COMPLEX HUMANITARIAN EMERGENCY: MANAGEMENT AND DEVELOPMENT OF INTERNATIONAL LEGAL REGIME

THESIS SUBMITTED TO JADAVPUR UNIVERSITY

FOR THE AWARD OF THE DEGREE OF

DOCTOR OF PHILOSOPHY IN ARTS

2023

BY

SHIVANI GUPTA

UNDER THE SUPERVISION OF

PROF. OMPRAKASH MISHRA

PROFESSOR, DEPARTMENT OF INTERNATIONAL RELATIONS

JADAVPUR UNIVERSITY

KOLKATA

Certified that the Thesis entitled

"Complex Humanitarian Emergency: Management and Development of International Legal Regime" submitted by me for the award of the Degree of Doctor of Philosophy in Arts at Jadavpur University is based upon my work carried out under the Supervision of Prof. Omprakash Mishra, Professor, Department of International Relations, Jadavpur University, Kolkata. And that neither this thesis nor any part of it has been submitted before for any degree or diploma anywhere/elsewhere.

Countersigned by the

Supervisor: Candidate:

Dated: Dated:

CONTENTS

ACKNOWLEDGEMENT

The completion of this thesis would not have been possible without the support and encouragement of several special people. Hence, I would like to take this opportunity to show my gratitude to those who have assisted me in a myriad of ways.

First and foremost, I would like to express my gratitude to my Ph.D. supervisor Professor Omprakash Mishra, presently, honourable Vice Chancellor, North Bengal University (Professor, Jadavpur University). Without him, this research would not have been born. I could not have asked for a more supportive and considerate supervisor. His willingness to offer me so much of his time and intellect was a major reason this thesis was completed. I will forever be grateful for the role he has played in shaping me both intellectually and personally.

I would also like to express my immense gratitude to the members of my Research Advisory Committee, Prof. Manik Chakraborty and Prof. Imankalyan Lahiri for their exemplary guidance, patience and constructive feedback throughout these years. I would also be forever grateful to other faculty members of the Department of International Relations, Jadavpur University, for their valuable insights and encouragement throughout the course of this research.

Finally, I would like to thank my friends and family to whom I owe a great deal. To my late father, who took the first step of my Ph.D. journey for me by submitting the application form. I am sorry that he did not get to see my completed work. However, he was an unwavering supporter through the seemingly endless years. To my sister, thank you for your support. Finally, to the two people who made this all possible, my husband for being the constant source of support and encouragement and my mother for her untold sacrifices and being the pillar of strength at every step. Without them, this thesis would never have been completed. With that said, all of the remaining flaws in the thesis are my own.

PREFACE

There has been a huge increase in emergencies in the last few years. These emergencies which are complex in form, longer lasting, and harder to address are referred to as Complex Humanitarian Emergencies (CHEs). CHEs are a mixture of armed conflict, total or partial breakdown of governmental authority, massive violations of human rights, and economic stagnation among others. Moreover, CHEs usually involve a multitude of actors both, global and local, public and private and most violence is directed against civilians leading to large-scale displacement of the victims of the emergency. While political crises are challenging by their very nature, CHEs are especially complicated as there is little-to-no government structure to support an emergency response. Complex Humanitarian Emergencies have become perhaps the most serious threat to human security in the present world. Despite attempts at controlling it, there are no signs that this trend is likely to be reversed any time soon.

This has resulted in the creation of zones of instability and insecurity globally, attracting the attention of a large number of international actors interested in either political intervention or providing humanitarian assistance. The spreading chaos does not appear to be subsiding and presents the international community with a major challenge. There is thus a need to address these catastrophes. As the entire world is stunned by the effect of complex humanitarian emergencies, there is an urgent need of addressing the concept legally in order to establish a legal policy that can govern emergency response and can reduce its harming effects. This study was driven by the objective of understanding the relevance of the existing international legislation and regulations to complex humanitarian emergencies and highlighting the gaps and lacunas of the existing framework.

In order to achieve this aim, the study made an attempt to analyse the wide range of laws within the international humanitarian law (IHL) regime, with special reference to the Geneva Conventions of 1949. The objective has been to locate sources of response mechanisms to complex humanitarian emergencies and determine the protection accorded to its victims. The role played by international organisations, especially the United Nations and the International Red Cross and Red Crescent Movement was also essential to this study. Since the inception of international humanitarian law, it has tried to regulate the conduct of hostilities by means of rules under the laws of war. The nature of armed conflicts has changed tremendously since the Geneva Conventions of 1949. However international humanitarian law has not been able to

keep pace with the continuously altering nature of conflicts. Complex humanitarian emergencies represent one such phenomenon. IHL recognises two types of conflicts. International Armed Conflicts and Non-international Armed Conflicts. Moreover, IHL does not cover internal tensions like riots and other domestic law and order situations within its protective scope. CHEs represent a myriad mix of armed conflicts that defies this neat division of armed conflicts in the IHL. Moreover, the humanitarian response to CHEs involves a multiplicity of actors including International Non-Governmental Organisations, the International Committee of the Red Cross (ICRC), various UN bodies along with their peacekeeping missions as well as third-party states. This diversity of actors further complicates the application of international humanitarian law.

A literature review revealed that there is a vast amount of existing literature that deals with the nature and sources of CHE (David Keen, 'Complex Emergencies' 2008), humanitarianism (David Rieff, 'A Bed for the Night: Humanitarianism in Crisis' 2003), as well as the nature and content of international humanitarian law (Elizabeth Wilmshurst, 'International Law and the Classification of Conflicts' 2018). Thus these and other related scholarly works provided a basis for the understanding of the topic. However, no study addresses IHL in the context of CHEs. There is a significant gap in the study of the applicability of international humanitarian law to complex humanitarian emergencies particularly. While non-international armed conflicts form an integral part of CHEs, CHEs also include various other factors and dimensions, including social, economic and political. No study has attempted an analysis of the difficulty of applying the existing international humanitarian law framework to the emerging concept of complex humanitarian emergencies. The present study is a modest attempt to fill this gap.

Thus the endeavour of this research has been to locate sources of response mechanisms to complex humanitarian emergencies and determine the protection accorded to its victims. It can be safely concluded that the existing framework of international humanitarian law does not formally include complex humanitarian emergencies, and hence there is no mechanism available to deal with it. However international humanitarian law accords and affords protection of civilian victims of war and armed conflict. Since armed conflicts are the primary source of disruption in CHEs, its victims are entitled to get the protection of IHL as part of the civilian population. However, the existing framework needs to evolve and develop in the light of the new challenges presented by CHEs so that the existing gaps and lacunas can be filled up.

LIST OF ABBREVIATIONS

AMISOM	The African Union Mission in Somalia
ATMIS	The African Union Transition Mission in Somalia
CAP	The Consolidated Appeals Process
CERF	Central Emergency Response Fund
CEDAT	The Complex Emergency Database
CHE	Complex Humanitarian Emergency
CMR	Guidelines for Civil-Military Relations
CPE	Complex Political Emergency
CTA	The Central Tracing Agency
DHA	Department of Humanitarian Affairs
ECOSOC	The Economic and Social Council
EPTA	Expanded Programme of Technical Assistance
ERC	UN Emergency Relief Coordinator
FARC	Revolutionary Armed Forces of Colombia
FAO	The Food and Agriculture Organization
FGS	Federal Government of Somalia
IAC	International Armed Conflict
IASC	Inter-Agency Standing Committee
ICJ	International Court of Justice
ICISS	International Commission on Intervention and State Sovereignty
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the Former Yugoslavia
ICU	Islamic Courts Union
IDPs	Internally Displaced Persons

IFRC	International Federation of Red Cross and Red Crescent Societies
IHL	International Humanitarian Law
INGO	International non-governmental organization
IOM	International Organization for Migrations
IRA	Irish Republican Army
IRO	International Refugee Organisation
KLA	Kosovo Liberation Army
LTTE	Liberation Tigers of Tamil Eelam
MDM	Médecins du Monde/ Doctors of the World
MINUSTAH	UN Stabilization Mission in Haiti
MNF	Multi-National Force
MOSS	Minimal Operational Security Standards'
MSF	Médecins Sans Frontières/ Doctors Without Borders
NATO	The North Atlantic Treaty Organisation
NIAC	Non-International Armed Conflict
NGO	Non-governmental organization
NSAG	Non-State Armed Group
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
PITF	Political Instability Task Force
PoW	Prisoners of War
PRT	UK's Provincial Reconstruction Team
RUF	Revolutionary United Front
R2P	Responsibility to Protect
SARC	Syrian Arab Red Crescent
SFSS	The Democratic Front for the Salvation of Somalia
SNA	Somalia National Army

SNM	Somali National Movement
SODAF	Somali Democratic Action Front
SPLA-IO	Sudan People's Liberation Army-In Opposition
SSF	Somali Salvation Front
SUNFED	Special United Nations Fund for Economic Development
TFG	Transitional Federal Government
TPNW	The Treaty on the Prohibition of Nuclear Weapons
UCDP	Uppsala Conflict Data Program
UN	The United Nations
UNAMA	UN Assistance Mission for Afghanistan
UNDAC	United Nations Disaster Assessment and Coordination
UNDRO	UN Disaster Relief Office
UNHCR	Office of the UN High Commissioner for Refugees
UNICEF	United Nations International Children’s Emergency Fund
UNOCHA	UN Office for the Coordination of Humanitarian Affairs
UNRRA	United Nations Relief and Rehabilitation Administration
UNRWA	The United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNSC	The United Nations Security Council
UNSECOORD	United Nations Security Coordinator
UNSOM	The United Nations Assistance Mission in Somalia
USAID	The US Agency for International Development
USC	United Somali Congress
WCO	World Customs Organization
WFP	World Food Programme
WHO	World Health Organization

CHAPTER I

INTRODUCTION TO THE THESIS

Background

There has been a huge increase in emergencies in the last few decades. These emergencies which are complex in form, longer lasting, and harder to address are referred to as Complex Humanitarian Emergencies (CHEs). CHEs are perhaps the most serious threat to human security in contemporary times. The term Complex Humanitarian Emergencies has been used by the United Nations to describe situations where armed conflict and the absence of effective governance have led to crises, characterised by extreme social upheavals. Thus while political crises are challenging by their very nature, CHEs are especially complicated as there is little-to-no government structure to support an emergency response. CHEs are not necessarily caused by conflicts, but more often than not, conflict is a major part of the problem. Most of the world's worst humanitarian crises today are influenced by armed conflict. However, no matter what the cause of the breakdown, the absence of a strong and legal government authority with its public services, hinders a proper response mechanism to the crisis.

Conflicts of the pre-Cold War period were devastating in every sense, however, the following points make CHEs even more complicated. Firstly, while most CHEs are localised geographically, they are often protracted as opposing sides face political stalemates. Moreover, despite their localised nature, these emergencies are marked by a large number of civilian victims and casualties, resulting in large-scale displacement as well as refugees spilling across national borders. This results in the creation of zones of instability and insecurity globally, attracting the attention of a large number of international actors interested in either political intervention or providing humanitarian assistance. The situation results in an economic crisis, leading to the breakdown of essential services and the undoing of years of developmental progress. Thus CHEs involve a broader dimension than traditional armed conflicts, involving economic, political, environmental, and ethnic factors.

These emergencies do not appear to be subsiding and present the international community with a major challenge. There is thus a need to address these catastrophes. However, every emergency is different requiring unique response mechanisms, thus the humanitarian community is required to dig deeper into each such CHEs. Missing or misinterpreting the needs can undo the entire response effort. Thus as the entire world is stunned with the effect of complex humanitarian emergencies, there is an urgent need of addressing the concept legally in order to establish a legal policy that can govern emergency response and can reduce its harming effects. It is important to study about wide range of laws within the international humanitarian law (IHL) regime which can regulate or guide international humanitarian action in the wake of these disasters. There is an imbalance, with significant humanitarian response capacity on one side and sparse legal authority, guidance and standards on the other. The role played by international organisations, especially the United Nations and the International Red Cross and Red Crescent Movement also becomes essential to study. Cooperation between humanitarian agencies is essential in creating a body of common standards for emergency response. This study aims at understanding the relevance of international legislation and regulations and discusses the lacunas of the existing framework of laws and regulations.

The impact of violence and war upon a nation and a society is irreversible. Since the inception of international humanitarian law, it has tried to regulate the conduct of hostilities by means of rules under the laws of war. The laws of war aim not just at curtailing the use of force but also at humanising war. *Jus ad bellum* refers to the set of criteria that must be met for a country or state to justifiably engage in war or use military force against another country or state. These principles are meant to ensure that wars are only fought for justifiable reasons. Whereas *jus in bello*, known as international humanitarian law, regulates the actual conduct of war. Thus, IHL seeks to humanise war by curtailing its impact by regularising the use of force by combatants and protecting those who are non-combatants.

IHL recognises two types of conflicts. International Armed Conflicts fought between two or more State and Non-international Armed Conflicts fought between a state and non-state armed actor or between two or more non-state armed groups. However, IHL does not cover internal tensions like riots and other domestic law and order situations within its protective scope. CHEs represent a myriad mix of armed conflicts that defies this neat division of armed conflicts in the IHL. Moreover, the humanitarian response to CHEs involves a multiplicity of actors including International Non-Governmental Organisations, the International Committee of the Red Cross (ICRC), various UN bodies along with their peacekeeping missions as well as third-

party states. This diversity of actors further complicates the application of international humanitarian law. This thesis attempts to study the scope and application of IHL to the phenomena of complex humanitarian emergencies.

Statement of the problem

The nature of armed conflicts has changed tremendously since the Geneva Conventions of 1949. However international humanitarian law has not been able to keep pace with the continuously altering nature of conflicts. Complex humanitarian emergencies represent one such phenomenon. The current usage of the concept of complex humanitarian emergency, though valuable, is rarely articulated in a consistent framework. There is, therefore, a felt need to formulate a comprehensive understanding of the concept of complex humanitarian emergencies and their actualities. An attempt has thus been made in the present study to critically analyse the prevailing usage and definitions of the concept and set up a more consistent and all-embracing definition.

In most cases, complex humanitarian emergencies are associated with the collapse of accountable government and the effects of war. Sometimes the situation is further complicated by other hazards such as drought, famines, etc. This instability and insecurity does not recognise demarcation of national boundaries and are frequently seen to spill over into neighbouring countries, many of which are themselves unstable. This leaves a complex situation where providing humanitarian assistance is fraught with danger. Humanitarians often have to make very difficult choices, many of which are contradictory and require uncomfortable compromises. There are plenty of examples where humanitarian aid during complex emergencies has ended up making a situation worse by indirectly, or even directly, assisting those with a vested interest in sustaining the humanitarian emergency. Among other reasons, this is attributable to the growing multiplicity of actors involved in relief operations. This adds significantly to the complexity of coordinating internal and external factors involved in humanitarian emergencies. Hence, this research investigates those internal and external factors that influence the work of humanitarian workers in a negative manner. This study also examines the financial and political constraints under which aid agencies, donors and governments operate during CHEs. In so doing it explores the divergence between the rhetoric and the reality of providing assistance to the most vulnerable.

Furthermore, the nature of violence that most CHEs witness is very different from traditional warfare. The increase in the scale and capacity of violence that non-state actors like terrorist

groups inflict and the advancement in military technologies have converged to question the adequacy of existing international norms at a time marked by the rapid proliferation of violent internal armed conflicts. These localised conflicts, driven by transnational connections have made states lose their monopoly over the use of force. A transformation of the traditional concept of war indicates that conflict is no longer predominately characterised by a classical, state-centred paradigm in which war is fought between soldiers as agents of the state, but rather they characterise complex and ambiguous situations of violence with less clear-cut distinctions. While response to any armed conflict represents quite a complex area of actions and reactions, it is even more so in the case of complex humanitarian emergencies. This is because the latter is the result of the deliberate disruption of institutional arrangements, which reduces the scope of endogenous responses within the state. At the same time, the armed conflict obstructs the compensatory actions of the international community.

This study aims to contribute toward a better understanding of the fundamental dilemmas that complicate any international response to complex emergencies. To say that the international community reacts to these events means that each of these organisations carries out specialised activities to address the needs of people displaced or endangered by the humanitarian emergency. This amorphous group of organisations is rarely unified. However, each organisation confronts similar situations and complexes. This study explores the relation between the United Nations (UN) and non-governmental organisations (NGOS) in responding to complex humanitarian emergencies. It describes the two actors, their organisation, cultures, governance and mandates. It examines why the two sets of organisations have been drawn into a closer collaboration in dealing with emergencies, how that interaction is working from both an operational and policy perspective and whether both are suited as currently constituted to respond to ongoing challenges. The study also examines the unique institutional strengths and weaknesses each brings to relief responses and the way friction between the UN and NGOS is exhibited in their diverse missions, operational styles and organisational cultures. Thus the study has focused on operational as well as organisational cooperation between NGOs and the UN system.

In addition, this study has devoted attention to United Nation's humanitarian interventions and peacekeeping missions. It has looked into the concept of Responsibility to Protect (R2P) to assess its relevance to CHEs. While the UN is expected to address emergencies and genocide, however, it is not able provide a very effective and efficient means to respond. Yet no other

humanitarian agency or organisation possesses the capabilities and the capacity to support the type and complexity of recovery infrastructure required.

The International Committee of the Red Cross has also had a major role to play in the development and evolution of international humanitarian law. Furthermore, it is usually the first humanitarian body to respond to an emergency owing to its mandate which allows it to have a presence in most states and offer its services in case of conflicts. This makes it important to study ICRC's response to humanitarian emergencies, especially in the context of its adherence to the principle of neutrality. This study has sought to analyse if the principle of neutrality, which is a cornerstone of ICRC's operational activities is useful in the context of CHEs.

In recent years, advances in technology, globalisation, and the proliferation of internal conflicts are all contributing to an increasingly complex international system governed by international humanitarian law created during the post-Second World War era, was not originally intended to operate. The idea of complex humanitarian emergencies has not been formally included in the IHL and hence there is no mechanism available to deal with it. Instead, they are being accommodated in the existing IHL framework creating confusion. Thus there is an alarming lack of internationally agreed standards for humanitarian assistance that ensures facilitation of effective response in times of complex emergencies. There are a number of relevant instruments, including some multilateral treaties, bilateral agreements between states, as well as between states and international organisations, and a number of UN resolutions, declarations as well as guidelines issued by various authoritative bodies. However, the effectiveness of this body of international law, is hampered by its dispersed nature; the lack of awareness and implementation of relevant instruments among the key stakeholders; and important gaps in its scope and coverage. Keeping in mind the increased number of conflicts and the multiplying of non-state armed groups with grave and large-scale human rights violations happening over all the world, this study has aimed to understand the applicability of the existing legal framework to these humanitarian emergencies.

The problem is further complicated owing to the fact that IHL applies differently to conflict of an international and non-international character. Moreover, situations of internal disturbances and tension not reaching the threshold of armed conflicts are not covered within the protective scope of IHL. This often creates difficulties in the application of international humanitarian law principles to situations of complex humanitarian emergencies, which often involves

various forms of violence occurring simultaneously. With regard to the applicability of law during international armed conflicts, the rules and regulations are well-developed and comprehensive. However, there was no specific law for non-international armed conflicts prior to 1949. Mostly, violence within states remained outside the scope of international law. This gap was finally filled in 1949 with the adoption of the Geneva Conventions of 1949. Article 3, which is common in all four Geneva Conventions, provides for the respect of basic standards of human rights in non-international armed conflicts. Subsequent developments led to the adoption of two Additional Protocols in 1977, in which Protocol II specifically relates to non-international armed conflicts. According to the Geneva Conventions of 1949, the application of international humanitarian law principles to non-international armed conflicts depends upon the fulfillment of a threshold and qualification of a 'conflict' as envisaged by the Convention. The Geneva Convention envisages three-tier situations regarding the applicability or non-applicability of international humanitarian law principles. First, it distinguishes between international conflicts as defined in Common Article 29 and conflicts, not of an international character under Common Article 3 and Additional Protocol II of the Geneva Convention of 1949. It also distinguishes the conflicts involving low-intensity violence that do not reach the threshold of non-international armed conflicts and therefore, are not regulated by the Geneva Convention and are beyond the scope of international humanitarian law. However, this demarcation does not provide a clear threshold for the respective armed conflicts. Moreover, each instrument has a different definition of these concepts, resulting in the fragmentation of the legal regime regulating internal armed conflicts. Therefore, the vital question of what exactly is meant by armed conflict of non-international character remains unanswered. For that reason, this thesis investigates relevant compliance and conceptual deficiencies confronting the application of IHL principles in non-international armed conflicts. It is necessary to look into the legal regime of non-international armed conflicts and the obligation of state and non-state actors under the same, due to instances of the denial of humanitarian rights during such conflicts. Elements of law that would aid humanitarian response and its associated legal issues have received comparatively little attention. This study has thus attempted to fill this gap by examining the scope of the application of international humanitarian law principles in cases of non-international armed conflicts that are most common in complex emergencies.

Despite progress in law in terms of consolidation of customary international law, development of non-derogable and peremptory norms, an incomplete regime of IHL, applicable to CHEs still prevails. While the United Nations (UN) resolutions and customary laws do exist, these

are all at the periphery of the issue. At the core is a yawning gap. There is no definitive, broadly accepted source of international law that spells out legal standards, procedures, rights and duties pertaining to emergency response and assistance. No systematic attempt has been made to bring together the various existing laws, to formalise customary law or to expand and develop the law in new directions. Owing to this, there are only a few newsworthy emergencies that receive assistance, others go unreported and receive inadequate response.

In the absence of legally agreed standards, the victims of humanitarian emergencies are at the mercy of the uncertainties of humanitarian response, political calculation, indifference or ignorance. An attempt has been made in the present study to review the applicability of the existing framework of international humanitarian law in the situation of a CHE. A legal framework establishes legal authority that may dictate, or encourage policies, practices, processes and the assignment of authorities and responsibilities to individuals or institutions. The study asserts that without a comprehensive legal directive that obliges actors and agencies to undertake action, the natural lethargy of international bureaucracies leads to non-specified essential tasks being ignored or undertaken indifferently. In short, legislation enables and promotes sustainable engagement and helps to avoid disjointed action at various levels.

Scope of the Study

The scope of the present study is limited to an understanding of the phenomena of complex humanitarian emergencies, their management and the legal framework guiding response to emergencies. The endeavor has been to analyse the international legal regime in response to complex emergencies.

The research aims at testing the usefulness of existing international laws in their interaction with the problem of complex humanitarian emergencies. The study concerns itself particularly with the emerging trends in contemporary armed conflicts that defy a neat division between international and non-international armed conflicts. The research has tried to locate these humanitarian emergencies in the current legal framework and the applicability of international humanitarian law in these cases. The scope of this research is therefore, focused on the analysis of provisions of the Geneva Conventions, the method adopted by the ICRC to protect war victims, prisoners of war and civilian victims of armed conflict, humanitarian law in relation to human rights, terrorism and cyber war. Also, since CHEs are a phenomenon that calls upon the international community to respond, it offers an opportunity to examine the role that the UN plays under the circumstances.

Since the concept of complex humanitarian emergencies is vast, the present study is limited only to the doctrinal research of the concept, the role of institutions, legal framework, and international response which deals with international conventions, treaties and agreements. Moreover, the study has mainly focussed on rules and principles set by the United Nations for relief and recovery rather than risk reduction.

Objectives of the Study

Complex humanitarian emergencies are increasingly impacting different nations and their people the world over. Human efforts along with legal frameworks in the management of emergencies increasingly occupy an important role in mitigating human suffering. In this context, it is of crucial importance to analyse the international legal regime and explore the coordination between various organisations in emergency management. This being the general objective of the present research work, the study also aims to:

i) To study and understand the concept of complex humanitarian emergencies and their management.
ii) Describe and define the application of international humanitarian law, principles, and codes of conduct to humanitarian action in complex emergencies, and study the challenges posed by these conflicts for international humanitarian law.
iii) To describe and evaluate the main theoretical concepts, histories and policies behind humanitarian aid and interventions and use case studies to show how perceptions shape international responses to a conflict and how this influences the response to the conflict.

Review of Literature

David Keen, 'Complex Emergencies' (2008).

David Keen's book "Complex Emergencies" is a thorough and insightful analysis of the causes and consequences of modern-day complex emergencies. Keen, has drawn on a wide range of theoretical perspectives and empirical data to provide a comprehensive overview of this phenomenon. The book gives a nuanced understanding of the different dimensions of complex emergencies. He demonstrates how CHEs are not simply natural disasters or conflicts, but rather result from the interaction of a range of social, economic, and political factors. In a similar vein, he has drawn attention to the functions of violence in complex emergencies, both at the local and global levels. Keen also shows how complex emergencies are not isolated

events, but rather are part of broader patterns of inequality, poverty, and marginalisation. Keen has also devoted his attention to the experiences of people who are affected by complex emergencies. He highlights the often-devastating impact that these crises have on individuals, families, and communities, and shows how people respond to them in a variety of ways.

David Rieff, 'A Bed for the Night: Humanitarianism in Crisis' (2003).

"A Bed for the Night: Humanitarianism in Crisis" is a thought-provoking and well-researched critique of the modern humanitarian aid system. Rieff, who is a journalist and scholar with extensive experience covering humanitarian crises, draws on his own observations as well as extensive interviews and archival research to provide a nuanced analysis of the challenges facing humanitarian aid today. He argues that aid is often driven more by politics and the interests of donor countries than by the needs of the people it is intended to help. Rieff also highlights the unintended consequences of aid, such as the ways in which it can perpetuate conflict, undermine local economies, and create dependency. Rieff also gives an analysis of the ethical dilemmas facing aid workers. He shows how aid workers are often caught between conflicting priorities, such as the need to respond quickly to urgent humanitarian needs and the requirement to ensure that aid is delivered in a sustainable and effective way.

Joanna Macrae and Anthony Zwi (eds), 'War and Hunger: Rethinking International Responses to Complex Emergencies' (1994).

"War and Hunger: Rethinking International Responses to Complex Emergencies," is a comprehensive and insightful examination of the challenges faced by the international community in responding to complex emergencies. The book is a collection of essays by a range of experts in the fields of humanitarianism, development, and conflict resolution.

The book focuses on the linkages between conflict, hunger, and humanitarian crises. It is argued that complex emergencies are not simply the result of natural disasters or resource shortages but are often driven by political and social factors such as conflict, displacement, and discrimination. The book shows how these factors can exacerbate hunger and other forms of deprivation, and how they can make it difficult for humanitarian actors to provide effective assistance. Questions on the role of neutrality in conflict situations, the tension between providing assistance and supporting local actors, and the responsibility of aid agencies to address underlying causes of crisis such as poverty and inequality have also been addressed.

Stephen C.Neff, 'War and the Law of Nations: A General History' (2005).

It is a study of the concept of war. It focusses upon the legal concept of war and the legal implications of going to war, how wars are fought, and how they are ended. Stephen Neff, contends that it was only after war was no longer regarded as natural or inevitable that a legal concept could evolve. He identifies war as a subset of normal human conflict characterised as a collective public armed yet rule-bound undertaking, targeted at foreign states.

Elizabeth Wilmshurst, 'International Law and the Classification of Conflicts' (2018).

The book addresses the distinction between international armed conflicts and non-international armed conflicts and the distinction between these and other situations of armed violence that are completely internal to a state. The book discusses classification and also provides a collection of studies of armed violence viewed through the lens of international humanitarian law, giving historical background, context and an examination of relevant legal issues. Being a very recent and extensive book written on the subject matter, the work highlights the issues of contemporary non-international armed conflicts and elaborates on the challenges faced due to the changing nature of warfare and the road ahead.

ICRC, '*ICRC Report on IHL and the Challenges of Contemporary Armed Conflicts' (2019)*

The report argues that the changing nature of conflict, including the increasing involvement of non-state actors and the use of new technologies, presents significant challenges to the application and enforcement of IHL. The report highlights the need for a renewed commitment to IHL by all parties to armed conflicts. It notes that violations of IHL are becoming more frequent and more severe, and that accountability for these violations is often lacking. The report also emphasises the importance of ensuring respect for IHL in new forms of conflict, such as cyber warfare and autonomous weapons systems.

The report emphasises the importance of humanitarian action in responding to the challenges of contemporary armed conflicts. It argues that the humanitarian consequences of armed conflicts are becoming increasingly severe, and that humanitarian actors must be able to operate safely and effectively in all contexts.

Overall, the ICRC report underscores the need for renewed efforts to promote respect for IHL and protect civilians in contemporary armed conflicts. It calls for increased dialogue and

cooperation among all parties to conflicts, and for greater investment in humanitarian action to address the urgent needs of those affected by conflict.

Sandesh Sivkumaram, 'The Law of Non-International Armed Conflict' (2012)

The author of this work opines that the issue of non-international armed conflicts has taken centre stage and international law has not remained static but has adapted itself to be applied in such situations. In a similar vein, the book underlines the equality of obligations of the parties to a non-international armed conflict, irrespective of the asymmetry in the positions of the government forces and the insurgent armed groups. The author argues in favour of investing courts established by these armed groups with a greater degree of legitimacy, recognising them as a proper "forum for prosecution when none would otherwise exist". A more traditional position taken by the author is a repudiation of the argument that there are so-called "transnational" armed conflicts, which are neither non-international armed conflicts nor international armed conflicts. The book does not address the more significant issue of international recognition of an insurgent regime as a state's government. The book shows that, in some specialised areas, non-international armed conflict can offer greater protection than international armed conflict.

Tamás Hoffmann, 'Squaring the Circle? –International Humanitarian Law and Transnational Armed Conflicts' (2008)

This work 'Squaring the Circle? –International Humanitarian Law and Transnational Armed Conflicts' acknowledges that while the armed conflict law historically accepts only the dichotomy of international and non-international armed conflict relevant to the legal system governing armed conflicts, the fact poses circumstances that do not neatly fall into such categories. External state participation is almost universal in current wars, and a substantial number of disputes continue between states and non-state parties that do not generally reside within a country's boundaries. In this article, Hoffman has attempted to explore the legal concept of 'transnational armed conflicts,' that is, violent wars of a transboundary nature affecting non-state parties and thereby apparently avoiding the traditional distinction between international and non-international violent conflict. After an analysis of the law, he argues that contemporary international humanitarian law is capable of regulating such conflicts and calls for an overhaul of the present system are premature.

Mary Kaldor, 'New and Old Wars: Organised Violence in the Global Era' (2006)

The book 'New and Old Wars: Organised Violence in the Global Era' argues that conventional wars between states with the objective of inflicting maximum violence is becoming extinct and, in its place, has come a new type of organised violence or 'new wars', which the author describes as a mixture of war, organised crime and massive violations of human rights where the actors are global, local, public as well as private. The wars are contested for particular political goals using strategies of terror and destabilisation that are essentially outlawed in accordance with the rules of modern warfare. Kaldor's analysis provides a basis for a cosmopolitan political response to these modern wars, where the monopoly of legitimate organised violence is reconstructed on a transnational basis and international peacekeeping is reconceptualised as cosmopolitan law enforcement. This implies a reconstruction of civil society, political institutions, and economic and social relations. The author in the last chapter has also answered the critics of the New Wars argument portraying that old war thinking in Afghanistan and Iraq greatly aggravated what turned out to be essentially, standard new wars - characterised by elements like identity politics, criminalised war economy and civilians as main target and victims.

Research Gap

A literature review revealed that there is a significant gap in the study of the applicability of international humanitarian law to complex humanitarian emergencies particularly. While there is a plethora of existing literature that deals with the nature and composition of international humanitarian law, as well as its applicability to non-international armed conflicts, no study addresses IHL in the context of CHEs. While non-international armed conflicts form an integral part of CHEs, CHEs also include various other factors and dimensions, including social, economic and political. No study has attempted an analysis of the difficulty of applying the existing international humanitarian law framework to the emerging concept of complex humanitarian emergencies. The present study attempts to fill this gap.

Research Methodology

The study is in the nature of qualitative analytical research that has an explorative, analytical and critical perspective. The literature relies upon various sources, both primary and secondary, available in books of comparative nature and various reputed journals on the topic. The study of the concept of complex humanitarian emergencies itself involved an extensive reading of

primary and secondary literature on the subject. Policy papers of the United Nations and other international organisations, including the International Committee of the Red Cross served as the basis to trace the presence or absence of an effective response to CHEs. The nature of the theme required the extensive usage of secondary data such as observation records and field notes of practitioners and organisations involved in emergency mitigation. Interviews and official records of former peacekeeping operations were also be made use of. The case study method has been applied to analyse the applicability of international humanitarian law in certain conflict areas.

Research Questions

1. How to identify the existence of a complex humanitarian emergency?
2. How has the increasing use of the military in humanitarian assistance impacted the nature and work of humanitarian organisations?
3. Why does the United Nations respond in different ways to similar humanitarian emergencies?
4. Is the ICRC's principle of neutrality relevant to cases of complex humanitarian emergencies?
5. Whether the gap in the applicable legal regimes on non-international armed conflicts, and their rigid legal characterisations contribute to both noncompliance and non-enforcement of law by non- state actors?
6. What gaps in the application of IHL to CHEs does the Somalia conflict represent?

Chapter Content

Chapter I: Introduction

The chapter deals with a brief introduction to the study. It focuses on the background, research problems, scope, objectives of the study, methodology of research work, research questions and a review of the literature.

Chapter II: Complex Humanitarian Emergencies: A Theoretical Exploration

This chapter introduces the concept of a 'complex humanitarian emergency' (CHEs). Starting with a working definition of the concept, the chapter attempts a detailed analysis of CHEs explaining their origin and incorporation into international policies. Such an analysis is then

used to understand the challenges and difficulties facing interveners and forms the basis for a reframing of the debate on humanitarian intervention considering current realities. In addition, the chapter also introduces the office of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and raises various problems associated with OCHA's definition of complex emergencies and its coordination of humanitarian activities.

Chapter III: Complex Humanitarian Emergencies and Humanitarianism

The chapter begins by exploring the concept of humanitarianism as an important response to complex humanitarian emergencies. It studies the impacts of political and military hindrances during armed conflicts in the delivery of humanitarian aid during emergency response and establishes the environment in which humanitarian organisations operate. It does so by defining the dilemmas humanitarian organisations face and their implications for conflict resolution, in the changing international context. The chapter then assesses the evidence that humanitarian organisations have also contributed inadvertently to the escalation of violence rather than only to conflict resolution. Furthermore, the chapter argues that there is an inherently insurmountable gap between political/military objectives and humanitarian objectives in an armed conflict that extends into the emergency response, causing an exacerbated bias and corruption in the provision of aid. Finally, the relationship between stabilisation project and humanitarian assistance is considered.

Chapter IV: The International Humanitarian System in Complex Emergencies: The Role of the United Nations

This chapter focuses on the first major actor of the international humanitarian system, that is, the United Nations. It aims to shortly summarise the history of the UN humanitarian assistance system and how this system has altered over the years to respond to the changing nature of complex humanitarian emergencies. It does so by highlighting the general patterns in the UN's humanitarian system as well as the legal framework of humanitarian assistance of the UN.

The chapter then proceeds to explore the concept of humanitarian intervention. It investigates the current legal status of the concept under contemporary international law and the Charter of the United Nations. It then attempts to illustrate the increasing legitimacy of humanitarian intervention and its relationship with the changing meaning of state sovereignty. It thus demonstrates how sovereignty norms have evolved over time and how they interact with,

modify, and are modified by humanitarian norms in the context of the functioning of the Security Council.

Finally, the chapter investigates the criticism surrounding the United Nations Security Council (UNSC), that of responding with vigour to some emergencies and inaction to others. A comparative study of the Council's response to some major humanitarian crises in order to understand the rationale behind this selective action has been attempted.

Chapter V: The International Humanitarian System in Complex Emergencies: The Role of the International Red Cross and Red Crescent Movement

The chapter examines the role of the International Red Cross and Red Crescent Movement in complex humanitarian emergencies and in the development of international humanitarian law (IHL). The chapter focuses on the International Committee of the Red Cross (ICRC) as it has a major role to play in the development and evolution of international humanitarian law. Moreover, it is one of the primary organisations involved in the humanitarian response to complex humanitarian emergencies. Thus the nature of the Red Cross as a transnational movement, its resources and its overall impact on international politics has been examined.

The second part of the discussion focuses on the principle of neutrality, which is the cornerstone of the Red Cross Movement. It examines the organisation's navigation of neutrality through changes in global politics. A contrast is also made with Médecins Sans Frontières' idea of neutrality.

Chapter VI: Scope and Development of International Humanitarian Law

International humanitarian law plays a major role in regulating complex humanitarian emergencies (CHEs). This chapter thus attempts to review the content and limits of IHL in its application to CHEs. This chapter appraises the factors that lead to or hinder compliance and reviews the applicable law and its enforcement.

The chapter also focuses on non-international armed conflicts which are subject to far fewer laws than international conflicts. The study determines aspects of customary international law that apply to non-international armed conflict and the extent to which double standards of the IHL regarding international and non-international conflicts contribute to the reduction of compliance by non-state actors. Finally, the chapter analyses how IHL is relevant in the face

of the challenges posed by terrorism and cyber war. These represent emerging forms of warfare not explicitly addressed within the existing scope of international humanitarian law.

Chapter VII: The Application of International Humanitarian Law: A Case Study of the Somalian Conflict

This chapter examines the international response and the application of international humanitarian law to the ongoing conflict in Somalia. The case study of Somalia was chosen as the violations of international human rights and humanitarian law have been particularly severe. Moreover, Somalia represents a protracted conflict where the nature and players have changed multiple times giving the opportunity to analyse the application of IHL at different levels.

The first part of the chapter provides a sequence of the most relevant events of Somalia's armed conflicts dating back to the era of Siad Barre in the 1980s. It first establishes why Somalia can be regarded as a complex humanitarian emergency. It then seeks to evaluate the extent to which Common Article 2 and Common Article 3 of the Geneva Conventions apply to the Somalia armed conflict. The chapter then re-evaluates the failed 1992 Somalia mission retrospectively and acknowledges the errors unique to the Somalia mission. It also analyses the compliance with IHL during the Ethiopian invasion of Somalia as well as some recent examples of violations and compliance of IHL in the conflict.

Chapter VIII: Conclusion to the Thesis

The final chapter brings together the understanding and findings gathered in the previous chapters. The chapter attempts to answer the research questions posed in the introductory chapter and present the findings of the research.

CHAPTER II

COMPLEX HUMANITARIAN EMERGENCIES: A THEORETICAL EXPLORATION

This chapter introduces the concept 'complex humanitarian emergency' (CHE). CHE represents a humanitarian crisis that jeopardizes a community's safety and well-being, to the extent that normal support systems are overwhelmed, leading to grave consequences for human development. It is thus important to understand this growing phenomenon. This chapter has endeavoured to achieve this understanding by starting with a working definition of the concept, a detailed analysis of complex humanitarian emergencies explains its origin and incorporation into international policies. Such an analysis will be used to understand the challenges and difficulties facing interveners and forms the basis for a reframing of the debate on humanitarian intervention in light of current realities. In addition, the chapter also introduces the office of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and raises various problems associated with OCHA's definition of complex emergencies and the humanitarian activities it coordinates.

Introduction

During the period between the early 1980s and the mid-1990s, the number of humanitarian catastrophes intensified from an average of 20-25 to about 65-70 a year, while the number of its victims increased spirally.[1] According to an estimate by the International Red Cross the number of people vulnerable to such crises' is increasing by about ten million annually.[2] A large number of people have been left dead, starving, dislocated, destitute and without hope, while many others could be affected in the near future unless pre-emptive and remedial measures are introduced on an urgent basis. This increase in emergencies is not owing to an increase in natural disasters but instead due to manmade causes and a rising share of them are complex humanitarian emergencies, a phenomenon which has become possibly the most serious danger to human security in the contemporary world.

[1]Jeni Klugman, "Social and Economic Policies To Prevent Complex Humanitarian Emergencies Lessons From Experience," *WIDER Policy Brief* 2/1999 Helsinki: UNU-WIDER, 1999, vi
[2] ibid

Definition and Origins

The term 'complex humanitarian emergency' has been adopted by the United Nations to illustrate conditions where armed conflict and the absence of effective governance have resulted in disasters, symbolised by intense social disruption. However, the meaning of the term 'complex emergency' is loaded with ambiguity and vagueness, and its usage may correspondingly conceal a lot. It pertains to certain types of social and political disorders causing extensive misery, but how and why it is used is by no means simple. There are quite a lot of ideas that are regularly used conversely when depicting complex emergencies and the responses to them.

"Complex emergencies are the intersection of massive political, social, economic, health, and security problems that are linked to large scale violent conflict and cause humanitarian crises."[3] They crop up in places where the state institutions have not developed or have been worn down or have become overwhelmed by the strength, extent, and magnitude of these problems. Thus, governance is impaired and conceiving or reconstructing it is a fundamental condition for mitigating the humanitarian crisis over the long term. Complex emergencies are thus, primarily internal crises. The 'complexity' refers to the multidimensional responses provided by the international community and is additionally complicated by the absence of protection usually provided by international treaties, covenants, and the United Nations Charter during conventional wars. It thus becomes important to understand the meaning of the term.

Firstly, the term 'emergency' itself is rather ambiguous. The Oxford dictionary defines an 'emergency' as "a sudden state of danger etc., requiring immediate action.".[4] However, the reality of what is described as 'complex emergencies' today is rather different. In the majority of the cases, these emergencies are not unanticipated but have been either constituted politically or, in fact, have been in an emergency-like situation for a relatively long time. Humanitarian assistance groups often deal with cases where an emergency was declared long back and yet the 'immediate action' either took place after a long time of the event or the condition of the emergency has altered so little that it has become a permanent situation. It is thus an attribute

[3] Flemming Pradhan-Blach, Gary Schaub, and Matthew LeRiche, "The Dilemmas of Complex Emergencies," *Cooperation between International Organizations in Complex Emergencies in Eastern Africa: The Views of Danish Practitioners on Cooperation from an Expert Seminar*. Report. Centre for Military Studies, (2014).p. 9. URL: chrome extension://efaidnbmnnnibpcajpcglclefindmkaj/https://cms.polsci.ku.dk/publikationer/complexemergencies/Cooperation_between_International_Organizations_in_Complex_Emergencies_in_Eastern_Africa.pdf.

[4] Oxford Dictionary

of the term ‘complex emergency’ that it often depicts a situation which is not as short-lived as it’s description as an ‘emergency’ suggests. It is therefore important to understand that what may be depicted by the media or policy makers as an ‘unforeseen combination of circumstances’ is in fact an aggregation of a multitude of causes that have been developing for a long time. Likewise, ‘immediate action’ is a term that can be expanded endlessly. Often response to an emergency needing urgent assistance, have taken years. Besides, the arrangement of the words ‘complex emergencies’ itself seem peculiar. The question that arises is what exactly is then an uncomplicated emergency? What is achieved by using the adjective ‘complex’? It therefore becomes important to comment on the origin of the term and on various ways of gauging the problems it brings into focus.

‘Complex humanitarian emergency’ is a concept which was introduced in rather recent times. The term originated in the 1980s, where it was first used to describe upheavals in Mozambique, Africa. During this time international assistance organisations recognised that the emergency aid and humanitarian assistance needs were triggered by the on-going armed conflict.[5] The term was then adopted by various United Nations agencies and by several prominent academicians in the early 1990s. One such academic who made extensive use of the term was Mark Duffield. Gathering from his experience as Oxfam’s Country Representative in Sudan in the early 1980s, he wrote an influential article named ‘Complex Emergencies and the Crises of Developmentalism’ in which he observed that ‘political tensions in East Asia and Latin America have decreased after the end of the Cold War. However, tensions have rather increased in parts of Africa, the Middle East, East Europe, the Caucasus and Central Asia’.[6] “In 1993, for example, there were 26 UN-designated ‘complex emergencies’ affecting 59 million people.”[7] For the UN, “a complex emergency is a major humanitarian crisis of a multi-causal nature that requires a system-wide response. Commonly, a long-term combination of political, conflict and peacekeeping factors is also involved.” [8]

The word ‘complex’ before humanitarian emergency may give out the implication that natural disasters are somewhat ‘simple’ and cannot be ‘complex’. Likewise, one might also argue that

[5] Organization for Economic Co-operation and Development, *“Evaluation and Aid Effectiveness 1- Guidance for Evaluating Humanitarian Assistance in Complex Emergencies*,” DAC, (Paris: OECD, 1999). p.9 http://www.oecd.org/dataoecd/9/50/2667294.pdf.
[6] Mark Duffield, Complex Emergencies and the Crisis of Developmentalism, *IDS Bulletin* Vol 25 No 4, (1994).pp. 2-3
[7] UN, “Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations”, *Report of the Secretary General,* A/48/536, New York: United Nations (1994).
[8] Mark Duffield, " Complex Emergencies and the Crisis of Developmentalism." *IDS Bulletin,* Vol 25 No 4, (1994).pp. 3–4.

conflict-related emergencies occurring prior to the late 1980s were not "complex". This impression might be rather misleading as several traits of those emergencies as well as the problems faced by humanitarian aid agencies were comparable to more recent emergencies that have been categorised as 'complex humanitarian emergencies.' However, in spite of this, the term has its usefulness owing to the fact that these conditions of political instability involving armed conflict are more often than not seen in complex contexts. Further, what increases the complexity is the fact that providers of humanitarian assistance must operate within it. It is because of its unique nature that international community must devise and adopt specific approaches and techniques for responding to complex humanitarian emergencies.

It is thus important to define a complex humanitarian emergency. Today, there is still no agreed-upon definition of the phenomenon. Several organisations have their own definitions that are similar to each other. The Inter-Agency Standing Committee (IASC) agreed upon a formal definition of a complex emergency in 1994. The IASC is a UN body that was formed in 1992 for inter-agency coordination of humanitarian assistance. It involves both the key UN as well as non-UN humanitarian partners, and its definition of a complex emergency is normally accepted to have official status. The IASC definition is also reproduced in the Orientation Handbook on Complex Emergencies, published by the UN Office for the Coordination of Humanitarian Affairs (UNOCHA) in 1999. However, it is not free from flaws and not everyone is inclined to accept it.

This official definition of a complex emergency is "a humanitarian crisis in a country, region or society where there is total or considerable breakdown of authority resulting from internal or external conflict and which requires an international response that goes beyond the mandate or capacity of any single agency and/or the ongoing United Nations country program' (IASC, December 1994)."[9] The World Health Organization's (WHO's) definition is very similar to this definition. It states Complex Humanitarian Emergencies "are situations of disrupted livelihoods and threats to life produced by warfare, civil disturbance and large-scale movements of people, in which any emergency response has to be conducted in a difficult political and security environment."[10]

[9] IASC, "Definition of Complex Emergencies," *Inter-Agency Standing Committee Working Group XVITH Meeting*, (1994).
[10] WHO, "Complex Emergencies," *Environmental Health in Emergencies*, World Health Organization. URL: http://www.who.int/environmental_health_emergencies/complex_emergencies/en/

In contrast, the definition of the International Federation of Red Cross and Red Crescent Societies (IFRC) also includes a disaster possibly leading to a complex emergency but describes the typical characteristics of a complex emergency to be: "Some disasters can result from several different hazards or, more often, to a complex combination of both natural and man-made causes and different causes of vulnerability."[11] Food insecurity, epidemics, conflicts and displaced populations are examples.

The three definitions stated above are only some of the many different definitions that are somewhat similar; however, there is not really any universally accepted definition of the term. This has become a source of confusion which can give rise to obstacles in cooperation and coordination. This is because the definitions of different institutions are not in sync with each other. A prominent scholar in this field, David Keen, has also defined the concept of a complex humanitarian emergency as "humanitarian crisis that are linked with large-scale violent conflict—civil war, ethnic cleansing and genocide."[12] He further stated that, "complex emergencies should be distinguished from natural disasters—that is, from disasters caused primarily by drought, floods, earthquakes, hurricanes, tidal waves or some other force of nature."[13] Thus both David Keen's and OCHA's definition emphasise the point that complex emergencies might be triggered by both internal or external conflicts. Some examples of countries that have been victims of complex emergencies include Afghanistan, Sudan, and Somalia.

The OCHA Handbook has also presented its reasons as to why complex emergencies need to be treated as a different category for analysis. It is pointed out that in the immediate aftermath of the Cold War, armed conflicts occurring around the world increased exponentially. These conflicts were usually intra-state, and violence was directed mostly towards civilians. This resulted in a horrifying misery for non-combatants which caused massive displacement of the population. It is argued that this is mainly because of the change in the nature of armed conflicts. Sergio Vieira de Mello, who was a former UN Under-Secretary General and Emergency Relief Coordinator, explained in his briefing to the UN Security Council in 1999 that 'contemporary armed conflicts are rarely conducted on a clearly defined battlefield, by conventional armies that confront one another. Instead warfare nowadays are regularly

[11] IFRC, "Complex/manmade hazards: complex emergencies," *International Federation of Red Cross and Red Crescent Societies.* URL: http://www.ifrc.org/en/what-we-do/disaster-management/aboutdisasters/definition-of-hazard/complex-emergencies/
[12] David Keen, "Complex Emergencies", *Polity Press,* Cambridge, (2008).p. 1.
[13] Ibid.

conducted within cities and villages, where civilians are the preferred targets, terror is spread intentionally, and the total physical eradication or displacement of certain classes of the population is the principal strategy.'[14] Violation of human rights and humanitarian law, which includes mutilation, rape, forced displacement, denial of food and medicines, diversion of aid, and attacks on medical personnel and hospitals are not the unavoidable consequences of war. They have rather become the strategy to reach the ends. It is precisely because of this that even conflicts that remain localised lead to massive human sufferings. These complexities result in a disproportion between the need for humanitarian assistance and the intensity of armed conflict, making fulfilling these requirements even more challenging.

There are a number of significant points to note in OCHA's use of the term complex emergencies. First, the difference between a 'complex' and a 'major' emergency can be difficult to sustain. There may be incidences where natural disasters intensify existing political tensions which may hinder humanitarian assistance to certain segments of society. Relief assistance may also get co-opted to fund armed conflicts. Second, in reference to the use of the term 'total or considerable breakdown of authority' there is an implication that complex humanitarian emergencies necessarily erupt in states where political authority is seriously contested or has virtually collapsed. This in essence would mean the application of this term would be limited to conflicts taking place in states which are not strong enough to resist its imposition. It may also be used for an emergency where the government of a state, on its own accord ask for assistance from the international humanitarian community. However, it is essential to recognise that more often than not a 'state breakdown' may not necessarily mean an ineffective government. States experiencing complex emergencies often have a strong but oppressive government.

Third, the definition of 'complex emergency' given in the OCHA Handbook may be criticised for confusing the description of a phenomenon with advocacy of how to deal with it. The OCHA definition of complex emergency does so by making 'an international response' a necessity. As OCHA itself is also one such agency, it can thus be blamed of asserting its own position and role. Additionally, it also implies a limited role for humanitarian bodies oriented toward development building on a long-term basis.

[14] OCHA, OCHA Orientation Handbook on Complex Emergencies, UN,(1999). pp. 4-6. URL: https://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%C2%A0ORIENTATION%20HANDBOOK.pdf,

It is thus clear that the term complex humanitarian emergency is more of a descriptive category rather than an investigative tool that still lacks precision and peculiarity. Duffield defined CPEs as 'protracted political crises resulting from sectarian or predatory indigenous response to socio-economic stress and marginalization … They have a singular ability to erode or destroy the cultural, civil, political or economic integrity of established societies.[15] This type of emergency is multifaceted as it represents overpowering violence leading to massive displacement of citizens. In addition, CHE's are often accompanied by famines as well as disintegration of political, social and economic institutions. While it cannot be denied that natural disasters may worsen an existing political fissure, the core cause of CHEs can almost always be found in political problems. However, what differentiates the earlier conflicts from Complex Humanitarian Emergencies is that the political disruption affects not only the armed personals actively participating in the war but also the unarmed civilians and humanitarian aid workers. In fact, more often than not they are deliberately targeted.

Another characteristic of CHEs is the combination of forces involved. Mary Kaldor had identified five different types: firstly, the regular armed forces; secondly, paramilitary groups, thirdly, self-defence units, fourthly, foreign mercenaries and lastly, the regular troops with the backing of international humanitarian regime.[16] One might also add local mercenaries providing guerrilla services to this line up. This varied group of actors contribute towards adding to the existing complexity of the conflict. The mercenaries often make use of small arms causing its proliferation in CHE infected regions. An extensive use of under aged soldiers and abduction of girls to serve as sex slaves is also quite common. Also, owing to its regional dimension, CHEs have proved to be a threat to regional peace and security.

Thus, from the discussion on the existing definitions it can be safely concluded that while the concept of complex humanitarian emergencies is not completely new, however, existing definitions have their limitations. On the one hand, most of the prominent definitions echo the concerns of the international humanitarian assistance community. For example, the definition given by the UN's Office for the Coordination of Humanitarian Assistance (OCHA) has implications for the requirement of a specific type of international response to these conflicts.[17] This however confuses the dependent variable with the unit of analysis. What is even more

[15] Mark Duffield, " Complex Emergencies and the Crisis of Developmentalism." *IDS Bulletin*, Vol 25 No 4, (1994).p. 38.
[16] Mary Kaldor, New and Old Wars, *Polity Press*, Cambridge, (2001). pp. 62-65

concerning is that these definitions refer to some extremely particular origins and outcomes of complex emergencies, such as war, displacement, disease, deterioration of political authority, and ethnic conflict.[18] The problem with such specific definitions is that they eliminate the possibility of inclusion of other similarly destructive conflicts where there is an absence of one of these characteristics.

Also, the list of complex emergencies made by these organisations does not represent consistency as there is no fixed criterion for inclusion. The Complex Emergency Database's (CEDAT) project at the Centre for Research on the Epidemiology of Disasters list, for instance, consist of conflicts that do not satisfy its own description of a CHE. However, these are still included because they are of interest to their partner humanitarian organisations. Moreover, the list is also limited to conflicts for which CEDAT was in the position to acquire health and mortality data. This might prove to be a probable cause of prejudice as it is usually the most disastrous conflicts where data is most difficult to obtain. In a similar manner, OCHA recognises only those conflicts as complex humanitarian emergencies that fulfil the interests of its partner organisations. In most cases, it only comprises of emergencies that are covered by a UN Consolidated Appeal for relief funding and termed as such by the Inter-Agency Standing Committee (IASC).[19] The UN Consolidated Appeal, however, depends upon where humanitarian organisations desire to offer their services.[20]

These complications that come with the usage and definition of the term 'complex humanitarian emergencies' have made some scholars dismiss the concept altogether. They rather prefer to use the term civil or internal wars. They consider the question of humanitarian assistance as a distinct issue. However, it is of value to preserve the term complex humanitarian emergency, in spite of its shortcomings. It is one of the most distinct ways to refer to areas that suffer from war and violence, generally associated with failure of state machinery, in need of international humanitarian responses. This is partially because the drastic changes in humanitarian action since the end of the Cold War are apparent. Thus, it is reasonable to use the recognised term to refer to conditions where such developments have taken place. Moreover, the limitations of the terms 'civil' or 'internal' war are equally serious. The term complex humanitarian emergency is thus full of ambiguities and inconsistencies, but it has

[18] OCHA, OCHA Orientation Handbook on Complex Emergencies (UN, 1999).pp. 1-4 https://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%C2%A0ORIENTATION%20HANDBOOK.pdf,
[19] Andrea L. Everett, "Post-Cold War Complex Humanitarian Emergencies: Introducing A New Dataset," *Conflict Management and Peace Science* 33 (2016).pp. 7-9
[20] Ibid.

become recognised as a way of referring to conflict-affected locations where there is a need for international humanitarian assistance.

Nature and Dynamics of Complex Humanitarian Emergencies

The post-Cold War world witnessed a huge increase in the number of violent civil wars. These wars resulted in unparalleled humanitarian devastation and misery. While most of these conflicts took place within the state borders, however more often than not, their effects have escalated across borders threatening international peace and security. This has mostly been due to the increase in the number of refugees trying to flee violence and persecution. It was for these types of conflicts that the UN coined the term Complex Political Emergencies (CPE). Although, complex emergencies existed during the Cold War as well, however owing to the excessive use of the 'vetoes' in the UN Security Council, the responses of the international community were either limited or totally non-existent.[21] Thus these conflicts were not new, but they began to get more visibility when they continued into the post-Cold War era.

During the Cold War period the concentration of most International Relations analysts and theorists was upon the bipolar conflict between the East and the West, represented by the erstwhile USSR and the USA, respectively. However, the post-Cold War period saw the outbreak of new varieties of violent upheavals, which did not fit into the established categorisations. Various scholars began using different expressions to describe them, including Protracted Social Conflicts[22], International Social Conflicts[23], and Complex political emergencies (CPEs). Mary Kaldor called them 'new wars' as they involved blurring of the existing differences between wars, organised crime and a large-scale violation of human rights.[24] However, some scholars disagreed with this 'new wars' hypothesis. Instead they believed that 'vicious civil wars maintained by identity politics, supported by diasporas and fought by paramilitary groups have merely continued from one decade into the other.' They asserted that the end of the Cold War had no major effect for most of these wars.[25] MLR Smith

[21]John Borton, "An account of co-ordination mechanisms for humanitarian assistance during the international response to the 1994 crisis in Rwanda." *Disasters* 20 4 (1996).p. 323. doi:10.1111/j.1467-7717.1996.tb01046.x,
[22]Edward. E Azar, *"*The Management of Protracted Social Conflict: Theory and Cases,*" Dartmouth* (Michigan:,1990).p. 25
[23] Oliver Ramsbotham and Tom Woodhouse, "Humanitarian Intervention in Contemporary Conflict," *: Polity Press,* (Cambridge: 1996).pp.28-30
[24] Mary Kaldor, "New and Old Wars", *Polity Press,* (Cambridge: 2001).pp. 71-75
[25] M.L.R. Smith, "Guerrillas in the Mist: Reassessing Strategy and Low Intensity Warfare." *Review of International Studies* Vol. 29, no. 1 (2003).p. 34. doi:10.1017/S0260210503000020.

further argued that the sudden increase in interest in civil wars amongst international relations scholars 'was the product of Cold War displacement'.[26]

While one can agree with Smith upon the fact that intrastate war is not a novel concept, however, the major transformations in objectives of and approaches used by the opposing sides in contemporary wars cannot be denied. Most intrastate conflicts of the Cold War period were either freedom struggles or proxy wars. However, the post-Cold War era saw the emergence of new types of conflicts that can best be described as class power struggles and coup d'etat. The most striking feature of these struggles is that despite their internal nature, they have the propensity to spill across borders resulting in the proliferation of small arms, refugee flow and cross-border conflagrations.[27] Thus complex humanitarian emergency is a term connected to the ending of the Cold War and the increase in the prospects of a more dynamic approach to humanitarian action by the United Nations system and other prominent actors in the international system.

Thus, the post-cold war world saw the emergence of humanitarian disasters with a degree of complexity that had never been experienced earlier. The international humanitarian community had to deal with situations so dangerous that requesting military assistance became the order of the day. Humanitarian assistance bodies claimed that the established principles of humanitarianism were proving to be a hindrance in coping with these new realities. The military began to be used for protection, logistics as well as communication. However, a handful of humanitarian organisations were opposed to this increased use of the military in aid operations. This difference in beliefs and ways of response created a new problem of difficulty in coordination. Thus, there was a need for a new type of informal consensus among humanitarian actors.

The advent of CHE's in the post-Cold War period has resulted in a drastic increase in death and distress among civilians. Thus, the victims of war are now more of civilians than the military. This change in addition to the extension of peace-keeping and peace enforcement operations has resulted in bringing humanitarian workers into the midst of conflicts. This change has resulted in an increase in intentional targeting of humanitarian workers. The transformation has had a direct impact for the humanitarian community. It has thus been very

[26] Ibid.
[27] David Francis, "The economic community of West African states, the defence of democracy in Sierra Leone and future prospects." *Democratization* Vol. 6, No. 4 (1999).p. 140 doi: 10.1080/13510349908403636. 0

truly said that the days of the relatively simpler emergencies such as the famines in Ethiopia and Sudan in the mid1980s are over, and what we now have are second-generation emergencies that are complex in every sense.[28]

Today, complex emergencies symbolise the definitive way of state disruption. A special characteristic of such emergencies is that they destroy the citizen's ability to protect their life and sustain their means of livelihood. This is mainly due to political reasons that lead to high degrees of violence. As constitutional governments break down, militaries get support from rebellious paramilitaries, while insurgents gain power. This disintegration of the political apparatus is usually preceded by an increase in corruption and criminalisation as well as a collapse of law and order. In such disrupted states (a term first used by H Smith in an unpublished paper, 1999), medical facilities are one of the first state infrastructures to be destroyed[29] and healthcare providers are often targeted. An example would be the case of Somalia, northern Iraq and former Yugoslavia.[30] Yet there is no universal form of such conflicts and they differ greatly in their sources and features. They may vary from civil and inter-state wars, to one-sided violence against civilians committed outside of war, to inter-communal violence.

Today the concept of complex humanitarian emergencies is widely used by policymakers as well as by humanitarian aid organisations to help determine the conflicts requiring extreme involvement and interest. It also provides scholars a method that helps them to differentiate between conflicts that result in considerable adversity for civilians and those that are in fact disastrous. Over the last decade, there has been an exponential growth in the literature explaining the links between large-scale violence and the repercussions on civilians. Much of this research has aimed towards gathering knowledge of the effects of war on civilians and understanding the reason behind why some wars are worse off as compared to others. Questions

[28] David Keen, James Darcy, Gullaume Foliot and Thomas Gurtner, "Humanitarian assistance in conflict and complex emergencies: conference report and background papers," *United Nations World Food Program*. (Rome, 2009).p. 2. URL http://eprints.lse.ac.uk/60359/.
[29] R. M. Coupland, "Epidemiological approach to surgical management of the casualties of war," *BMJ Clinical research ed., 308*(6945) (1994). p. 1699. https://doi.org/10.1136/bmj.308.6945.1693.
[30] Frederick Burkle, "Fortnightly review: Lessons learnt and future expectations of complex emergencies", *BMJ Clinical research ed.,* 319 (1999).p. 425. doi 10.1136/bmj.319.7207.422.

on the effects of war on public health[31] and the reason behind the intentional targeting of civilians, both during and outside of war have been widely addressed in the literature.[32]

These studies have resulted in the collection of significant data that explains civilians' experiences during large-scale conflicts. Benjamin Valentino for instance, collected data on instances of premeditated mass killing of around 50,000 or more civilians over less than five years.[33] The Political Instability Task Force (PITF) has also created a well-defined list of genocides and politicides.[34] Meanwhile, the Uppsala Conflict Data Program (UCDP) makes a report on one-sided violence against non-combatants by the state and other organised armed groups.[35] Finally, various other datasets on conflict-related deaths include but are not restricted to civilian casualties. Lacina and Gleditsch[36] collected data on total combatant and civilian deaths in civil and inter-state wars, and UCDP's Non-State Conflict Dataset includes civilian deaths caused by inter-communal violence.[37]

These findings have helped scholars make significant improvement in understanding the characteristics of several different types of conflict and in unearthing the reasons behind large-scale violence against civilians. However, all these studies do not necessarily shed light upon the question of civilian protection and responses of international humanitarian relief community. Answering these questions would require a comparative analysis of different conflicts based on the ground of their human outcomes. The existing data sources are thus inefficient in answering these questions, as:

Firstly, most of these studies show only those causalities that are either direct or intentional, or both. However, modern conflicts result in varieties of wars which get excluded from these studies. In fact, in most cases of long-term political violence most civilian deaths are due to

[31]HA Ghobarah, Paul Huth, Adam Hazem and Bruce Russett,"Civil Wars Kill and Maim People—Long After the Shooting Stops." *American Political Science Review* 97, no. 2 (2003).pp. 189–202. doi:10.1017/S0003055403000613.
[32] Benjamin Valentino, Huth Paul, and Balch-Lindsay Dylan, "'Draining the Sea': Mass Killing and Guerrilla Warfare." *International Organization* 58, no. 2 (2004).pp. 375–378. doi:10.1017/S0020818304582061.
[33] Ibid, 340
[34] INSCR, "Political Instability Task Force (PITF) State Failure Problem Set 1955-2018", *Center for Systemic Peace*. URL http://www.systemicpeace.org/inscrdata.html.
[35] Kristine Eck and Lisa Hultman, "One-Sided Violence Against Civilians in War: Insights from New Fatality Data," *Journal of Peace Research* 44, no. 2 (2007).pp. 233-36. URL: http://www.jstor.org/stable/27640485.
[36] Bethany Lacina and Nils Gleditsch, "Monitoring Trends in Global Combat: A New Dataset of Battle Deaths," *European Journal of Population.* 21 (2005).pp. 145-147. doi:10.1007/s10680-005-6851-6.
[37] Ralph Sundberg, Kristine Eck and Joakim Kreutz, "Introducing the UCDP Non-State Conflict Dataset," *Journal of Peace Research.* 49 (2012).p. 5. doi10.1177/0022343311431598.

indirect reasons like starvation and disease, instead of direct ones like violence or battle.[38] These are the outcome of the destruction of public utilities' infrastructure such as hospitals, electric supply, and sewage disposal facilities. Such conditions lead to forced displacement of people as they flee ongoing violence, which in turn leads to greater civilian casualties. For example, in the Democratic Republic of the Congo (DRC), the war and the crimes against humanity since the late 1990s led to millions of civilian deaths. However, in spite of the intentional targeting of non-combatants, the majority of these deaths were because of disease or malnourishment linked to civilians fleeing violence. Indeed, by 2006, only about two percent of deaths were caused by violence in war directly.[39]Therefore, while direct and deliberate deaths are a significant cause behind some conflicts being worse than others, they however do not represent the entire picture.

Secondly, these studies predominantly focus on a single form of violence, but in reality, a number of different types of events produce severe and extensive civilian suffering. These can be because of intra and inter-state wars as well as due to one-sided violence against civilians outside of war. Such cases sometimes also include inter-communal violence, as well as a conflict based on religion or ethnic identity in which the state is not the primary participant. For instance, the hostilities between the Christians and Muslims in the Moluccas Islands and Sulawesi, Indonesia, during 1999 and 2002, killed an estimated 12,500 people directly. However, the greatest causality of this event was the displacement of about a million people who tried to flee the violence.[40]

Furthermore, there is a substantial difference in the type of civilian distress among inter and intra state wars and in cases of one-sided violence against unarmed civilians. While genocide and mass killing might transpire in any of these circumstances, however there are no norms for any of them. Even besides the above-mentioned crimes, the effects of some war can be absolutely destructive for civilians, while other types might be a great deal less so. As a result, studies that are limited to any one variety of conflict or to merely the most horrible act of

[38] HA Ghobarah, Paul Huth and Bruce Russett, "Civil wars kill and maim people - Long after the shooting stops", *American Political Science Association.* 97 (2003).pp. 189-192. doi:10.1017/S0003055403000613..
[39] Victoria K. Holt and Berkman C Tobias, "The Impossible Mandate?: Military Preparedness, the Responsibility to Protect and Modern Peace Operations," *The Henry L. Stimson Center,* (Washington, DC: 2006).p. 50
[40] Internal Displacement Monitoring Center, "Indonesia/Central Sulawesi: IDP return and recovery hampered by persistent tensions, land disputes and limited access to livelihoods," *Norwegian Refugee Council* (2009). URL https://reliefweb.int/sites/reliefweb.int/files/resources/67A5CADE941D856DC12577FA00491415-Full_Report.pdf.)

violence eliminate at least some conflicts with similar humanitarian consequences. Mixing them all, on the other hand, would result in a list of conflicts with highly contrasting degrees of disruption to normal mode of life.

As distinguished from these data, complex humanitarian emergencies symbolise the most terrible of a wide diversity of violent incidents and focus on their consequences for non-combatants. By including the indirect and inadvertent effects of violence, the concept covers not only conflicts that involve many predetermined civilian deaths, but also conflicts as in Somalia, where intentional violence against civilians has in general been less but its indirect effects have often been disastrous. Complex emergencies are thus distinctively suitable for research questions that are doubtful about the causes of conflict, but necessitate comparison based on its humanitarian effects.

Identification of Complex Humanitarian Emergencies

To gauge the disturbance to civilian life, one has to depend upon two chief quantitative indicators and a number of other derivative qualitative ones. First, wherever possible, the number of civilian deaths is the most apparent pointer of the devastation caused by the conflict. However, more often than not, authentic data about civilian deaths is not easily available. Thus, the degree of population dislocation is also often used to understand the number of conflict-related vulnerabilities that the civilian population is exposed. This displaced population may include refugees and asylum seekers (both of whom have crossed international borders), as well as internally displaced persons (IDPs). Often, states perpetrating violence block access to their territory for journalists or humanitarian workers. In such cases refugees and asylum seekers reaching neighbouring states for shelter and protection become the primary, if not the sole proof for the outside world about the atrocities going on within the disrupted state. Moreover, forcible displacement is often connected with a number of indirect but mortal consequences. According to Frederick Burkle, in most complex emergencies it is displacement-related problems like ‘forceful exodus of population’, ‘hindrance in food supplies’, and ‘demolition of the public health infrastructure’, that results in maximum calamities. This is because fleeing populations “suffer almost immediate food, shelter, fuel, water, sanitation, and basic healthcare insecurities.”[41] Also, since the population of a conflict-affected territory, more

[41] Frederick Burkle, “The epidemiology of war and conflict, in *Handbook of Bioterrorism and Disaster Medicine*, ed. RE Antosia and JD Cahill (Boston, MA, 2006).p. 91. https://doi.org/10.1007/978-0-387-32804-1_20

often than not, has compromised mediocre health care, a huge number of displaced people can contribute to the rapid spread of diseases further weakening the delivery of emergency relief.[42]

However, there might be few cases where data regarding both civilian deaths as well as displacement are unavailable, especially when the conflict is ongoing. In such condition one may need to look at other supplementary qualitative indexes. These indicators may offer additional clue about the existing state of affairs. They can provide evidence that either substantiates the claim of considerable disruption to civilian life, or may alleviate such fears, proving that the disruption may not be as calamitous as it may seem. For instance, an outburst of an infectious disease, leading to worsening health data, poor sanitation conditions at displaced-person camps, or a shortage of basic amenities such as food, health care, or shelter, can prove to be a substantiating evidence of a severe threat to civilian life. On the other hand, contradictory evidence showing that the disruption is only temporary may alleviate the fear of a severe case of humanitarian crisis. This is mainly because a short-term displacement usually does not signify outbreaks of disease or a major disruption of the food supply.

A true assessment of a state's capability and willingness to protect its citizens from the repercussions of violence can only be made by using qualitative indicators. These indicators may either confirm or mitigate the concern about the existence of a complex emergency. First, evidence regarding the intended targeting of civilians where they are a victim of state abuses is the most reliable indicator of the failure of the government machinery. In such a case, the government is either the perpetrator of abuse, thus unwilling to protect, or the government is not strong enough to protect its citizens. Similarly, if a government conducts aggression without first attempting to remove or protect the population, it can show its absence of concern for welfare of the civilian.

Evidence relating to the existence of a humanitarian emergency can also be provided by relief organisations. As OCHA (1999) stated, complex emergencies tend to involve "the hindrance or prevention of humanitarian assistance by political and military constraints" and "significant risks to humanitarian relief workers in at least some areas."[43] The role played by relief organisations becomes vital in administering the condition of civilians in conflict-affected states. Thus, an active effort to block them from entering, or the failure of the state to protect

[42] Ibid.
[43] United States Committee for Refugees, "World Refugee Survey 1999", *United States Committee for Refugees* (New York, 1999).

them is indicative of the breakdown of the state machinery. These circumstances may include an official prohibition from entry to international humanitarian organisations or the inability to deliver aid because of deliberate attacks on aid workers. On the other hand, evidence that a government is capable and prepared to respond to a conflict-affected population's requirements may include international commendation for its efforts. This might include rapid response to the humanitarian crisis, an effective effort at terminating inter-communal violence, or implications that suggests that most displaced persons are satisfactorily cared for. Given that complex emergencies are intended to identify the very worst conflicts for civilians, it would be safest to rely on high quantitative parameters for deaths and displacement. These indicators should encourage agreement that these conflicts truly involve large-scale civilian suffering.

Difference Between Complex and Natural Emergencies

Natural disasters and complex humanitarian emergencies are essentially distinct phenomena. This, however, does not imply that natural disasters are any less of an emergency, but it is the social complex within which complex emergencies exists that distinguishes it from natural disasters. However, while major humanitarian emergencies caused by natural or technological disasters are conceptually separate from complex emergencies, but in 'failed states' a natural disaster like a flood, famine, or industrial accident and others can expose the societal vulnerabilities that were till then hidden. A clear understanding of the distinction between the two kinds of emergencies can be ascertained by analysing the way they are dealt with. Such an understanding is essential for an emergency response that will do good rather than make matters worse.

J.M. Albala-Bertrand created an analytical framework, the Disaster Situation Framework to analyse natural disasters from a political economy perspective. This framework also sheds light on the difference between natural disasters and complex humanitarian emergencies and has thus proved itself to be effective for an understanding of CHEs as well. Bertrand has provided three points of analysis, namely "pre-disaster factors,", "disaster impact and impact effects," and "disaster response and disaster interference".[44]

The three factors behind a disaster impact are:

1) the social/institutional and physical vulnerability of a given society.

[44] J. M. Albala-Bertrand, "Responses to Complex Humanitarian Emergencies and Natural Disasters: An Analytical Comparison," *Third World Quarterly* 21, no. 2 (2000). pp. 215-216 http://www.jstor.org/stable/3993417.

2) The proneness of a particular area or aspect of the concerned society to disaster, and

3) the triggering event[45]

While in the case of natural disasters these three factors can be analysed individually from one another however in complex emergencies there are no such water tight compartments between them making them inter-related to each other in intricate ways. In natural disasters vulnerability is both physical and social, however the physical aspects of vulnerability, are outgrowths and the consequence of social living. Social vulnerability like habitat deterioration, hinderances in economic activities, entitlement erosion, and environmental erosion can be identified as exposure to external and extreme events.[46] Such an event is usually caused by an external force, usually a natural calamity like an earthquake, flood, etc.

On the contrary, in complex humanitarian emergencies these three factors are much more interconnected and the social and political aspects are a lot more important than the natural and physical ones. Vulnerability is generally the result of poverty and economic decay and disintegration or tension between diverse ethnic groups, and weak and failing state structures[47]. The nature of complex emergencies is not something unchanging and inert but rather dynamic and can transform with changing political, economic, and social situations.

A large number of states around the globe are wrecked with declining economies, acute poverty, competing identity groups, and incompetent government. While they are all weak, but not all are necessarily disposed to collapse into a conflict and degenerate into a complex humanitarian emergency. The factor that makes one state more prone to collapse into CHE than the other are the major characteristic features of a complex emergency as opposed to a natural disaster.

This factor in a natural disaster is its susceptibility to a geophysical event owing to the physical weakness of structures and processes that fails to compensate for extreme natural events. On the other hand, in complex emergencies it is susceptibility to a violent disturbance, which, because of its societal or institutional weakness makes normal social response mechanisms of a community incapable of accommodating. This gives rise to entrenched conflicts.[48] According to Albala-Bertrand a complex humanitarian emergency can be defined as: “a

[45] Ibid.
[46] Ibid, 291
[47] Ibid.
[48] Ibid.

purposeful and unlikely neutral response, mostly intended to counteract the worse effects of the massive human destitutions that derive from an overt political phenomenon, which takes the forms of a violent, entrenched and long-lasting factionalist conflict or imposition with ultimate institutional aims."[49] This definition identifies a complex emergency as a response which is the result of an "unleashing event", often an entrenched (and therefore socially rooted) conflict which causes "massive human destitutions." While there is no denying that natural disasters are emergencies as well, however what distinguishes it from complex emergencies is impact event and the resulting effects that arise. In the case of complex emergencies, the complexity is the outcome of deliberate violence as opposed to natural disasters which are influenced by mainly neutral geophysical factors.

Thus, it is the internal institutional causes which lead to the triggering events. It is society's proneness and vulnerability to disasters which "makes socially made disasters more complex than natural ones."[50] The main distinction between CHE's and natural disasters is therefore the extent of social endogeneity of cause and effect. Natural disasters being completely endogenous, while complex emergencies being only partly so. In complex emergencies most effects are intentionally institutional, which represents the entire goal of warfare. On the other hand, in natural disasters majority of the effects are accidental, while the institutional effects being mostly incidental and not normally important.

Thus, the impact of natural disaster is mainly the result of a gap between a natural calamity and a social system that exists to respond to it. On the other hand, a complex humanitarian emergency is principally the result of an institutionally uncompensated interaction between a societal crisis and a social system. While, the two types of disaster have many points of differences, the fundamental difference between them is the way institutions of society are afflicted. In natural disasters, institutional changes might arise from both the impact effects and the responses. However this is uncommon and usually short-term. In complex emergencies, the impact and effects have premeditated institutional objectives. Likewise, the response to this type of emergency will also lead to substantial interference with society, which may be intense, long-term and mostly deliberate. Conflicts, such as civil wars, revolutions, intra-state violence can considerably affect and alter all aspects of a state's life. These transformations are reflected in the economic, social, cultural, physical, health as well as the political dimensions. The degree

[49] Ibid, 21.
[50] Ibid, 289

of the change or destruction of the society is conditional upon the intensity, length, and form of conflict.

The complexity is further enhanced by the length and effects of the impact, the emergency phase, and the responses to the impact; these in addition to the pre-disasters factors are responsible for differentiating a natural disaster from a complex emergency. The impact event and its effects can be analysed in isolation from each other in natural disasters. The event in such cases is usually rare and occasional which ends naturally (for instance, earthquake, flood, thunderstorm), with the effects being long term. In complex emergencies the impact of overt violence continues, with its effects ending only with a socially and politically grounded resolutions.

Disaster response can be defined as an extensive range of endogenous and exogenous reactions, actions and strategies that are intended to alleviate, thwart and avoid disaster impacts and effects. In case of natural disasters their organisation is comparatively simpler than in complex emergencies. In terms of response to a disaster one can articulate it as follows: once a disaster has struck, the impact effects on its own leads to the uncovering of existing instruments of response as well as the formulation of new response measures. These two sets of responses are meant to compensate immediately as well as permanently as restitutive activities. The impact effects and the compensatory responses also trigger an anticipatory response designed at forestalling future potential disasters.[51] This then leads to three major areas of attention, which covers the response side of a disaster situation, namely, the emergency relief, the restitutive (recovery/reconstruction), and the anticipatory (risk reduction). The relief stage caters to the urgent and critical needs of the effected people and undertakes to restore societal movements and operative structures. The general objective is to arrest the escalation of the impact effects. Restitutive response is aimed at reconstructing and physically restoring what was ruined; while the anticipatory response refers to activities intended at risk reduction, forestalling future impact events and taking precautions to either avert and/or alleviate the effects of a future event.[52]

[51] J.M. Albala-Bertrand, "Natural disaster situations and growth: A macroeconomic model for sudden disaster impacts", *World Development*, Volume 21, Issue 9, (1993).p. 1417. https://doi.org/10.1016/0305-750X(93)90122-P.

[52] J. M. Albala-Bertrand, "Responses to Complex Humanitarian Emergencies and Natural Disasters: An Analytical Comparison," *Third World Quarterly* 21, no. 2 (2000).p. 219. http://www.jstor.org/stable/3993417..

These three phases have been used by Albala-Bertrand to distinguish between natural disasters and complex emergencies observing that these responses also enhance the complexity of the condition. However, there has been some debate since the 1990's regarding post-conflict response phases, how they connect and who is responsible for them. These have been termed as the "relief-development continuum."[53] The reason for this disagreement among international response representatives lies in the social and institutional context of complex emergencies, as well as the inevitably politically premeditated violence and the politicised nature of conflict and the international response.

Characteristics of complex emergencies

While it is common knowledge that no two emergencies will be identical as each will have different sources and features. It would thus be rather inaccurate to think in terms of a "typical" complex emergency. Nonetheless, for the sake of clarity, elucidating the characteristics shared by most complex emergencies might be helpful. The major characteristics of complex emergencies are:

1. Intra-State rather than Inter-State Conflict

Most of the contemporary conflicts are intra-state rather than inter-state. Majority of these conflicts are an outcome of dissatisfaction felt by some parts of the population with the prevailing governmental system and framework. In certain cases, the acknowledged purpose of the opposition or the rebels is either to topple the government in power or to entirely secede from the country to establish an independent political entity. The question whether international aid organisations and the international humanitarian community should or should not accord recognition to these rebel groups is often a highly sensitive problem. Thus, the role of international agencies, the legal basis for their operations and the legal rights of affected populations within the affected countries becomes highly important in this context.

2. Difficulty in Distinguishing between Combatants and Civilians

In most contemporary intra-state conflicts, it has become rather difficult to differentiate between civilians and combatants. Combatants often neglect to wear uniforms. Food and

[53] Humanitarian Policy Group, "Beyond the continuum: The changing role of aid policy in protracted crises", *Humanitarian Policy Group at ODI*, Edited by Adele Harmer and Joanna Macrae (2004).p. 2. https://lccn.loc.gov/2006445863.

shelter are also provided to them by the local civilian families either on a voluntary basis or through the use of force. More often than not this intermingling between combatants and non-combatants is a political strategy. In such conditions misuse of humanitarian aid meant for civilian use by warring factions becomes inevitable.

3. Violence Directed Towards Civilians and Civil Structures

A striking feature of many recent conflicts is intentional attacks on civilians. This attack might be in the form of actual physical ones or an attempt to uproot an entire social or ethnic group by demolishing their cultural symbols. State infrastructure like government buildings, factories, roads and railways etc as well as other symbols of cultural identity like places of religious worship are often subjected to deliberate attacks. This also fulfils the purpose of inculcating fear in groups of similar social or ethnic background. The economic assets left behind by the fleeing population is then used by the group responsible for the massacre.

4. Variability of the Situation on the Ground

Natural disasters are generally rapid-onset events which rarely last for more than a few days, with its effect lasting up to a few months or a year. However, after the course of this time, the affected population tends to resume their pre-disaster way of life. Even the rare slow-onset natural disasters such as droughts may last a few months or at the most for two years or slightly more. On the other hand, complex emergencies are conditions that last for several years. For instance, in the case of Afghanistan, the conflict lasted for almost about two decades. Within such enduring situations, there are a large variety of problems that can prop up at particular times. The result of such conflicts is a large number of civilian as well as military casualties as well as fleeing of populations that feel threatened by the crisis. This further complicates the situation causing a displacement crisis. Thus, complex emergencies often face these interconnected problems that calls for immediate responses by humanitarian agencies, further increasing the complexity.

5. Lack or Absence of Normal Accountability Mechanisms

In most states threatened or effected by complex emergencies, the usual devices ensuring freedom of the people and accountability of the government are either present negligibly or are totally absent. Thus, those involved in the crisis or those responsible for providing humanitarian aid have to operate in a very dangerous context that lacks any form of accountability for the actions conducted in the operation of their work.

6. The Potential and Actual Development of Illegal Economies

The above-mentioned lack of accountability in conflict affected states, more often than not, gives rise to economic activities of dubious nature which could be labelled as semi-legal if not totally illegal. Such activities often consist of trade in narcotics, exploitation of existing mineral deposits as well as trade in arms. The money earned from these illegal activities is used by the warring forces to fund their violent acts or for personal gains. Such exercises enable extending the conflict and sometimes proves to be even a motivation for its prolongation. As these activities are normally done at a large scale it also invariably associates international players within its domain, thus spreading the effect of the conflict outside as well. Also, in certain cases, the official government authorities also have a role to play in such illegal money laundering.

7. The Potential for Humanitarian Aid to Extend the Conflict

Although humanitarian assistance becomes a dire necessity in conflict affected areas, it has the potential of prolonging it as well. This happens when the aid coming in is diverted from the proposed recipients to the warring factions. This task is achieved by regulating the entry of aid and imposing heavy taxation upon it. While reliable empirical evidence regarding the diversion of humanitarian aid is hard to find, such knowledge can prove to be critical in understanding the repercussions of it.

8. Multiplicity of Actors

The large number of actors involved in a complex humanitarian emergency contributes significantly to adding to its complexity. Provision of humanitarian assistance generally includes the work of national relief organisations or relief structures associated with some specific blocs, local NGOs, UN agencies, international NGOs, the ICRC, the IFRC and the national Red Cross and Red Crescent Society. Large donor organisations also sometimes establish local branch offices with the aim of financially supporting local projects and providing organisational expertise to them. Due to diplomatic relations, neighbouring or other powerful states sometimes intervene in order to bring about a total cessation of the conflict or to prevent it from increasing. Human rights and other monitoring agencies and organisations attempting to resolve the conflicts also play an important role in areas affected by complex emergencies. Also, in certain situations international peacekeeping or peace enforcement forces are deployed either by the UN or by some regional bodies like, NATO, OAU and others

which run alongside the peacekeeping operations. Such military interventions usually involve armed forces' contribution from a variety of countries. Situations where people are forced to flee and cross international borders for safety, involve refugee agencies as well as governments of the asylum countries. Overt or covert involvement of neighbouring states is also a common phenomenon. States that have a strong diplomatic relation with the conflict-affected country or whose national interests are at stake will naturally want to play an active role in relation to the conflict. A typical complex emergency, therefore, involves about 7-8 UN agencies; the Red Cross Movement (ICRC, IFRC and the National Society); a large number of international and local NGOs involved in the provision of humanitarian assistance, human rights activities and conflict-resolution activities; military groups functioning either under the mandate of the UN or a regional organisation; and agencies associated with the warring factions. The financing of the humanitarian activities may be done by official donors alongside privately raised funds.

Since a conflict infected state generally lacks a strong central authority, coordinating with such a large number of actors becomes a very difficult task, one where the international humanitarian system is still lacking. The UN and the NGO community's organisational structures are generally weak and ineffective. Also, the multiple actors that are involved or have an interest in the conflict do not necessarily share the same goals and objectives. In fact, more often than not they are at odds with one another.

Types of Complex Humanitarian Emergencies

Given the complex nature of CHEs, each of them is so unique that categorising them becomes a very difficult task to achieve. However, for the sake of clarity, such an attempt on the basis of its emergence can be made. Firstly, it might be an international conflict involving either an inter-state war or a clash between two actors in different states in which at least one party is not the government. In such a scenario, while the scene of the conflict is based in one state, there is international intervention on one or both sides. Secondly, CHE may be the result of an internal conflict involving the state and at least one structurally organised opposition without any external intervention. Thirdly, it might be principally a one-sided violence against civilians if there is no ongoing parallel conflict between at least two organised groups. Finally, there is also a possibility of inter-communal violence owing to increased communal tensions. Generally, the government is not the primary perpetrator of violence and most victims usually belong to a particular religious or ethnic group which is targeted.

Analysing CHEs: Causal and Intervening Factors

In order to analyse the causal factors of complex humanitarian emergencies three levels of CHEs can be identified. These are the international or regional level, the state level and the community level. Though different conflicts have context-specific causal factors, there are common themes that can be identified as follows:

International/regional factors

While CPEs are mostly identified as 'internal' or 'civil wars', external factors also play a significant role. Major international events like the end of the Cold War, the discriminating policies of major financial institutions like the IMF and the World Bank and the effects of globalisation thwarted development in some parts of the world which lead to conflicts and sometimes even total state collapse.

The majority of the states that are suffering from complex emergencies today have been former colonies of an imperialist power. This has led to the development of weak institutions and legitimacy making for ineffective governance. During the Cold War period, these countries received economic and military aid from either the US or the Soviet Union. However with the cession of the east-west rivalry these benefits also ended. This sudden stoppage of aid further drove these states into serious economic and political crises.[54]

Globalisation and the discriminatory policies of international financial institutions as well as donor countries have also been held responsible for CHE's.[55] The disadvantaged status of African states in the global economy, for instance, is because the continent receives a very meagre portion of the total world economic investments. The unfavourable terms of trade imposed on these countries by major trading partners further spurred their marginalisation. This leads to deep-seated 'enduring inequalities in the global distribution of wealth and economic power', which will result into what Rogers and Ramsbotham called 'a crisis of unsatisfied expectations within an increasingly informed global majority of the disempowered'.[56]

[54] T.M. Shaw and J.E. Okolo, "African Political Economy and Foreign Policy in the 1990s: Towards a Revisionist Framework for ECOWAS States." in Timothy M. Shaw and Julius Emeka Okolo (eds), *The Political Economy of Foreign Policy in ECOWAS, Basingstoke*, St Martin's Press, (1994).p. 6
[55] Mary Kaldor, New and Old Wars, *Polity Press* (Cambridge, 2001).pp. 71-75
[56] Wibke Hansen, Oliver Ramsbotham and Tom Woodhouse, "Hawks and Doves: Peacekeeping and Conflict Resolution," In: A. Austin, M. Fischer, N. Ropers. (eds) *Transforming Ethnopolitical Conflict*, VS Verlag für Sozialwissenschaften, (Wiesbaden, 2004).p.78. doi: 10.1007/978-3-663-05642-3_15.

The policies of the World Bank and International Monetary Fund (IMF) are often exacting and complicated leading to further economic and political adversity for some states. For example, The Structural Adjustment Programme (SAP) which stood for extension of privatisation had a mostly negative effect, especially widespread unemployment, in 'third world' countries. This was mainly because of a lack of appreciation of the cultural, political and economic uniqueness of these countries. The outcome was increased discontentment among the youths leading to social unrest often making them vulnerable to recruitment into warring groups.

State failure and CHEs

The connection between 'failed' states and CHEs is perhaps the most obvious. State failure has proved to be both a cause as well as a fallout of complex emergencies. A failed state is one that 'does not fulfil the obligations of statehood' and where 'the leadership does not have the means and credibility to compel internal order or to deter or repel external aggression.'[57] Thus state failure is a situation where the structure, authority, law and political order have fallen apart. Similar to the concept of 'failed states' is that of 'fragile states',[58] a term coined by the Department of International Development (DFID), UK in 2005. The term describes a state 'where the government cannot or will not deliver core functions to the majority of its people'.[59] As it is clear from the definition, the concept of 'fragile states' is not very different from that of 'failed states'. Thus, it is a state which is normally unable to give security as well as basic necessities like health, education and food to its citizens. The state also suffers from poor and inefficient governance making it incapacitated when it comes to dealing with conflicts and tensions.

Although each state and its circumstances are unique, however generally a failed state has a history of dictatorial government, massive corruption and non-existent or extremely weak opposition. These aspects challenge the legitimacy of the state making it vulnerable to attacks from rebellious discontented sections of the population. Sometimes, the phenomena of state failure are also seen in new states whose democratic institutions are still in the nascent stage of development. As legal authority struggles for survival, ethnicity and religious identities emerge as important centres offering alternative sources of loyalty. These circumstances are a

[57] David Carment, "Anticipating State Failure', paper presented to the Conference on *Why Sates Fail and How to Resuscitate Them*, (2001).p. 10. URL. http://www.carleton.ca/cifp/docs/anticipatingstatefailure.pdf.
[58] William Zartman(ed.), Collapsed States: The Disintegration and Restoration of Legitimate Authority, *Lynne Rienner Publishers*, Boulder, CO and London, (1995).p. 1
[59] DFID, "Why We Need to Work More Effectively in Fragile States", *DFID*, London,(2005).p. 7. URL: https://www.jica.go.jp/cdstudy/library/pdf/20071101_11.pdf

harbinger to further chaos with an increase in crime rates, massive loss of life and finally an all-out war. The resulting enduring conflict further wears down the already weak government institutions and infrastructure, leading to state collapse. Another aftereffect of a failed state can be felt at the regional level. CHEs can be caused by a spill-over effect into the neighbouring states. This is usually the outcome of refugees fleeing violence and looking for a safe haven in neighbouring states.

The Political Economy of CHEs

P. Collier (2000)[60] is of the opinion that the source of CPEs can be linked to economic opportunism instead of constitutional inequalities and innate resentment. However, such an analysis does not explain the fact as to why countries both rich and deprived of resources are equally vulnerable to complex emergencies.[61] For instance, Sierra Leone, a country rich in diamonds and Mozambique, a country lacking in strategic resources became victims of war and conflict. Thus, the idea of economic opportunism as the sole reason behind CHE's is not very convincing. It can rather be traced as a contributing factor behind the underlying causes of failed states and the international and regional linkages that further fuels a conflict. An understanding of complex emergencies seen only through the prism of political economy risks the distortion of the concept and further complicates the process of resolving conflicts. However, a study of it as a contributing factor can be of immense help in a clearer understanding.

While CHEs more often than not result in the breakdown of the legal economy, they also sometimes lead to the formation of a parallel illegal economy with international or regional connections. This parallel economy represents the development of completely new kinds of social establishments that would help in subsistence at the very periphery of the global economy. Such a phenomenon creates what Goodhand and Hulme have described as 'conflict entrepreneurs.'[62] These are individuals who are able to establish a lucrative trading practice for themselves and reap high profits. Such people would naturally have an interest in perpetuating the emergency. However, not all of this wealth is used for financing the people engaged in the

[60] Paul Collier, 'Doing Well Out of War' in Mats Berdal and David Malone (eds), *Greed and Grievance: Economic Agendas in Civil Wars*, Boulder, CO: Lynne Rienner, (2000).pp.91-94
[61] David Francis, 'ECOMOG: A New Security Agenda in World Politics' in Tswah Bakut Bakut and Sagarika Dutt (eds), *Africa at the Millennium: An Agenda for Mature Development*, London: Palgrave (2000).pp. 5-9: https://doi.org/10.1007/978-0-333-97727-9_10.
[62]Jonathan Goodhand and David Hulme, "From Wars to Complex Political Emergencies: Understanding Conflict and Peace-Building in the New World Disorder." *Third World Quarterly* 20, no. 1 (1999).pp. 13-26. http://www.jstor.org/stable/3993180.)

fight. Majority of them are left to fend for themselves, thus encouraging plunder and loot. As a result, extensive human rights violations are committed.

In such instances of looting and plundering in CHEs, humanitarian aid is often the most lucrative target of the warring factions.[63] Looting of humanitarian aid warehouses and aid supplies meant for civilians is not uncommon. While some warring factions who have been able to establish a certain degree of control in the area force aid agencies to pay fees to allow passage of aid fleets, others seek payment for allowing them to even operate. An example is the case of aid agencies in Somalia paying local armed security agents to provide security.[64]

Socio-economic factors

Rapid increase in population is one of the most common causes behind social instability in any part of the world. It is not just the increase in the number that has the greatest potential for contributing to the conflict itself but rather the change in the composition of the population. Urban slums currently comprise over half the poor people with inadequate support systems in the developing world. The growth in public utility infrastructure such as sanitation, water supplies and medicine has not been able to keep pace with the exponential growth in population. This prompts people to migrate to other regions to ensure their survival. As more and more people move to urban areas in search of basic amenities, the need for humanitarian assistance also moves likewise. However, critical issues such as the defence of urban public health infrastructure, sanitation, and access to water are often neglected. Regrettably, political and economic realities make some victims more appealing to international humanitarian groups than others. Such disrupted states are often favoured as recipients for humanitarian assistance and disaster relief.

Overview and Trends

Thus Complex humanitarian emergencies have been a major political and security threat featuring in the post-Cold War world. These man-made emergencies result in more civilian casualties than all natural and technological calamities put together. Thus to ensure an effective system of aid delivery during complex humanitarian emergencies, international humanitarian organisations must have a sound understanding of the political and social climates in which

[63] Mary B. Anderson, "Do No Harm: How Aid Can Support Peace – or War", Boulder, CO: Lynne Rienner,(1999).p. 21
[64] J. O.C Jonah, "Humanitarian Intervention," in *Humanitarianism Across Borders: Sustaining Civilians in Times of War,* ed. Thomas G. Weiss and Larry Minear (Boulder, CO and London: Lynne Rienner,1993).p. 123

they are operating. The novel coronavirus pandemic highlighted the urgent need for humanitarian leadership. The pandemic resulted in countries, including the ones suffering from CHEs in a state of lockdown, restricting the movement of people, including refugees and humanitarian actors. Thus the pandemic highlighted the limits of both governments' capacity to respond to the emergency as well as existing gaps in the international humanitarian aid system. Most victims during complex humanitarian emergencies are due to the effect of violence during conflict. However, there are certain preventable casualties which are the result of increased rates of infectious diseases malnutrition and trauma. A response mechanism at the local level, concentrating on primary health care will prevent at least some casualties. It is an unfortunate reality of contemporary times that the scale and frequency of complex humanitarian emergencies and the massive amount of human suffering linked with them are unlikely to decrease in the near future.

CHAPTER III

COMPLEX HUMANITARIAN EMERGENCIES AND HUMANITARIANISM

With a discussion of Complex Humanitarian Emergencies (CHEs) in the previous chapter, this chapter investigates 'humanitarianism' as an important response to CHEs. The chapter begins with a description of the concept of humanitarianism and the changes it has gone through over the years. The chapter then focuses upon the impacts of political and military hindrances during armed conflicts in the delivery of humanitarian aid during emergency response. Thus, the attempt has been to first establish the environment in which humanitarian organisations operate and the attitude toward humanitarian aid during an armed conflict. It does so by analysing the dimensions of complex humanitarian emergencies, defining the dilemmas humanitarian organisations face and their implications for conflict resolution in the changing international context. The chapter then assesses the evidence that humanitarian organisations have also contributed inadvertently to the escalation of violence rather than only to conflict resolution.

The chapter then addresses the security issues that led to restrictive environments for humanitarian aid. It argues that, while there have been new challenges, there is an inherently insurmountable gap between political/military objectives and humanitarian objectives in an armed conflict that extends into the emergency response, causing an exacerbated bias and corruption in the provision of aid.

This chapter then explores the evolution and content of 'stabilisation' as a discourse and set of policies, and the challenges of translating these into practice. Finally, the relationship between stabilisation and humanitarian assistance is considered.

Introduction: Humanitarianism

The term 'humanitarianism' designates the aspirations and actions that affirm the common dignity of human beings over and above differences in race, gender, religion, national status or ideological beliefs. In some way, humanitarianism serves as an alternative to the state-centric

Westphalian system. The Westphalian system is characterised by the presence of sovereign states with absolute control over the territory under their jurisdiction. Moreover, in accordance with the principle of sovereignty, states must not interfere in the internal affairs of other states. Humanitarianism, on the other hand, provides individuals and groups a space to perform activities in a domain that previously belonged exclusively to sovereign states. While most religions emphasised humanitarian qualities of compassion and solidarity towards those in need, it was only in the second half of the nineteenth century that humanitarianism was officially recognised in international law.

This recognition was owing to the efforts of Henry Dunant, the founder of the Red Cross movement. Dunant's efforts have today resulted in humanitarianism being internalised in international law through the four Geneva Conventions of 1949. These Convention recognise the International Committee of the Red Cross (ICRC) as the 'guardian' of international humanitarian law. Thus the objective of the ICRC, that is, its desire to help the vulnerable and needy during times of war, is inspired by the principle of humanity. Thus, with the foundation of the ICRC in 1863, humanitarianism was officially recognised in the field of international relations. However, it was only in the aftermath of the Second World War that humanitarianism gained momentum. The devastation caused by the war, led to new efforts at enforcing the concept of humanitarianism above national interests. This led to the 1949 Geneva Conventions and the 1948 Universal Declaration of Human Rights.

The 1970s marked a further transformation of humanitarianism. The Biafra crisis of 1970 displayed the limitations of classical humanitarianism, especially that of its belief in neutrality. This dissatisfaction with the ICRC and its adherence to classical humanitarianism led to the foundation of Médecins Sans Frontières (Doctors Without Borders), a volunteer organisation which believed in providing witness to the atrocities inflicted upon victims of armed conflicts. This marked the beginning of humanitarianism extending beyond the ICRC with multiple actors including states, the United Nations system and non-governmental organisations (NGOs) becoming increasingly involved in humanitarian activities. Thus contemporary humanitarianism involves the actions of a multitude of actors who attempt to provide assistance and relief to victims of armed conflicts, regardless of their geographical location or political affiliations. In fulfilling this objective contemporary humanitarianism often challenges the limits imposed by the Westphalia principle of sovereignty and the ICRC's belief in the classical principles of neutrality, impartiality and independence.

Humanitarianism has contributed significantly to progress towards betterment of human condition, justifying its interference in the internal affairs of sovereign states. However, critics have pointed out to the negative effects of humanitarianism, especially the misuse of humanitarian aid, by warring factions.[1] Moreover, humanitarianism has also been criticised as a cover up tool used by powerful states of the West for meddling in the internal affairs of weaker states.[2] The endeavour of this chapter has been to add to the existing debate around humanitarianism as an ideology, identify the challenges it is facing and how is it attempting to mitigate these.

The International Humanitarian Regimen in Complex Emergencies

The international humanitarian action and policies relating to it have been through some substantial changes over the past decade. Relief and development agencies are functioning in a progressively varied arrangement of war-affected and grim circumstances. Donor government policies have evolved, showing an increase in concern with so-called weak and fragile states. These backgrounds of uncertainty and turbulence are considered to be spots of underdevelopment and human suffering, while also becoming major threats to international peace and security, giving rise to complex humanitarian emergencies.

The growing number of failed states across the globe have led to an increasing number of complex emergencies, causing confusion and disorder to which humanitarian organisations have tried to respond. The result has been the evolution of a complex system to respond to these emergencies. This system is composed of three sets of institutional actors, namely, Non-Governmental Organisations (NGOs), the United Nation (UN) organisations and the International Committee of the Red Cross (ICRC) and its affiliated International Federation of Red Cross and Red Crescent Movement (IFRC). However, in more cases than not, the result of their efforts has been mixed.

The reason behind this mixed success is many. The application of International Humanitarian Law (IHL) in a conflict is dependent on the relation of the state to the conflict. If an outside state is involved, it has to adhere to the rules of an international armed conflict (IAC), while the home state and the armed group in conflict are bound by the rules of a non-international

[1] Fiona Terry, "Condemned to Repeat? The Paradox of Humanitarian Action," *Cornell University Press*, Ithaca, NY, (2002).
[2] Noam Chomsky, "The New Military Humanism: Lessons from Kosovo," Pluto Press, London, (1999).

armed conflict (NIAC).[3] If the conflict is neither an international armed conflict nor a non - international armed conflict, IHL will not come into effect. In such situations, states may react to the crisis by enforcing domestic laws against the recalcitrant. The International Committee of the Red Cross (ICRC) has argued that the problem lies not so much with the IHL as with the absence of support from states. It is not uncommon for states to deny that a conflict is a NIAC. They use their sovereign right to deny a particular act of violence as a NIAC.[4] The ICRC's assessment of a conflict is not binding upon the states. On the other hand, non-state actors including armed groups argue that IHL is not binding upon them as it is a state-centric system where they have no say.[5] The ICRC also noted that often when matters of security are involved the political will to implement IHL is not strong enough.[6] With national security being of paramount importance States are often seen taking measures to check security risks. These actions sometimes include tougher counterterrorism laws, as well as a cessation of financial and material support, including humanitarian aid to prevent terrorist organisations from benefiting through it.

When a conflict occurs, both the want for security as well as the need for humanitarian aid increases. Victims require both, but often the government is required to make a choice between the two, and security often takes precedence over humanitarian aid. Maintaining security in the midst of a conflict is one of the prime political objectives of the affected state. While it has to respond to the disaster but maintaining security operations in the disorder is also vitally important. The government's responsibilities include not only the protection of its citizens during armed violence, but also working towards rebuilding and restoration of the impacted areas. Government also must decide if and how aid can be sent to regions captured by armed groups. Should it refrain from providing aid to those areas as a measure to eliminate the crisis, or should it prioritise the life of the inhabitants and allow the delivery of aid, especially given that there are non-combatants too? The International Committee of the Red Cross, however, maintains that Article 18 of the Geneva Conventions and customary laws provide for the facilitation of unhindered aid delivery.[7]

[3] ICRC, "Internationalized Internal Armed Conflict," *How Does Law Protect in War.* URL: https://casebook.icrc.org/casebook/doc/glossary/internationalized-internal-armed-conflict-glossary.htm.
[4] ICRC, "International Humanitarian Law and the Challenges of Contemporary Armed Conflicts," *International Review of the Red Cross* 89, no. 867, (2019).
[5] Ibid.
[6] Ibid.
[7] Geneva Convention Relative to The Protection of Civilian Persons In Time of War of 12 August 1949, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf.175.

It is also argued that increasing aid given to complex emergencies for life-saving humanitarian interventions has dealt a blow to sustainable development. The US Agency for International Development (USAID) has significantly increased its funding for humanitarian intervention provided to United Nations organisations, the International Organization for Migrations (IOM), the International Committee of the Red Cross (ICRC) and NGOS in the last couple of decades. It is argued that such funding has the effect of depriving the donor nations of spending the resources for the welfare of their own citizens as well as creating a cycle of economic dependency in conflict afflicted regions.

Political and Military Issues with Humanitarian Aid

In a 2012 statement, the UN Office of Coordination of Humanitarian Assistance (OCHA) cited the following hurdles to the supply of humanitarian aid that might occur during conflicts and disasters:

• "bureaucratic restrictions on personnel and humanitarian supplies

• impediments related to climate, terrain, or lack of infrastructure

• the diversion of aid, and interference in the delivery of relief and implementation of activities

• active fighting and military operations

• attacks on humanitarian personnel, goods, and facilities."[8]

Most of the recent emergencies including that of Afghanistan depict the existence of all these barriers during humanitarian response. However, it is possible to identify four additional factors present during armed conflicts that can also cause hinderance in the smooth supply of humanitarian relief. These include:

Firstly, overcrowding of response due to the presence of multiple humanitarian organisations

Secondly, negative impression of the local population towards humanitarian aid

Thirdly, an increasing number of internally displaced persons (IDP's) due to the conflict

Lastly, overtaking of territories by warring factions

[8] OCHA, "OCHA on Message: Humanitarian Access,", OCHA, (2012). URL: https://docs.unocha.org/sites/dms/Documents/120312_OOM-humanitarianAccess_eng.pdf.

These factors put additional pressure upon states, significantly impacting emergency response operations. While it is true that the Red Cross Movement has special relationships with both governments as well as armed groups enabling it to respond promptly, however, these factors still contribute towards the uneven provision of aid, despite their best efforts. Additionally, due to visas restrictions, harsher customs procedures, and extensive security checks humanitarian organisations are frequently unable to bring in their employees and aid supplies. While the Red Cross Movement has been able to overcome some of these restrictions owing to the special relationship it shares with governments, but the organisation still confronts problems with the distribution of relief. Though there is no particular mention of counterterrorism laws, OCHA defines bureaucratic hurdles as "restrictions imposed by state and non-state actors on personnel and humanitarian supplies. This includes donor governments' funding restrictions, and domestic legislations criminalising the provision of 'material support' to 'designated foreign terrorist organizations.'[9] This definition makes use of the terms "material support" and "funding restrictions," which are also found in U.S. counterterrorism laws. Although counterterrorism laws are newer bureaucratic limitations, however, their objective of preventing funding and resource flow to armed forces is not a novel one.

Counterterrorism Measures

The September 11 terrorist attack in the US, led to the launch of the 'Global War on Terror'. This war unlike conventional wars was not fought against one or more states but rather against the ill-defined notion of 'terror'. According to the 2006 National Strategy to Combat Terrorism; 'the War on Terror' is acknowledged to be a unique form of war. It was not only a battle of arms but also a battle of ideas. The aim of this war was to promote freedom and human dignity as opposed to the terrorists' objective of oppression and totalitarian rule. The deployment of all forms of national power and influence became the model for combatting terrorism. This included not only "military power, but also the use of diplomatic, financial, intelligence, and law enforcement activities. This was to defend the 'Homeland' and strengthen the defences, disrupt terrorist operations, and deprive the adversaries of the resources they need to operate and survive."[10]

[9] OCHA,"Thematic Areas: Humanitarian Access," OCHA. http://www.unocha.org/what-we-do/policy/thematic-areas/humanitarian-access.
[10] Office of the Director of National Intelligence, "White House Releases National Strategy for Counterterrorism." URL:https://www.dni.gov/index.php/nctc-features/2622-white-house-releases-national-strategy-for-counterterrorism#:~:text=The%20National%20Strategy%20for%20Counterterrorism,citizens%2C%20and%20our%20interests%20abroad.

Humanitarian aid workers on the other hand, who are attempting to provide impartial and neutral help, are frequently caught in the crossfire between the government and armed organisations. Following the September 11th attacks, political rhetoric about humanitarian organisations focused on their role in the war on terror. Former U.S. Secretary of State Colin Powell in 2001, mentioned of NGOs as a 'force multiplier for the United States and a part of the U.S. combat team'.[11] Humanitarian organisations reacted negatively to these comments, as they disregarded the principles of neutrality, impartiality, and independence.[12]

Thus counterterrorism laws and greater military dependence have become recent additional obstacles to the provision of aid. This is mainly because they give the idea of an integrated front in the fight against terrorism that includes non-governmental organisations. This has resulted in NGO's negative perception, adversely affecting their capability to negotiate the situation. These concerns result in uneven aid distribution, which is in violation of the Red Cross Movement's code of conduct, which states that aid should be administered in a neutral, independent, and impartial manner.

According to some non-governmental organisations, counterterrorism laws and growing military use for humanitarian relief purposes have led to increased operational difficulties jeopardising their capability to provide aid. Humanitarian aid workers who aim at providing impartial and neutral assistance often find themselves in the midst of a power struggle between the government and armed groups. The United Nations (UN) Office of Humanitarian Assistance's names counterterrorism laws as a bureaucratic hurdle to humanitarian access in conflicts. Counterterrorism laws aim to limit the diversion of aid to warring groups. However, since the declaration of the war on terror, there has been increasing concerns that these laws are likely to further erode the authority of the Geneva Conventions and IHL. In a 2013 speech, Christine Beerli, ICRC former Permanent Vice President, expressed her displeasure at governments 'for their role in the denial, prohibition, and criminalization of aid.'[13] She also

[11]Colin Powell, "Remarks to the National Foreign Policy Conference for Leaders of Nongovernmental Organizations," US Department of State, Washington, DC, (2001). URL: https://2001-2009.state.gov/secretary/former/powell/remarks/2001/5762.htm

[12] Laura Hammond, "The Power of Holding Humanitarianism Hostage and the Myth of Protective Principles," in Humanitarianism in Question: Power, Politics, Ethics, ed. Micahel Barnett and Thomas G. Weiss, Cornell University Press, Ithaca, NY, (2008).p. 18

[13] Christine Beerli, "ICRC Operations and Engagement with Non-state Armed Groups in Noninternational Armed Conflicts," speech, *Paul Reuter Prize Award Conference on Contemporary Challenges of Non-International Armed Conflicts*, Geneva, Switzerland, (November 7, 2013).

pointed out the 'vagueness in language which gives multiple meanings to terms like "material support," a fact that can prove to be fatal.'[14]

While the meaning remains ambiguous, the effects of these actions are also unclear. Bloodgood and Tremblay-Boire's study about the effects of counterterrorism laws on humanitarian organisations in five nation-states concluded that 'these have led to increased bureaucratic hurdles and primarily affected the smaller NGOs.'[15] A similar analysis by the Humanitarian Policy Group noted that while counterterrorism measures are essential, a "rigid and over-zealous" observance of them would 'bind humanitarian assistance to political aims and jeopardise their acceptability.'[16] The Humanitarian Policy Group further recommended counterterrorism laws to be structured in accordance with the IHL to help "preserve neutral and impartial humanitarian action, and protect the ability of victims of a conflict to receive relief."[17] The IHL also needs to modify, if it does not adapt to include terrorist activities as a type of conflict, humanitarian relief would not be seen as beneficial, but rather as useful for terrorists.

In Somalia, Al-Shabab compelled the humanitarian relief bodies, to follow the terrorist group's dictates and extracting taxes in exchange for permission for operation and restricting relief in some areas.[18] In an interview taken by the Humanitarian Policy Group, former Al-Shabaab members admitted to 'disallowing humanitarian organisations from engaging in any activities that helped any leadership except Al-Shabaab.' This meant that not only was humanitarian aid used to fund Al-Shabab activities but the principles of impartiality and neutrality too could not be followed. Such restrictions imposed by the government and armed bodies can negatively affect the reputation of humanitarian organisations hindering their work as well as negotiating power. Al-Shabab's demands resulted in the ICRC withdrawing from the Al-Shabaab controlled areas altogether.[19]

---

[14] Ibid.

[15] Elizabeth Bloodgood, Joannie Tremblay-Boire, and Aseem Prakash. "National Styles of NGO Regulation," *Nonprofit and Voluntary Sector Quarterly* 43, no. 4 (2014).pp. 716–36. https://doi.org/10.1177/0899764013481111.

[16] Sara Pantuliano et al., "Counter-terrorism and Humanitarian Action," *HPG Policy Brief* 43 (2011). https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7347.pdf

[17] Ibid., pp.11–12.

[18] Ashley Jackson and Abdi Aynte, "Al-Shabaab Engagement with Aid Agencies," *HPG Policy Brief* 53 (2013). https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinionfiles/8749.pdf

[19] Ibid.

The 2015 Harvard Law School research on State's compliance to UN Security Council Resolution 2178[20] analysed the effects of counterterrorism measures on humanitarian organisations.[21] The study examined the concerned laws and the six problems faced by these organisations, that is, "increased administrative and programmatic issues, diminished freedom of movement, increased governmental checks, decreased funding, reputational damage, and decreased autonomy in tackling armed conflict. The United States earned a compliance score of 46 out of 50, and a score of 37.5 out of 50 in the category of "support of five key aspects of principled humanitarian action in counterterrorism contexts."[22]

Despite several attempts to distinguish and set boundaries between political, military, and humanitarian actors, there will always be compromises. It is the sovereign right of any government to ensure the country's security through any means it deems fit. The chaotic circumstances surrounding a conflict often make governments tighten security measures. This becomes important for ensuring the safety of survivors. The problem with neutral aid is that it benefits not just the civilian survivors but also unwittingly provides resources to terrorist organisations for continuing their fight. The fight against terrorism has created a non-international armed conflict (NIAC) between governments and internationally recognised terrorist groups. This has led to growing concerns about how to manage the situation. In such circumstances, states mostly prefer to rely upon the help of other states who are also victims of the same menace. This ensures a greater similarity of objectives as compared to humanitarian organisations that operate upon the principle of neutrality. This leaves the humanitarian organisations to provide aid within its principles according to the situation as it stands rather than the ideal.

This problem brings the question of the application of IHL. In the event of a conflict, the ICRC is required by the Geneva Conventions to conduct its own evaluation of whether the situation warrants the status of "conflict" or not.[23] Kathleen Lawland, who formerly directed the ICRC's unit that counsels on the application of the laws in armed conflict said, 'that though ICRC's assessment of a situation of violence is not binding upon a state, it's specific mandate under

[20] UNSC, S/RES/2178 (2014), Resolution 2178 (2014). https://www.undocs.org/S/RES/2178%20 (2014)
[21] Jessica Burniske, Dustin A. Lewis, and Naz K. Modirzadeh, "Suppressing Foreign Terrorist Fighters and Supporting Principled Humanitarian Action: A Provisional Framework for Analyzing State Practice," *Harvard Law School Program on International Law and Armed Conflict, Counterterrorism and Humanitarian Engagement Project, Research Briefing,* Cambridge, MA (2015). doi: 10.2139/ssrn.2673502
[22] Ibid.
[23] Kathleen Lawland, interview by International Committee of the Red Cross, October 12, 2012, "What Is a Non-international Armed Conflict?," https://www.icrc.org/eng/resources/documents/interview/ 2012/12-10-niac-non-international-armed-conflict.htm.

the Geneva Conventions and its historic role in the development of IHL gives a particular significance to its evaluation, and States are expected to consider it in good faith."[24] Nevertheless, sometimes certain states refuse to abide by the established agreements.

The ICRC holds that increasing these security measures has adversely affected its ability to provide humanitarian aid in NIACs. However, a look into humanitarian relief operations in NIACs before the War on Terror would reveal that the Red Cross faced political and military hindrances even then. During the Second World War, the German government did not grant the ICRC access into the concentration camps.[25] In 1968, during the Nigerian–Biafran conflict, the Nigerian government barred the Red Cross from providing relief because armed groups were making use of Red Cross vehicles to transfer weapons into Biafra.[26] While it is true that counterterrorism laws and increasing military use have aided perception concerns, they are not solely responsible for hurdles on humanitarian relief. Increasing security concerns have contributed to decreasing political commitment to IHL leading to the restriction of humanitarian aid.

Military in Humanitarian Assistance

Where non-governmental organisations (NGOs) are unable to provide assistance due to certain hurdles, the military can fill the void. Military assets can offer not just the necessary relief supplies but also the security and logistical support required for the rapid delivery of aid. However, there are perception and information-sharing challenges that cause confusion and can impede NGO response. Even over and above the counterterrorism legislations, the role of military in humanitarian assistance activities has increased in regions affected by complex emergencies.[27] This increase has led to a shrinkage of 'humanitarian space' and blurring of civil-military boundaries. While in the positive side this ensures greater security against relief being captured and diverted, but it also has impression of the military on it. This is particularly true if the military is considered an enemy by any of the warring factions or civilians. It is for

[24] Ibid.
[25] ICRC, "The ICRC in WW II: The Holocaust," International Committee of the Red Cross (2014). https://www.icrc.org/eng/resources/ documents/misc/history-holocauste-020205.htm.
[26] Marie-Luce Desgrandchamps, "'Organising the Unpredictable': The Nigeria–Biafra War and its Impact on the ICRC," *International Review of the Red Cross* 94, no. 888 (2012).p. 1414, doi: 10.1017/S1816383113000428.
[27] United Nations, "Civil-Military Guidelines & Reference for Complex Emergencies" United Nations, New York (2008). URL: https://docs.unocha.org/sites/dms/Documents/ENGLISH%20VERSION%20Guidelines%20for%20Complex%20Emergencies.pdf.

this reason that in 2010 Pakistan floods, the ICRC declined to work with NATO and the Pakistani military due to their involvement in security operations.[28]

These ties between humanitarianism and the military can lead to the general idea that humanitarian organisations are a part of counterinsurgency efforts. In 2008, in response to the rising use of the military by NGOs, the UN issued the 'Civil-Military Guidelines & Reference for Complex Emergencies.' According to the statement humanitarian access is "not conditional upon the allegiance to or support to parties involved in a conflict but is a right independent of military and political action."[29] It also mentions that the military should be used only as a last resort and operational control should remain with the NGO. Despite this, the use of the military by NGOs to supply relief in crisis-ridden areas is on a rise.

Military instructions also referred to humanitarian organisations as partners in counterinsurgency efforts.[30] These references ignore the fact that these organisations are not government units and are bound to the principles of independence, neutrality, and impartiality. Also, their objective is to give relief assistance, not to combat an insurgency. While military and humanitarians might operate in the same region, their goals are different. A roundtable on civil-military coordination in 2011, acknowledged the fact that military counterinsurgency activities in communities are similar to humanitarian organisations' aims. However even then, the difference lies in the devices involved while doing so.[31]

Information sharing is a major problem between humanitarian organisations and military partnerships. The ICRC has established agreements that give it permission to remain silent about its operations. The 2011 civil-military coordination round table also remarked upon the mistrust humanitarian organisations have regarding information sharing with militaries.[32] The military on the other hand more often than not is reluctant to share security information with humanitarian bodies.

---

[28] Marion Pechayre, "Humanitarian Action in Pakistan 2005–2010: Challenges, Principles, and Politics," *Humanitarianism and Politics: Briefing Note Series,* Tufts University, Medford, MA (2011). p. 12. URL: http://fic.tufts.edu/assets/pakistan.pdf

[29] United Nations, "Civil-Military Guidelines & Reference for Complex Emergencies," United Nations, New York (2008). p. 41. URL: https://docs.unocha.org/sites/dms/Documents/ENGLISH%20VERSION%20Guidelines%20for%20Complex%20Emergencies.pdf.

[30] Department of the Army, "Counterinsurgency (FM 3-24)," Department of Army, Washington, DC (2006).p. 1-1.

[31] Humanitarian Policy Group and ICRC, "Roundtable on Civil–Military Coordination: The Concept of Protection: Towards a Mutual Understanding," ICRC, (2011). p. 8, https://www.icrc.org/eng/assets/files/2012/hpg-icrc-roundtable-summary-note-2011-12-12.pdf.

[32]Ibid.

Some critics argue that humanitarian organisations should in fact play a more proactive role politically. In the article "Principles, Politics, and Humanitarian Action", Weiss's characterises the ICRC's approach as 'classicist', 'as it adheres to an apolitical approach that has no linkage with realpolitik and neither does it recognise the political repercussions of its activities.'[33] The Red Cross Movement's seven code of conduct principles 'represents an altruistic, unattainable goal'.[34] To mend the gap between humanitarian and political aims, Weiss contends that the ICRC should use its position and the power it possesses to influence conflicts. Weiss argues that since their actions are impacted by politics, humanitarian organisations cannot turn a blind eye to it. Therefore, NGOs need to act as "political humanitarians" and recognise that their actions are not disassociated from politics.[35]

However, few humanitarian organisations, already have a presence in politics. Their roles are mentioned in detail in agreements and charters with states as well as in the Geneva Conventions and IHL. Notwithstanding this presence, humanitarian organisations can only conduct their operations with the consent of the "parties to an armed conflict."[36] Since NGOs possess no 'hard power', that is, military strength, they have to depend upon the power of negotiation. To retain their negotiating power, it is important for humanitarian organisations, to maintain their reputation for which adherence to their principles becomes crucial.

The main issue with the increase in military usage for the provision of humanitarian relief is that of perception. The impression of strong links between the military and humanitarian aims indicated in counterinsurgency strategies has damaged the trust in humanitarian actors and exposed them to increased attacks. Armed groups in Pakistan refused to allow the ICRC and Pakistani Red Crescent Societies to provide aid, believing that they were involved with security operations.[37] Just like the restriction of humanitarian aid for political objectives, perception issues are not new. NGOs have been unable to shake civilians' and armed groups' perception that NGOs are western Judeo–Christian groups that foster western government ideals—this perception has held fast prior to recent counterterrorism laws and increased military

[33] Thomas G. Weiss, "Principles, Politics, and Humanitarian Action." *Ethics and International Affairs* 13, no. 1 (1999).pp. 1–22. doi: 10.1111/j.1747- 7093.1999.tb00322.x.
[34] Ibid.
[35] Ibid.
[36] Tarcisio Gazzini, "A Unique Non-State Actor: The International Committee of the Red Cross," Human Rights and International Legal Discourse, (2010). pp. 32-46.
URL: https://ghum.kuleuven.be/ggs/projects/non_state_actors/publications/gazzini_bis.pdf.
[37] Humanitarian Policy Group, "A Clash of Principles? Humanitarian Action and the Search for Stability in Pakistan," *HPG Policy Brief* 36 (2009). URL: https://www.odi.org/sites/odi.org.uk/ files/odi-assets/publications-opinion-files/4854.pdf.

humanitarian aid. David Rieff suggests that humanitarian aid is viewed as a means of colonising a country. He points out that white, western humanitarian aid workers in developing countries will live in former cabinet ministers' houses and have local drivers while making and directing changes.[38] Rieff argues that the humanitarian workers providing assistance, maintain the image of western power.[39] When a humanitarian agency works with a military that is considered hostile, this image is further reinforced.

The information requirements and screening process for receiving humanitarian assistance have further contributed to the belief that humanitarian organisations are complicit with political views and need justification for providing aid.[40] The majority of these organisations have close ties to the major world powers as the majority of their funding comes from these countries. These countries also provide military support in major conflicts. Thus, the barriers between humanitarian organisations and the military have become distorted because of increased military humanitarian aid.

In recent conflicts such as Syria, Iraq, and Afghanistan the United States and other western countries have not been neutral bystanders but instead have been participants in the conflicts.[41] Monica Krause argues that adherence to the principle of 'independence' is measured by an organisation's distance from the United States due to the U.S. role in current conflicts.[42] However, distance from the United States is difficult to attain, it being one of the largest donors of financial assistance to NGOs.

It is because of this increasingly unfavourable perception towards humanitarian aid workers that attacks on them are increasing. In an article entitled "Humanitarian Action: From Risk to Real Danger," Michel Cagneux, the head of the ICRC's security unit, is quoted as saying some actors "are caught in an unequal struggle and have no hesitation in resorting to non-conventional methods of warfare such as attacks on humanitarian organizations, considered 'soft targets.'"[43] At an August 2014 meeting of the UN Security Council, it stated that, in 2013, there had been 155 humanitarian workers reportedly killed, 171 wounded, and 134

[38] David Rieff, "Bed for the Night: Humanitarianism in Crisis", *Simon and Schuster,* (New York: 2003).p. 257.
[39] Ibid.
[40] Humanitarian Policy Group, "A Clash of Principles? Humanitarian Action and the Search for Stability in Pakistan," *HPG Policy Brief* 36, (2009). URL: https://www.odi.org/sites/odi.org.uk/ files/odi-assets/publications-opinion-files/4854.pdf.
[41] Monika Krause, "The Good Project: Humanitarian Relief NGOs and the Fragmentation of Reason," University of Chicago Press, Chicago, (2014). p. 116.
[42] Ibid., pp.116–117.
[43] Pierre Hazan and Jean-François Berger. "Humanitarian Action: From Risk to Real Danger." *The Magazine of the International Red Cross and Red Crescent Movement* 1 (2004).pp. 4–9.

kidnapped.[44] This was a 66-percent increase from 2012. Masood Karokhail, former Director of the Liaison Office in Afghanistan, stated that in Afghanistan, from 2001 to the first quarter of 2014, 895 humanitarian workers were attacked and 325 killed.[45] Armed groups have issued statements that attacks on humanitarian workers align with their efforts to stop the enemy. A week before the bombing of the UN compound in Iraq, Mullah Omar, a Taliban leader, issued a statement that identified the worst enemies of Islam and humanity to be "Jews and Christians, America, Great Britain, the UN and all Western humanitarian organizations."[46]

The implications of tying humanitarian organisations to military efforts, or at least blurring the lines between them, have varying impacts depending on the views of civilians regarding the military. The Director of Médecins Sans Frontières-USA De Torrente, in the article "Humanitarian Action under Attack," stated that 'when governments drape their military and political actions in the cloak of humanitarian concerns, they undermine humanitarian action's essential purpose: the unconditional provision of assistance to those in need. 'When all aid efforts are showcased and conceived as being for the fulfilment of political and military objectives, it is more challenging and dangerous for independent humanitarian organisations to continue with their humanitarian work.'[47] However, blaming these processes as the only reason behind recent concerns (including increased attacks on humanitarian workers and limited access to conflict zones) fails to acknowledge the tensions that already existed between security objectives and humanitarian goals of providing impartial and independent aid to the vulnerable.

First, aid provision has always been contingent upon the ability of the government, the armed forces, and the Red Cross Movement to negotiate in the situation. Article 71 of the Geneva Convention's First Additional Protocol states that NGO personnel "shall be subject to the approval of the Party in whose territory they will carry out their duties" and cannot "exceed the terms of their mission under this Protocol."[48] Governments also evaluate their response to conflicts on their national interests and these attempts can lead to tension between humanitarian organisations and the government. From the government's standpoint, humanitarian relief is a

[44] Jan Eliasson, "Paying Tribute to Fallen Personnel, Speakers Call for More Effective Use of Judicial Tools, Sanctions, Resolutions," speech, *United Nations Security Council,* (August 19, 2014)
[45] Ibid.
[46]Laura Hammond, "The Power of Holding Humanitarianism Hostage and the Myth of Protective Principles," in *Humanitarianism in Question: Power, Politics, Ethics,* ed. Micahel Barnett and Thomas G. Weiss, Ithaca, NY: Cornell University Press, (2008). p.181
[47] Ibid.
[48] David Fisher, "Domestic Regulation of International Humanitarian Relief in Disasters and Armed Conflict: A Comparative Analysis," *International Review of the Red Cross* 89, no. 866, (2007).p. 366.

part of the response, which can result in a biased distribution of aid. NGOs on the other hand believe that all should get unbiased aid with priority to the most vulnerable, without any political interference. It is the two opposing viewpoints that lead to tension during a conflict.

Additionally, the shifts in the emergency environment have adversely affected the position of the Geneva Conventions and international humanitarian law. The ICRC performs an impartial evaluation of a crisis to decide the category to which a conflict should belong. The Geneva Convention expects the state to take this evaluation into consideration.[49] However, since the 1990s, multiple changes have taken place in the definition of conflict which states have been hesitant to accept, leading to a lack of political will to comply with IHL. This has raised doubts about the sustainability of the framework.

Negative Impacts of Humanitarianism

Humanitarianism as an Obstacle to Conflict Resolution

Based on the experience of humanitarian assistance in complex emergencies in the last few decades, critics have argued that the relief activities at their best do not contribute to, and at worst, can threaten conflict resolution. It is not uncommon to come across humanitarian organisations that lack operational efficiency and accountability. The multi-donor evaluation of the Rwandan crisis, for example, could not trace a third of the 170 registered NGOs, and around $120 million of funding could not be accounted for.[50] The question of accountability, which includes not just funding but also performance monitoring and programme evaluation, arose as states began to delegate humanitarian relief work to private bodies. A few NGOs have been hesitant to accept independent evaluation as it can bring their failures and corruption to light.[51] However, in the case of complex emergencies, monitoring that is focussed on supporting internal review and improvement has more chance of being accepted than an external audit.

Evaluations have also focussed upon the need for better coordination among humanitarian organisations and donor states. More responsible use of the media by these organisations and

[49] Kathleen Lawland, interview by International Committee of the Red Cross, "What Is a Non-international Armed Conflict?," (2012). URL: https://www.icrc.org/eng/resources/documents/interview/ 2012/12-10-niac-non-international-armed-conflict.htm.
[50] International Federation of Red Cross and Red Crescent Societies, "World disasters report 1997", *Oxford University Press*, Oxford, England, (1997).
[51] John Prendergast, "Minimizing Negative Externalities of Aid: the Ten Commandments, Paper prepared for the *United States Institute of Peace* (1995).

better coordination of different bodies within the United Nations during a complex emergency have also been emphasised.[52] For instance, about 240,000 people died in Somalia due to initial inaction by the international community initially. Moreover, too much focus on food aid diverted attention from health facilities which could have prevented around 70 percent of deaths.[53]

Humanitarians have themselves felt the need for better coordination amongst themselves and with donors and international organisations. This has led to several new coordination efforts. In Rwanda, for instance, the NGOs formed a Coordinating Committee in 1995, to represent the large numbers of NGOs working there in a tense relationship with the new government. Likewise in Burundi too, NGOs created their own forum to help better coordinate amongst themselves. The forum regularly discussed matters of importance with heads of UN agencies and these issues were often represented at UN security meetings.

Critics also allege that humanitarian organisations require a greater understanding of the society, its culture, history, and language. In Somalia and Rwanda, for instance, very few NGOs could speak the local language, understand societal and cultural norms, and had experience of working at the grass root level.[54] An understanding of local politics, networks and strategies is crucial for mitigating some of the negative consequences of humanitarian aid, which helps prolong rather than resolve conflict.

Finally, humanitarians need advanced technical knowledge in conflict resolution. In Somalia, for instance, a local peace-building programme supervised by an NGO saw success as it made use of the traditional Somali conflict management methods.[55] International humanitarian assistance on the contrary aided in the collapse of these traditional methods by prioritising those

[52] Jon Bennett, "Coordination, Control, and Competition: NGOs on the Front Line," in James Whitman and David Pocock, eds. *After Rwanda: The Coordination of United Nations' Humanitarian Assistance,* St. Martin's Press. New York, (1996).
[53] John Sommer, "Hope Restored? Humanitarian Aid in Somalia 1990-1994," *RPG Refugee Policy Group,* Center for Policy Analysis and Research on Refugee Issues, Washington (1994). p. 97
[54] Peter Shiras, "Humanitarian Emergencies and the Role of NGOs," in James Whitman and David Pocock, eds. *After Rwanda: The Coordination of United Nations Humanitarian Assistance,* St. Martin's Press, New York (1996).
[55] Kenneth Menkhaus, "International Peacebuilding and the Dynamics of Local and National Reconciliation in Somalia," in Walter Clarke and Jeffrey Herbst, eds. *Learning from Somalia: The Lessons of Armed Humanitarian Intervention,* Boulder: Westview Press (1997). pp. 42-63.

based on violence.[56] Better knowledge of traditional practices by humanitarian workers would have resulted in better management of the situation.

Critics have also argued that international humanitarian assistance mitigates national leaders' accountability to their populations. Political accountability is a crucial safeguard for citizens against their governments. This criticism is especially applicable in the context of famines. Famine is often the result of systematic violence, used for political reasons aimed to destroy the survival strategies of certain races.[57] It is argued that humanitarian aid does not address the causes of famine, and in fact may worsen it by reducing political leaders' accountability to their citizens.[58] When aid is distributed by international humanitarian organisations, local government is able to evade their responsibility to cater to the needs of their own populations.[59] This was very apparent in the case of Sudan.[60] An analysis of the states that wilfully perpetrate violence and famine upon their civilian population shows that they are unlikely to be held accountable. This is because most of these states have an authoritarian government with little or no accountable institutions.[61]

Owing to an increasing international interest in complex emergencies, states tend to avoid political action by providing humanitarian aid as a substitute. Governments have delegated relief to private agencies and aim at containing the complex emergency rather than addressing the root causes. While avoiding political intervention for protecting the vulnerable population, states are even reluctant to accept refugees and grant them asylum as mandated by the international refugee regime. There is also a simultaneous reduction in response to funding appeals by NGOs. It is in such a background that states are trying to push NGOs into the forefront as a cover for their own absence.[62]

---

[56] Andrew S. Natsios, "Humanitarian Relief Intervention in Somalia: The Economics of Chaos," in Walter Clarke and Jeffrey Herbst, *Learning from Somalia: The Lessons of Armed Humanitarian Intervention*, Boulder, Westview Press (1997). pp. 85-86.
[57] Amartya Sen, "Poverty and Famines: An Essay on Entitlement and Deprivation", *Clarendon Press*, Oxford (1981).
[58] Alexander de Waal, "Famine that Kills: Darfur, Sudan, 1984-1985", *Clarendon Press*, Oxford (1989).
[59] John Prendergast, "Crisis Response: Humanitarian Band-Aids in Sudan and Somalia," Pluto Press, London (1997).
[60] Alexander de Waal, "Famine that Kills: Darfur, Sudan, 1984-1985", *Clarendon Press*, Oxford (1989).
[61] Mark Duffield, "NGO Relief in War Zones: Toward an Analysis of the New Aid Paradigm," in Thomas G. Weiss, ed. *Beyond UN Subcontracting: Task Sharing with Regional Security Arrangements and Service-Providing NGOS*, St. Martin's Press, New York (1998). pp. 139-159.
[62] Dylan Hendrickson, "Humanitarian action in protracted crises: the new relief 'agenda' and its limits", Network Paper 25, *RRN*, London (1998).

Humanitarian assistance has also lost its credibility because of the unsustainable conditions it has accepted to gain access to the needy. The difficulties of getting access to the vulnerable are more often than not intentionally created by an involved party who benefits by perpetuating the emergency. This leaves humanitarian bodies in a place where they have to negotiate access in return for consenting to certain conditions. The warring parties often utilise these negotiated agreements to establish international credibility. This sometimes has the unintended result of more killing, resulting in an increased flow of aid resources.

Humanitarian Relief and Development

It is often alleged that humanitarian assistance has an adverse effect on development. It is believed that aid has taken away a sense of initiative and responsibility from local leaders, promoted outsiders in place of the local community and in the process harmed the local economy.[63] To counter these problems, some NGOs have tried to bring a "developmentalist" orientation to relief by promoting "relief-to development-and-democracy (RDD) continuum." It is held that if relief and development take place together, the cycle of dependency will end bringing peace faster.[64]

'Developmentalists' advocate rapid resolution of complex emergencies and a return to stability, which would allow for peaceful development. This policy relies upon the empowerment of local communities through participation. The goal is to develop alternative modes of livelihood for people affected by war and the war economy. This approach thus believes in blurring the boundary between relief and development.[65] Local partnerships and community empowerment are critical components of successful development, and conflict resolution that is sustainable in nature. Vulnerable communities must have a say in their own future if lasting peace is aimed. Ironically, however, the stress on the increase in 'participatory' emergency relief led to humanitarian organisations' loss of credibility. In Eastern Zaire's camps for Rwanda refugees, humanitarian organisations utilised "refugee self-management" techniques. The purpose was to assist refugees by utilising indigenous leadership from within the camps. However, in this

[63] Alexander de Waal, "Famine that Kills: Darfur, Sudan, 1984-1985", *Clarendon Press*, Oxford, (1989).

[64] M Buchanan-Smith, and Simon Maxwell, "Linking relief and development: an introduction and overview", *Institute of Development Studies Bulletin* 25, (1994). p. 2-16. doi: 10.1111/j.1759-5436.1994.mp25004002.x

[65] Mark Duffield, "NGO Relief in War Zones: Toward an Analysis of the New Aid Paradigm," in Thomas G. Weiss, ed. *Beyond UN Subcontracting: Task Sharing with Regional Security Arrangements and Service-Providing NGOS*, St. Martin's Press, New York, (1998). pp. 139-159.

.

situation, the leaders were the very people who devised the genocide which led to the forced mass migration. This made the existing situation worse for the refugees.

The 'developmentalist' approach likewise overlooks the scale of the violence and the magnitude of the crisis, factors that would make a return to stability exceedingly difficult. In some cases, like Somalia, the conflict has lasted a decade or even more. In other cases, such as Afghanistan, the hasty declaration of an end to the crisis to accommodate the new agenda is disproved by the ongoing violence within the country. In 1996 Rwanda was aiming for a gradual but progressive development programme. The repatriation of the refugees, the establishment of some essential government structures and some economic growth gave encouragement to this vision. However, by December 1997, most parts of Rwanda were again unstable with the number of internally displaced increasing rather than declining.[66] The emergency was far from over. Similarly, despite the continuing conflict an end to the emergency was declared in Sudan, thereafter, humanitarian organisations were only allowed to work for development and rehabilitation, even though many people were in the need of relief.[67] This only benefitted the protractors of violence.

Humanitarian assistance prioritises economic reconstruction over justice and political accountability that is essential for a stable political system. Humanitarianism owing to its principles of impartiality and neutrality avoids pinning accountability over perpetrators of violence.[68] Development in the context of complex humanitarian emergencies often makes the mistake of inviting the same people who were responsible for the massive disruption in the first place. This defeats the objective of the pursuit of justice. Another criticism levied against humanitarian aid is that it fuels war and conflict through a transfer of resources. There is plenty of evidence to show that, in many complex emergencies, the aid that NGOs supply has unintentionally acted as a fuel to continue warfare.[69] For Instance, civil conflict and drought made food extremely expensive in Somalia, thus the food aid brought by humanitarian

[66] J. Macrae and A. Zwi, eds., "War and Hunger: Rethinking International Responses to Complex Emergencies," *Zed Press,* London and New Jersey, (1994).
[67] Sue Lautze and John Hammock, "Coping with Crisis, Coping with Aid: Capacity Building, Coping Mechanisms and Dependency, Linking Relief and Development", UNDP, New York, (1996). p. 27
[68] Mark Duffield, "NGO Relief in War Zones: Toward an Analysis of the New Aid Paradigm," in Thomas G. Weiss, ed. *Beyond UN Subcontracting: Task Sharing with Regional Security Arrangements and Service-Providing NGOS*, St. Martin's Press, New York, (1998). pp. 139-159.
[69] Mark Duffield, "NGOs, Disaster Relief, and Asset Transfer in the Horn: Political Survival in a Permanent Emergency", National Emergency Training Center, (1993). pp. 131-157.

organisations was used to fund war activities by militia.[70] Similar has been the case in Rwanda and Sierra Leone, where aid was either 'taxed', or used to indirectly for conflict escalation rather than conflict resolution.

In eastern Zaire, UN and NGO aid was subjected to control and taxation by the parties responsible for the Rwandan genocide of 1994. Rwanda's genocidaires converted international humanitarian organisations managed refugee camps into resource bases for continued warfare, both within Zaire and in western Rwanda.[71] When in 1994 the Rwandan government tried to seize back control of the camps, warring parties made use of civilian refugees as human shields. Thus, humanitarian organisations in this case unwittingly acted as a resource for destruction rather than a means of protection. This diversion of assets by warring parties is one of the most significant impediments that humanitarian organisations face in the resolution of conflict. They unintentionally help fuel a vicious cycle of violence making people more vulnerable. However, abandoning populations that are vulnerable to conflict is not an option. There is no consensus regarding the most suitable solution in such cases. Some critics hold that humanitarian assistance should be completely transformed or eliminated entirely. Others have argued that relief should be made conditional upon promises of good governance and respect for human rights.[72]

The broader criticism, that humanitarian aid fuels war, though valid, fails to take into account the appropriate context. Withdrawal of the humanitarian presence should be the last option, even if it has negative outcomes. This is so because more often than not it is these organisations who are the only sources of information about what is actually happening in a conflict-afflicted region, which serves as a mild restrain upon the perpetrators of violence. Moreover, relief is not the only source of resources for war economies. Its use for such purposes varies from conflict to conflict. In eastern Zaire, for example, humanitarian aid was one of the main sources of funds for the warring parties, whereas, in other regions, drug trade and trafficking have played a more significant role. As yet, there is no data available that can confidently claim an exact proportion of humanitarian aid's effect on war efforts.

---

[70] Natsios, Andrew S, "Humanitarian Relief Intervention in Somalia: The Economics of Chaos," In Walter Clarke and Jeffrey Herbst, Learning from Somalia: The Lessons of Armed Humanitarian Intervention, Westview Press, Boulder, (1997). pp. 77-95.

[71] Mark Duffield, "The Political Economy of Internal War: Asset Transfer, Complex Emergencies, and International Aid," in Anthony Zvi, ed. *War and Hunger: Rethinking International Responses to Complex Emergencies*, Zed Books, London, (1994).

[72] Mark Duffield, "Post-Modern Conflict, Aid Policy, and Humanitarian Conditionality", *Department for International Development (DFID), Emergency Aid Department*, London, (1997).

Finally, there is little data to support the claim that humanitarian aid creates dependency and mitigates the prospect of development.[73] It is only under certain conditions that humanitarian aid actually blocks development. Given the modest quantity of aid given and the relatively short duration of most, it is doubtful if aid would appear to be an appealing option when compared to other coping strategies. It is more likely that violence destroys these alternatives and vulnerable populations have no option but to rely upon aid.

Minimising the Negative Consequences of Aid in War

There are no obvious remedies to the problems that humanitarian organisations face in their endeavour to assist the vulnerable population of a complex humanitarian emergency. It would be unreasonable to expect these emergencies to end quickly. Experience does not encourage optimism. For humanitarians, the struggles are likely to continue, if not increase.

However, two conclusions can be safely drawn. Firstly, complex humanitarian emergencies similar to the ones in the last few decades are likely to continue. Secondly, humanitarian organisations will continue to provide assistance to vulnerable populations with disengagement not being a possibility. However, with the increasing privatisation of relief and the United Nations being weakened by budget deficits, NGOs will play a more proactive and prominent role.[74] The main challenge will be to prevent the negative side effects of relief as aid continues to flow to disturbed regions. Humanitarians are working towards preventing aid utilisation by warring parties to continue the war. It is necessary to make use of lessons from past experience and develop better alternative practices. An example of such an effort is that NGOs have started distinguishing between types of food, based upon their market value. For instance, In Somalia, rice had a much higher market value than sorghum, making relief workers shift to sorghum.[75] Similarly, the ICRC, has switched to cooked food to deter looters.

Additionally, humanitarian organisations have also sought to restructure by becoming more transparent and accountable. This has also helped in preventing resource diversion as was seen

[73] Jerker Carlsson, Gunnar Koehlin, and Anders Ekbom, "The Political Economy of Evaluation: International Aid Agencies and the Effectiveness of Aid", *Macmillan Press,* London, (1994). pp.194-203
[74] Carnegie Commission, "Preventing Deadly Conflict", *Final Report of the Carnegie Commission on Preventing Deadly Conflict*, Carnegie Corporation of New York, New York, (1997). pp. 105-127
[75] Natsios, Andrew S, "Humanitarian Relief Intervention in Somalia: The Economics of Chaos," In Walter Clarke and Jeffrey Herbst, Learning from Somalia: The Lessons of Armed Humanitarian Intervention, Westview Press, Boulder, (1997). p. 87.

in Rwanda and Angola.[76] They are also attempting to raise the ratio of non-food to food aid and there is much more emphasis on supporting sustainable livelihoods.

In response to allegations of having violated humanitarian space, humanitarian organisations have collaborated to refine their ethics and responsibilities during complex emergencies. This has led to the development and adoption of the Code of Conduct for the International Red Cross Movement and NGOs in Disaster Relief. This document lists the technical standards that need to be maintained when delivering water and food aid during armed crises. Humanitarian organisations have also started to evaluate the local coping mechanisms of populations at risk. Meeting the needs of the vulnerable as well as sustaining community structures and building capacity is becoming the new priority for relief organisations.

A Political Humanitarianism

These approaches can certainly reduce the severity of the problems but cannot completely solve them. Analysis of recent conflicts suggests that humanitarians working in complex emergencies will face severe impasses until the United Nations fails to provide security and the major powers continue to disengage and privatise assistance as a substitute for political action. Neither of these issues is likely to get solved in the near future; rather they are expected to increase. This would leave humanitarian organisations with little option. This was the case in eastern Zaire in 1994 and 1995 when these organisations had to make a difficult choice between leaving the civilians at the mercy of militants or continuing to allow the use of their aid for warring activities. There is no solution to this problem even now.[77] In the face of greater tragedy humanitarians are forced to choose the lesser harm. To make the choice that does the least harm, humanitarians have to evaluate by keeping the larger political context in view.

There is also a need for humanitarian organisations to acknowledge and examine the political nature of their activities during a complex emergency. Most such bodies believe that strict observance of the principles of neutrality and consent of the parties involved can protect humanitarianism from political propaganda.[78] They also hold that neutrality assists in conflict resolution. This helps in persuading the UN and state governments to provide assistance,

[76] Ibid. 86-93

[77] Mary Anderson, "Do No Harm: Supporting Local Capacities for Peace Through Aid", *Local Capacities for Peace Project, The Collaborative for Development Action,* Cambridge, (1996).

[78] David Keen and Ken Wilson, "Engaging with Violence: A Reassessment of Relief in Wartime," in J. Macrae and A. Zwi, eds. *War and Hunger: Rethinking International Responses to Complex Emergencies,* Zed Press, London and New Jersey, (1994).

dissuading the use of violence through their presence, accessing media and providing them with accurate information, and finally mediating between the warring groups.[79] On the other hand, it is also argued that the environment of humanitarian relief has altered so drastically that being apolitical is no longer a viable option. Neutrality is beneficial in a neutral environment however current complex emergencies are far from it. If the political objectives of the perpetrators of violence are overlooked, humanitarians will fail to acknowledge the intrinsically political character of the relief they deliver. Complex emergencies are self-perpetuating, eroding security resources, spreading anarchy and violence, and necessitating even more outside aid.

The major powers that are vital to the UN's force authorisation are likely to regard the majority of the humanitarian emergencies as 'discretionary.' They are thus reluctant to commit their forces, either directly or through the United Nations, to a crisis that humanitarians regard urgent. The shrinking UN peacekeeping funds speak for themselves. Major powers are becoming more cautious about crossing the 'Mogadishu line'[80] since the last decade. Explaining this trend, the Former Under Secretary-General for Humanitarian Affairs, Sergio Vieira de Mello, remarked that states are not opposed to 'letting humanitarian staff go to conflicts where they fear sending their better trained and equipped troops."[81]

In a situation where security is already compromised, the security of humanitarian workers in the field is, not unexpectedly at an increased risk. There are, however, very few provisions in place through the United Nations to combat this risk. Within the UN, it is the responsibility of the United Nations Security Coordinator (UNSECOORD) to make arrangements for internal security as well as act as a coordinating centre for other agencies on security issues, in peacekeeping situations. However, these arrangements apply only to humanitarians involved in an action that has been formally authorised by the Security Council or the General Assembly.[82] Since 1997, NGOs that are implementing partners of UN agencies may request to be included in UN security arrangements; by paying their share of the costs and abiding by UN

[79] Nicholas Berry, "War and the Red Cross: the Unspoken Mission", St. Martin's Press, New York, 1997.
[80] A term originating from the 1993 Somalia action that refers to the point in a foreign intervention when diplomacy or humanitarian aid shifts to combat operations.
[81] Dino Kritsiotis, "Learning from Somalia: The Lessons of Armed Humanitarian Intervention," edited by Walter Clarke and Jeffrey Herbst, *Journal of International Peacekeeping* 5, 2, Westview Press. Boulder, Colorado, (1997). pp.7-8. https://doi.org/10.1163/187541198X00123
[82]Secretary-General of the United Nations, "Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict, 1999," S/1999/957, United Nations, New York, (1999)

security guidelines. However, these arrangements do not encompass staffs of non-UN implementing NGOs and local staff, let alone the vulnerable populations.

Conditionality and Exit

Sometimes as a last resort, humanitarian organisations have to consider the option of withdrawal when relief for humanitarian purposes is being captured to be used for renewed conflict. Withdrawal during an emergency goes against the very basic humanitarian objective of protecting lives at risk. However, sometimes withdrawal gives them the scope to regain control over aid supplies. When there are no other possibilities humanitarian bodies have to take the necessary step to avoid becoming part of the problems they were meant to solve. Withdrawal might also serve as a warning message to other militants hoping to use humanitarian aid for their own purposes. However, this argument poses practical, strategic, and ethical concerns. Should humanitarian bodies disengage in between a crisis? There have been such instances in the past. Most such cases have been when humanitarian personnel were harmed or when essential infrastructure was ruined. The ICRC withdrew from Burundi and Chechnya, and a majority of NGOs withdrew from Liberia in 1996. Withdrawal as a strategic choice is uncommon, but humanitarian organisations at times are forced to make this choice. Often such a decision also helps in increasing pressure on the international community to respond to the crisis.

If humanitarian organisations consider disengagement as a strategy to pressurise warring groups and reluctant major powers, they need to be certain about the negative effects of their action. However, the problem lies in the fact that every emergency is different and the results of such a strategy will be dependent upon the difference in context.

Another problem with strategic withdrawal is the effort in executing a collective action. Disengagement by just one NGO, irrespective of how large it is, is unlikely to significantly influence the warring parties. Even the collective withdrawal from Mugunga had very little effect as the NGOs continued to supply aid to other camps which were diverted into Mugunga. For strategic withdrawal to have significant success, there must be coordination and agreement among the major humanitarian players engaged in the crisis. Achieving such coordination and agreement is not an easy task. Most humanitarians are of the belief that withdrawal is equivalent to leaving the vulnerable to their own fate and goes against the very essence of their work.

The most serious criticism levelled at the policy of strategic disengagement is that it is unproductive. Following the cessation of humanitarian aid to Rwandan refugees, violence increased causing thousands more fatalities. This lack of agreement among humanitarians limits the chances of collective action. Also, a disengagement policy must also have clear conditions for return. These conditions might include an end to aid capture, unconditional access to people at risk, and other similar conditions. There have been instances where these conditions were heeded. Few NGOs in southern Sudan asserted for independent access and monitoring as conditions of continued assistance. Thus, only if withdrawal is coordinated and strategic and if the conditions that humanitarian organisations set can be met by the targets, can concerted withdrawal have any impact whatsoever on the behaviour of the target party.

In certain cases, humanitarian assistance is stopped not due to a humanitarian organisation's own decision but due to security concerns. An example is of the conflict in Aceh, Indonesia. The Indonesian government, before the 2004 tsunami, enacted a regulation that prohibited all NGO actions that countered the Martial Law Administration's rules and mandated that all activities must be routed through the Coordinating Minister for People's Welfare.[83]

Humanitarian organisation's commitment to independence, neutrality, and impartiality can pose security risks to the state. Nonetheless, IHL and the Geneva Conventions allow for the Red Cross Movement to maintain a presence during emergencies. The conduct of conflicts over the last few decades, however, has not conformed to the guidelines of IHL and the Geneva Conventions. The restrictions imposed on the Red Cross Movement are a violation of IHL and the principles of neutrality and impartiality. However, as a necessary security measure states have often imposed these restrictions. Both military operations, as well as humanitarian relief, are inextricably linked to resources. Analysing the influence of NGO aid in Africa, Mary Anderson, president of the Collaborative for Development Action, remarked that "resources under the control of one or another warring faction help buttress the power and continuing legitimacy of that warring faction."[84]It is these facts that sometimes justify states for stopping humanitarian relief in their regions.

[83] Ali Aulia Ramly, "Modes of Displacement during Martial Law, Refugee Studies Centre," in *Aceh under Martial Law: Conflict, Violence, and Displacement (RSC Working Paper No. 24),* edited by EvaLotta E. Hedman, University of Oxford, Oxford, (2005). p. 17

[84] David R. Smock, "Humanitarian Assistance in Africa," *United States Institute of Peace,* Washington, DC, (1996). URL: http://www.usip.org/sites/default/files/pwks6.pdf.

International Humanitarian Assistance and Natural Disasters Affected Armed Conflicts

Following a natural disaster, it becomes the duty of the affected state to assist survivors including those regarded as enemies of the state. When a disaster strikes amid a conflict, it can profoundly hinder the state's as well as armed groups' capability to defend and fight. Natural disasters have a non-discriminatory character and can wreak havoc by causing significant loss of life, depletion of food and water, and destruction of infrastructure. Often survivors, who have already suffered from the conflict, engaged in the conflict, or live in areas controlled by armed groups, find themselves in an even more vulnerable situation. The 2004 Indian Ocean tsunami in Indonesia and Sri Lanka and the 2010 Pakistan flood illustrate the problems that arise for humanitarian bodies and governments when conflict affected region is hit by a natural disaster. All these situations saw an increase in restrictions on the supply of aid due to enhanced security concerns.

The pre-existing tensions between humanitarian relief and political and military objectives that exist during a conflict are exacerbated by the complexities of response to disaster. Political and military concerns can rise, like in Indonesia, where government officials got killed in the disaster, or in Sri Lanka, where aid to the Liberation Tigers of Tamil Eelam (LTTE) resulted in political unrest.[85] On the other hand, natural disasters also bring with them the opportunity of using 'soft power' counterinsurgency efforts. The U.S. Navy had used the supply of aid as a measure to soften the country's negative impression among the locals in Indonesia.[86] However, disasters can also cause unanticipated and unforeseen security concerns which armed groups can use to make the government look weak. The international community's apprehension about Pakistan's ability to adequately respond to the 2010 floods,[87] led it to fear a setback to the stabilisation efforts supported by the United States.[88] This resulted in increased restrictions on humanitarian aid making it difficult for the Red Cross Movement to supply aid to the neediest.

---

[85] Sharon Wiharta and Hassan Ahmad, "The Effectiveness of Foreign Military Assets in Natural Disaster Response", *Stockholm International Peace Research Institute,* Solna, Sweden, (2008). p. 37. URL: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/224421/evidence-nato-disaster-response.pdf

[86] Rhoda Margesson, "Indian Ocean Earthquake and Tsunami: Humanitarian Assistance and Relief Operations" CRS Report for Congress NO. RL32715, 2005, *Congressional Research Service*, Washington, DC, (2005). URL: https://apps.dtic.mil/sti/citations/ ADA461370

[87] K. Alan Kronstadt, Pervaze A. Sheikh, and Bruce Vaughn, "Flooding in Pakistan: Overview and Issues for Congress", CRS Report for Congress No. R41424, *Congressional Research Service*, Washington, DC, (2010). URL: https://sgp.fas.org/crs/row/R41424.pdf

[88] Ibid.

In terms of humanitarian relief supply, an armed conflict and a natural disaster are seen as different situations. However, the ICRC holds that if a disaster strikes during a conflict, the disaster response should be viewed as a part of the conflict response. The uncertainty of the conflict flows into the uncertainty of the disaster response; however, political objectives remain unaltered. The goal is still to maintain security and state sustainability.

Due to additional security concerns, aid resources used in the conflict and disaster-affected regions are subjected to increased restrictions.[89] This is in violation of the Geneva Conventions and IHL guidelines for conflicts.[90] If a state considers a situation to be a law enforcement operation, the Red Cross Movement can only interfere through negotiation. The combination of counterterrorism laws, increase in the use of the military in relief efforts, and absence of political resolve to comply with IHL are recent impediments that aggravate existing tension between governments and humanitarian organisations. This raises the difficult problem of supplying humanitarian relief during a disaster in a conflict-ridden situation. The government's curbs upon the activities of relief organisations to retain security results in aid not reaching the neediest. This mitigates humanitarianism's ideals and creates a scenario that diminishes locals' impression of the NGOs' work and impedes their negotiating process.

The influence of neoliberalism on the development of the international relief system

A majority of international relief organisations have accepted the key tenets of neoliberalism by relying on non-governmental institutions to carry out aid initiatives.[91] This shift has been fuelled largely, by the belief that these organisations can connect better with the people they serve, getting greater acceptance than their respective governments. It is also claimed that these institutions are more efficient than nation-states and other international bodies. More importantly, advocates of this policy see INGOs and NGOs as a way to assure community participation in relief efforts and avoiding the issue of governmental corruption and incapacity. This indicates a sense of distrust regarding the state's ability to provide expected results. At the global level, the neoliberals have argued for large-scale privatisation of humanitarian relief services.

[89] David Fisher, "Domestic Regulation of International Humanitarian Relief in Disasters and Armed Conflict: A Comparative Analysis," *International Review of the Red Cross* 89, no. 866, (2007).p. 354.
[90] Ibid.
[91] Michael Edwards & David Hulme, (Eds.), "Beyond the magic bullet: NGO performance and accountability in the post-Cold War world", *Kumarian Press,* Hartford, CT, (1996).

These policies have had a number of significant effects. Firstly, it has brought into picture many new actors into an already congested area of programme delivery. Secondly, more often than not, final aid delivery is dependent on intermediaries. Thirdly, these changes have led to increasing scepticism towards the existing system in favour of increasingly privatised aid delivery. Such a trend could lead to the possibility of nations avoiding their moral and ethical responsibility to respond through international institutions to crisis situations.

The international humanitarian relief delivery system is made of inter-organisational networks connected loosely together. These networks frequently transverse multiple institutional and social borders.[92] Thus, the international humanitarian relief challenge is largely one of interagency and intergovernmental issues. There is no single official in charge of overseeing the operations and hence assigning accountability to anyone is still not a possibility. Given the intricacies of the phenomena, this task is rather difficult to achieve. However, several indicators suggest that these obstacles can be mitigated, if not eliminated. First, it is important to recognise that implementers do not have control over their surroundings or their collaborators. Organisational structures and policies need to be devised accordingly. This is especially important since there is not much of a possibility of the collapse of the Westphalian international order in the near future. It is this gap between reality and ideals that make current policies ill-suited and prone to failure.

The development of the clusters system by the UN Office for Coordination of Humanitarian Affairs and member states' acceptance of it in 2005 represents an attempt towards improvement in organisation and coordination of humanitarian assistance. But a report of a Special Panel of the Secretary-General highlights the continuing hurdles of attaining inter-organisational coordination despite the introduction of the cluster system.[93]

Second, there is also a need for policymakers to realise that nongovernmental and non-profit organisations must have access to funding, planning, and response mechanisms if they are to elicit community participation in relief efforts. Such efforts would allow the victims of a crisis an actual voice in the way it is addressed. Finally, there is an urgent need for those in charge of humanitarian relief to recognise that there is no fool proof method of responding to these

[92] Max Stephenson & Lisa Schnitzer, "The role of trust and boundary spanning behavior in humanitarian assistance coordination", *Non-Profit Management and Leadership*, 17(2), (2006). pp. 211–233.
[93] United Nations, "Transition from relief to development: Key issues related to humanitarian and recovery/transition programmes", *United Nations: Office of the Secretary General: High Level Panel on UN System-wide Coherence in the Areas of Development, Humanitarian Assistance and the Environment*, Rome, Italy, (2006).

complex situations. An attitude of learning and adapting to rapidly changing conditions is what is most needed.[94] The challenges are many but experience with relief assistance delivery suggests that they should be addressed directly and on the basis of experience, rather than against abstract standards that have little resemblance to organisational realities.

Stabilisation and Humanitarianism

A natural flow from the war on terror was to the policy of stabilisation. Stabilisation, as it is currently understood by the western powers, is based upon the belief that weak and unstable states, violent conflicts and underdevelopment are threats to their security interests as well as world peace. This is due to the fact that these regions are seen as 'islands of instability' especially when they are the result of international terrorism.[95] While strategic security is the priority of the stabilisation project, recent experiences have made nation-states realise the importance of including development and humanitarian action as well.[96]

Stabilisation according to the Guiding Principles 'aims to prevent the recurrence of violent conflict through conflict-sensitive development that seeks to promote a long-lasting peace.'[97] Peake and Muggah explain how, in the instance of Timor-Leste, military and civilian actors typically framed the goal of their development and peacebuilding activities as 'bringing about stability.[98] Similarly, in Haiti, the UN Stabilisation Mission (MINUSTAH) and interventions sponsored by bilateral donors asserted development as a core stabilisation objective.[99]

Despite being powerful and pervasive, the enterprise's true target and nature continue to remain unclear and ambiguous. While stabilisation is definitely concerned with security issues like counterterrorism, counterinsurgency and arrest of the migration flow, it also includes other policy issues. These agendas include peace-making, peacebuilding, peace-enforcement, state-building, human development as well as humanitarian relief. 'Stabilisation' is thus a hypothetically transformative and long-term venture, involving considerable social, political,

[94] Charles Wise, "Organizing for Homeland Security after Katrina: Is adaptive management what's missing?", *Public Administration Review,* 3(66), (2006).pp. 302–318.
[95] Robert Muggah, and Keith Krause, "Closing the Gap Between Peace Operations and Post-Conflict Insecurity: Towards a Violence Reduction Agenda", *International Peacekeeping* 16 (1). (2009). p. 136–150.
[96] L. Brahimi, "Report of the Panel on United Nations Peace Operations", [A/55/305], *United Nations,* New York, (2000).
[97] USIP and PSKOI, "Guiding Principles for Stabilization and Reconstruction", USIP Press, Washington DC, (2009). p. 3
[98] Sarah Collinson, Samir Elhawary and Robert Muggah "States of fragility: stabilisation and its implications for humanitarian action", *Humanitarian Policy Group*, London, (2010).
[99] Ibid

and economic changes. In its essence, it is about powerful states trying to secure or support a 'stable' political order, in tune with their long-term strategic objectives.

This ambivalent character of the stabilisation project has given it multiple meanings and interpretations. While the term is largely used by western governments as it serves their political and strategic interests, it has also begun to be picked by the United Nations and other regional organisations. A number of states affected by conflict have also started to use the term in connection to what might be rightfully called civil wars or humanitarian crises.

Despite the fact that the term is rarely used in UN policy debates, the UN's peacekeeping missions and other interventions in conflict situations progressively include development and humanitarian assistance.[100] UN peacekeeping missions are to follow the 'Capstone Doctrine' which requires these missions to be actively involved in peace-making and initial peace-building activities.[101] The UN peacekeeping principles and guidelines state that these missions' primary goals are to 'create an environment while consolidating the state's capability to provide security while facilitating the establishment of legitimate institutions of governance'.[102] However, the principal goals of stabilisation and its methodology continue to remain vague and controversial. Different actors in the project have a different set of interests and capacities. While some prioritise security issues with the help of the military, others, prefer long-term peacebuilding, and development objectives.

In the past, the UN's only direct role during complex emergencies was to negotiate a peaceful resolution and send peacekeeping missions to put it into effect. However, now that the UN is getting more directly involved in peacebuilding, it has to sometimes take up partial forms of political involvement. Despite significant institutional reform and innovation aimed at improving the organisation's role in handling complex humanitarian emergencies, internal conflict, competition and confusion continue to exist within the organisation, particularly in its relationship with political authorities and political processes.[103] In Pakistan, for example, the UN has found itself in a politically constrained situation. Pakistani government's reluctance to the internationalisation of the Balochistan crisis, together with UN's wish to protect the

[100] Expen Barth Eide, Ajna Therese Kasperson, Randolph Kent and Karen von Hippel, "UN Integrated Missions: Practical Perspectives and Recommendations", *Independent Study for the Expanded ECHA Core Group*, (2005).
[101] DPKO, United Nations Peace-Keeping Operations: Principles and Guidelines, *UN DPKO,* New York, (2008).
[102] Ibid, 23
[103] Bruce Jones, "The Changing Role of the UN in Protracted Crises", *HPG Research Briefing 17,* ODI, London, (2004).

progress it has made in steering the 'One UN' approach has led to its 'passivity' in the particular crisis.

In Somalia, the UN gave up even a pretence of neutrality, even though it was found lacking in terms of resources and structures to play the part of an effective humanitarian organisation. An analysis of its achievements towards stabilisation leaves one wanting. In Somalia, UN officials in Nairobi and New York campaigned for support to the Transitional Federal Government (TFG), promising UN backing for rebuilding the government's capacity.[104] Security for UN facilities in the country was increased to satisfy 'Minimal Operational Security Standards' (MOSS). The UN Special-Representative on Human Rights also pressured other humanitarian organisations to continue aid activities despite unfavourable conditions.[105] Despite this, the presence of staff from the UN and other humanitarian decreased in 2009. By September, the UN had no international staff anywhere in South Somalia, and most of the other UN personnel in Somalia were located in the safer north.[106]Al-Shabaab, which controlled a large part of southern Somalia declared in 2010, that it was stopping World Food Programme (WFP) food aid. This was because it suspected the organisation of being politically motivated and harming the interests of local farmers.[107]

In stabilisation situations, the UN and its specialised agencies face a unique mix of difficulties and opportunities. While the UN seeks to participate in impartial humanitarian action, it also supports state-building and peacebuilding, striving for a unified approach. A criticism often levied against UN bodies is that they 'play both sides of the field, claiming humanitarian ideals in contexts of emergency and post-crisis recovery while continuing to work with the host government, stating the obligatory nature of their responsibility.' As a result, there is an 'inevitably intermingle'.[108]

Stabilisation has developed as a major part of the liberal, peace-building plan, as is evident in situations as varied as Afghanistan and Haiti. Thus, stabilisation is concerned not just with short-term objectives of eliminating immediate threats but also with long-term goals of

[104] Sarah Collinson, Samir Elhawary and Robert Muggah, "States of fragility: stabilisation and its implications for humanitarian action," *Humanitarian Policy Group*, London, (2010).
[105] UN News Service, "Somalia: International Community Failing Uprooted Somalis, Says UN Rights Expert," All-Africa-com, (21 October 2009). URL: http://allafrica.com/stories/200910211164.html
[106] "Statement to the Somali People," Somalia NGO Consortium (2009). URL: http://somaliangoconsortium.org/resource-detail/?cat=16
[107] VoaNews, "Rebels Ban WFP Aid to Its Territory in Somalia," (2010).URL: https://www.voanews.com/a/al-shabab-bans-wfp-85824252/159789.html
[108] Robert Zoellick, "Fragile States: Securing Development", Survival, vol 50(6), (2008). p. 69. URL: 10.1080/00396330802601859

'stabilising' areas of crisis for reconstruction, development and a 'lasting peace'. Stabilisation projects are based on the belief that counter-insurgency and politics are inextricably linked,[109] and development and security are also co-dependent.[110] Thus, developmental efforts are also thought to reinforce security by bringing in peace and legitimising the host government or intervening force. Security, subsequently, provides the conditions to implement longer-term development ideas. This is based on a liberal interpretation of war that considers violence and instability as evidence of underdevelopment.[111]Civil war's beginning and intensity are connected to 'failure of development' or 'development in reverse'.[112]As a result, the appropriate response is to promote development as a way to bring peace and stability, that is 'securing development'[113]or 'securitising development'.[114] However, the link between development and security is far more complicated than what the proponents of this theory believe. For instance, development assistance can exacerbate instability by legitimising one group over another in regions where it is challenged.[115]

Western powers have swiftly included development and humanitarian assistance into their emerging military doctrine on stabilisation without verifying its core hypothesis. The FM 3-07 US Army operations manual on Stability Operations highlights the necessity for the military to move beyond 'kinetic' operations, that is military force and work towards protecting vulnerable populations.[116] Since the early 2000s donors also began to shift their attention to fragile situations, linking relief more with both development as well as security.[117] Rebuilding sectors

[109] David Kilcullen, "Counter-insurgency Redux", *Survival,* vol. 48 (4), (2006). pp. 111–130. URL: https://www.tandfonline.com/doi/abs/10.1080/00396330601062790
[110] Mark Duffield, "Global Governance and the New Wars: The Merging of Development and Security," *Zed Books*, London, (2001).
[111] Christoper Cramer, "Civil War Is Not a Stupid Thing? Accounting for Violence in Developing Countries", *Hurst & Co.,* London, (2006).
[112] World Bank, "Breaking the Conflict Trap: Civil War and Development Policy", *World Bank Policy Research Report,* World Bank, Washington DC, (2003).
[113] Zoellick, Robert, "Fragile States: Securing Development", Survival, vol 50(6), (2008). pp. 67–84. doi: 10.1080/00396330802601859
[114] Mark Duffield, "Development, Security and Unending War: Governing the World of Peoples", *Cambridge: Polity,* (2007).
[115] Jonathan Goodhand, and Mark Sedra, "Who Owns the Peace? Aid, Reconstruction and Peace-building in Afghanistan", *Disasters* 34(1), (2009). pp. 78–101.
[116] Headquarters, Department of the Army, "Stability Operations, FM 3-07," Army Doctrine Publication, DoA. 15, Washington DC, (2019). URL: https://www.armyupress.army.mil/Portals/7/PDF-UA-docs/Caldwell-2008-UA.pdf
[117] ibid.

like healthcare, education and water and sanitation were increasingly understood as crucial in developing a state's legitimacy.[118]

The relation between stabilisation and humanitarianism is highly uncertain because of the ambiguities that involve stabilisation policies, as well as due to the vagueness that characterises humanitarianism. This is mirrored by the fact that despite a growing realisation about the inadequacies of humanitarian action in addressing the root cause of the humanitarian crisis, there is concern that humanitarianism might be compromised to security objectives. This makes the international humanitarian community distrustful and occasionally even hostile to the stabilisation project.

Thus, while humanitarianism is often considered to be part of the larger picture of stabilisation, it is not necessarily true. The difference between stabilisation, humanitarian action and development based upon the political aims of stabilisation, is the unbiased aims of humanitarianism and the apolitical aims of development. It can be problematic when humanitarian and stabilisation activities take place at the same scene. This is not only because of a misalignment between the political goals of stabilisation and the neutral goal of humanitarianism. Neither it is only because of ambiguities that surrounds stabilisation policy. The uncertainty is also the result of the vagueness within the international humanitarian community itself. These concerns the values, aims and goals that should direct humanitarian agents in complex emergencies, as well as how humanitarian action should align with politics.[119]

This perception is due to a large number of responses and interventions aiming to 'stabilise' and alleviate recognised threats. These efforts usually comprise of integrating 'hard' and 'soft' forms of intervention, that is, both military as well as civilian. As a result, there is a growing perception within the humanitarian community that the ability of relief agencies to help affected populations and the ability of the victims to access assistance is decreasing, that is, the 'humanitarian space' – is shrinking.

Despite the uneasy relationship, many humanitarian bodies are engaged in activities that form a part of the stabilisation project. These include short- to medium-term rehabilitation,

[118] Sara Pavanello, and James Darcy, "Improving the provision of basic services for the poor in fragile environments", *International Literature Review Synthesis Paper*, ODI, London, (2008).pp. 1-32.
[119] Michael Barnett, and J. Synder, "Grand Strategies of Humanitarianism". In Michael Barnett and Thomas Weiss (eds) *Humanitarianism in Question: Politics, Power and Ethics,* Cornell University Press, New York, (2008).

peacebuilding, development and human rights work. Any unity between humanitarianism and these other realms will depend on whether humanitarians trust the positive intent, effects, and consequences of stabilisation efforts. For example, if powerful governments give importance to only security objectives at the expense of human welfare, humanitarian bodies will resist. However, in more cases than not these bodies are too dependent upon the donor governments to make a strong appeal against stabilisation.

In practice, very few humanitarian organisations confine their work to only short-term lifesaving and relief activities. Starting from the 1990s, humanitarian actors increasingly called for integrated aid and development interventions in protracted conflict-affected emergencies. This emerged from the belief that humanitarianism should serve not just as a short-term relief but also as means for long-term recovery and community building.[120] This argument however has the flaw that it does not take into consideration the changing political economy of protracted crises, the low levels of aid that some of these emergencies get and that aid is often used by donor states as a means of avoiding other extensive interventions in difficult scenarios.[121]

Humanity, neutrality, independence and impartiality are the basic principles that drive humanitarian action for the vast majority of international humanitarian organisations. This assumes or implies a distinction between politics and humanitarianism. Impartiality requires agencies to provide aid based on need and without discrimination among recipients; neutrality requires them to avoid taking sides, and independence requires them to act in isolation to any parties involved in the conflict or who could benefit from the conflict. These principles serve as a precaution to prevent humanitarian activity from political manipulation. It reinforces the primary humanitarian ideal of unconditionally providing relief without any other motive. However, in reality, this dichotomy is rather difficult to practice. Humanitarian action has repercussions upon existing vulnerabilities and the resulting suffering. Thus, humanitarianism has inescapable political consequences, notwithstanding if it was meant at the outset or not.

These trends have led to a broader definition of humanitarianism which aims to address the causes as well as decrease suffering caused by conflict among vulnerable populations. Barnett and Snyder remark that there can be seen a significant movement among many of the larger

[120] Humanitarian Policy Group, "Beyond the continuum: The changing role of aid policy in protracted crises", Humanitarian Policy Group at ODI, Edited by Adele Harmer and Joanna Macrae (2004). URL: https://lccn.loc.gov/2006445863.
[121] Ibid.

humanitarian organisations towards interventions for comprehensive peacebuilding and restructuring society post-conflict.[122]

Initiatives to increase humanitarian space and the odds of realising better results require strategic interventions in cooperation with other actors involved in stabilisation and development efforts, or whose activities influence humanitarian space. This political engagement in no way implies a total abandonment of the fundamental humanitarian principles. Leader remarked, 'in a majority of conflicts the ideal "political" strategy is to explicitly assert one's 'non-political' character'.[123] There is no simple formula for saving humanitarian space when stabilisation operations and humanitarian organisations are involved.

While it is true that stabilisation may lead to a shrinkage in humanitarian space, more often than not, it has a positive impact upon humanitarian outcomes. For instance, while impartial and autonomous relief activities are often obstructed due to military action, it also provides protection to vulnerable populations. Between 2006 and 2009 in Afghanistan's province of Helmand for example, the UK's Provincial Reconstruction Teams (PRTs) provided military medical support to 'quick impact' projects.[124] On the other hand there are instances where stabilisation efforts jeopardised humanitarian space and its gains.

Since 2007 in Somalia, key aid organisations , as well as the UN Special Representative of the Secretary-General, have sought to provide humanitarian relief via the Transitional Federal Government (TFG). This was thought to aid in legitimising relief in the eyes of the locals. Yet the TFG continued to be perceived by aid agencies as corrupt and a benefactor in the ongoing war and allied exploitations of civilians. According to Menkhaus, 'working with the TFG for delivering humanitarian assistance for the "greater good" of state-building is another way of accepting the explicit politicisation of food aid and consenting to aid never reaching the needy'. It moreover 'requires surrendering any pretence of neutrality in the war as the TFG was an

[122] Michael Barnett, and J. Synder, "Grand Strategies of Humanitarianism", in Michael Barnett and Thomas Weiss (eds) Humanitarianism in Question: Politics, Power and Ethics, Cornell University Press, New York, (2008).
[123]Michael Barnett and Thomas Weiss, "Humanitarianism: A Brief History of the Present", in Barnett and Weiss T. (eds), *Humanitarianism in Question: Politics, Power and Ethics*, Cornell University Press, New York, (2008). p. 47.
[124] Gordon Brown, "west is sleepwalking into Afghanistan disaster", The Guardian, (2021). URL: https://www.theguardian.com/world/2021/dec/29/gordon-brown-west-sleepwalking-afghanistan-disaster

obvious participant. This would leave the humanitarian organisations further vulnerable to criticisms'.[125]

Lastly, stabilisation activities may also contribute to protecting humanitarian space and outcomes. This happens when stabilisation operations are effective in culminating or reducing violence, enabling unrestricted access for humanitarian organisations. In Haiti prior to the 2010 earthquake, MINUSTAH and the Haitian National Police aided in improving humanitarian access because of their 'security first' approach to stabilisation. They stressed upon reducing violence, sometimes even undertaking coercive actions against it.[126] While instability did not disappear from Haiti, the situation appeared to improve since 2007. Stabilisation activities helped in reducing violence, making socio-economic development possible, notwithstanding with continued UN military presence. Humanitarian agencies, which were initially suspicious, gradually recognised the opportunity that the situation provided.[127] Similarly, in Timor-Leste, the use of international military forces in 1999 and 2006 helped in drastic reduction of violence, proving better access for the delivery of humanitarian assistance.[128]

Even though humanitarianism is inclined to focus on the military aspects of stabilisation, yet stabilisation has some major political implications too. Understanding the effect of powerful nation's political and security objectives upon the overall stabilisation agenda and the degree to which the response of local actors and beneficiaries is in consensus with the core humanitarian priorities is crucial to evaluate the impact of stabilisation for humanitarianism. In Somalia, for example, humanitarian and stabilisation interests were quite opposed to each other, leaving little scope for compromise. The transitional government was a party to the conflict, humanitarian actors preferred to remain neutral resulting in their access becoming limited in the midst of state-building efforts as well as counter-terrorism operations. This has resulted in political conditions where radical groups hostile to the US and other Western nations view humanitarian organisations activities in the same light as international security and

[125] Ken Menkhaus, "Elite Bargains and Political Deals Project: Somalia Case Study", *Stabilisation Unit, UK*, (2018). URL: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766049/Somalia_case_study.pdf

[126] E. Lebrun (Ed.), "Small Arms Survey 2011: States of Security, 2011," *Cambridge University Press*, Cambridge, (2011).

[127] Ibid.

[128] Edward Rees, Susan Harris Rimmer, James Scambary, "Timor-Leste Armed Violence Assessment Final Report, 2011, *Small Arms Survey Special Reports*, Small Arms Survey. URL: https://www.files.ethz.ch/isn/143631/Timor-Leste-Violence-Special-Report-12.pdf

intelligence operations. These circumstances have resulted in an 'extremely high level of dysfunctional relations between stabilisation initiatives and humanitarian accesses.[129]

However, a unified humanitarian model combining political, military, and development aims is yet to emerge. Instead, humanitarianism is still primarily defined in terms of either avoiding or outright rejecting explicit political, military, or developmental-led interventions to humanitarian emergencies. Barnett and Weiss observe that this is a sign of apprehension that humanitarian actors often face regarding their identity.[130] This is the result of newer forms of humanitarian activities diluting the existing dichotomy between humanitarianism and other areas of social life. Subsequently, despite areas of overlap, relationship between humanitarianism and organisations responsible for stabilisation inclines to be marred by mistrust, suspicion, or even hostility.

Apart from the unique problems in different stabilisation situations, the most significant hurdle to greater unity between humanitarianism and stabilisation is increasing humanitarian scepticism about the likelihood of success of stabilisation efforts. Humanitarian organisations continue to remain highly hesitant of committing themselves to an apparently failing strategy who's continuously changing objectives they distrust.

Conclusion

The international humanitarian relief delivery system, made of inter-organisational networks is connected very loosely together. These networks frequently transverse multiple institutional and social borders. Thus, the international humanitarian relief challenge is largely one of interagency and intergovernmental issues. There is no single official in charge of overseeing the operations and hence assigning accountability to anyone is still not a possibility. Given the intricacies of the phenomena, this task is rather difficult to achieve. However, several indicators suggest that these obstacles can be mitigated, if not eliminated. First, it is important to recognise that implementers do not have control over their surroundings or their collaborators. Organisational structures and policies need to be devised accordingly. This is especially important since there is not much of a possibility of the collapse of the Westphalian

[129] Ken Menkhaus, "Elite Bargains and Political Deals Project: Somalia Case Study", Stabilisation Unit, UK, (2018).
[130] Michael Barnett and Thomas Weiss, "Humanitarianism: A Brief History of the Present", in Barnett and Weiss T. (eds), Humanitarianism in Question: Politics, Power and Ethics, Cornell University Press, New York, (2008). p.5.

international order in the near future. It is this gap between reality and ideals that make current policies ill-suited and prone to failure.

Second, there is also a need for policymakers to realise that non-governmental and non-profit organisations must have access to funding, planning, and response mechanisms if they are to elicit community participation in relief efforts. Such efforts would allow the victims of a crisis an actual voice in the way it is addressed. Finally, there is an urgent need for those in charge of humanitarian relief to recognise that there is no foolproof method of responding to these complex situations. An attitude of learning and adapting to rapidly changing conditions is what is most needed. The challenges are many but experience with relief assistance delivery suggests that they should be addressed directly and on the basis of experience, rather than against abstract standards that have little resemblance to organisational realities.

CHAPTER IV

THE INTERNATIONAL HUMANITARIAN SYSTEM IN COMPLEX EMERGENCIES: THE ROLE OF THE UNITED NATIONS

This chapter focuses on the first major actor of the international humanitarian system, that is, the United Nations. It aims to shortly summarise the history of the UN humanitarian assistance system and how this system has altered over the years to respond to the changing nature of complex humanitarian emergencies. It does so by highlighting the general patterns in the UN's humanitarian system as well as the legal framework of humanitarian assistance of the UN.

The chapter then proceeds to explore the concept of humanitarian intervention. It investigates the current legal status of the concept under contemporary international law and the Charter of the United Nations. It then attempts to illustrate the increasing legitimacy of humanitarian intervention and its relation with the changing meaning of state sovereignty. It thus demonstrates how sovereignty norms have evolved over time and how they interact with, modify, and are modified by humanitarian norms in the context of the functioning of the Security Council.

Finally, the chapter investigates the criticism surrounding the UNSC, that of responding with vigour to some emergencies and with complete inaction to others. A comparative study of the Council's response to some major humanitarian crises in order to understand the rationale behind this selective action has been attempted.

The Network of Humanitarian Assistance

It is no secret that the world has been unable to achieve the peace and security that was so desired. A large number of states are still plagued by genocide, crimes against humanity, killings, torture, and other civil and political rights violations. The use of explosive weapons in populated areas continues to have devastating humanitarian impacts on civilians, resulting in civilian deaths and injuries, damage to vital infrastructure, and the collapse of essential services. The psychological trauma, especially for the most vulnerable, including children, is

profound and puts additional pressure on the already scarce resources. Displacement continued to rise with 26.4 million refugees worldwide by mid-2020.[1] By the end of 2019, the number of internally displaced persons had reached an all-time high, with 45.7 million people forcibly displaced by conflict and violence.[2] States, Non-governmental Organisations, and the United Nations have tried to respond to this increasing level of chaos. As a result, a complex response system has evolved to respond to these emergencies, which comprises of three sets of institutional actors: the UN organisations, the NGOs, and the States.

Role of the UN

The United Nations was established to serve as the cornerstone of order and stability, the framework within which members of the international community negotiated agreements on the standards of behaviour and the legal norms of proper conduct in order to preserve the Westphalian state system. Thus, the United Nations was to serve as a platform for mediating power dynamics; achieving political change that the international community deemed reasonable and desirable; promulgating new norms; and conferring collective legitimacy. Thus, the United Nations' authority is rooted not in coercive power but in its function as a guarantee of legitimacy. The Charter of the UN is itself an example of a collection of international commitments voluntarily accepted by member states. On the one hand, in granting membership in the United Nations, the international community accepts the signatory state as a law abiding member of the community of nations. Moreover, the state itself, in signing the Charter, accepts the responsibilities of membership that signature entails.

The UN Emergency Relief Coordinator (ERC), who is also the Under-Secretary-General for Humanitarian Affairs and the head of the UN Office for the Coordination of Humanitarian Affairs (OCHA), is in charge of the UN's complex emergency response. Resolution 46/182 of the General Assembly established guiding principles for the international community's response to humanitarian crises and was instrumental in the foundation of the Office of the Emergency Relief Coordinator (ERC) and the formation of the Inter-Agency Standing Committee (IASC). The IASC includes important humanitarian players from both inside and outside the United Nations, and its goal is to facilitate inter-agency analysis and decision-making in response to humanitarian crises.

[1] Office of the United Nations High Commissioner for Refugees (UNHCR), "Mid-year Trends 2020", Copenhagen, (2020).
[2] Internal Displacement Monitoring Centre, "2020 Global Report on Internal Displacement," Geneva, (2020).

The humanitarian 'cluster' approach introduced in 2005 is a method by the IASC to improve coordination. During a humanitarian crisis, clusters are groups of United Nations agencies, non-governmental organisations, and other international organisations that focus on a specific sector. These include, protection, camp coordination and management, water sanitation and hygiene, health, emergency shelter, nutrition, emergency telecommunications, logistics, early recovery, education, and agriculture.[3] Each cluster, managed by a designated agency, works with the Office for the Coordination of Humanitarian Affairs (OCHA), the United Nations agency in charge of overall coordination under the ERC.

Since the end of the Cold War a decade ago, the United Nations has used its authority in new ways to address various areas of conflict resolution and post-conflict recovery. These new approaches have included the use of force to end protracted conflicts. These actions have been conducted either with the consent of the state or states involved, or in accordance with the Security Council's authority under Chapter VII of the UN Charter, or both. Furthermore, the UN's role in the governance of conflict-affected nations has grown significantly. The following commentary describes this evolution of law and practice concerning UN initiatives during conflicts and addresses some of the legal issues presented by it.

History of UN's Humanitarian Activities

Early Days of UN Humanitarian Assistance

Since its very inception, the UN has been mandated "To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character."[4] Article 55 of the UN Charter states: "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

(a) higher standards of living, full employment, and conditions of economic and social progress and development;

[3] Jayshree Bajoria, "Improving UN Responses to Humanitarian Crises," *7 Billion People, 1 United Nations, Hand in Hands*, No. 4 Vol. XLVIII, (2011). URL: https://www.un.org/en/chronicle/article/improving-un-responses-humanitarian-crises

[4] UN Charter of 1945, Article 1, para. 3

(b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation."[5]

Furthermore, even in its early years, the General Assembly stressed the need for international cooperation whenever it initiated relief actions.[6] During World War II, in 1943, the Agreement for United Nations Relief and Rehabilitation Administration was signed by 42 states founding the UNRRA in order to provide relief to areas freed from the Axis powers and to refugees.[7] Up to this time, the UNRRA was a unique body of international governmental cooperation for the purpose of humanitarian action with a near-global reach.[8] It was the first instance of the creation of a UN humanitarian body. The International Refugee Organisation (IRO), a successor of the UNRRA was recognized by the General Assembly in 1946. In 1951, UNRRA was dissolved to form the Office of the UN High Commissioner for Refugees (UNHCR), which took over its duties.[9] The UNICEF (United Nations International Children's Emergency Fund) also emerged from the dissolution of UNRRA, when during the early days of the Cold War the United States (US) declined to work through the UNRRA and concerns were raised about the fate of Europe's children.[10] The Executive Director Maurice Pate, made it a condition of his service that aid would be distributed in an impartial and neutral manner. Thus, UNICEF became a part of the United Nations humanitarian relief system.[11] The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), established in 1949, is also one of the oldest UN institutions in the field of humanitarian action.[12] The character of UNRWA as a UN body with only one specific focus group was quite unique at the time.

UN Humanitarian Assistance During the Cold War

During the Cold War period, the General Assembly in accordance with Article 55 and the UN Charter urged all governments to take immediate steps against the food shortages caused by

[5] United Nations, Charter of the United Nations, 1 UNTS XVI, (1945). URL: https://www.refworld.org/docid/3ae6b3930.html.
[6] UN General Assembly, "Relief and Rehabilitation for Korea", UN Doc. A/RES/ 410 A (V), (1950).
[7] "Agreement For United Nations Relief and Rehabilitation Administration", Australian Treaty Series, (1943). p. 2.
[8] D. Cohen, "Between Relief and Politics: Refugee Humanitarianism in Occupied Germany 1945-1946." *Journal of Contemporary History* 43, no. 3 (2008).p. 440. URL: http://www.jstor.org/stable/40542969.
[9] Social and Humanitarian Assistance- UN Children's Fund (UNICEF), *Encyclopedia of the Nations*.
[10] UNICEF, "Fifty years for children", *The State of the World's Children 1996*, 50th Anniversary Edition (1996).
[11] Ibid.
[12] UN General Assembly, Humanitarian Assistance, 4 July 1967, UN Doc. A/RES/2252 (ES-V); UN General Assembly, Persons Displaced as a Result of the June 1967 and Subsequent Hostilities, UN Doc. A/RES/60/101, (2006).

the war.[13] This led to the establishment of the World Food Programme (WFP) in 1961.[14]In 1965, the General Assembly combined the Expanded Programme of Technical Assistance (EPTA), and the smaller Special United Nations Fund for Economic Development (SUNFED) to form the United Nations Development Programme (UNDP).[15]The UNDP was given responsibilities over the entire range of social and economic affairs of the UN, including emergency relief coordination.[16] In 1997, the UN Secretary-General, Kofi Annan, redistributed aspects of the Emergency Relief Coordinator (ERC) to the UNDP.[17] This included disaster prevention, mitigation and preparedness. In March 1972, the UN Disaster Relief Office (UNDRO) was established to ensure that relief was mobilised more rapidly and was better coordinated.[18]

UN Humanitarian Assistance After the Cold War

The end of the Cold War changed not just the nature of conflicts, but also the structure of the UN and its humanitarian response framework. Two UN resolutions are particularly important with regard to complex emergencies. General Assembly Resolution 47/120 B[19] adopted the Secretary General's Agenda for Peace, in essence proposed a strengthening of the General Assembly's role in concern with international peace and security. Resolution 46/182[20] changed the UN's humanitarian system in organisational and operational terms. This Resolution aimed at strengthening the UN's capacity in regard to natural disasters and other emergencies. It created a new body, the Inter-Agency Standing Committee (IASC), formed the position of the Emergency Relief Coordinator (ERC), as well as created the Central Emergency Response Fund (CERF). The Consolidated Appeals Process (CAP) and Guiding Principles for humanitarian assistance were also formed. These principles do not however impose legal

[13] UN General Assembly, "World Shortage of Cereals", UN Doc. A/RES/27 (I), (13 February 1946).
[14] UN General Assembly, World Food Programme, UN Doc. A/RES/1714 (XVI), (19 December 1961).
[15] Gordon Wilson, "Knowledge, innovation and re-inventing technical assistance for development, Progress in Development Studies, 7(3). (2007). p. 186. https://doi.org/10.1177/146499340700700301.
[16] Wolfrum, "Article 55 a and b", para. 39, in Simma B (ed) *The charter of the United Nations: a commentary*, vol 1, 2nd edn. (2002a), Oxford University Press: 911
[17] UN General Assembly, Renewing the UN: A programme for reform (post of Deputy SG established, inter alia), 12 November 1997, UN Doc. A/RES/52/12 B
[18] Bruno Simma (ed), "The charter of the United Nations: a commentary", vol 1, 2nd edn., Oxford University Press. (2002a). p.916.
[19] UN General Assembly, "An Agenda for Peace", UN Doc. A/RES/47/120 B,(20 September 1993).
[20] UN General Assembly, "Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations", UN Doc. A/RES/46/182, (19 December 1991).

obligations upon the member states, but it is binding for the subsidiary bodies and the staff created by this Resolution.[21]

Part I of the Guiding Principles states that humanitarian assistance must be provided in accordance with the principles of humanity, neutrality, and impartiality.[22] UN bodies engaged in humanitarian action must respect the sovereignty and territorial integrity of the state affected by a natural or man-made disaster. The primary responsibility of responding to a humanitarian crisis lies with the state concerned. The UN can only provide humanitarian assistance with the consent of the affected state given through an appeal.[23] "Soon after, the Secretary-General established the Department of Humanitarian Affairs (DHA) and assigned the ERC the status of Under-Secretary-General for Humanitarian Affairs with offices in New York and Geneva to provide institutional support."[24] Organisationally, the ERC is therefore bound to the directives of the Secretary-General according to Article 101 (2) of the UN Charter, but the organisational competencies are subject to the approval of the General Assembly.[25] In 1998, the DHA was restructured into the Office for the Coordination of Humanitarian Affairs (OCHA) as part of the Secretary-General's programme for reform. "Its mandate was expanded to include the coordination of humanitarian response, policy development and humanitarian advocacy."[26]

The UN Humanitarian System

The UN humanitarian system is highly complex as there are many actors with overlapping agendas, however, the main actors in the field of emergency relief are UNHCR, UNICEF, UNRWA, UNDP, WFP, and OCHA. All these organisations share the common feature of coming into existence through General Assembly resolutions. However, here the commonality ends. In legal status, for instance, unlike the UNDP or UNHCR, the UNICEF[27] is authorised to receive funding, acquire, hold or transfer property and take legal recourse if necessitated in the fulfilment of its duties. This power to enter contracts is absent in the case of the primary UN agency in the UN humanitarian system, that is, the OCHA.

[21] Gottelmann and Munch, "Article 101, para. 23", in Simma B (ed) *The charter of the United Nations: a commentary,* vol 2, 2nd edn, Oxford University Press, (2002). p. 1258.
[22] UN General Assembly, "Strengthening of the coordination of humanitarian emergency assistance of the United Nations", UN Doc. A/RES/46/182, (19 December 1991). para. 2.
[23]Ibid., paras. 3, 4.
[24] OCHA, History of OCHA. URL shorturl.at/bxKQX
[25]Gottelmann and Munch, "Article 101, para. 23", in Simma B (ed) *The charter of the United Nations: a commentary,* vol 2, 2nd edn, Oxford University Press, (2002). pp. 1254, 1256.
[26] OCHA, History of OCHA. URL shorturl.at/bxKQX
[27] Section 2 (a), General Assembly Resolution 57(I), (1946).

Appointments

While the position of the Under-Secretary-General for Humanitarian Affairs (USG), who chairs the IASC, and heads OCHA as the ERC, is appointed by the Secretary-General, the High Commissioner for Refugees is nominated by the Secretary-General and then elected by the General Assembly.[28] These appointments fall within the discretionary power of the Secretary-General. In the case of the UNDP Administrator, the Secretary-General's decision follows after consultation with the UNDP Governing Council and is subject to confirmation by the General Assembly.[29] The appointment of the UNICEF Executive Director, who holds the rank of Under-Secretary-General, follows the general scheme. This position is appointed by the Secretary-General after consultation with the UNICEF Executive Board.[30] The WFP Executive Director, also an Under-Secretary-General, is appointed by the Secretary-General and the Director-General of FAO in consultation with the WFP Executive Board.[31]

Decision-Making in Humanitarian Action

A distinction can be made between operational agencies that are entrusted with the management and operation of programmes and funds, such as the WFP, UNDP, UNHCR, UNRWA and non-operational agencies like OCHA. All operational agencies have an inter-governmental body for policy decisions.[32] In case of the UNDP, for example, it is the Executive Board which is made up of representatives from 36 countries around the world who serve on a rotating basis.[33] WFP's Executive Board consists of 36 members, 18 of whom are elected by the Economic and Social Council and the remaining by FAO's Council.[34] The Executive Board of the WFP is subject to the general authority of the Economic and Social Council and the Council of FAO, which established it. One of its main responsibilities is to ensure the implementation of the policies formulated by the General Assembly and the FAO Conference as well as the coordination measures and guidance received from the ECOSOC and the Council of FAO. As a non-operational department of the UN Secretariat, OCHA is often regarded as

[28] UN General Assembly, "Statute of the Office of the United Nations High Commissioner for Refugees", UN Doc. A/RES/428 (V), (14 December 1950). para. 13.
[29]Ibid., para. 84
[30]Ibid., para. 92.
[31]Ibid., para. 107.
[32]G. Jaenicke, "Article 7", in B Simma, (ed), *The charter of the United Nations: a commentary,* vol 1, 2nd edn.,2002, Oxford University Press. para. 19, p. 222.
[33] UNDP, Executive Board of UNDP/UNFPA.
[34] UN General Assembly, "Further Measures for the Restructuring and Revitalization of the United Nations in the Economic, Social and Related Fields", UN Doc. A/RES/48/162, (20 December 1993).

more impartial and more objective than the operational agencies.[35] Its main body of humanitarian policymaking is the IASC. Contrary to the intergovernmental bodies of operational agencies, the IASC is not composed of country representatives but of representatives of major players in humanitarian assistance.

According to General Assembly Resolution 46/182, appropriate non-governmental organisations may be called upon to join on an ad hoc basis.[36] 'General Assembly Resolution 48/57 confirmed IASC's role as the chief instrument for inter-agency coordination of humanitarian assistance.' Under the leadership of the Emergency Relief Coordinator, the IASC 'evelops humanitarian policies, divides responsibility for humanitarian assistance, identifies and addresses gaps in response, and advocates for effective application of humanitarian principles.'[37]

Additionally, decision-making with regard to humanitarian affairs also takes place on the level of the primary organs of the UN, particularly the Secretary-General, Security Council, General Assembly, and ECOSOC. Though generally, the subjects of decision-making at this level are more routine matters, however, sometimes they have to deal with very specific issues. One of the primary UN bodies concerned with humanitarian assistance is the ECOSOC. Organisations created by the General Assembly, report through their Executive Boards to the ECOSOC. These includes UNDP, UNICEF, UNHCR, and WFP. It negotiates agreements with the programmes and funds and coordinates their activities in consultation with the General Assembly.[38] While the ECOSOC is concerned with policy and programme matters, the General Assembly is regarded as the most important decision-making body in the UN System, as it makes decisions regarding all financial matters of UN humanitarian actors.[39]

[35] Office for the Coordination of Humanitarian Affairs, "OCHA Orientation Handbook on Complex Emergencies", (2002). URL: https://reliefweb.int/report/world/ocha-orientation-handbook-complex-emergencies.
[36] UN General Assembly, "Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations", UN Doc. A/RES/46/182, (19 December 1991). para. 38.
[37] IASC, "About the Inter-Agency Standing Committee".URL https://interagencystandingcommittee.org/the-inter-agency-standing-committee
[38]Gretchen Sidhu, United Nations Non-Governmental Liaison Service, "Intergovernmental Negotiations and Decision Making at the United Nations: A Guide with Gretchen Sidhu", United Nations Non-Governmental Liaison Service,(2007).p. 9. URL: https://digitallibrary.un.org/record/610622/files/UNDecisionMaking.pdf
[39] Adele Harmer, "Humanitarian action: in need of a steer or an anchor?" *Humanitarian Policy Group*, (2004). p. 25.

The UN Cluster Approach

The General Assembly and the ECOSOC are the prime UN agencies to make decisions regarding UN involvement in crisis situations and the continuation of humanitarian assistance. One of the main responsibilities of the Secretary-General is to implement these decisions with the aid of OCHA and the ERC. Since other UN humanitarian bodies have different directives and as a few of them are vested with significant freedom of the way to implement the decisions of the General Assembly and the ECOSOC, it is quite difficult to bring them under one banner. Therefore, the General Assembly called "upon relevant United Nations organisations as well as other humanitarian and development actors to work with the Office for the Coordination of Humanitarian Affairs of the Secretariat for enhancing the coordination, effectiveness, and efficiency of humanitarian assistance."[40] States concurred and called for a more predictable, efficient, and effective humanitarian action, for greater accountability, and for the UN to build the capacity and technical expertise to fill gaps in critical sectors and common services.[41]

The strategic step to do so was the establishment of the 'Cluster Approach' by the IASC. In September 2005 the IASC established nine cluster leads with different focuses that were to be headed by one of the main UN bodies concerned with relief action and the International Federation of the Red Cross (IFRC). Presently, there are 11 global clusters. This process thus managed to include the IFRC in the coordination of the clusters. However, unlike the other cluster leads, the IFRC is not to be regarded as a relief provider of the last resort in case of assistance coordination failing to succeed.

UN Conventions and Regulations Governing Humanitarian Assistance

Privileges and Immunities of UN and Specialised Agencies

The UN Charter states[42] that the organisation as well as its representatives and officials enjoy privileges and immunities as are essential for the independent exercise of their functions and responsibilities. This provision has been supplemented by the General Convention on the Privileges and Immunities of the United Nations, 1946, and by the Convention on Privileges and Immunities of the Specialized Agencies, 1947. These provisions are also supplemented by

[40] UN General Assembly, "Strengthening of the Coordination of Emergency Humanitarian Assistance of the United Nations", (2005). para. 2. URL: UN Doc.A/RES/59/141.
[41]Ibid.
[42] UN Charter, Article 105

bilateral agreements.[43] The General Convention on the Privileges and Immunities of the United Nations, 1946 provides certain immunities to officials of the UN in accordance with Article V, Section 18. Experts other than officials have privileges given by Article VI, section 22.

These privileges and immunities unlike the diplomatic immunities are not based upon reciprocity but on an agreement. Furthermore, these immunities and privileges are not absolute and cannot be applied to private acts. They are only applicable in the conduct of the United Nations' duties.[44] Apart from these immunities, the UN property also enjoys protection from different types of interference, including the assets meant for the use of humanitarian assistance.[45]

For all other member states of the UN, Article 105 is applicable. Since this Article has a very unspecific formulation, the 1946 Convention will have to be consulted as a base for interpretation of Article 105 of the UN Charter in a concrete situation.[46] This is discussed below:

Special Agreements for Humanitarian Assistance

The freedom of movement of UN staff and the mobility of goods is often hindered during humanitarian assistance. This is due to the limitations of the provisions of Article VII. Sections 24 and 25 require the member state that a United Nations laissez-passer be recognised and accepted as a valid travel document by the local authorities. However, it makes reference only to granting of facilities for swift travel. Article. 105 of the UN Charter is also not clear regarding the mobility of UN humanitarian actors, it states, "the Organisation shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes." It follows from this that free movement for the purpose of access to a population in need of humanitarian assistance is permitted. Article 1.3 refers to Chapters IX and X of the Charter, which have been often bought into the General Assembly in reference to humanitarian actions.[47] However, humanitarian agencies are often left dependent upon

[43] Malcolm Shaw, "International law", Cambridge University Press, Cambridge, (2008). p. 1319
[44] Cecilia Nilsson, "Contextualizing the Agreement on the Privileges and Immunities of the International Criminal Court." *Leiden Journal of International Law* 17, no. 3 (2004).p. 569. doi:10.1017/S0922156504002031.
[45] UN General Assembly, "Convention on the Privileges and Immunities of the United Nations," (1946), Article 2 Section 3, 4.URL: https://www.refworld.org/docid/3ae6b3902.html
[46] Felix Schwendimann, "The legal framework of humanitarian access in armed conflict", International Review of the Red Cross, Vol 93 No. 884 (2011).p. 5. URL: doi:10.1017/S1816383112000434
[47] Riidlger Wolfrum, "Art. 55," In B Simma (ed), "The charter of the United Nations: a commentary," vol 2, 2nd edition, Oxford University Press, (2002b). para. 31, p. 46.

provisions of a bilateral agreement to gain any real freedom of movement and access.[48]It has often been contended that these provisions are opposed to the principle of territorial integrity and sovereignty.

While four international instruments[49] govern the measures for simplifying customs clearance of aid consignments, however, a 1994 research undertaken by OCHA observed that most states had either not signed the conventions or failed to honour them. The study resulted in an agreement between the OCHA and the World Customs Organisation (WCO) which gave birth to the 'Model Agreement on Customs Facilitation in Humanitarian Assistance'.[50]

This agreement between the state and the relevant agency regarding measures to accelerate the import, export and transit of aid deliveries and possessions of aid workers during emergencies "apply, specifically, to United Nations delegates, experts on mission for the United Nations, to emergency response personnel to assist refugees and internally displaced persons, to international search and rescue teams, medical teams, specialised teams provided by foreign military, civil defence and civil protection organisations (MCDA teams), to governmental service packages requested by United Nations, and to United Nations Disaster Assessment and Coordination (UNDAC) teams".[51] This agreement is not dependent upon the consent of the state to permit humanitarian actors from accessing its territory.[52]

Safety and Security

The safety and security of personnel employed by the UN or by specialised agencies have always been an area of concern for the UN. Articles 8(2)(b)(iii) and 8(2)(e)(iii) of the Rome Statute categorise attacks against United Nations staff, installations, material, units or vehicles involved in humanitarian assistance or peacekeeping missions as war crimes, as long as they are entitled to the protection given to civilians or civilian subjects under the international law

[48] Felix Schwendimann, "The legal framework of humanitarian access in armed conflict", International Review of the Red Cross, Vol 93 No. 884 (2011).p. 8. doi:10.1017/S1816383112000434
[49] The CCC Recommendation (1970) concerning relief consignments and three conventions (Kyoto Convention, A.T.A. Convention and Istanbul Convention) elaborated by the World Customs Organization (WCO).
[50] UN. Department of Humanitarian Affairs, "Model agreement on customs facilitation in international emergency humanitarian assistance," Geneva, UN, (1996). URL: https://digitallibrary.un.org/record/230021/files/ST_DHA_96_134-EN.pdf
[51] UNOCHA, "Customs Model Agreement between the United Nations and a State/Government," (2011). URL: https://www.unocha.org/sites/dms/Documents/Model_en_2011.pdf.
[52]Ibid.

of armed conflict.[53]The General Assembly also time and again issues resolutions on the protection of UN personnel as well as on the safety and security of humanitarian actors.[54] In its Resolution 62/95, the Secretary-General was required to submit a report on the safety and security of humanitarian personnel and on the implementation of Resolution 62/95. This Resolution urged "all States to take the necessary measures to ensure the full and effective implementation of the relevant principles and rules of international law… related to the safety and security of humanitarian personnel and United Nations personnel."[55]

The main legal instrument for the protection of the UN and associated humanitarian actors are, the General Assembly, the Convention on the Safety of United Nations and Associated Personnel and its optional protocol. The optional protocol extends the application of the Convention to all UN operations by any competent organ of the UN for the purpose of delivering humanitarian, political, or development assistance in peacebuilding or emergency humanitarian assistance.[56]Some delegations wanted to extend it to all non-governmental organisations. The compromise found within the Convention made the protection of non-governmental organisations conditional upon a very close contractual link with the United Nations.[57] The protection thereby includes:

i. "Persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police, or civilian components of a United Nations operation.
ii. Other officials and experts on a mission of the United Nations or its specialized agencies.
iii. Persons assigned by a government or an intergovernmental organisation with the agreement of the competent organ of the United Nations.
iv. Persons engaged by the Secretary-General of the United Nations or by a specialized agency.

[53] UN General Assembly, "Report of the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel," UN Doc. A/60/52, Supplement No. 52. (11–15 April 2005).
[54] UN General Assembly, "Safety and Security of Humanitarian Personnel and Protection of United Nations Personnel," *UN Doc. A/RES/60/123, (*2005).
[55] General Assembly, "Safety and Security of Humanitarian Personnel and Protection of United Nations Personnel," (2007), UN Doc. A/RES/62/95, para. 2.
[56] UN General Assembly, "Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel," A/RES/60/42, (2006). Art. 2, para. 1. URL: https://www.refworld.org/docid/44168a999.html
[57] Antoine Bouvier, "'Convention on the Safety of United Nations and Associated Personnel': Presentation and Analysis." *International Review of the Red Cross* 35, no. 309 (1995).pp. 638–66. doi:10.1017/S002086040008726X.

v. Persons deployed by a humanitarian non-governmental organisation or agency under an agreement with the Secretary-General of the United Nations or with a specialized agency."[58]

A major flaw of the convention, however, was that humanitarian development activities and other non-peacekeeping operations were covered only through a declaration of extraordinary risk. 'Personnel of humanitarian relief operations were especially left outside the scope of automatic coverage except when they carry out their activities in the same area as an operation covered by the Convention, in which case they would fall within the category of 'United Nations personnel'.'[59]

Article 9 of the Convention defines crimes against United Nations and associated personnel as the intentional commission of:

i. A murder, kidnapping or other attack upon the person or liberty of any United Nations or associated personnel.
ii. A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations or associated personnel likely to endanger his or her person or liberty.
iii. A threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act.
iv. An attempt to commit any such attack.
v. An act constituting participation as an accomplice in any such attack, or in an attempt to commit such attack, or in organizing or ordering others to commit such attack, shall be made by each State Party a crime under its national law.

Concerning transit states, the parties to the Convention have the duty to facilitate the unimpeded transit of United Nations and associated personnel and their equipment.[60] The main commitments of state parties to the Convention are:

[58] Office of Legal Affairs Codification Division, "Convention for the Safety of UN and Associated Personnel, Art. 1 (a) and (b). URL: https://www.un.org/law/cod/safety.htm
[59] M.-Christiane Bourloyannis-Vrailas,. "The Convention on the Safety of United Nations and Associated Personnel." *The International and Comparative Law Quarterly* 44, no. 3 (1995).p. 568. http://www.jstor.org/stable/761203.
[60] Office of Legal Affairs Codification Division, "Convention for the Safety of UN and Associated Personnel, Art.5. URL: https://www.un.org/law/cod/safety.htm.

i. Duty to ensure the safety and security of the UN and associated personnel from any attack or any action that prevents them from discharging their mandate[61]
ii. Duty to release or return the UN and associated personnel captured or detained.[62]
iii. Duty to establish jurisdiction over the crimes against the UN and associated personnel.[63]
iv. Duty to prevent such crimes through taking all practicable measures to prevent preparations for the commission of those crimes and through exchanging information with other parties to the convention.[64]

Legal Challenges

The unique and difficult endeavours undertaken since the Cold War may indicate a significant shift in the way in which the United Nations assumed responsibility for assisting conflict victims. They do, however, raise substantial policy concerns regarding the capability of the United Nations to perform this role, the long-term political feasibility of depending on the UN to shoulder such burdens, and the existence of viable alternatives for this purpose. Some critical legal questions must also be addressed. First, is there a sufficient legal authority for the UN to intervene in such cases? In more cases than not, the answer is clearly yes. Most such UN actions are based on the authority of the Security Council under Chapter VII of the Charter. That authority is premised under Article 39, on the Council's determination of the existence of a "threat to the peace, breach of the peace, or act of aggression." As a result, it is not available for every conceivable breakdown of governmental authority. However, during the past decade, the Council has demonstrated a willingness to act on the basis of a realistic assessment of what might constitute a threat to peace. It has exercised its Chapter VII jurisdiction when the conflict or humanitarian crisis in question was claimed by some as essentially internal.[65] The Charter vests this judgment in the Council, which guided by an understanding of the Charter's role and obligations exercises its duty. Overall, any situation, even if it occurs within a single state, that threatens the peace through elements such as cross-border violence, significant refugee flows, serious regional instability, or appreciable harm to the nationals of another state could lawfully form the basis for a determination by the Council under Chapter VII. Also, the scope of the measures it may take under Chapter VII of the Charter is very broad. Article 41 states that the

[61]Ibid., Article 7.
[62] Ibid., Article 8.
[63]Ibid., Article 10.
[64]Ibid., Article 11.
[65] E.g., UN Security Council, "Security Council resolution 794 (1992) [Somalia], 3 December 1992", S/RES/794 (1992). URL: https://www.refworld.org/docid/3b00f21137.html.

Council may select what steps to take to carry out its decisions, it then recites a list of possible measures, but the list is mostly exemplary and not exhaustive.

Several times over the last decade, the Council has taken actions that are outside the Article 41 list.[66] The appeals chamber of the International Tribunal for the Former Yugoslavia declared that the Security Council, "has a very wide margin of discretion under Article 39 to choose the appropriate course of action and to evaluate the suitability of the measures chosen." The establishment of an international criminal tribunal is not expressly mentioned in the list provided for in Chapter VII. It is evident that the measures set out in Article 41 are merely illustrative examples that obviously do not exclude other measures.[67] Another important question that can be raised in this context is, does the exercise of this authority constitute an unacceptable infringement on state sovereignty? The Security Council's exercise of Chapter VII responsibilities does not infringe on the sovereignty of any UN member affected by its decisions. By adhering to the UN Charter, member states acknowledge the Council's jurisdiction under Chapter VII, and this acceptance of the Council's authority is not a derogation from their sovereignty but rather an exercise of it. Article 2 (7) of the Charter, which prohibits the UN from intervening "in matters which are essentially within the domestic jurisdiction of any state," particularly excludes enforcement measures under Chapter VII. Article 25 states that UN members agree to accept and carry out the decisions of the Council. Article 48 requires that such decisions be carried out both directly by member states and through international organisations to which they belong.

Another important question is, what are the limits to the Council's authority to make decisions providing for the governance of a territory? Can the Council make major transformations regarding the political status of a territory? Chapter VII itself does not specifically limit the measures that the Council adopts in response to a threat or breach of the peace. While Article 51 protects states' right to individual or collective self-defense, it also highlights that exercising this right has no bearing on the Council's authority to maintain or restore international peace and security. Article 103 states that decisions resulting from obligations under the Charter have precedence over obligations under any other international agreement. Article 2 requires the

[66] UN Security Council, "Security Council resolution 687 [on restoration of the sovereignty, independence and territorial integrity of Kuwait] (1991). supra note 2, paras. 16-19.
[67] Prosecutor v. Dusko Tadic, a/k/a "Dule", Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, The Hague (2 October 1995). Paras. 32-38 (Oct. 2, 1995). URL: https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Prosecutor%20v%20Tadic%20%28IT-94-1-AR72%29%20ICTY.pdf

United Nations to act in line with a set of principles, including the "sovereign equality" of all member states, and the Council is required to perform its duties in good faith in conformity with these principles. Furthermore, the Council would have to follow the procedural rules of the Charter that apply to decisions under Chapter VII. Thus, under exceptional circumstances, the Security Council would be justified in bringing about a permanent change in some aspect of the status, boundaries or political structure of territory within a state, if the Council is convinced that such a measure is essential to restore and maintain international peace and security. Of course, such measures should never be lightly taken, and, if implemented should always be done in good faith in accordance with the Charter.

UN Peacekeeping Operations: Applicability of International Humanitarian Law

Since the Korea operation, in which the United Nations commander accepted for the first time the request of the International Committee of the Red Cross, to abide by the humanitarian provisions of the Geneva Conventions, very few UN operations have accepted the applicability of IHL over them. By the mid-1990s, however, when UN forces fatalities increased substantially, and the international community was devising ways to improve the safety and security of the UN and associated personnel, the UN was being pressured to own responsibility for the operational activities of the UN forces. The excesses perpetrated by members of UN operations in situations of armed conflict, as well as the degree of property damage and personal harm caused by them in their operational duties, prompted the United Nations to reassert the applicability of IHL to UN forces and redefine the UN's international responsibilities and third-party liability for operations-related damage. A review of the scope of UN responsibility for peacekeeping activities led to the publication of the Secretary-General's Bulletin on the Observance by United Nations Forces of International Humanitarian Law,[68] and the establishment of principles of the third-party liability of the organisation within a range of temporal and financial limitations. Together, these two represent the UN doctrine of the organisation's international responsibility for activities of UN forces under IHL.

Responsibility for Combat-Related Activities

Application of International Humanitarian Law to UN Forces

[68] UN Secretary-General (UNSG), "Secretary-General's Bulletin: Observance by United Nations Forces of International Humanitarian Law," ST/SGB/1999/13,(1999).URL: https://www.refworld.org/docid/451bb5724.html

Initially, the United Nations refused to accept the applicability of international humanitarian law to UN forces or to officially adhere to its provisions. However, for the first time, in 1993, it undertook the Agreement on the Status of the United Nations Assistance Mission for Rwanda to ensure that UN forces would abide by the 'principles and spirit' of the general conventions applicable to the conduct of military personnel, including the four Geneva Conventions of 1949, their two Additional Protocols of 1977, the Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict of 1954 while conducting their operations.[69] However, this 'principles and spirit' clause proved to be rather abstract when applied practically. In the operations of the United Nations Protection Force and the United Nations Operation in Somalia, issues relating to the legal status of UN forces taken hostage, that of detainees held by UN peacekeepers, and the use of particular types of weapons, were difficult to ascertain. Thus in 1995, the ICRC initiated meetings of experts to discuss the applicability of IHL to UN forces. The conclusions of the meetings were subsequently submitted by the ICRC to the Office of Legal Affairs of the UN Secretariat and formed the basis of the Secretary-General's Bulletin on the Observance by United Nations Forces of International Humanitarian Law.

Bulletin on the Observance by United Nations Forces of International Humanitarian Law

The main provisions

In accordance with his commitment under the status of forces agreements concluded after 1993 to familiarise UN personnel with the principles of IHL, on August 6, 1999, the Secretary-General issued the Bulletin on the Observance by United Nations Forces of International Humanitarian Law. This Bulletin sets forth the principles and rules regulating "the civilian population in the UN area of operation and in the area controlled by the opposing party;[70] means and methods of combat;[71] treatment of civilians and combat, and women[72] and children;[73] treatment of detained members of the armed forces and other persons taking no part in hostilities, in accordance with the relevant provisions of the Third Geneva Convention and

[69] United Nations and Rwanda, "Agreement on the Status of the United Nations Assistance Mission for Rwanda (UNAMIR), 1748 UNTS, (1993). Art. 7. URL: https://treaties.un.org/doc/Publication/UNTS/Volume%201748/volume-1748-I-30482-English.pdf
[70] UN Secretary-General (UNSG), "Secretary-General's Bulletin: Observance by United Nations Forces of International Humanitarian Law," ST/SGB/1999/13,(1999). supra note 2,5. URL: https://www.refworld.org/docid/451bb5724.html
[71] Ibid.,6.
[72] Ibid.,7.2, 7.3.
[73] Ibid.,7.4.

to their status as prisoners of war;[74] treatment of the wounded and sick; protection of medical and relief personnel; and collection and identification of the dead left on the battlefield." The Secretary-General did not bind himself to the customary international law provisions of the Conventions and Protocols by which all national contingents would otherwise be bound.[75] Provisions such as the prohibitions on using methods of warfare intended to cause widespread, long-term, and severe damage to the natural environment,[76]rendering objects indispensable to the survival of the civilian population useless,[77]and causing the release of dangerous forces with consequent severe losses among the civilian population'[78]were thus included in the Bulletin regardless of their conventional international law nature.'[79]

Scope of application and legally binding effect

The afore-mentioned instructions for UN forces are binding upon UN operations conducted under UN command and control. They are not, however, applicable to UN-authorised operations conducted under the national or regional command and control. The obligation "to respect and ensure the respect" for IHL rests with the states or regional organisations conducting the operation. The instructions apply to members of UN forces who are actively engaged in armed conflict as combatants, till the time of their engagement. They accordingly take effect in enforcement actions when the use of force is authorised in pursuance of a Chapter VII mandate, and in peacekeeping operations when it is permitted in self-defence. While the 1994 Convention on the Safety of United Nations and Associated Personnel[80] implicitly recognised the applicability of IHL in peacekeeping operations, the line differentiating the application of the UN Convention, and that of international humanitarian law was not defined. When in 1998 the Rome Statute of the International Criminal Court defined war crimes to include attacks against peacekeepers "as long as they are entitled to the protection given to

[74] Ibid.,8.
[75] UN Security Council, "Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993)" [Contains text of the Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991], *S/25704*, (1993). URL: https://www.icty.org/x/file/Legal%20Library/Statute/statute_re808_1993_en.pdf
[76] UN Secretary-General (UNSG), "Secretary-General's Bulletin: Observance by United Nations Forces of International Humanitarian Law," ST/SGB/1999/13,(1999). supra note 2, 6.3 URL: https://www.refworld.org/docid/451bb5724.html
[77] Ibid., supra note 2, 6.7
[78] Ibid., supra note 2, 6.8.
[79] Georges Abi-Saab, "The 1977 Additional Protocols and General International Law: Some Preliminary Reflexions," In: Dordrecht, *Humanitarian law of armed conflict challenges ahead : essays in honour of Frits Kalshoven*, M. Nijhoff, (1991). pp. 121-22.
[80] UN General Assembly, "Convention on the Safety of United Nations and Associated Personnel," (1994). Art. 20, 34 URL: https://www.refworld.org/docid/3ae6b3b60.html.

civilians or civilian objects" under the international law of armed conflict, the line between the protected status of peacekeepers 'as civilians' and their status otherwise as combatants was finally drawn.[81] The Secretary-General's Bulletin is binding on members of UN forces in the same way as are all other instructions issued by the Secretary-General in his capacity as 'commander in chief' of UN operations. The source of the legal obligation, however, lies in the international humanitarian law requirements incorporated into the individual national laws, by which members of the force are obligated throughout their service with the UN operation, or in the customary international law provisions that are independently mandatory upon them.

Responsibility for Damage in Ordinary Operational Activities

In accordance with its commitment under section 29 of the 1946 Convention on the Privileges and Immunities of the United Nations, the United Nations has agreed, to settle claims of a private law nature to which the UN peacekeeping operation or any of its members is a party, through a standing claims commission.[82] While the standing claims commission promised under these agreements has never been created, UN-based claims review boards were created instead, in practically every peacekeeping operation to settle third-party claims for personal injury, property loss, or damage caused by the actions of the force in the pursuance of their duties. With the expanding scale of peacekeeping operations, the damage to the person or property of third-party individuals had also significantly increased. This increasing financial burden made the General Assembly call upon the Secretary-General to create ways for decreasing the third-party liability of the UN.[83]The Secretary-General presented a report in which the principles and extent of UN liability for both combat-related and ordinary operational activities of UN forces were outlined,[84]and criteria and guidelines for implementing the temporal and financial limitations on UN liability were elaborated.[85]The General Assembly adopted the Secretary-General's recommendations in its Resolution 52/247 in June 1998.[86]

[81] UN General Assembly, "Rome Statute of the International Criminal Court (last amended 2010)," UN Doc. A/CONF.183/9, (1998), Art. 8(2) (b) (iii) & (e) (iii). URL: https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf
[82] UN Secretary-General, "Model Status-of-Forces Agreement for Peace-keeping Operations: report of the Secretary-General," *UN Doc. A/45/594*, United Nations Digital Library, (1990).
[83] United Nations General Assembly, GA Res. 50/235, UN GAOR, 50th Sess., Supp. No. 49, Vol. 2, at 33, UN Doc. A/50/49 (1996).
[84] UN Secretary-General, "Report of the Secretary-General, Financing of the United Nations Protection Force, UN Doc. A/51/389, (1996).
[85]Ibid.
[86] UN. General Assembly, "General Assembly Resolution 52/247: Third-party liability: temporal and financial limitations," United Nations Digital Library (1998).

The Principle of Limited Liability

The financial limitation on the third-party liability of the UN was a policy which intended to share the risks of peacekeeping operations between the UN and the states in whose territories UN operations are deployed. It was assumed that by agreeing to a peacekeeping operation within its territory for its own benefit, the host country agrees to undertake responsibility for some of the financial outcomes of that presence. This policy also had to ensure that it struck a balance between principles of justice and fairness to potential claimants and the financial sustainability of the UN. Thus, financial limitations are inapplicable in cases where damage is caused by gross negligence or wilful misconduct. These limitations are applicable, in cases of 'operational necessity,' where the UN incurs no liability. The 'operational necessity' clause however must conform to a few conditions: the force commander must be convinced that an operational necessity exists; that the measure is necessary and is not a matter of military advantage; that it was deliberated upon and a spur of the moment decision; and that the damage inflicted will be proportional to what is strictly necessary. The limitations on the UN's liability for damage caused in the ordinary operational activities, apply to non-consensual use and occupancy of premises; personal injury; and property loss and damage as a result of negligence.

The Security Council and Humanitarian Intervention

Having the 'primary responsibility for the maintenance of international peace and security' (Article 24 of the UN charter) and the authority to determine whether a situation is a 'threat to international peace and security' (Article 39), under Chapter VII, the Security Council may opt for coercive action, including the collective use of force (Article 42) and the imposition of sanctions (Article 41). Further, although not formally included in the UN charter, the Council has authorised the deployment of Peacekeeping Operations, whose mandate under Chapter VII includes the limited use of force.

The Security Council has been greatly criticised on grounds of its typically uneven performance, unrepresentative composition, and its inherent institutional double standards due to the 'veto' power of China, France, Russian Federation, the United Kingdom, and the United States. While there are numerous reasons to be dissatisfied with the Security Council's performance thus far, nevertheless, the fact remains that there is no institution as powerful as the UNSC to deal with issues of human protection. If the Security Council proves unable or unwilling to act in circumstances that appear to cry out for such action, such as another Rwanda or Kosovo-like situation, the only institutional solutions that seem available are consideration

of the matter by the General Assembly in Emergency Special Session under the Uniting for Peace procedure.

The Meaning of Humanitarian Intervention

Intervention refers to a convention-breaking action, intentionally undertaken in the domain of another state in order to alter or influence the authority or structure of the target state. However, the implementation of humanitarian intervention requires special circumstances. Humanitarian intervention is only authorised when a state violates the minimum standards of humanity which are recognised by the international society. The level of violation that could justify the right of intervention is "when a state renders itself guilty of cruelty against and persecution of its nationals in such a way as to deny their fundamental human rights and to shock the conscience of mankind."[87]Thus the right of humanitarian interventions becomes operative only when a state exceeds the limit of its authority. Humanitarian intervention can therefore be understood as the use of force for the purpose of protecting the inhabitants who are subjected to grave violence and injustice. Thus, humanitarian intervention can only be used in situations where there are massive human sufferings. It is fundamentally different from other types of illegal intervention as humanitarian intervention is neither carried out wilfully nor does it desire to alter the authority or structure of the target state.

Many scholars have raised the issue of the right of self-defence. An assault on nationals abroad can be regarded as equivalent to an armed attack on the state itself as nationals are one of the main ingredients of statehood.[88] However, this argument does not hold much substance. Self-defence is only applicable when there is an attack on the territory of the state.[89]Any other interpretation of the concept would amount to enlarging it beyond the boundaries that the UN Charter permits. Even if such an interpretation is accepted, it is still difficult to justify intervention on the basis of self-defence. This is because humanitarian intervention by its very definition should be aimed at rescuing other nations. Thus, an intervention must be carried out with the objective of rescue only, or else it will become an abuse of state sovereignty.[90] Therefore, humanitarian intervention refers to a situation where international actors across national boundaries, use force, with the objective of relieving severe human sufferings and

[87] Denys P. Myers, "International Law: A Treatise. By L. Oppenheim. Vol. I: Peace. (8th Edition; Ed. by H. Lauterpacht.) London, New York, Toronto: Longmans, Green, and Co., 1955. Pp. Lvi, 1072. 90 s." American Journal of International Law 49, no. 3 (1955): 426–27. doi:10.2307/2194894. p. 312
[88] D W. Bowetl, "Self-Defence In International Law," New York: Praeger, (1958).
[89] Ian Brownlie, "International Law and The Use of Force bv States," Clarendon Press, Oxford, (1963).
[90] Moses Moskowitz, "Human Rights and World Order," Oceana Publications, London, 1959. p. 16.

violation of human rights within states as local authorities are unwilling or unable to do so. Humanitarian intervention differs from humanitarian aid in that the former may incorporate the threat or use of force in the process of responding to complex humanitarian emergencies. There are times, however, when the two concepts may overlap.

Role of the Security Council in Intervention

Although the international community has come to a universal agreement that they have a responsibility to undertake humanitarian intervention to protect populations caught amid a complex emergency, it is still unclear who exactly in the international community should intervene. The option, supported by the majority is that intervention should be undertaken by those whose action would be regarded as legal in accordance with international humanitarian law. According to IHL, the UN Security Council's authorisation is required for an intervention to be legal. The Security Council is the principal political forum for making authoritative decisions on whether a situation constitutes a threat to international peace and security, the legitimate source of sovereign authority, and the purpose of military force. Furthermore, the decisions of the UNSC are binding on member states.

There has been a longstanding debate over the legitimacy of humanitarian intervention under international law. The right to exercise intervention is enshrined in the Genocide Convention, international customary law and the UN Charter. The UN Charter is often regarded as the most important document in deciding if humanitarian intervention is permitted in international law. Some scholars are of the opinion that intervention is only permitted if pursued within the processes established in the UN Charter. The UN Charter appears to restrict humanitarian intervention by requiring member states to "refrain in their international relations from the threat or use of force against the territorial integrity, political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations".[91]Article 39 of the UN Charter, on the other hand, authorises the UNSC to establish the existence of a threat "to the peace, breach of the peace, or act of aggression" and to determine the measures that are necessary to "restore international peace and security". While the Charter does not expressively authorise the use of humanitarian intervention, Chapter VII empowers the Security Council to impose a variety of sanctions against non-compliant states, such as non-forceful measures

[91] UN Charter, Art 2(4).

under article 41 and air, sea or land action to maintain or restore international peace and security pursuant to article 42.

However, only once the obligation to prevent has been fully performed, can the responsibility to respond with military coercion be justified. This does not necessarily imply that every alternative has been attempted first; in more cases than not, there is no time to experiment during a crisis. It merely implies that there is reason to believe no other measure if used would have been successful under the circumstances. However, there are some guidelines that the international humanitarian community must follow when deciding upon the use of the military in a conflict. These include, firstly the proportionality of intervention. The planned armed intervention's scale, duration, and intensity must not be more than the minimum necessary to achieve the task at hand. Secondly, the reasonable prospects of success. Military intervention can only be justified if there is a substantial likelihood of successfully halting or preventing the atrocities that prompted military intervention. The intervention is not justified if the objectives cannot be reached, or if the consequences of the intervention are likely to be worse than inaction. This is especially true if the military action triggers a larger conflict, rather than halting the existing one. There are situations when a bargain has to be struck between rescuing a few individuals and endangering regional conflagration of violence. In such situations, too military intervention cannot be justified.

Humanitarian Intervention and State Sovereignty

Since its inception, the UN has prioritised sovereignty and human rights norms. However, the conceptual meaning of both norms has evolved over time. Sovereignty is regarded as the supreme principle of the international community. While the norm has not lost its significance, its meaning has altered to keep pace with historical changes. This is what underpins the paradox of sovereignty: states are sovereign only within the context of a larger global system of states, and thus they can maintain independence only by ensuring the survival of the system that imposes constraints on their independence. This fact is well reflected by the role the Security Council played with regard to humanitarian intervention over the years.

Humanitarian intervention was almost impossible during the Cold War. The Security Council not only failed to stop the mass killing, but also criticised states that intervened militarily to alleviate human suffering in other states, irrespective of the humanitarian motives or desired effects. For instance, in 1979 Vietnam's military intervention in Cambodia, despite effectively halting genocide was criticised in the UN. France's ambassador to the Council held that "the

notion that because a regime is detestable, foreign intervention is justified and forcible overthrow is legitimate is extremely dangerous. This could result in endangering the very maintenance of the international order and make the continued existence of various regimes dependent on the judgement of their neighbours."[92] During the Cold War, references to violations of human rights were considered inappropriate for UNSC deliberation, as they were considered to infringe on state sovereignty, especially the principle of domestic non-interference guaranteed by Article 2(7) of the UN Charter.

However, in 1999, twenty years after France's scathing remarks against Vietnam's intervention, the UNSC declined to take any action against members of the North Atlantic Treaty Organisation for its intervention to stop ethnic cleansing in Kosovo. Thus, unlike the Cold War period humanitarian justifications now made intervention legitimate. Currently, humanitarian intervention had become a regular component of Council discussions and justifying non-intervention in the event of mass atrocity has become more difficult than justifying intervention.

Since the end of the Cold War, there has been a significant increase in usage of the enforcement provisions under Chapter VII of the UN Charter.[93] Despite the initial optimism that the Security Council was finally functioning as intended after effectively reversing Iraq's occupation of Kuwait in 1991, the post-Cold War era was swiftly marked by new challenges to international peace and security.[94] Internal political tumult resulted in flagrant and widespread violations of human rights. This proved to be a greater threat to peace than inter-state warfare. In the 1990s the Security Council's agenda became burdened by conflicting normative demands, that is, protection of state sovereignty and non-intervention in the internal affairs of states on the one hand and the protection of human rights and the right to self-determination on the other. In addition to the complex problem itself, was the issue of major powers trying to influence the decision related to intervention. The problem further aggravated when the intervening states were also the major funders of humanitarian activity. These changing patterns of intervention

[92] Nicholas J.Wheeler, "*Saving Strangers: Humanitarian Intervention in International Society,"* Oxford University Press. (2002).p. 93 https://doi.org/10.1093/0199253102.001.0001
[93] David M. Malone, "Introduction", in *The UN Security Council: From the Cold War to the 21st Century,* Lynne Rienner Publishers, (2004). pp. 3–4.
[94] Peter Wallensteen & Patrick Johansson, "Security Council Decision in Perspective." In *The UN Security Council: From the Cold War to the 21st Century*, Lynne Rienner Publishers, (2004).

raise additional ethical dilemmas and require new analysis. A look into the major crisis will help in an understanding of intervention decisions by the Security Council.

The selected cases include those where the Security Council engaged in humanitarian intervention and those where the Council did not authorise humanitarian intervention to stop the ongoing atrocities.

Iraq

Humanitarian intervention first became a topic of heated deliberations in the Security Council during Iraq's territorial aggression against Kuwait. When Iraq invaded Kuwait in August 1990, the UNSC unanimously passed Resolution 660 reaffirming the sovereignty and territorial integrity of Kuwait and condemning the Iraqi invasion as a breach of international peace and security. Resolution 678 authorised member-states to use "all necessary means" to restore Kuwait's sovereignty. As a result, a coalition led by the United States launched Operation Desert Storm defeating the Iraqi army. This resulted in a humanitarian emergency with a massive flow of refugees into neighbouring countries.[95] This flow of refugees posed a threat to international security. Turkey, for instance, said that the crisis was a "grave threat to the peace and security of the region".[96] Iran held that humanitarian crisis inside Iraq should no longer be seen as an internal affair, as Saddam Hussein's repression measures were leaving an impact internationally, including threatening the stability of the entire region. Thus, Iran urged the Council to deal "both with the causes of the crisis and with its symptoms."[97]Thus, the UNSC for the first time described the situation as a threat to international peace and security. Resolution 688 required the Iraqi government to stop committing excesses against its people and to give access to humanitarian aid organisations and external military observers within its territory. The Resolution was justified by invoking human rights norms. Germany, for example, maintained that the attacks by Iraqi soldiers against the civilians were "absolutely shocking and contrary to the norms of international law."[98]Cuba, which was opposed to the Resolution held that the UNSC did not have the competence to address human rights, or the right to violate the

[95] UN Security Council, 45th Session, U.N. Doc. S/PV.2982 (5 Apr. 1991). pp. 6, 12.
[96] Ibid., 4–6.
[97] UN Security Council, 45th Session, U.N. Doc. S.PV.2983, (9 Apr. 1991). pp. 13–15.
[98] Ibid., 73

principle of non-intervention.[99]India and China also had strong reservations about human rights being discussed by the Council.[100]

Resolution 688 is conflicting in nature. While redefining international security interests to include the protection of human rights within a state, it also reiterated the principle of non-interference in the domestic affairs of member states. The Council attempted to reconcile these conflicting principles by maintaining that the domestic human rights violations affected states beyond the domestic realm, justifying an international response.[101] Thus in this case the referent for sovereignty was not Iraq but it's neighbours, specifically, Kuwait, Iran, and Turkey.[102] The Security Council response created the political and normative space to shape future Council deliberations about humanitarian intervention.

Somalia

The approval for the use of military force for humanitarian action in Somalia changed the way the Security Council defined the legitimate use of force and marked the official appearance of humanitarian intervention. Since Somalia lacked a sovereign authority, the Council was able to launch a forcible military action for defending the humanitarian principles. The Somalia crisis differed from the Bosnia or Rwanda crisis, which were occurring simultaneously. Since there was no sovereign government, Somalia's status as a state was in doubt. This allowed the UN to avoid the contradictory nature of Article 2(7) of the UN Charter and the human rights principles.

President Siad Barre's reign had come to an end in January 1991 after he was deposed by an armed rebel group. This left a situation of political vacuum with competing groups fighting for political control, soon deteriorating into a full-scale war. The conflict resulted in a large number of civilian deaths, food scarcity, and severe drought. The World Food Program termed the crisis "an unparalleled disaster".[103] Though international humanitarian aid organisations were already working, soon their free movement was restricted by warlords, who regularly looted aid supplies meant for the civilians.[104] Resolution 746 designated the continuation of the

[99] Ibid., 46.
[100] UN Security Council, 47th Session. 3105th Meeting., U.N. Doc. S/PV.3105, (11 Aug. 1992). pp. 7, 12.
[101] UN Security Council, 2982nd Meeting., supra note 28. p. 32–37
[102] H. Robert Jackson, "Armed Humanitarianism," *International Journal,* 48(4), (1993).p. 579. https://doi.org/10.1177/002070209304800401.
[103] Jeffrey Clark, "Debacle in Somalia", *Foreign Affairs*, 72, (1992).p. 113.URL: https://www.foreignaffairs.com/articles/somalia/1992-01-01/debacle-somalia.
[104] Jonathan T. Howe, "The United States and the United Nations in Somalia: The Limits of Involvement", *The Washington Quarterly,* 18:3, (1995). p. 47. DOI: 10.1080/0163660947 509550157

internal humanitarian crisis, rather than its cross-border repercussions, as a threat to international peace and security.[105] Soon, Security Council Resolutions 794 and 814 authorised the use of "all necessary means" to secure humanitarian relief delivery and promote political reconciliation. The authorisation of armed force for a strictly humanitarian cause under Chapter VII signified a significant shift in UNSC practice. Unlike Resolution 688, Resolution 794 identified the internal humanitarian crisis itself as a threat to international peace and security. Since Somalia was a failed state with no sovereign government, no sovereignty was undermined by the armed action of the UN.

Bosnia-Herzegovina

UNSC's response to Bosnia crisis was vague and contradictory at its best. This was mainly owing to a lack of consensus about the nature of the conflict. There was ambiguity and disagreement in the Council regarding the identity of the sovereign authority of Bosnia, whether the conflict was a civil war or external aggression, and the identities of perpetrators and victims. The Bosnian conflict that began in April 1992 resulted in large civilian casualties and flagrant violations of international humanitarian law including forced migration. While there were debates in the Council about the nature of the conflict, there was an agreement that the grave violations of human rights were a threat to international peace and security and justified the passage of Resolution 770 authorising sanctions against Serbia and Resolution 771 condemning ethnic cleansing. Similar to Somalia, in the Bosnian crisis, the focus was on human rights violations posing a threat to international peace and security rather than the spill over of violence to the neighbouring states. India, China, and Zimbabwe were the only states that expressed reservations about intervention by the UN. India, for instance, held that discussions of human rights were beyond the scope of the Security Council.[106] China too abstained from voting on these resolutions. Members who believed that the conflict was an intra-state civil war described sovereign authority as indeterminate and those who argued that the conflict was inter-state in nature characterised sovereignty as contested. Thus, since Bosnia's sovereignty was contested or indeterminate, humanitarian intervention was needed for the protection of human rights. The case of Bosnia demonstrates that it is easier to build consensus around the use of force in defense of a sovereign state than against it.

[105] UN Security Council, 46th Sess., Res. 746, U.N. Doc. S/RES/746 (1992).
[106] UN Security Council, 3106th Meeting., supra note 47. p. 11.

Rwanda

When the UNSC became involved in the situation in Rwanda in 1993 it was as a guarantor of a peace agreement that had ended a civil war between the authoritarian Rwandan regime of Juvénal Habyarimana and the Rwandan Patriotic Front, a Rwandan nationalist organisation comprised primarily of exiled Tutsis. When extremist members of the Habyarimana regime launched genocide in April 1994 following Habyarimana's assassination, the UNSC initially interpreted events through this civil war framework, which privileged the sovereignty of the Rwandan government. Although members agreed that the seriousness of the atrocities warranted the attention of the Security Council, humanitarian intervention to stop the genocide was not forthcoming.

In Rwanda, the alleged perpetrator of atrocities was the legitimate sovereign authority, the Rwandan government. Rwanda was a sovereign state member of the UN and the Habyarimana government was the legitimate sovereign authority. Since an internationally recognised sovereign authority was a party to the conflict, the protection of humanitarian principles and sovereignty with non-intervention norms were directly at odds. Authorising humanitarian intervention to prevent the atrocities would have required the Security Council to use military force against a legitimate UN member state. There was no precedence for such action in 1994.[107] Despite the increasing human rights violations by government agents, Rwanda was allowed to continue as a non-permanent member of the UNSC. Human Rights Watch criticised the UN for putting "decorum before the obligation to speak as the conscience of the international community."[108] Only New Zealand voiced its reservations about the legitimacy of the Rwandan ambassador to address the Council because of the government's role in the genocide.[109] If it was difficult to make a party to a conflict renounce its Security Council seat, it was even more difficult to authorise the use of force against a sovereign member, even when that state is a perpetrator of genocide. Humanitarian interventions had previously been only justifiable when humanitarian and sovereignty norms were seen to be complementary, and in Rwanda, they were not.

[107] Jan Eliasson, Robert C. Loehr, and Eric M. Wong. "Interview: The U.N. and Humanitarian Assistance: Ambassador Jan Eliasson." *Journal of International Affairs* 48, no. 2 (1995).p. 491. http://www.jstor.org/stable/24357600.
[108] Alison Des Forges, "Leave None to Tell the Story: Genocide in Rwanda," *Human Rights Watch,* (1999).
[109] UN Security Council, 48th Session, 3377th Meeting, U.N. Doc. S/PV.3377, (1994). p. 11.

Kosovo

The Kosovo crisis highlighted the developing conflict within the UNSC over the validity of humanitarian norms and the extent to which they either corresponded to or conflicted with existing principles of state sovereignty. The UN deliberations about humanitarian intervention in Kosovo were about defining the boundaries of state authority and control over its citizens and territory. The former Yugoslavia's disintegration can be traced to Kosovo and the revocation of its autonomy by Serbian authorities in 1989. After a failure of non-violent resistance by Kosovar authorities to restore Kosovo's autonomy or garner international attention, an Albanian insurgency movement called the Kosovo Liberation Army (KLA), launched guerrilla warfare against the Serbian government. The government retaliated by torching Albanian villages, forcing them to flee. This started a cycle of violence and atrocities. On March 1998, the UNSC passed Resolution 1160, condemning the excessive use of force by the Serbian government, as well as the acts of terrorism by the KLA. It also imposed an arms embargo on the Federal Republic of Yugoslavia.

Resolution 1160 was contradictory in nature. It reaffirmed the federal republic's sovereignty while demanding immediate compliance with some Security Council conditions for its domestic policy practices, including a dialogue on Kosovo with outside representation and the withdrawal of special police forces from Kosovo. Supporters of the Resolution maintained that respect for human rights, and the violation of such rights, are matters of the utmost interest to the international community.[110] Critics contended that the crisis was an internal matter and posed no threat to peace and security.[111]While the majority of the UNSC members described the violence in Kosovo as ethnic cleansing, the Council was unanimous in its decision to preserve the sovereignty and territorial integrity of the state. Thus, while wanting to protect the citizens of Kosovo from government excesses, the UN was hesitant to directly challenge the current state's sovereignty. Thus, the Kosovo emergency exposed the growing divisions within the Security Council about the status of human rights vis-à-vis state sovereignty. This tension resulted in inaction by Security Council in Kosovo. In March 1999, the North Atlantic Treaty Organisation (NATO) conducted a controversial military humanitarian intervention in Kosovo, without the permission of the UNSC. This action deepened the existing tensions over priority between humanitarian norms and the principles of sovereignty. Twelve UNSC members

[110] UN Security Council, 53rd Session, 3868th Meeting, U.N. Doc. Record, S/PV.3868, (31 March 1998). pp. 3–4.
[111] UN Security Council, 52nd Session, 3836th Meeting, U.N. Doc. S/PV 3868, (31 Mar. 1998). pp. 10–12.

justified NATO's action by invoking the norms of humanitarianism and human rights norms. Germany, for instance, insisted that European Union members had a moral obligation to condemn the grave violation of human rights.[112] Only China, Namibia, and Russia criticised NATO's action, contending that it was in violation of the principles espoused by the UN Charter, especially Article 2(7).[113]

Sierra Leone

The Kosovo emergency overlapped with a devastating war in Sierra Leone. However, in the case of Sierra Leone humanitarian and sovereignty norms were seen as complementary. The government was cast as a victim rather than a perpetrator, allowing for humanitarian intervention. Sierra Leone became engulfed in war in March 1991 when the Revolutionary United Front (RUF) invaded Eastern Sierra Leone, starting a ten years war before officially ending with a peace agreement in January 2002. The war period saw grave atrocities against civilians, including torching villages, raping women, and forcing children to fight in battles.[114] The UNSC created the United Nations Mission in Sierra Leone to protect the civilian population and assist in the implementation of the Lomé peace agreement.[115]The agreement collapsed in the face of continuing rebel atrocities, cease-fire violations, and the abduction of 500 peacekeeping personnel by the RUF.[116]Acting on behalf of the Council, the UK responded with a military intervention to rescue the peacekeepers and other foreign nationals, but once on the ground, transformed the mission into a humanitarian intervention to secure the airport, defend the city, and protect civilians against the RUF.[117]In Sierra Leone, it was the combination of gross human rights violations and the overthrow of a democratically elected government that motivated Security Council's military action. Since the perpetrators were an illegitimate armed group, it was easy to create the narrative of the protection of human rights as complementary to state sovereignty. Although Council members had a vested interest in protecting state sovereignty by reversing the effects of an illegal military coup, the increasing legitimacy of human rights norms was evident.

[112] UN Security Council, 53rd Session, 3989th Meeting, U.N. Doc. S/PV.3989, (26 Mar. 1999). p. 17.
[113] UN Security Council, 53rd Session, 4011th Meeting, U.N. Doc. S/PV.4011, (10 June 1999). p. 11.
[114] Chris Coulter, "Bush Wives and Girl Soldiers: Women's Lives Through War and Peace in Sierra Leone,"1st ed., *Cornell University Press*, (2009).
[115] UN Security Council, 53rd Sess., Res. 1270, U.N. Doc. S/RES/1270, (22 Oct. 1999).
[116] Chris McGreal, "Threat to Sierra Leone Hostages Splits UN", *Guardian,* (2000). URL: http://www.theguardian.com/world/2000/may/17/sierraleone1.
[117] Ibid.

Humanitarian Intervention Under the United Nations Charter

The most persistent question that normally arises concerning the right of humanitarian intervention is whether or not it has legal validity since the United Nations Charter expressly prohibits the use of force. The majority of arguments concerning the validity of humanitarian intervention rely on two types of interpretation: textual and contextual. The focus of these interpretations is particularly Article 2(4) and its relation to other provisions of the Charter in general.

Textual interpretation

Article 2(4) reads that "all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state or in any other manner inconsistent with the purpose of the United Nations."[118]Opponents of the right of humanitarian intervention argue that in accordance with Article 2(4) any use of force or threat of force is ultimately illegal. As a result, whenever humanitarian intervention is coupled with the use of force, the intervention becomes illegal since it violates the prohibition expressed in Article 2(4).[119]Proponents of the right of humanitarian intervention, on the other hand, term this interpretation as a 'too simple reading of Article 2(4).' They instead advocate reading Article 2(4) with reference to Articles 1(1), 51, and other general provisions of the Charter.[120] They contend that as Article 51 gave the right to use force for self-defence, states could use this right beyond what reserved in Article 51."[121]

Lillich, contends that Article 2(4) imposes two conditions: intervention must not be oriented against the territorial integrity and political independence of a state, and it must not be inconsistent with the objectives of the United Nations Charter.[122]Thus if a humanitarian intervention complies with these restrictions, it is in fact desirable since it coincides with the Charter's aim.[123]However, such an interpretation based upon speculation of the original intention of the framers of the Charter is not always helpful as Charter is by nature organic. A correct interpretation of the Charter must be consistent with the current aspirations of the

[118] D. J. Harris, "Cases And Materials On International Law," (3rd ed). *Sweet & Maxwell,* London, (1983). p.4
[119] Ian Brownlie, "International Law and The Use of Force bv States," *Clarendon Press,* Oxford, 1963.
[120] Julius Stone, "Of Law and Nation: Between Power Politics and Human Hopes," *W. S. Hein,* New York, (1974). p. 23.
[121] Ibid.,24.
[122] Richard B. Lillich, "Intervention to Protect Human Rights", *McGill Law Journal*, vol. 15, (1959). pp. 211-12
[123] Richard B. Lillich, ed., "Humanitarian Intervention And The United Nations" *University Press of Virginia,* (1973). p.172

international community. Furthermore, ascertaining the intention of the framers is rather difficult; and since there are a lot of open endings in the provisions themselves, it will be very difficult to come to a substantive conclusion regarding Article 2(4). It would thus be more fruitful to employ another method of interpretation of the Charter of the United Nations.

Contextual interpretation

This technique of interpretation analyses not just one provision of the Charter but rather its objectives and its general character. The usual course of action, in a situation of ambiguity, is that "a treaty provision should be read in its entirety", "it must be placed in its legal context as supplied by the other provisions of the charter and the principles of international law".[124]Thus opponents of humanitarian intervention accordingly argue that the prohibition on the use of force is absolute and supersedes all other objectives.[125]They make reference to Article 1 of the Charter which lists the different objectives that must be achieved through peaceful means. The achievement of these aims through the use of force will defeat the very purpose of existence of the UN Charter.[126]Thus, the Charter has no provision for the use of force, with the only exception being Article 51. Since Article 51 is an exception, it should be also interpreted as one and not expanded to such an extent that it defeats the objective of the Charter.[127] During the Council deliberations regarding India's role in the 1971 Bangladesh independence, Pakistan contended that "a principle basic to the maintenance of peace is that no political, economic, strategical, social or ideological consideration might be invoked by one state to justify its interference in the internal affairs of another state".[128]It has been further held that, humanitarian intervention "certainly violates the public policy which underlies the Charter and its provisions for equality, independence and self-determination of states."[129]

The proponents of the right of humanitarian intervention, on the other hand, reject the above interpretation. They believe that the Charter and other resolutions affirm the existence of

[124] International Court of Justice, "Report Dissenting opinion of the Judges: Basdevant, Winiarski, Sir Arnold McNair and Read," (1947-1948). URL: https://www.icj-cij.org/public/files/case-related/3/003-19480528-ADV-01-03-EN.pdf
[125] B. V. A. Rolling, "On the Probation of the Use of Force", in George P. Smith, II, *Legal Change: Essay In Honor Of Julius Stone,* A. R. Blackshield, ed. Sydney, (1983). p. 276. URL: https://doi.org/10.1093/ajj/30.1.231
[126] Scott Davidson, "Grenada: A Study in Politics and the Limit of International Law," Dartmouth Publishing Co Ltd. (1987). p.49.
[127] Ibid.,16.
[128] Maziar Jamnejad and Michael Wood, "The Principle of Non-Intervention," *Leiden Journal of International Law* 22, no. 2 (2009). p. 347. doi:10.1017/S0922156509005858.
[129] Robert M. Chilstrom. "Humanitarian Intervention Under Contemporary International Law: A Policy Oriented Approach"? *Yale Studies In World Politic Order,* vol. I, (1974). p. 133.

humanitarian intervention as a result of the evolution of international law concerning human rights. They hold that Article 1(3) establishes a connection between the principle of self-determination and the promotion of human rights. During the first meeting of the General Assembly, it was stated that the UN Charter deals not only with states or with politics and war, but also with the basic existential needs of human beings, irrespective of their race, colour, or creed. The members reaffirmed their faith in fundamental human rights and freedom of the individual in a state was essential to the freedom of the world community of nations. Furthermore, the importance of social justice and the best possible standards of life for all cannot be underestimated in the promotion and maintenance of world peace. The General Assembly, also adopted the Universal Declaration of Human Rights, in Resolution 217(111) of 1948, which further reaffirmed the Charter's commitment to human rights. The preamble of the Charter of the United Nations too expressly states "to reaffirm faith in fundamental human rights."[130]Professor Reisman contended that the importance of human rights in the Preamble outweighs the restriction on the use of force. He held that the Charter's Preamble permitted the use of force for the purpose of saving the common interest, and its use for such purposes is legal.[131]This interpretation of the Charter is in tune with the Charter's commitment to preventing "an emergence of a new Hitler",[132]through violation of humanitarian principles. Thus, any contextual interpretation cannot separate human rights and the importance of peace. It has now become a legal duty to respect fundamental human rights, which have become a part and parcel of the new international system upon which peace depends on that immediate connection.[133]

In fact, the choice between a total prohibition on the use of force in the name of peace, or authorisation to use it for the same purpose is dependent on the choice of value that an intervening body has to make. Like Ronzitti maintained it is "difficult to agree that the value protected by duty to safeguard human rights should prevail over the value protected by the duty which forbids the use of force."[134]While the Charter undoubtedly promotes human rights, it also does not expressly authorise the use of force for such purposes. There exists no ethical standard for establishing a legal basis for humanitarian intervention; international law is based

[130] Richard B. Lillich, ed., "Humanitarian Intervention And The United Nations" *University Press of Virginia,* (1973). p.172
[131] Ibid.
[132] Robert M. Chilstrom. "Humanitarian Intervention Under Contemporary International Law: A Policy Oriented Approach"? Yale Studies In World Politic Order, vol. I, (1974). p. 120.
[133] Ibid., 123
[134] Louis Henkins, "Remark", *Proceeding Of The American Society Of International Law,* Cambridge University Press, vol. 66, (1971). p. 148.

upon the will of the state as a basis of obligation. Thus, states will reject any attempt to limit their sovereign rights over their citizens by another state. When it comes to the importance of the Declaration of Human Rights, the important issue is of its authority. If it is said to have legal authority, then the question is, how strong is it if it has not yet been ratified by all member states.[135]Furthermore, even if all states do ratify, the implementation is ultimately dependent upon the will of the state. Also, the reality of states' indifference to mass atrocities, in more cases than not, brings the legality of intervention into collision with reality. When the right to life is at stake for thousands or millions of people one might be justified to disregard any law that hinders the alleviation of suffering. After all the premise of the United Nations is based upon the desire to provide real protection to victims, and not to abandon them at their hour of need. The contention that peace should take priority over the protection of human rights is not very convincing. There can be no peace if people are denied basic existential rights. Thus, while interpreting the Charter, with an intention to decide upon the legality of humanitarian intervention, one has to decide between letting people die as there is no right of intervention or recognising intervention as a viable option in exceptional circumstances.

Humanitarian Intervention and Domestic Jurisdiction

Opponents of humanitarian intervention contend that it is impermissible since it interferes with the domestic jurisdiction of a state. Article 2(7) explicitly prohibits interference within the domestic jurisdiction of any state. It also expresses that "this principle shall not prejudice the application of enforcement measures under Chapter VII."[136]This raises the important question of the right to intervention. It thus becomes important to ascertain whether gross violation of human rights should be regarded as domestic jurisdiction of a state.

There is no denying that human rights as an issue have come to be accepted as a matter of concern for the entire international community. Judge Lauterpacht held that "human rights and freedom, have become the subject of a solemn international obligation and of one of the fundamental purposes of the Charter, are no longer a matter which is essentially within the domestic jurisdiction of the members of the United Nations."[137]Furthermore, it is also believed that a matter which is regulated by an international treaty is no longer within state

[135]J. S. Watson, "Legal History, Efficacy and Validity in The Development of Human Rights Norms In International Law," *University Of Illinois Law Forum*, (1979). p. 631.
[136] Article 2(7) of the UN Charter. URL: https://legal.un.org/repertory/art2_7.shtml
[137] Hersch Lauterpacht, "International Law and Haman Rights." *Stevens & Sons*, London, (1950).p. 120

jurisdiction.[138]Thus the principle of sovereignty can no longer be used as an excuse for domestic jurisdiction when matters related to human rights are concerned. This raises the question of who decides what comes outside the domestic jurisdiction of a state. It is contended in this regard that Article 2(7) does "not confirm that each individual state holds the right to decide matters of domestic jurisdiction".[139] Only the UNSC has the jurisdiction to decide if a matter is within the jurisdiction of a state. Nevertheless, if the Security Council fails to undertake the necessary action, the General Assembly under the Uniting for Peace Resolution will hold secondary competence to deal with the subject. The question that remains to be answered is can a state legitimately take action to protect human rights in the event of inaction by the United Nations. Thus, is unilateral action permitted for the protection of human rights?

Unilateral or Collective Intervention

When it comes to authorising military intervention for the purpose of human protection, the argument is convincing that the UN, especially the Security Council, should be the first to decide. A difficult situation arises when the United Nations fails to take action against gross atrocities committed against subjects of a state. The UN is indisputably the primary institution for developing, strengthening, and utilising the authority of the international community. However, in the absence of collective action by it, the only remaining option is to authorise a state to undertake unilateral action. Nevertheless, such action by a state is inherently dangerous and illegal since it can give rise to the most serious abuse and therefore cannot be accepted in international law. It also has the danger of being motivated by self-interest. Furthermore, such an action inherently would be reserved for the powerful states. However, many critics have pointed to the fact that while there are many provisions in the Charter relating to human rights, there are no procedures for enforcing such provisions. This omission sometimes makes the UN ineffective and unresponsive to the suffering of the people. This inaction has lent itself to the idea that if the United Nations is unable to provide protection to people in need, a state may feel justified to assert the right of humanitarian intervention.[140]Reisman contended that 'if the International Organisation' cannot 'assume the role of enforcer' 'self-help' rights of states 'will revive.'[141] Therefore, since the Charter is committed to protecting and promoting human rights

[138] W. D. Werwey. "Humanitarian Intervention Under International Law", *Netherlands International Law Review,* vol. 32, issue 111, (1985). p. 367. doi:10.1017/S0165070X00011062.
[139] Raifqual Islam, "Bangladesh Liberation Movement," *The University Press Limited,* Bangladesh, (1987). pp. 116-119
[140] Inis L. Claude. "The United Nations, The United States, and the Maintenance Of Peace", *International Organization* 23, no. 3 (1969). p. 621. doi:10.1017/S0020818300013990.
[141] William Michael Reisman, "Nullity And Revision," *Yale University Press*, London, (1971). pp. 848-9.

and since it is unable to enforce that protection, unilateral action by a state in extreme violation of human rights is not illegal. In fact, certain provisions in the Charter could be used to justify such an action. Article 56, obliges "all members to take joint and separate action in cooperation with the Organisation for the achievement of the achievement of the objectives contained in Article 55."[142]Following India's role in East Pakistan, it was held that 'India's armed intervention would have been justified if she had acted under the doctrine of humanitarian intervention because of the inability of the UN to take any effective action to end the violation of human rights in East Pakistan.[143]Thus, if the United Nations fails to discharge its responsibility in conscience-shocking situations crying out for action, concerning individual states simply may not rule out a unilateral intervention to meet their gravity and urgency. It is about choosing between the two contending principles under the circumstances. Confronted with such a reality one must give priority to saving lives. There is a risk then however, that such interventions, deprived of the discipline and constraints imposed by UN authorisation, will not be conducted for the genuine reasons or with the complete commitment to precautionary principles. Therefore, a humanitarian intervention must only be authorised after ensuring all possible safeguards. Furthermore, following the failure of the Council to act, if a state undertakes unilateral military intervention fully observing the necessary precautionary criteria, and if that intervention is judged by world public opinion to be successful, it may have serious effect for the status and integrity of the United Nations itself.

Humanitarian Intervention and Responsibility to Protect

Origins and evolution

In contemporary international relations, humanitarian intervention has been re-defined as the Responsibility to Protect (R2P).[144] Following the failure of the international community to timely respond to tragedies such as the 1994 Rwandan Genocide and the 1995 Srebrenica Massacre, Kofi Annan, in 2000, in his capacity as UN Secretary-General, wrote the report "We the Peoples" on the UN's 21st Century role. In this report, he raised the point of uniting the objectives of state sovereignty and humanitarian intervention. Responding to this in 2001, the International Commission on Intervention and State Sovereignty (ICISS) released a report

[142] Article 56, United Nations Charter.
[143] "East Pakistan Staff Study", *The Review*, International Committee Of Jurists, No. 8, (1972). p. 2. URL: https://www.icj.org/wp-content/uploads/2013/07/ICJ-Review-8-1972-eng.pdf
[144] Zareen Iqbal, "Democratic Republic of Congo (DRC): MONUC's Impending Withdrawal", *International Institute for Justice and Development*, (2010). URL: https://www.iijd.org/2021/05/31/democratic-republic-of-congo-drc-monucs-impending-withdrawal/

titled ‘The Responsibility to Protect’. This report marks the origin of the doctrine of responsibility to protect.[145]According to the ICISS report, “the debate about intervention for human protection purposes should focus not on ‘the right to intervene’ but on ‘the responsibility to protect’.”[146]The report contended that “sovereign states have a responsibility to protect their own citizens from avoidable catastrophe, from mass murder and rape, from starvation; but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states”.[147]Thus according to the report, R2P can in some cases lead to humanitarian intervention. However, such an intervention must meet certain conditions, including just cause, the right intention and proportional means employed; it must be the last resort; there must be reasonable prospects of success, and the authority to exercise humanitarian intervention must be obtained from the UNSC.[148]

There are three primary principles embodied in R2P are, responsibility to prevent (to address the causes of conflict); responsibility to react (taking appropriate action, including the use of force); and responsibility to rebuild (to assist in reconstruction, reconciliation, and rebuilding). Nevertheless, the ICISS report clearly states that military intervention must be an exceptional step.[149]Military action should therefore be authorised only as a last resort to avert “large-scale loss of life, actual or apprehended with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large-scale ‘ethnic cleansing’, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape".[150]Thus the principle is closely linked to ‘the right to intervene’ and attempts to bridge the gap between sovereignty and humanitarian intervention.

The Security Council has resorted to the R2P doctrine in several resolutions and humanitarian interventions, including Darfur, Libya, Yemen, Mali, and Sudan. Nonetheless, Responsibility to Protect can be differentiated from humanitarian intervention in two significant aspects. First, humanitarian intervention, in most cases refers to mainly military intervention, whereas R2P

[145] ICISS, “Report of the International Commission on Intervention and State Sovereignty: The Responsibility to Protect,” *International Development Research Centre,* (2001). URL: https://www.globalr2p.org/wp-content/uploads/2019/10/2001-ICISS-Report.pdf
[146] Ibid., note 41 at para 2.29.
[147] Ibid., at para 10.
[148] R Hamilton, “The responsibility to protect: From document to doctrine - but what of implementation?”, *Harvard Human Rights Law Journal* 19 (2006). p. 289.
[149] ICISS, “Report of the International Commission on Intervention and State Sovereignty: The Responsibility to Protect,” International Development Research Centre, (2001), note 41 at para 4.18. URL: https://www.globalr2p.org/wp-content/uploads/2019/10/2001-ICISS-Report.pdf
[150] Ibid at para 4.19.

is a preventative measure that emphasises state responsibilities. Secondly, R2P broadens the scope of action beyond traditional military measures and includes the responsibility to prevent, the responsibility to react and the responsibility to rebuild.

Sovereignty: Its Redefinition and Humanitarian Intervention

Traditional concepts of state sovereignty confine a state's domestic affairs to within the jurisdiction of that state, regardless of its wrongdoings towards its citizens. Yet over the course of time sovereignty has undergone drastic transformations. States have interfered in each other's affairs for ages. One of the earliest attempts at humanitarian intervention was perhaps the British anti-slave patrols on the high seas. In 1827, Great Britain, France, and Russia intervened in Greece, with the aim of alleviating the oppression of Greek Christians in the hands of the Ottoman Empire. The London Treaty[151]maintained that the intervention was motivated by, "sentiments of humanity". While the norm of state sovereignty has not been completely abandoned, it has weakened in recent years. For example, states limit their sovereignty by ratifying international treaties and joining international organisations. Sovereignty is progressively yielding moral ground to the rights and needs of groups and individuals within states, especially when serious human rights violations occur.

This change in priorities has presented the UN with the difficult task of reconciling its foundational principles of member state sovereignty and the accompanying primary mandate to maintain international peace and security for saving "succeeding generations from the scourge of war", with the equally important challenge of safeguarding the interests and welfare of people within those states. The answer to overcoming this challenge is to reimagine sovereignty in terms of its essence being not so much control as responsibility. The reimagining of sovereignty as responsibility has few implications: It means that the state is responsible for protecting the lives of citizens and promoting their welfare. This suggests that national authorities are responsible to their population domestically, as well as to the international community through the United Nations. Thus, this makes the state accountable for its acts of commission and omissions. These developments have led to a progressive shift from a culture of sovereign immunity to that of national and international accountability. This is because of an important change in international thinking about what constitutes the concept of security, extending it beyond states to people. The emphasis has drifted from what sovereign states are

[151] The London Treaty for the Pacification of Greece, (1827). URL: https://sourcebooks.fordham.edu/mod/1827gktreaty.asp

entitled to do to what they are not entitled to while conducting their responsibilities to their citizens. There is clearly a rising gap between the codified best practice of international behaviour as expressed in the UN Charter, which emphasizes the principle of state sovereignty, and actual state practice as it has evolved since the Charter was signed. That gap demonstrates the limits of sovereignty.

Using the term 'protection' in place of 'intervention' makes humanitarian intervention more acceptable, especially to humanitarian relief organisations who have mostly despised the association of the term 'humanitarian' with military activity. Furthermore, talking about the 'responsibility to protect' rather than the 'right to intervene' has the benefit of evaluating the situation from the point of view of victims needing assistance, rather than those who have the capacity to intervene. The responsibility to protect recognises that the primary responsibility rests with the state in question; only if the concerned state is incapable or reluctant to fulfill this responsibility, or is itself the perpetrator of abuses, does it become the responsibility of the international community to act in its place.

The following cases in this study illustrate that while making decisions regarding responding to complex emergencies a shift from the Westphalian conception of sovereignty to sovereignty as responsibility within the UNSC can be observed.

Darfur

In 2003 the Sudanese government was attacked by a rebel insurgency in the Darfur region, resulting in huge losses. The government retaliated by using military force against the rebels and civilian members of their families, as well as by sponsoring Janjaweed's attacks in Darfur villages. In 2008, Sudan's President Omar al-Bashir was charged with war crimes and crimes against humanity by the International Criminal Court. In 2010 charges of genocide were added to the already existing allegations.[152]Security Council deliberations on Darfur outlined the government of Sudan's responsibility towards the people of Darfur but were divided on the Council's responsibility when the government was unable to do so. Thus, Sudan was the first crisis in which the UNSC used the doctrine of responsibility to protect. The passage of Resolution 1556 and Resolution 1564, reflects upon the gradual acceptance of R2P. Resolution

[152] International Criminal Court (ICC), "Press Release: ICC Prosecutor Presents Case Against Sudanese President, Hassan Ahmad AL BASHIR, for Genocide, Crimes Against Humanity and war Crimes in Darfur, (2008). URL: https://www.icc-cpi.int/news/icc-prosecutor-presents-case-against-sudanese-president-hassan-ahmad-al-bashir-genocide-crimes

1564 states "recalling that the Sudanese Government bears the primary responsibility to protect its population within its territory, to respect human rights, and to maintain law and order and that all parties are obliged to respect international humanitarian law."[153]

Resolution 1706 of 2006, was the first to explicitly make reference to "the responsibility of each United Nations Member State to protect its citizens and the international community's responsibility to assist in this if the state could not provide for such protection alone."[154]Thus this marks the beginning of the application of sovereignty as responsibility. However, China, Qatar, and Russia abstained during the vote on Resolution 1706 as a sign of protest against the idea of responsibility to protect. Nevertheless, they did not exercise their veto, highlighting the growing legitimacy of R2P. However, despite the adoption of the responsibility to protect terminology by the Council, the UNSC did not engage in humanitarian intervention in Darfur. This was due to the fact the members failed to reach a consensus about responsibility to protect, as a recognised sovereign state itself was the perpetrator of violence. It is generally more difficult to justify humanitarian intervention against a state perpetrator than it is when sovereignty is itself missing or contended. In the case of Darfur, the Security Council failed to view sovereignty and human rights as complementary due to differences regarding the perception of sovereignty.

Libya

The UNSC employed the doctrine of the responsibility to protect in 2011, in Libya. This was the first instance of the Security Council's official authorisation to use military force against a member state to prevent a perpetrator government from committing human rights abuses. The Arab Spring reached Libya in February 2011. The ruling regime retaliated with violence and repression to initially peaceful protests. The situation swiftly deteriorated into a full-scale war between the opposition and the Muammar al-Qadhafi administration. There was the use of massive force on both armed rebels as well as unarmed civilians. The UNSC deliberations in the case of Libya focused upon the concepts of popular sovereignty and the responsibility to protect, rather than the traditional Westphalian conceptions of sovereignty that prevailed during the 1990s. Resolution 1970 expressly mentions "the Libyan authorities' responsibility to protect "its population" and affirms the Security Council's "responsibility for the maintenance

[153] UN Security Council Res. 1564, U.N. Doc. S/Res/1564, 5040 Mtg., (18 Sept. 2004). p. 2.
[154] UN Security Council, 61st Sess., 5519th Mtg., U.N. Doc. S/PV.5519, (31 Aug. 2006). p. 4.

of international peace and security under the Charter of the United Nations."[155]The Security Council unanimously passed the Resolution, indicating a consensus regarding the state's responsibility to protect. In March, the majority of the Security Council members supported the establishment of the no-fly zone and the authorisation of all necessary means to protect civilians on the basis of R2P. Thus, Resolution 1973 illustrated that the international community was prepared to respond when civilians face grave danger and seek protection.[156] Council members who opposed the Resolution cited their opposition to the means of response, rather than the respond itself. In effect, Resolution 1973 exercised the Council's responsibility to protect but without explicitly affirming it clearly in writing.[157]Thus in the case of Libya, the Security Council viewed sovereignty norms and human rights norms as complementary, allowing the justification of humanitarian intervention as compatible with the protection of Libyan sovereignty. This was achieved by identifying the source of sovereignty not in the Libyan government but in the Libyan people. Libya validates the idea that sovereignty norms are being reconceptualised at the UN with an understanding that state sovereignty encompasses both responsibilities as well as legitimacy.

Sovereignty in the Security Council Post-Libya

A preliminary examination of Security Council responses to conflicts after Libya appears to confirm Libya's lessons. The Council's failure to authorise humanitarian intervention in Syria made a few scholars and practitioners raise doubt regarding the feasibility of R2P. However, despite the lack of humanitarian intervention, human rights concerns and sovereignty as responsibility were frequently mentioned in Council deliberations about Syria.[158]Furthermore, the UNSC has authorised the use of "all necessary measures" to protect civilians under Chapter VII of the Charter in Security Council Resolutions on Côte D'Ivoire, Mali, and Central African Republic. In each case, the UNSC reaffirmed the responsibility to protect. Thus, since the beginning of the twenty-first century sovereignty is being recognised as incorporating responsibility for protection by Council members.

[155] UN Security Council Resolution. 1970, U.N. Doc. S/Res/1970, (2011). p. 1, 2. URL: https://www.un.org/securitycouncil/s/res/1970-%282011%29
[156] UN Security Council, 66th Sess., 6498th Mtg., U.N. Doc. S/PV.6498, (17 Mar. 2011). p. 9.
[157] UN Security Council Resolution 1973, U.N. Doc. S/Res/1973 (17 Mar. 2011). p. 1.
[158] UN Security Council, 69th Session Resolution 2165, U.N. Doc. S/RES/2165 (14 July 2014).

Selectivity of UN Action

Over the past few decades, the Security Council has deployed peacekeeping operations and authorised and carried out military interventions in response to various humanitarian crises across the globe. However, the UNSC's response has been often criticised as exceedingly selective. It has responded more forcefully to some humanitarian crises than to others. This question raises the important issue of what factors account for this variation. Why is the Security Council occasionally prepared to deviate from traditional Westphalian ideas of sovereignty in some cases of rights violation, yet often unwilling to contravene them in similar situations?

Given the complexity of intervention decisions, these decisions are not governed by any single cause, but rather by a combination of objectives. It thus becomes necessary to examine which combinations of conditions are sufficient for the Security Council to authorise intervention. The December 2004 report of the High-level Panel on Threats, Challenges, and Change, entitled 'A More Secure World: Our Shared Responsibility,' recommended that the Security Council "adopt and systematically address" a set of agreed guidelines for deciding whether or not to authorise the use of force and emphasised the need for "good conscience and good sense." It enumerated the "five basic criteria of legitimacy," namely seriousness of threat; proper purpose; last resort; proportional means; and balance of consequences.[159] These references are however general in character, and the Security Council usually makes decisions based on the practical situation, often ignoring these recommendations.

Past cases of conflicts and humanitarian interventions suggest that there are two causal indicators that determine humanitarian intervention. A large extent of human suffering and significant previous involvement in a crisis by international institutions may be identified as the key explanatory conditions for UN intervention. However, for the UN to take decisive action, normally these conditions must also be accompanied by either negative spill over effects to neighbouring regions or low capabilities of the target state. None of these requirements are necessary or sufficient on their own but combined they explain why the Council responds more forcefully to some crises than to others.

With the 'primary responsibility for the maintenance of international peace and security' (Article 24 of the UN charter) and the authority to determine whether a situation is a 'threat to

[159] UN Secretary-General, "Note by the Secretary-General to the UN General Assembly: Follow-up to the Outcome of the Millennium Summit," A/59/565, 2 (2004). paras 205, 207

international peace and security' (Article 39), under Chapter VII, the Security Council may opt for coercive action, including the collective use of force (Article 42) and the imposition of sanctions (Article 41). Furthermore, the UNSC can also authorise military humanitarian interventions under Chapter VII which permits the use of force. Similarly, the Council may also decide to undertake non-coercive actions, including observer missions, or deployment of humanitarian aid in order to restore peace and stability. Finally, the UNSC might also resort to complete inaction.

It has been often contended that the decision of intervention or non-intervention in conflicts is highly influenced by the interests of its most powerful members, particularly the 'veto power' holding members. Nevertheless, as Gilligan & Stedman argue since the permanent five member's consent is necessary for any Security Council action, such a thesis tends to 'approach tautology'.[160] The more important question is what conditions encourage these interests and manage to get the support of this powerful group?

Explanatory conditions for UN intervention / Considerations

It is thus important to ascertain whether any specific criteria or a combination thereof, contribute to a better explanation of selective UN intervention.

Normative considerations

Constructivist studies on intervention highlight the fundamental shift in the normative environment as well as humanitarian concerns as incentives for outside intervention. The rise in humanitarian interventions is mainly due to the emerging norms of human security and rights over and above the traditional principles of sovereignty in cases of CHEs.[161] The responsibility to protect principle has further strengthened these norms. Even the sceptics agree that UNSC members have felt a 'humanitarian impulse'[162]when confronted with incidents of widespread human sufferings. While normative considerations alone fail to explain selectivity for humanitarian intervention, it suggests that intervention decisions depend on the severity of a crisis.[163] Higher the level of human suffering, the greater the moral pressure to intervene and

[160] Michael J Gilligan, Stedman J Stephen. "Where Do the Peacekeepers Go?" International Studies Review 5, no. 4 (2003). pp. 39–40. URL: http://www.jstor.org/stable/3186392.
[161] Nicholas, J Wheeler, "Saving Strangers: Humanitarian Intervention in International Society," *Oxford University Press.* (2002). p. 27.
[162] Thomas G, Weiss, "The humanitarian impulse", In David M Malone (ed.) *The UN Security Council: From the Cold War to the 21st Century*, Boulder, CO: Lynne Rienner. pp. 37–54.
[163] Jane Boulden, "Double standards, distance and disengagement: Collective legitimization in the post-Cold War Security Council." Security Dialogue 37(3), (2006).p. 419. URL: http://www.jstor.org/stable/26299515.

help the needy. However, while massive human suffering is a necessary criterion for intervention, it is not sufficient.

Status of sovereignty

In cases where the state authorities are identified as illegitimate actors, the course of humanitarian intervention becomes more likely. Humanitarian intervention usually occurs in circumstances when sovereignty is either believed to be contested or absent or weak. Where sovereign authority in the target state is seen as lacking; it becomes easy for the Council to justify an intervention. Similar is the case of a weak sovereign, where it could benefit from protection; or where sovereignty is contested and the existing governing authorities are deemed illegitimate and sovereign authority is conceptually transferred to the people of that state. In each of these cases, Council can justify a humanitarian intervention with ease. On the other hand, if the perpetrators of violence have their sovereign authority uncontested and thus deemed legitimate by the Security Council, humanitarian intervention is unlikely to become politically possible. In this context, the protection of civilians through the use or threat of force would conflict with the protection of state sovereignty through the principle of domestic non-intervention.

Media attention

Pressure to come to the rescue of human suffering in conflict situations, may be influenced not just by the 'real extent' of a crisis but also by its perceived magnitude. The decision to intervene in humanitarian crises is affected by the extent of international media attention on a particular conflict.[164]Media coverage often helps in producing international pressure for action to address man-made disasters. This is usually done by either of the two following ways. Firstly, via mass media coverage, citizens and decision-makers can identify with, or develop empathy for, the victims of conflicts and humanitarian emergencies. Secondly, more extensive media coverage ensures that a larger public creates pressure upon decision-makers who, act strategically, to avoid reputational damage from inaction. However, doubts can be raised about the effects of media coverage. They contend that media coverage follows foreign policy decisions rather than the other way round. Furthermore, there has been non-intervention despite widespread media attention; or that media coverage might, through sensationalisation and fearmongering

[164] Piers Robinson, "The CNN Effect Reconsidered: Mapping a Research Agenda for the Future." *Media, War & Conflict* 4, no. 1 (2011). pp. 3–11. https://doi.org/10.1177/1750635210397434.

dissuade rather than encourage intervention.[165]Thus, media coverage, though important is not 'sufficient on its own to cause intervention and is unlikely to even be a necessary factor in causing policymakers to act'.[166]

Spill-over effects and countervailing power

Spill-over effects emanating from a crisis is important in this regard. The greater the spill-over, the larger the extent of threat it is to international peace and security. Spill-over often results in refugee flows, international terrorism, or economic downturn which produce negative consequences for neighbouring countries. The second important factor is the ability of potential target states to provide countervailing resistance against outside intervention. The greater the extent of such strength, the greater the costs and risks of intervention. Furthermore, target states might also resist UN action if they are themselves or are allied with a permanent five-member or any other powerful state that can use its political influence in the Council to prevent UN intervention.

International community's previous involvement in a crisis

Depending on the extent to which regional or international institutions have previously been involved in a humanitarian emergency, the desire to secure these investments by sustained or greater commitment is considered a powerful motive for UN action. Yet, while previous involvement might explain why certain established policies and institutional arrangements may persist, they do not account for why these particular policies were adopted in the first place.

Conclusion

Thus, these findings reveal that distinct trends can be identified in the way the UN responds to humanitarian emergencies. While every crisis is unique, the Security Council's responses to them are not random. Rather, the Council selects crises for intervention based on specific causal factors. Moreover, none of these conditions are individually necessary or sufficient for a UN intervention. In combination, however, they provide for a powerful and sufficient explanation of variation in UN humanitarian intervention. Thus, the prospect of humanitarian intervention involves a combination of competing factors, principles, interests, motivations, and trade-offs.

[165] Ibid.
[166] Piers Robinson, "Operation Restore Hope and the Illusion of a News Media Driven Intervention." *Political Studies* 49, no. 5 (2001). p. 942. https://doi.org/10.1111/1467-9248.00348.

CHAPTER V

THE INTERNATIONAL HUMANITARIAN SYSTEM IN COMPLEX EMERGENCIES: THE ROLE OF THE INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT

The chapter examines the role of the International Red Cross and Red Crescent Movement in complex humanitarian emergencies and in the development of international humanitarian law (IHL). The chapter focuses on the International Committee of the Red Cross (ICRC) as it has a major role to play in the development and evolution of International Humanitarian Law. Moreover, it is one of the primary organisations involved in the humanitarian response to complex humanitarian emergencies. Thus the nature of the Red Cross as a transnational movement, its resources and its overall impact on world politics has been examined.

The second part of the discussion focuses on the principle of neutrality, which is the cornerstone of the Red Cross Movement. It examines the organisation's navigation of neutrality through changes in global politics. A contrast is also made with Médecins Sans Frontières' idea of neutrality.

ICRC and the International Red Cross Red Crescent Movement

The inception of the Red Cross

The Red Cross owes its origin to the 1859 Solferino war, where France and Italy battled against Austria. Henri Jean Dunant, a Swiss banker and industrialist, was horrified with the sights of suffering in one of the bloodiest battles which had been fought up to that time between European nations. These sights made him actively propagate a humanitarian plan to prevent a repetition of such sufferings in the future. Dunant's plan was supported among others, by a committee of five members of a movement known as the Geneva Society for Public Welfare. Together, they called for an international conference. The conference, which met in Geneva in 1863, was attended by delegates from sixteen European countries. It resulted in a statement that provided for the formation of a committee in every country that would cooperate with the

army's medical service in times of war, and, with the consent of their respective governments, prepare material and personnel in times of peace. Thus, the foundation for the Red Cross movement was laid down which has continued to this day and is recognised in all countries.

However, this conference had no power to implement its proposals. Therefore, steps had to be taken to convince governments to agree to these plans in a formal manner. A diplomatic conference of accredited government representatives was convened in Geneva in 1864. The conference was attended by twenty-six delegates from sixteen countries. Their deliberations resulted in the formation of the Geneva Convention of that year. Its primary object was to give recognition to the principle that it is the duty of combatants to collect and care for wounded soldiers, irrespective of nationality. Furthermore, the wounded in time of war, the ambulances, and hospitals in which they are placed, and the medical and auxiliary staff attending them, are to be always and in all circumstances considered neutral. As the emblem of this neutrality, the symbol of the Red Cross movement was adopted. Later, the Geneva Convention of 1864 was modified and extended in subsequent conventions.

Organisational structure

The International Committee of the Red Cross, is one of the most unique and well-renowned humanitarian actors, having received four Nobel Peace Prizes. The Movement comprises of three main components: the International Committee of the Red Cross (ICRC); the International Federation of Red Cross and Red Crescent Societies (IFRC); and at the country level National Red Cross and Red Crescent Societies (National Societies). Each component has different tasks and areas of expertise but are based upon the same fundamental principles. It has about 192 national bodies with individual membership of about 97 million persons. Legally the organisation is a Swiss private association but is recognised in public international law.

The organisation of the movement is thus complex. The original Red Cross agency, now called the International Committee of the Red Cross (ICRC), is still all Swiss in composition and exists in addition to the Swiss Red Cross. The ICRC recognises new national societies on behalf of the movement. This is an indication of the exercise of centralised authority within the movement. The ICRC is also the 'guardian' of Red Cross principles and has become the 'direct protection agent' and 'neutral intermediary' for the movement.[1] After the First World War, the

[1] Jacques Freymond, "The International Committee of the Red Cross Within the International System," *International Review of the Red Cross,* No. 134 (1972).pp. 255-60.

ICRC was joined by a federation of national societies, the League of Red Cross Societies. Today, this body is known as the International Federation of Red Cross and Red Crescent Societies (IFRC). The ICRC, the IFRC, and national societies comprise 'the International Red Cross' and meet, in principle, every four years at the Red Cross Conference. The Conference is only a deliberative body and is mainly concerned with procedural matters.

At the international level, the Red Cross movement is further complicated by the fact that governments signatories to the Geneva Conventions have full membership in the Conference, despite not being members of the Red Cross movement. Besides the legal considerations, governments provide a majority of the monetary and material resources for conflict-related transnational Red Cross activities. However, the Red Cross is more independent at the international level than at the national level. This is because governments do not have the power to dictate policy to the ICRC. Thus, the Red Cross is a complex and disjointed transnational movement.

However, the organisation has an international legal status, distinct from that of non-governmental organisations (NGOs) and comparable to that of international intergovernmental organisations such as the United Nations. Some legal protection is also granted through agreements with state governments. For instance, immunity from certain legal processes as well as protection of its premises, documents and data from being accessed for criminal prosecution purposes. As a result of this unique mandate, the ICRC has a special place in the UN coordination system, where it is recognised as an observer despite not being a full member. Thus, the ICRC works with but is not coordinated by the UN-led coordination institutions. This makes it possible for the Red Cross to perform even when state governments cannot or can only do so with several obstacles from which the Red Cross is free. The ICRC also seeks regular interaction with the UN and other organisations both on the ground and institutionally in order to improve the overall humanitarian response. Beyond its special mandate under IHL, the rationale for the ICRC's niche is anchored in its expertise in conflicts as well as its approach to security management, which is in turn based on acceptance of parties to a conflict. Thus, the ICRC is perceived by all sides to be neutral, independent and impartial. As a result, it enjoys the unique position where it can operate alike in hostile as well as neutral countries in the name of humanity for the alleviation and prevention of the suffering which all conflicts bring.

The Assembly of the International Committee of the Red Cross

A committee of five private Swiss citizens was appointed in 1863 by the Geneva Society of Public Welfare to examine the proposals of Henry Dunant, which ultimately led to the formation of the Red Cross movement. That Committee described itself as the International Committee and was asked by the Conference to work towards the maintenance and development of mutual relations between the national central committees. To this day this committee continues to serve as the guardian of fundamental Red Cross principles. The national Red Cross Societies have no vote in its composition and it continues to be composed even today, of fifteen to twenty-five Swiss citizens.

The Assembly is the supreme governing body of the ICRC and supervises all ICRC's activities. It is responsible for formulating policies, defining objectives, creating strategies, and approving financial transactions. Moreover, it is the official medium of the Protecting Power, which is the governmental channel of communication between belligerents. Additionally, under the terms of the Prisoners of War Convention, it is also called upon to undertake administrative work. Thus, this neutral, self-elected Swiss body holds a unique position in the Red Cross movement. Also, commendable is the acceptance that it has obtained from national Red Cross Societies because of its strict adherence to the Red Cross principle of neutrality and of its understanding of the peculiar responsibility which it bears, especially in times of war.

International Federation of Red Cross and Red Crescent Societies

In the field of international relief work in times of peace, it was felt that the resources and expertise that the National Red Cross societies had developed during the war should be preserved and utilised in times of peace as well. Thus, a new international Red Cross organisation was established while the peace negotiations were in progress in Paris after the First World War. The name of this organisation was the League of Red Cross Societies, today known as International Federation of Red Cross and Red Crescent Societies (IFRC). Its articles of association were adopted on May 5, 1919. The articles provided that the League shall be non-political, non-governmental, and non-sectarian. It was mandated to promote in every country in the world the establishment and development of a national Red Cross organisation with the purpose of improvement of health, prevention of disease and mitigation of suffering throughout the world. It was also obliged to provide a medium for coordinating relief work in case of great national or international calamities.

The original members of the League were the American, British, French, Italian and Japanese National Red Cross Societies. The membership of the organisation expanded rapidly and today the IFRC consists of 192 Red Cross and Red Crescent Societies. The control of the affairs of the IFRC is vested in the IFRC Secretariat of around 2500 staff responsible for the day-to-day running of the IFRC which is directed by the Secretary-General. The highest decision-making body of the IFRC is the General Assembly which consists of representatives of all the National Red Cross organisations which are members of the IFRC. It also has a Governing Board which meets twice a year and appoints the Secretary General. It has representatives from 20 elected member National Societies, five Vice-Presidents and one President.[2]

The organisational culture of the ICRC

The dominant ICRC culture has always been primarily orthodox. The organisation has a strong belief in the validity of its principles. It is a major advocate of proceeding slowly and cautiously with the approval of the state. This it holds, is the reason for its special status in the field of humanitarianism. Since its past record in getting access to conflict victims has been rather successful, the ICRC believes that there is no reason for a fundamental change in its character and policies. The organisation's accomplishments are a testimony in itself to the validity of ICRC policies. However, there have also been multiple instances where these statistics have failed to justify ICRC's hesitance in accepting change.

In 2002 ICRC created a Director General, with the responsibility, to improve the organisation's effectiveness in day-to-day humanitarian activities. The 1970s Tansley study had recommended the ICRC to ''open the windows'' and stop being such a secretive organisation.[3] The organisation took decades to implement these recommendations by consulting more with outside parties and increasing its own transparency. For instance, it finally opened its archives to the public in 1990, though subject to the forty-year non-access rule. This move compelled the Red Cross to deal more honestly with its history, as observers wrote independent studies on its activities for the first time. Additionally, in 1996 the ICRC opened the International Review of the Red Cross, under the editorship of Hans-Peter Gasser, to more diverse topics.

[2] IFRC, "People and Culture." URL: https://www.ifrc.org/who-we-are/people-and-structures/ifrc-governance/governing-board

[3] Joint Committee for the Re-Appraisal of the Role of the Red Cross, Donald D Tansley, "Final Report: An Agenda for the Red Cross," Red Cross, Geneva, (1975). p. 111

Since then, the Review has published a wide range of opinions on different issues relating to humanitarian activities, sometimes even criticising the organisation itself.

However, The ICRC's Annual Report for 2002 noted, that the ICRC still faced many issues about its communication policy, and that its visibility in international relations was still problematic.[4] Thus in matters regarding openness and transparency, the organisation has only moved very hesitatingly. It has accepted modifications only when the realities of the world compelled it to do so. From 1996 to 2002 the ICRC undertook the 'Avenir' process, in which it reviewed its mandate, strategy and tactics in the light of the future. Not surprisingly, it reaffirmed much of its fundamental mandate. Furthermore, the ICRC's budget process is bottom-up, starting with reports from sub-delegations and delegations in the field. Also, when the organisation contemplates suspending its visits to places of detention, it usually consults with the detainees involved.

Thus overall, today's ICRC is evidently more open and transparent than it has ever been in its long history. It is more conscientious about maintaining its independence, neutrality, and impartiality. It has adopted a performance-based evaluation to measure the substance of its humanitarianism. However, many policy choices necessitate contextual judgment, rather than quantified reports. Nonetheless, it cannot be denied that the ICRC has made some efforts at becoming more transparent. In the past, knowledge about the organisation's activities were mostly limited to official ICRC publications and statements. This enabled the organisation to conceal a variety of errors, lethargies, deviations from neutrality, and so on, avoiding a critical examination of its self-proclaimed independence, neutrality, impartiality, and effectiveness. For ICRC to retain its position of leadership, it was necessary to rectify this secrecy and come out in open about all its strengths as well as weaknesses. A more serious examination of its history, a more scrutinising media spotlight, and increased competition from other similar actors have led to a better ICRC.

Relations with the national Red Cross and Red Crescent societies and their International Federation

The Red Cross Movement has always been a very fragmented movement, especially since World War I. Its beliefs in the principles of independence and neutrality caused it to give priority to its own position as opposed to co-ordinated action with the national societies. The

[4] ICRC, "Annual Report 2002," ICRC, Geneva, (2003). pp. 11–13. URL: https://www.icrc.org/en/doc/resources/documents/annual-report/icrc-annual-report-2002.htm

organisation did not really approve of the formation of the International Federation of Red Cross and Red Crescent Societies, after the First World War. For a long time, it tried to keep a distance from it. As part of a direct challenge to ICRC leadership of the Movement, Henry P. Davison, then President of the American Red Cross, pushed the Federation in a way that violated various Red Cross ideals. This was followed by other Federation leaders, who were dissatisfied with the ICRC's leadership position.

There has however been some genuine co-operation within the Movement as well. Examples include its efforts during the Second World War, the Vietnam War and the Balkan wars. However, it was only after the Cold War that the ICRC realised that to survive as a significant humanitarian organisation it would have to utilise the resources of the entire Movement. In Yemen, for instance, the ICRC and the IFRC have been working together to provide humanitarian aid to people affected by the conflict, including distributing food, water, and medical supplies to those in need. In addition, the ICRC and IFRC have also been conducting training sessions for local authorities, armed groups, and volunteers on the principles of international humanitarian law.[5]

Surprisingly by late 2003, ICRC's dilemma was not an assertive Federation but rather a weak Federation facing financial crisis. To regain their visibility in the humanitarian scene many national societies designed their own operation during the US invasion of Iraq in 2003. This resulted in a lack of coordinated action with the ICRC, disregarding the 1997 Seville Agreement, which guaranteed a leadership role to the ICRC within the Movement in armed conflicts. After the war ended in Iraq in 2003, many of the national societies, in opposition to the ICRC's opinion wanted to undertake constructive relief projects. However, ICRC's caution proved to be correct when in October 2003 there was violent attack on ICRC headquarters in Baghdad.[6]

In 1973 the ICRC teamed with the Federation at the International Conference of the Red Cross and Red Crescent, where it concluded that the two Geneva bodies have the right to review the statutes of national societies. This initiative was widely opposed by some of the important national societies. Nevertheless, the Conference finally adopted a diluted version of the original proposal. However, these initiatives did not amount to much in reality. ICRC'S problem of

[5] ICRC, Red Cross and Red Crescent relief aid in Yemen, International Committee of the Red Cross, (2015). URL: https://www.icrc.org/en/document/red-crossred-crescent-relief-efforts-yemen
[6] Christophe Lanord, ''The legal status of National Red Cross and Red Crescent Societies'', *International Review of the Red Cross,* Vol. 82, No. 840 (2000). p. 1056.

getting national societies to conform with the Red Cross principles continued. In 2013, the Syrian Arab Red Crescent (SARC), came under criticism for their perceived bias towards the Syrian government. This led to concerns that SARC was not providing equal access to aid for all people affected by the conflict, regardless of their political affiliation. The ICRC, with its adherence to the principle of neutrality, had to navigate this delicate situation by trying to provide aid to all people affected by the conflict. The ICRC faced criticism from some quarters for working with SARC. The ICRC responded by stating that they were committed to providing aid to all people affected by the conflict, regardless of their political affiliation, and that they were working closely with SARC to ensure that aid was distributed impartially. However, the situation highlighted the challenges that can arise when working with local Red Cross National Societies in conflicts, particularly when there are concerns about their impartiality.

Thus, today the ICRC and the Federation attempt to review National Societies through a joint ICRC–Federation Commission, where they focus on statutes and rules for recognition and admission, thus providing the Movement's review of national society policies. With time the ICRC's stress has shifted towards the building of 'constructive engagement' with non-complying national societies.[7] Currently, the ICRC spends a major portion of its annual budget on national society development. However, this policy of constructive engagement would not be very useful in cases where a national society is adamant about being loyal to its national patron during a conflict. In such cases, there is not much that the ICRC, the Federation, or the International Conference of the Red Cross and Red Crescent can do. Thus, the Red Cross Movement is destined to remain fundamentally fragmented, at least in the near future. However, the efforts towards better cooperation reflect a step in the right direction.

ICRC and the Development and Evolution of IHL

Since its foundation, the ICRC has had dual objectives, that of providing humanitarian assistance to the victims of armed conflict, based upon the principle of neutrality and independence, and to make efforts towards greater compliance and development of international humanitarian law.

Thus, the ICRC has thus described its mission as: "The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the Geneva Conventions and the

[7] ICRC, "Policy on ICRC co-operation with National Societies", *International Review of the Red Cross*, Vol. 85, No. 851 (2003). pp. 663–78.

International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence."[8]

Henry Dunant, the founder of the Red Cross Movement was the first to suggest that states should adopt a convention protecting the wounded soldiers and those who come to their aid. This led to the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field in 1864. This Convention can be seen as the inception of modern IHL. New Conventions protecting the shipwrecked and prisoners of war were concluded in subsequent period in 1906, 1929 and 1949. On 12 August 1949, four Geneva Conventions were signed. These are:

1. The Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field;
2. The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;
3. The Geneva Convention relative to the Treatment of Prisoners of War; and
4. The Geneva Convention Relative to the Protection of Civilian persons in Times of War.

Subsequently, these four Geneva Conventions have been supplemented by two Additional Protocols on 8 June 1977:

1. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of the Victims of Internal armed Conflict (Additional Protocol I)
2. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II)

Sui generis status

In accordance with the Statutes of the Red Cross Movement, the ICRC has *sui generis*, that is, "a status of its own.[9]" Unlike non-governmental organisations, the ICRC's recognised legal status allows it to sign agreements with states in matters relating to the provision of personnel, premises and diplomatic protection.

[8] ICRC, ICRC mission statement.URL: https://www.icrc.org/en/who-we-are/mandate
[9] ICRC, "Art. 5(1): Statutes of the International Red Cross and Red Crescent Movement," (1986). URL: https://www.icrc.org/en/doc/assets/files/other/statutes-en-a5.pdf

ICRC'S Legal Status

The legal source of ICRC's action stems from the provisions of the IHL, state practice and the Statutes of the Red Cross Movement. In accordance with the IHL, states engaged in armed conflict must grant the ICRC access so that it can perform the humanitarian functions it is assigned by the Geneva Conventions. These functions include:

1. Acting as a substitute for or complementing the actions of Protecting Powers

In cases where the opposing groups are unable to agree upon any Protecting Powers, the ICRC may serve as a substitute for Protecting Powers.[10]

2. Access to prisoners of war and other protected persons

The ICRC has the mandate under the IHL to visit prisoners of war. Moreover, the ICRC must be given access to visit civilians protected under the provisions of the Fourth Geneva Convention detained at any place within the territory of a state, and in territories under the opponent's control.[11] During these visits, ICRC ascertains that the humanitarian needs of these persons are met and their treatment is in accordance with international humanitarian law.

3. Central Tracing Agency

The Central Tracing Agency whose mandate is recognised in the 1949 Geneva Conventions is managed by the ICRC. The Agency aims at tracking missing persons, especially children in order to restore family links broken by violent conflicts.[12]

4. Humanitarian assistance

States engaged in conflict are bound by the IHL to allow and facilitate the delivery of impartial humanitarian relief in areas both within and outside their control.[13] While this right is given to all neutral humanitarian organisations, ICRC's special mandate of access to victims of armed conflict gives the organisation a unique advantage.

[10] Geneva Conventions I–III, Art. 10.
[11] Geneva Conventions IV, Arts 76(6) and 143.
[12] Geneva Conventions III, Art. 123
[13] Geneva Conventions IV, Art. 23

5. Guardian of IHL

The ICRC has been accorded the status of "guardian of IHL" by the 1949 Geneva Conventions and Additional Protocol I. However, since the ICRC shares many of the tasks assigned by the Geneva Conventions with other humanitarian organisations, it would not be wrong to say that ICRC's legally recognised status has been strengthened through state practice and is not based solely upon the Geneva Conventions.

6. To increase awareness about the IHL

In order to increase awareness and foster respect for the IHL, the ICRC regularly conducts training courses and workshops in this regard.

7. The right of humanitarian initiative

Other than the tasks specifically assigned to the ICRC in the context of armed conflicts, the 1949 Geneva Conventions and Additional Protocol I also gives the ICRC the right to "carry out any other humanitarian activities in favour of these victims, subject to the consent of the Parties to the conflict concerned."[14] This provides the ICRC the flexibility to decide the humanitarian activities it considers most suitable in a particular situation. While it is not mandatory for states to accept these offers of service from the ICRC, it is expected that they would consider them in good faith.

Thus in order to fulfil its mandate under the IHL, the ICRC attempts to, firstly, prevent IHL violations through its presence in an armed conflict. It does so by constantly reminding warring factions of their obligations under IHL and holding training sessions to increase awareness about IHL. Secondly, in case IHL has been violated, ICRC all possible means to end them and prevent their recurrence. In extreme cases, this might also include public condemnation. Thirdly, the ICRC makes an effort to reaffirm and strengthen IHL, in light of the changing nature of warfare.

ICRC's Relations with Judicial and Quasi-judicial Investigating Authorities

ICRC in accordance with its principles does not provide testimony with regard to legal investigations relating to IHL violations during armed conflicts. However, the organisation

[14] Additional Protocol I, Art. 81(1).

regularly engages with judicial and quasi-judicial authorities on issues relating to the general implementation, application and interpretation of international humanitarian law.

Development of IHL

The ICRC, through its Advisory Service on International Humanitarian Law, offers states assistance in incorporating IHL obligations into their national legislation and institutions. Furthermore, the ICRC regularly organises and participates in discussions regarding the potential adoption of new laws, in light of changing political realities. It does so by preparing, or contributing to drafts to be considered by relevant international bodies. Even the 1949 Geneva Conventions and their Additional Protocols of 1977 were drafted with significant ICRC assistance and contribution.

Thus the International Committee of the Red Cross (ICRC) as the 'guardian' of the IHL constitutes a major actor outside the UN system to implement and operationalise the IHL for

Operation of The Red Cross

The Red Cross has a plethora of different responsibilities to fulfill. Aside from responding to natural disasters and providing health and welfare services, the Red Cross performs 'protection and assistance' functions in complex emergencies. Protection and assistance from the Red Cross lack a precise definition. During armed conflicts both are frequently combined into a single process of attempting to assist individuals.

Insofar as conflicts are concerned, the functional roles of the Red Cross are three:

1. To assist in the development of the law of armed conflict in order to legalise humanitarian values;
2. To aid in law application; and
3. To assist individuals in a non-legal manner outside of an armed conflict.

The Red Cross has played a significant role in the development of international humanitarian laws. It has attempted to get those laws applied for the benefit of prisoners of war, civilians, wounded and sick military personnel, and individuals affected by conflict. It has also attempted to help individuals such as political prisoners, hostages, and others beyond war zones.

Red Cross and Red Crescent National Societies teams deployed across borders must follow certain rules and the fundamental principles of the Movement. This includes guidelines on

coordinating and cooperating among themselves and with other actors. These principles are different from channels of access and influence, as well as from operational tactics. There are three operational principles. Firstly, the Red Cross claims itself to be non-political and impartial. Secondly, the Red Cross has traditionally taken a cooperative rather than a confrontational approach to governments. Thirdly, the Red Cross in conflicts has been a discreet actor and has avoided making public disclosures of its activities, rendering it better accepted by states in future conflicts.

The ICRC has dealt with even flagrant violations of the law of armed conflict or widely accepted humanitarian principles without disclosing the details. Only some general statements and reports are issued. Apart from the principles, owing to the loosely knit structure of the movement, the ICRC can utilise a variety of channels to protect and assist individuals trapped in armed conflicts. This task of assisting victims of conflicts becomes more plausible owing to the ICRC's right of automatic access to certain individuals like prisoners of war and civilian detainees because of the content of international humanitarian law.[15] While this legal right grants it some importance, it has at times proven very difficult to implement, thus making the ICRC seek access to individuals primarily by a voluntary grant of such access by nation-states than by claims to automatic right.[16] For securing voluntary access to individuals who may need third-party protection or assistance, the ICRC can act through national societies, obtaining introductions to key governmental officials, information, or logistical support. Or it may even utilise the Secretariat of the IFRC for these purposes. At certain times, the ICRC finds it useful to bypass all channels in the movement and deal directly with governments or other detaining authorities such as terrorists' groups. Once access is gained, the same channels are available for exerting influence. It has often been contended that the ICRC has not utilised the full potential of its influence and channels. However, even if one agrees with the view that the ICRC has failed to utilise its full potential of influence, it has still gained more access to victims in political conflict than any other organisation.

Many states support the role of the ICRC and willingly grant it access. The ICRC holds that both detainees and central authorities, benefit from this. This is because violations of IHL against war prisoners are usually done at the hands of the middle or lower-ranking officials of the state. As a result, the ICRC functions similarly to an ombudsman, seeking a non-legal

[15]Third Geneva Convention of 1949, Article 126; Fourth Convention, Article 143.
[16] David Forsythe, "Who Guards the Guardians: Third Parties and the Law of Armed Conflict," *American Journal of International Law*, Vol. 70, No. 1 (January 1976). p. 44.

resolution to problems arising from national administration, without challenging either law or general policy, and reporting back to established authority for the final resolution of a problem. The ICRC's primary tactical approach is that of friendly persuasion appealing to moral grounds. At times the ICRC appeals to the self-interest of states, as well as to legal argument. Thus, claiming to be impartial, cooperative, and discreet, having many channels through which to act, and emphasising moral approaches, the ICRC on behalf of the Red Cross movement is an actor whose presence is acknowledged by most in world politics.

Red Cross resources

In performing its activities during conflict situations, the Red Cross makes extensive use of two resources, namely, efficacy and integrity. However, owing to its subjective character, it is difficult to precisely define or measure these resources. An investigation of the functional roles begins with legal developments. The ICRC was instrumental in the drafting of the 1949 Geneva Conventions. It worked closely with governments and experts from around the world to develop a comprehensive set of rules that would protect the lives and dignity of all those affected by armed conflict. Later, in the mid-1970s the ICRC was used as a drafting secretariat for supplementing the 1949 Geneva Conventions. However, critics have had a mixed reaction to ICRC's role as a drafting secretariat.[17]

In relation to the ICRC and the application of the humanitarian law, very little is known about efficacy. There is no detached observer to analyse and record if some other organisation might have acted more efficaciously. This is due to ICRC's discretion provided by the international humanitarian law. However, there are a few exceptions. For instance, many Israeli prisoners of war held in Syria in the mid-1970s acknowledged an improvement in their condition following ICRC visits.[18] Similarly, Guantanamo Bay detention facilities in Cuba, have reported improvements in their conditions following ICRC visits in 2002.[19]

Through such instances of historical evidence, we can create some idea of the efficacy of the Red Cross in the application of the law of armed conflict. However, the international law on armed conflict is vast, and the Red Cross's activity is varied; thus, coming to a general

[17] R. R. Baxter, "Humanitarian Law or Humanitarian Politics," *Harvard International Law Journal,* Vol. 16, No. 1 (1975).p 6.
[18] New York Times, "P.O.W.'s Back in Israel Charge Cases of Brutality," *New York Times* (June 8, 1974). p. 3. URL: https://www.nytimes.com/1974/06/08/archives/pows-back-in-israel-charge-cases-of-brutality.html
[19] Stephanie Nebehay, "Guantanamo conditions improve under scrutiny: ICRC", Reuters, (2009). https://www.reuters.com/article/us-aid-cross-guantanamo-idUSTRE57A45Z20090811

conclusion is difficult. If it is accepted that the ICRC is relatively successful in improving detention conditions, one can raise questions about other aspects of the law, such as material assistance to non-detained civilians. Similarly, even less is known about the Red Cross effectiveness in relation to political prisoners and other individuals not covered by the international humanitarian law.

With regard to integrity, there has never been any historical evidence that suggests that the ICRC acted on any motivation other than that of humanitarian assistance. Similarly, there is also no evidence of the ICRC acting on the basis of political considerations. Thus, the positive image of the Red Cross in conflict situations does not seem to be in doubt, although the effectiveness ascribed to the Red Cross varies according to the specific role performed. It has a very favourable reputation for efficacy and integrity in cases of protection and assistance to detainees, somewhat lower for assistance to mass civilians, and probably lowest for its efforts on behalf of the development of law.[20] Despite the difficulty of establishing any precise conclusion, it appears clear that the general reputation of the Red Cross for efficacy and integrity is favourable for a vast majority of opinions.

Criticisms of the Red Cross

In the contemporary world, the ICRC has made a name for itself as a neutral humanitarian body in conflicts, but it is not free from controversies and challenges. Its activities since its very inception have presented a complex picture full of paradoxes. There have been times in the past when it proved not to be as independent, neutral, and impartial as is commonly portrayed. To rectify this situation, the ICRC has, especially since about 1970 made important changes in its structure and functioning. It attempts to achieve liberal ends using conservative means and advocates individual welfare but progresses cautiously with state consent, which sometimes results in slowing the operation. It claims to be non-political but is intrinsically linked to humanitarian politics. It supports the IHL but avoids giving public legal statements. It is based on Western ideals but presents itself as a secular and global organisation. It is an international network that is supposedly dedicated to universal humanitarianism but has a history of strong Swiss nationalism. It emphasises a narrow mandate but has broadened its operations over time.

[20] Donald D. Tansley, "Final Report: An Agenda for the Red Cross," Red Cross, Geneva, (1975). pp. 22-3.

There are generally two points of view regarding the ICRC. The first of these believes that the ICRC is an impressive organisation, a leader in its field with commendable accomplishments; the second view sees the organisation as only a marginal international organisation working on humanitarian issues. There is thus an ongoing debate regarding the efficacy of the ICRC in protecting human dignity with its limited mandate and obligations of state consent. There are also different perspectives regarding ICRC's organisational culture. The more optimistic viewpoint sees the organisation as continuously modifying to better adapt to new realities. The more critical view sees the ICRC as extremely slow to change, still dominated by traditionalists and risk-aversive Swiss society and political culture.

In a world of escalating number of conflicts, the ICRC was one of the first to recognise the humanitarian needs and took action to solve them. If the humanitarian scene is greatly different today from the 1859 Solferino battle, then a lot of credit for it goes to the Red Cross. Today, at least in legal theory all military establishments recognise a moral and legal responsibility to protect the war wounded from undue suffering. The ICRC's leadership in this context has had a far-reaching and long-lasting impact.[21]

The fact that a few contemporary irregular fighting forces do not provide medical aid to their combatants does in no way reflect the inadequacy of the ICRC. The principle of providing medical services in war on a neutral basis, established by the Red Cross remains uncontested. While it is true that for some time the ICRC itself took a back step from organised planning for medical care during conflicts, this rather reflects that the commitment for such assistance was accepted by states and national Red Cross societies to such a degree that the ICRC incorrectly believed that this role was unnecessary for it.

It has been alleged that the ICRC is responsible for preventing war's inevitable demise as a form of conflict resolution. However, in reality, apart from what Robert Gilpin referred to as hegemonic war,[22] war continues to be a common method to resolve conflict. The recent conflicts point to the fact that states believe that their national interest can be achieved at tolerable losses, which include human casualties. In these decisions to go to war the role of Red Cross has never been documented as being a particularly big element of it.

[21] John F. Hutchinson, "Champions of Charity: War and the Rise of the Red Cross", *Westview Press,* Boulder, (1996).
[22] Robert Gilpin, "War and Change in World Politics," *Cambridge University Press*, Cambridge, (1981).

Another major accomplishment of the ICRC is the fact that the ICRC has been one of the first and the most persistent humanitarian organisation in attempting to expand humanitarian protection from inter-state to intra-state wars. Both Article 3 of the four 1949 Geneva Conventions and Additional Protocol II of 1977 owe their origin in large part to the work of the ICRC for civil wars. While it is true that in practice it is often difficult to make a clear distinction between international and internal conflicts,[23] nonetheless, it cannot be denied that humanitarian constraints on the waging of war have been extended considerably and ICRC has played a major part in it. For instance, in 2006 the US Supreme Court stated that 1949 Common Article 3 had become the minimum standard of humanitarian protection in all armed conflicts.[24]

Also, the ICRC initiated the effort to ensure that during armed conflicts all combatants placed out of action, and not only the sick and wounded ones received humane treatment. The ICRC first visited the European prisoner-of-war (POW) camps in 1917 to provide medical relief and ensure respect for the basic human rights of captured combatants. Thus, despite the lack of authorisation from the 1906 Geneva Convention, the ICRC took the lead in responding to human needs in conflicts. The 1929 Geneva Convention for Prisoners of War provided legal recognition of this. At present humane treatment of POWs as tested by ICRC visits has become a benchmark for the requisite minimum of civilized behaviour. Today, through the principle of reciprocity and military honour, POWs are often treated better than civilians.

Another important achievement of the ICRC is bringing attention to those detained by reason of events outside armed conflict, or to political or security prisoners. Although public international law has never recognised the concept of political or security prisoners, the ICRC has attempted to give humanitarian protection to this category of prisoners beginning in Hungary and Russia after World War I. While Amnesty International has done more than the ICRC since 1961 to publicise the plight of these detainees, the ICRC has been the only organisation to visit security prisoners on a regular basis. In 1935, long before the creation of Amnesty International, it established a special commission to deal with the problem of political prisoners. However, till now the ICRC has not attempted to push for recognition and protection in international law for political and security prisoners. It is of the opinion that definitional

[23] James G. Stewart, ‘‘Towards a single definition of armed conflict in international humanitarian law: a critique of internationalized armed conflict’’, *International Review of the Red Cross*, Vol. 85, No. 850, (2003). pp. 313–50.
[24] Hamdan v. Rumsfeld, (29 June 2006). URL: https://ihl-databases.icrc.org/en/national-practice/hamdan-v-rumsfeld-supreme-court-29-june-2006

issues are significant, and the will of states to take positive legal action to address the problem is lacking. Thus, when a state allows the ICRC to visit the security prisoners, it sees it as a concession.

Another point in the list of ICRC's achievements is its concern for the civilian population in armed conflicts. Although initially the ICRC was mainly concerned with the needs of wounded combatants, and then later with captive combatants, it did not ignore civilians totally. From as early as the 1930s it attempted to garner public authorities toward providing better legal protection for civilians caught amid conflicts. One of the basic principles of humanitarianism in contemporary times is that a distinction must be made between combatants and civilians. A person who is not an active combatant must not be targeted by the military. The ICRC has played a major role in the development of this key idea. However, the ICRC has not always done a very commendable job while acting upon this principle. For example, In Syria the ICRC faced significant challenges in gaining access to conflict-affected areas and negotiating with all parties to the conflict. The ICRC was also faced with a shortage of staff and resources, which further delayed its ability to respond effectively to the crisis.[25]Nonetheless, the ICRC has remained the leading organisation in focusing on civilians in conflicts.

The ICRC was also the first organisation to initiate family linkage efforts. Even today, no other organisation has been so successful in restoring contact between members of families divided by conflict. The Arolsen Archives, formerly known as The International Tracing Service at Arolsen, Germany, with a mandate to establish personal facts about victims of the Nazis, was administered by the ICRC 1955 to 2012. The Central Tracing Agency (CTA) is also a permanent structure within the ICRC which assists in reuniting families of victims of an international armed conflict by collecting and transmitting information as a neutral intermediary.[26] The CTA is also recognised by the Geneva Conventions. The ICRC has often arranged family visits to places of detention and financial payments to distressed families whose chief provider was in custody. Attempting to reintegrate child soldiers into society has also become an important preoccupation in this area of endeavour. This activity of the ICRC

[25] ICRC, Syria: request for immediate access to violence-stricken areas, ICRC, Geneva, (2011). URL: https://www.icrc.org/en/doc/resources/documents/news-release/2011/syria-news-2011-06-10.htm
[26] ICRC, "Restoring Family Links." URL: https://www.icrc.org/en/what-we-do/restoring-family-links#:~:text=In%20many%20cases%2C%20RFL%20work,help%20to%20reunite%20the%20families.

became more prominent in 2004, when the US and allied forces occupying Iraq were ignoring to notify the families of Iraqis detainees.[27]

The ICRC also acts as a guardian over the Hague tradition of attempting to limit the means and methods of warfare. The ICRC had vehemently opposed the use of poison gas in the First World War and promoted the formation of the 1925 treaty prohibiting poisonous and asphyxiating gases. The 1977 Protocols addition to the 1949 Geneva Conventions also included clauses on means and methods of warfare. In its opposition to the use of some particular types of weapons, the Red Cross has not avoided opposing some major states, including its main donor, the United States.

Apart from these core accomplishments, the ICRC has also developed for itself a reputation for integrity. A large amount of trust and confidence is placed internationally on its report. However, there have been a few instances of mistakes in reporting by ICRC officials. Nevertheless, overall, the ICRC has been extremely cautious with facts. The ICRC was criticised in the past for not choosing to follow up properly on facts reported by its delegates. One example is the 2006 conflict between Israel and Hezbollah in Lebanon, the ICRC reported that an Israeli air strike on the Lebanese village of Qana had killed 57 civilians, including 37 children, who were sheltering in a building that was being used by Hezbollah fighters. However, it later emerged that the building had not been used by Hezbollah fighters. The ICRC acknowledged the error and issued a statement expressing regret for any confusion or harm caused by the inaccurate information.[28] While this was a significant error, it is important to note that the ICRC is generally very careful in its reporting and takes great pains to ensure the accuracy of the information it shares.

Thus while ICRC has shown exceptional integrity in the reporting of facts, its decision about going public or not on the basis of those facts has often been debated. This has also had an impact upon ICRC's image of neutrality. The guidelines on going public in the case of violations of international humanitarian law during violent conflicts were revised and modified to take into account significant developments that had affected the environment in which the organisation works. To foster more transparency, these guidelines were published in the public

[27] Ian Fisher, ''Searing uncertainty for Iraqis' missing loved ones'', New York Times, 1 June 2004, p. 1.
[28] Israel/Lebanon/Hezbollah Conflict in 2006, *How does law protect in war*, ICRC, (2006). URL: https://casebook.icrc.org/case-study/israellebanonhezbollah-conflict-2006

domain in 2005.[29] Similarly, after the Cold War, it was the ICRC that established specific standards for making its field delegations as secure as possible in case of violent threats. It, in fact, provides guidance to other humanitarian organisations engaged in field operations. To take this further, by 2003 the ICRC had developed a unique reporting system in the midst of conflict. For instance, in the 2003 war with Iraq, the ICRC published freely accessible electronic reports regarding the condition of Iraqi hospitals, thus enabling the world access to information on humanitarian issues without it being hampered by conflict parties. However, even here the ICRC neglected to mention the extent of civilian casualties and collateral damage. Thus, while the "real-time" reporting was commendable, its avoidance of any statements that had the potential to embarrass the US-led Coalition forces was greatly criticised.[30] However, despite these failings, these public reports made a definite impact on pressuring public to respond to humanitarian needs. Overall, there are a number of reasons for the ICRC to be so widely respected, and the idea of it as a leader in the field of humanitarian assistance with impressive accomplishments is justified. However, this is not the complete picture.

The ICRC has always been criticised as "Europe's pharmacy" or "perpetual first aid station."[31]On one occasion a former US Secretary of Defense referred to the ICRC as nothing more than an accounting agency for prisoners.[32] During the Second World War, when the Red Cross gained access to some detention camps in France, it just performed its traditional duties, following which some of the camp inmates were sent to the gas chambers. This earned the organisation the phrase "the well-fed dead."[33] The essence of this problem still remains. The same situation prevailed in South Africa. While the ICRC did provide food assistance to Nelson Mandela and lobbied South African white penal authorities for better treatment of prisoners,[34] it was quiet upon the broader issue of racist repression owing to its principle of neutrality.

---

[29] ICRC, "Action by the International Committee of the Red Cross in the event of violations of international humanitarian law or of other fundamental rules protecting persons in situations of violence", *International Review of the Red Cross,* Vol. 87, No. 858, (2005). p. 398.
[30] Sabrina Tavernise, ''Iraqi death toll exceeded 34,000 in '06, U.N. says'', *New York Times,* 17 January 2007.
[31] Amos Elon, "Switzerland's lasting demon", New York Times Magazine, (12 April 1998). p. 40. URL: https://www.nytimes.com/1998/05/03/magazine/l-switzerland-s-lasting-demon-698784.html
[32] Final Report of the Independent Panel to Review DoD Detention Operations, Government Printing Office, Washington, *The Schlesinger Report,* (2004). URL: http://www.isn.ethz.ch/pubs/ph/details.cfm?id5 10157.
[33] Mary B. Anderson, "You save my life today, but for what tomorrow?': Some moral dilemmas of humanitarian aid'', in Jonathan Moore (ed.), Hard Choices: Moral Dilemmas in Humanitarian Intervention, *Rowman & Littlefield for the ICRC,* Geneva, (1998). p. 140.
[34] Nelson Mandela, "Long Walk to Freedom", *Little, Brown,* Boston, (1995).

However, the Red Cross was not the right organisation to fight against apartheid. The Red Cross, with its principle of neutrality could not take a bold public stance against racism. Under the circumstances, the best it could do was provide basic relief in an impartial manner regardless of race. Additionally, some of the limitations on the ICRC mandate, such as not questioning the reasons for war or detention, and certainly not in public, are the price it must pay for its special status. The organisation holds that its influence stems from its 'non-political' nature. Nelson Mandela claimed that the authorities feared the ICRC.[35] However, this opinion is somewhat exaggerated as officials mostly co-operate with the ICRC because of the organisation's well-established policies of neutrality and non-interference. As a matter of fact, when in May 1975 the ICRC did consider suspending its visits to South Africa, it was advised against it by Mandela himself. He is reported to have said, "Always remember that what matters is not only the good you bring but just as much the bad you prevent.''[36] This quote has become a part of ICRC's guiding philosophy.

Thus, the answer to the question of the status of the ICRC in the field of humanitarian assistance is difficult to give. The answer depends upon the context of the conflict. The ICRC has made a significant contribution towards achieving important objectives over time, at the same time it has preferred operating on the borders of the great issues that confront humanity. However, its contribution towards limiting the damage caused to human beings by conflict, can in no way be underestimated. Expecting it to take a stand and rectify issues like genocide, racist repression, etc is unjustified as it goes beyond both the mandate as well as the capacity of the ICRC.

Overall, there is a widespread belief that the Red Cross, can protect and assist individuals, establish communication between individuals and states, and can contribute towards conflict resolution. In the context of this favourable view toward the Red Cross, actors often desire Red Cross's presence in a conflict. One example is the conflict in Colombia between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC). During the conflict, the FARC allowed the ICRC to operate in areas under its control since its presence created the impression that the FARC is in support of human rights.[37] In evaluating the Red Cross an important point is that no matter the weaknesses, there is no other organisation in world affairs

[35]Ibid., p. 409.
[36] Anthony Sampson, "Mandela: The Authorised Biography", *Harper Collins*, London, (1999), pp. 226–7.
[37] ICRC, Colombia: The ICRC clarifies its role in the transport of FARC-EP negotiators, ICRC, (2016). URL: https://www.icrc.org/en/document/colombia-icrc-clarifies-its-role-transport-farc-ep-negotiators

that has done or will be likely to do what the Red Cross has done with regard to conflicts. For instance, the United Nations Secretariat has itself claimed that it has no clear role in implementing the laws of war,[38] as it is limited by statute from doing what the ICRC does. Similarly, Amnesty International and other human rights groups are not able to make systematic visits to political prisoners, as the Red Cross does. Thus, as long as conflicts continue, many actors are likely to continue wanting a Red Cross presence in conflicts, either to create a certain image, or to help individuals, or both.

Core dilemmas of humanitarian protection

Statistics about the number of visits to war detainees and the amount of relief provided reveal little about the success of the ICRC's policy choices when stuck amid violent conflicts. When it comes to the point of co-operation with authorities, Pierre Boissier maintained that it was important for the ICRC to cooperate with public authorities and therefore it has to be careful not to go beyond the realm of their agreement.[39] However, abusive policies of these same public authorities have led to dire consequences for war victims. Many of these governments have been responsible for the massive killing of civilians in past decades. This is precisely the reason why some advocacy groups like Amnesty International prefer a more confrontational relationship with states and apply the tactic of public pressure upon them. They are in favour of uncomfortable hostility as opposed to the ICRC's neutrality in the hope of quiet co-operation. Thus, ironically the ICRC gets itself into a complex situation where it seeks cooperation from the same authorities that are responsible for the gravest human rights abuses.

Yet, the important question is, how long does the ICRC wait for the belligerent state to agree to co-operate? and what alternative course of action does it have when the said state refuses to co-operate? For instance, in 2016, in South Sudan, the ICRC attempted to negotiate access to areas controlled by the rebel group, the Sudan People's Liberation Army-In Opposition (SPLA-IO), in order to deliver aid to civilians affected by the conflict. The SPLA-IO initially agreed to allow the ICRC access, but then delayed the organisation for several months on false promises, preventing them from delivering much-needed aid to the affected population. The SPLA-IO was accused of using the ICRC's neutrality and impartiality as a shield to protect themselves, as they were aware that the ICRC's presence could provide them with some level

[38] David P. Forsythe, "Humanitarian Politics: The International Committee of the Red Cross", *Johns Hopkins University Press*, Baltimore, (1977).
[39] Pierre Bossier, "History of the International Committee of the Red Cross: From Solverino to Tushima", *Henry Dunant Institute*, Geneva, (1985).

of legitimacy. The delays caused by the SPLA-IO hindered the ICRC's ability to deliver aid to those in need and put the lives of civilians at risk.[40] In such a nexus between 'national security' and 'human security', it is often difficult to find and justify the balance for the ICRC.

Another important reason for the policy choice of the ICRC is the fact that it is an established humanitarian organisation, which enjoys official recognition by states through public international law. Given such a situation it would be unjustified to expect the ICRC to be more vocal in protesting against human abuses. However, there were a number of initiatives taken up by the ICRC without state intervention like visiting political prisoners beyond situations of armed conflict. Thus, while the Red Cross owes its special status to state recognition to a large extent, it has also shown rich instances of individual initiative.[41]Due to this dual nature, there is sometimes tension in ICRC actions between respecting state consent and pressurising states to make more effort for ensuring human dignity. The organisation's management of these complexities helps reveal its true nature.

Slow Change and Partial Access

Since the ICRC has always been very hesitant to challenge public authorities about their violations of humanitarian standards, a great deal of harm is already done till it decides upon the intention of governmental policy. There have also been occasions when it has agreed to unfavourable conditions by belligerent authorities for insignificant access rights to victims. Sometimes these conditions backfire, like in Kosovo in the late 1980s. However, it took the ICRC quite a long time to realise that its visits to detention camps are meaningless as authorities were not serious about improving the condition of these camps. The Peruvian government on the other hand continued with its abuse while claiming cooperation with the ICRC. Thus, this approach of the ICRC enables a repressive government to stall and continue abusing individuals.[42]

The Mandela axiom of avoiding withdrawal to prevent unknowable harm in the future has a similar reasoning. If the Red Cross decides to withdraw after publicly criticising an oppressive government, it will lose its special status compared to other humanitarian organisations, that is, its in-country presence. This was evident during the US 'war on terrorism' after 11

[40] "ICRC demands access to those wounded in S. Sudan town", Sudan Tribune, (2017). URL: https://sudantribune.com/article61871/
[41] Gil Loescher, "The UNHCR and World Politics: A Perilous Path", *Oxford University Press,* Oxford,(2001).
[42] David P. Forsythe, "Humanitarian Politics: The International Committee of the Red Cross", *Johns Hopkins University Press,* Baltimore, (1977).

September 2001. The ICRC received some cooperation from US and NATO forces, but some 'high value' detainees were kept away from the ICRC. While the ICRC publicly condemned the US policy of forced disappearances, it never withdrew from the situation. The issue of prisoners in the US 'war on terrorism' led to a lot of debate about whether the ICRC had been too slow and cautious in pressurising the US to rectify the conditions. However, overall, it might not be wrong to conclude that the ICRC is cautiously assertive in the area of its visits to places of detention, trying to overcome the hurdles established by detaining authorities.

Relief Supplies

As for the relief supplies, the ICRC sometimes goes ahead with cross-border operations to provide relief where the authorities are not able to block such operations. It normally informs the authorities about its operations but does not always ask for advance permission. It did this in the ongoing Yemen conflict. In 2018, the ICRC provided aid to civilians in the city of Taiz, which was under siege by Houthi rebels, without the approval of the Yemeni government.[43] A look into ICRC's relief after the Cold War gives the impression that the organisation has always been present to provide relief in conflicts, at par or better than the other major relief agencies such as the UNHCR, UNICEF, and WFP. Thus, in the matter of providing relief, the ICRC has proved to be a major actor in the field of humanitarian assistance during armed conflicts.

Impact of the Red Cross: A Political View

Interstate relations continue to be the most important factor in world politics. In the event of a confrontation between the Red Cross and states, it is the latter that has its way.[44] For instance, the military junta in Myanmar imposed restrictions on the ICRC's ability to operate in conflict-affected areas and has limited the organisation's access to prisoners held by the military. The ICRC had no choice but to comply with the junta's policies. Such direct confrontations between the Red Cross and states are, however, uncommon. This is because the Red Cross is generally cooperative, avoiding total confrontation with states on the grounds that firstly, some

[43] "Red Cross medical aid enters Yemen's besieged Taiz", *Middle East Eye*, (2016). URL: https://www.middleeasteye.net/news/red-cross-medical-aid-enters-yemens-besieged-taiz
[44] Robert O. Keohane, and Joseph S. Nye. "Transgovernmental Relations and International Organizations." *World Politics* 27, no 1 (1974). pp. 39–62. doi:10.2307/2009925.

humanitarian good can be achieved even if a government is negligent in some respects and secondly, that some bad is prevented by a Red Cross presence even if some of it continues.[45]

On the other hand, states also hold the belief that winning a confrontation against the Red Cross comes with a political price and that the Red Cross is generally useful to states' interests. For example, during a confrontation between North Vietnam and the ICRC over detained American combatants, Hanoi rejected the ICRC's point of view. However, this step had the effect of damaging Hanoi's reputation in diplomatic circles, and more importantly of providing the American government an opportunity to mobilise support in a critical Congress and a fragmented and disenchanted public.[46] The actual cost of disagreeing with the Red Cross varies depending upon the circumstances. For example, Hanoi had to pay a high price for its disagreement with the ICRC. In Ethiopia in 1975, when the ICRC sought access to the war area around the city of Asmara in the context of internal war resulting in tens of thousands of casualties, the government responded that "there was no emergency,"[47] the price paid by the government was relatively low. This was because very few parties cared about the humanitarian situation in Ethiopia. Furthermore, many states are reluctant to enter into a confrontation with the Red Cross because they value the resources of the Red Cross. As a result, while states are more powerful than the Red Cross, they rely on the Red Cross for certain services and are limited by certain Red Cross activities. States can circumvent this restriction, but sometimes the price can be too high to pay.

There is also the question of who benefits the most from the Red Cross's activities. Despite its transnational nature and aspirations for universal acceptance, the Red Cross is based on Western values. It is therefore sometimes argued that it benefits the West by helping to implement Western views and values. This argument has some validity from a philosophical point of view as well as from the point of historical facts. The Red Cross had Western origins. The prominent leadership of the movement have been mostly Western. Also, most of the funding contributions towards the movement have been Western contributions. However, the criticism that the Red Cross works to further essentially Western views is incomplete. Firstly, western support of the Red Cross in conflicts comes with a price. These states also have to accept rigorous ICRC supervision of their activities during armed conflicts. Furthermore, it is

[45] Gidon Gottlieb, "International Assistance to Civil Populations in Civil Wars," *Israeli Yearbook on Human Rights,* 1971, *Tel-Aviv:* Israel Press, (1971). p.354.
[46] Jon M. Van Dyke, "Nixon and the Prisoners of War," *New York Review of Books*, (1971). URL: https://www.nybooks.com/articles/1971/01/07/nixon-and-the-prisoners-of-war/
[47] ICRC, "Information Notes", No. 219b, ICRC, (1975). p. 1.

not just Western states that support and accept the Red Cross in conflicts. While it is true that no Socialist regime accepted ICRC presence in major Cold War conflicts and many Third World countries like Iraq and Ethiopia had prohibited significant Red Cross activities during conflicts, many socialist parties have, however, cooperated with the Red Cross on a number of matters. For example, North Korea utilised the Red Cross to conduct sensitive talks with South Korea in 2018.[48] Also, many Third World states have demonstrated interest in cooperating with Red Cross activities during conflicts. Indeed, the Third World is where most Red Cross humanitarian activities takes place during conflicts. For instance, the majority of ICRC visits to political prisoners take place in the Third World countries.

Therefore, in answer to the question of who benefits the most from the Red Cross activities, there is no set of actors that are permanently benefitted or disadvantaged. The Palestinians and Arab states, for example, find the ICRC useful with regard to Israeli-administered territories. However, Israel finds the ICRC useful regarding Syrian and Egyptian treatment of prisoners of war. Thus, it is not the states that are most benefitted but rather individual victims of conflicts. It is highly probable that individuals are better off with an ICRC presence than without. While all humanitarian problems are not solved; indeed, major problems sometimes continue despite an ICRC presence, it is still difficult to argue that civilian victims would be better off without the Red Cross programme than with them. Some critics have even accused the Red Cross of blocking revolutionary change. They assert that since the Red Cross does not overtly challenge the general policies of a recalcitrant state, they end up making more tolerable a situation that should be completely overthrown. However, in reality, the Red Cross actually promotes the idea of incremental change, leaving revolutionary change to other bodies.

The Red Cross and State Sovereignty

The Red Cross's activities during conflict situations have had the consequence of both conserving state authority as well as circumscribing it for the sake of safeguarding fundamental human rights. On the one hand, the Red Cross cooperates with the states and acts discreetly in matters deemed sensitive by states. On the other hand, Red Cross activities in conflicts have often compelled states to make some humane changes in their policies. These modifications with time have resulted in a transformed nature of the nation-state system, even as states

[48] CNBC, "Rival Koreas agree to military, Red Cross talks for peace,"CNBC, (2018). URL: https://www.cnbc.com/2018/06/01/rival-koreas-agree-to-military-red-cross-talks-for-peace.html

continue to remain the most fundamental authority within that system. The fact that the Red Cross, is able to get access and is allowed to act in most situations of political conflict has lent it a quasi-supranational authority. This allows the Red Cross to sometimes bypass the legal authority of the state thus transcending its sovereignty.[49] Overall, historically, the consequence of the movement has been to help liberalise the nation-state system, while still reinforcing fundamental state authority within that system.

The unique place that the Red Cross movement has owes to the fact that its national societies are generally fully private, auxiliaries to public governmental authorities. This ideal type is uncommon if not the only example in the contemporary world. These national societies are fully independent of governments yet sometimes partially staffed by governmental appointees or have their activities regulated by municipal law. For instance, the American Red Cross is chartered by the US Congress, and has some appointees by the President. Similarly, in many, totalitarian governments these national societies are brought under government apparatus as much as possible since they try to reduce the private sector of the nation.[50]

Thus, at the national level, the Red Cross movement has been largely 'nationalised' during the past century. There are of course wide variations in the level of nationalisation among different national societies. This nationalised character is not the sole result of government control. No society existing within a geographical country would want to take action that goes entirely against its governmental policies.

Thus, overall, the Red Cross's activities as a transnational body reinforce the nation-state system as the Red Cross seeks to make that system more effective in responding to humanitarian needs, not to replace it. The Red Cross makes every attempt to cooperate with states, seeking their permission for in-country programmes. In fact, national societies must be recognised by state governments before they can gain recognition as a member of the International Red Cross. Also, the ICRC, in 1975, argued against being given a quasi-supranational authority to supervise international humanitarian law during armed conflict.[51]

[49] Cf. Samuel P. Huntington, "Transnational Organizations in World Politics," *World Politics*, Vol. 25, No. 3 (1973). p. 368.
[50] Richard Magat, "As Others See Us: Views on Red Cros", Joint Committee for the Re-appraisal of the Role of the Red Cross, (1975). p. 12
[51]David P. Forsythe, "Who Guards the Guardians: Third Parties and the Law of Armed Conflict," *American Journal of International Law*, Vol. 70, No. 1 (1976).pp. 41-61.

The Red Cross movement is itself very fragmented owing to the movement's acceptance of national jurisdictions. With regard to the relationship between the movement and states, initially, the ICRC was not very reluctant to assume a quasi-supranational authority.[52] However, in the current times, the Red Cross has assumed a more conservative attitude of acting within the nation-state system. The question then arises is whether the Red Cross activities ultimately lead to major changes within the nation-state system toward a more humane world politics? This has always been the movement's objective. The Red Cross has made attempts throughout its life span to 'humanise war.' However, it is difficult to comment upon the precise success rate that the Red Cross has had on this front. From a historical point of view, there has been a significant change toward more humane politics. Since the early 1860s, there have been several multilateral treaties brought into force under the guidance of the Red Cross. These treaties apply to a growing number of subjects in armed conflict. There is also a greater emphasis on mitigating the destruction caused by internal wars. Furthermore, there is an increased awareness regarding the plight of political prisoners. Existing deficiencies in humanitarian management of conflict should not obscure historical changes that have occurred. In this change, the Red Cross has had a significant role to play.

The greatest shift in attitudes appears to have occurred among the nation-state's decision makers, as inspired by the Red Cross. However, in more cases than not, governments have accepted humanitarian values insofar as they are instrumental to national values. This situation represents the limits of liberalism, that is, Red Cross activity in conflicts will be accepted only when it can be made compatible with a nation's national interest. The question that then arises is what impact does the Red Cross have in affecting that definition? The Red Cross has helped transform a stringent nation-state system into a looser nation-state system, in which some authority is given to non-governmental entities. The Red Cross has been given certain rights in international humanitarian law; however, states have the power to block the exercise of that authority and prevent ICRC access during armed conflict. Nonetheless, the Red Cross has had an important impact on world politics, especially from a historical perspective.

Neutrality

The core principles of humanitarianism developed by the International Red Cross Movement, that is, humanity, neutrality, impartiality and independence have recently come under severe

[52] Ibid.

attack.[53] This criticism is mainly because many humanitarian bodies are unwilling to accept the full implication of some of these principles. These critics hold that while most of these principles, are intended to improve humanitarian operation,[54] they are increasingly becoming a barrier to aid delivery to victims of violent conflict, particularly in the twenty-first century.[55] The International Red Cross Movement has maintained that these are just working principles and do not hold the status of absolute value.[56] However, historical evidence has shown that these principles are being treated as unconditional principles and used as absolute moral values.[57]

The Crisis in Neutrality

As important as it is, the principle of neutrality has proved controversial both in historical and contemporary terms. According to the Red Cross, neutrality is the refusal to take any position in a given conflict so as not to side or favour any particular group which may in turn jeopardize the chances of relieving the sufferings of the victims of that conflict.[58] Neutrality, as a principle is meant to promote the principle of humanity and is therefore not an absolute value in itself. It is rather a means of achieving the absolute value of the principle of humanity.

The principle of neutrality and its mandate allow the ICRC to access prisoners of war, negotiate their release, and perform a variety of other vital humanitarian functions. The 1949 Third Geneva Convention obliges states to give the ICRC access to individuals detained in armed conflict.[59] Thus international humanitarian law gives the ICRC the status of a neutral actor. The single Swiss nationality of the ICRC Assembly has also contributed to the perception of ICRC as neutral. The ICRC has been questioned time and again about the appropriateness of its code of strict neutrality. While some have criticised neutral humanitarianism, others have challenged the possibility of neutral humanitarianism. The question is whether there is a moral duty to speak out against atrocities that go against humanity. Many in the humanitarian

[53] Jean Picket, "Red Cross Principles: Commentary," *ICRC,*(1956).p 6. URL: https://international-review.icrc.org/sites/default/files/S0020860400019872a.pdf
[54] Henri Dunant, "A Memory of Solferino", *ICRC,* (Geneva: 1986).
[55] J. Labbe, "Rethinking Humanitarianism: Adapting to 21st Century Challenges", *International Peace Institute,* (New York, 2012).
[56] Denise Plattner, "ICRC Neutrality and Neutrality in Humanitarian Assistance", *International Review of the Red Cross,* 36 (1996). p.14.
[57] E. Wortel, 'Humanitarians and their Moral Stance in War: The Underlying Values', *International Review of the Red Cross*, 91, (2009). p. 792.
[58] Denise Plattner, "ICRC Neutrality and Neutrality in Humanitarian Assistance", *International Review of the Red Cross,* 86 (2004), p. 552.
[59] Geneva Convention (III), Article. 125.

assistance field prefer only delivering impartial aid. They believe that incorporating political and human rights agenda will hinder access, endanger its staff members, and compromise the life-saving programmes. They hold that such activities are better addressed by other governmental and intergovernmental agencies involved in advocacy and human rights concerns. However, it has also been seen in a large number of cases in which the failure to act beyond providing assistance rendered agencies mere bystanders to the tragedies that befell their beneficiaries. In Bosnia, for example, the apparent futility of providing aid was referred to as providing for the "well-fed dead." Bernard Kouchner started Médecins sans Frontières because he rejected the ICRC as too limited and ineffectual due to its neutral and apolitical approach.[60] Similarly, it has also been contended that neutrality is no longer a valued concept when fighting parties that target civilians. As the Former US President George W. Bush had said, "you are either with us or against us."[61] Thus according to these critics, neutrality has no place in the environment of contemporary conflicts. Providing neutral humanitarian assistance becomes difficult when some governments argue that the enemy does not deserve humane treatment.

Apart from political leaders, many academicians have also expressed similar opinions. Kurt Mills, argued that "the traditional ideals of neutrality, impartiality, and independence have become myth."[62] He further contended that it is becoming increasingly difficult to engage in neutral humanitarianism because of the changes in the global environment caused by the end of the Cold War and the 9/1 1. These changes have according to Mills ushered in what he refers to as neo-humanitarianism. Neo-humanitarianism "is distinguished by the explicit manipulation of humanitarianism for political or military gain on the ground in a conflict or as a substitute for political and military action."[63] States co-opting humanitarian bodies for political objectives have had the effect of making them susceptible to the targets of non-state actors who reject humanitarian norms including the Geneva Conventions.[64]

The challenge for an organisation like the ICRC is to carve out a neutral space where it can carry out its activities while minimising its impact as much as possible. The ICRC has been practicing this balancing act for a long time, whether dealing with Mussolini's Italy, Hitler's Germany during the Second World War, or various communist countries during the Cold War.

[60] David Rieff, "A Bed for the Night: Humanitarianism in Crisis", Simon and Schuster, (New York: 2003).
[61] You Are Either with Us or Against Us, *CNN.com*, (6 Nov. 2001), URL: https://edition.cnn.com/2001/US/11/06/gen.attack.on.terror/
[62] Kurt Mills, "Neo-Humanitananism: The Role or International Humanitarian Norms and Organizations in Contemporary Conflict", *Global Governance*, (2005).
[63] Ibid. p, 162.
[64] Ibid. pp. 164-65.

At times, however, the ICRC has failed in maintaining neutrality but there have also been examples of great successes.

A further criticism of neutral humanitarianism revolves around the idea of total war. Critics claim that neutral humanitarianism is no longer feasible as many terrorist groups indulge in total war. Mills and Michael Barnett have argued that international organisations today cannot remain neutral in the current international relations environment. Humanitarian organisations are becoming increasingly aware that principles like neutrality which encourage passivity is also a form of intervention that might lead to undesirable results.[65] Even ICRC supporters have admitted to its limitations, "the off-the-rack humanitarian suit (neutrality, impartiality, and consent) may fit some but certainly not all contemporary armed conflicts."[66] Former ICRC President Cornelio Sommaruga has also commented that ICRC neutrality was not well understood.[67] While it is a fact that the ICRC does not harbour any religious or racial affiliations, it is however ideologically driven, even though it is hesitant to admit it. This ideology is that of humanitarianism which is related to liberalism which is concerned with the dignity of individuals. This partly explains ICRC's difficulties in dealing with communists during the Cold War.

Another problem lies in the fact that some states who would benefit from humanitarian assistance deny such neutral humanitarian assistance as these efforts sometimes create for them obstacles in reaching their political objectives. For instance, during The Troubles conflict in Northern Ireland, Irish Republican Army (IRA) members detained by the British authorities did not want the ICRC to visit them since it made the British appear humane. Instead, the IRA wanted the international community to see their detention as illegitimate.[68]ICRC visits to detainees of a government, provide that government some additional legitimacy in the area of its human rights record. The Red Cross's neutrality was also severely attacked for its handling of Jews in Germany and Europe. Not only was the organisation unable to get access to regular visits to Nazi concentration camps, a public appeal to protect the victims of war, was rejected by the ICRC out of pressure from Berne, which feared that the ICRC might lead to German

[65] Michael Barnett, "Humanitarianism with a Sovereign Face: UNHCR in the Global Undertow", 35 *International Migration Review*. (2001). pp. 244, 270
[66] Peter J. Hoffman & Thomas G. Weiss, "Sword and Salve: Confronting New Wars and Humanitarian Crises," *Rowman & Littlefield Publishers,* (2006). p. 82.
[67] David Forsythe, "UNHCR's Mandate: The Politics of Being Non-political," *New Issues in Refugee Research,* Working Paper No. 33, (2001). URL: http:// www.unhcr.ore/research/RESEARCH^aeGaOdOS.p
[68] David P. Forsythe, "The Humanitarians: The International Committee of the Red Cross", *Cambridge University Press,* (2005). p. 60.

retaliation against the Swiss state. This failure of the ICRC led to the conclusion that the organisation was not completely neutral during WWII.[69] Similarly, in the context of the Syrian crisis, there have been instances where the organisation has been accused of not being. One such example is the controversy surrounding the Red Cross's decision to provide aid to government-controlled areas in Syria while excluding opposition-held areas. The organisation defended this decision on the grounds that it was based on operational and security considerations, but critics argued that it was a violation of the principle of impartiality.[70]

ICRC Neutrality in the Twenty-First Century

A question that is often raised today is that is the ICRC neutral in its activities during conflicts. With a number of significant conflicts occurring in countries where Islam is the dominant religion the ICRC had to deal with new realities of international relations. Andreas Wigger, former ICRC deputy director of operations, noted that over "half of the ICRC's operational budget" in 2006 was "spent in countries that are members of the Organisation of the Islamic Conference."[71] To gain acceptance the ICRC has met with various religious leaders, Islamic scholars, and Islamic charities. Also, the ICRC's symbol of the red cross on a white flag, has the potential to pose a threat to the ICRC's perception of neutrality for the Muslim world. To mitigate these issues, the ICRC has worked closely with National Red Crescent Societies to promote humanitarian aims and has even used the Red Crescent emblem instead of the Red Cross to provide assistance to the local population. Also, its continued presence in the Islamic world and the development of a track record of neutral humanitarianism have helped it to gain access to the Islamic world. For example, The ICRC has been involved in Israel and Palestinian conflict for a long time. They have provided assistance to both Palestinians as well as Israelis. Thus, despite the Western association of the organisation, the ICRC has been accepted by the Palestinians as well as the Israelis. This is because it is seen by both parties as a neutral organisation. However, some countries in the Middle East have not accepted ICRC's neutrality. Some Islamic groups also do not accept the ICRC and the humanitarian protection it offers because they do not share these values. Omar Bakri Muhammed, an al-Qaeda militant stated that "we don't make a distinction between civilians and non-civilians, innocents, and non-

[69] David P. Forsythe & Barbara Ann J. Rieffer-Flanagan, "The International Committee of the Red Cross: A Neutral Humanitarian Actor", *Routledge* (2007). pp. 13-17.
[70] Jose Ciro and Brent Eng "The unintended consequences of emergency food aid: neutrality, sovereignty and politics in the Syrian civil war, 2012–15", *International Affairs* 92:1 p. 15. URL: https://www.ecbproject.org/system/files/content/resource/files/main/inta92-1-08-martinezeng.pdf
[71] Interview with Andreas Wigger, Deputy Director of Operations, ICRC (26 Nov. 2006), URL: http://www.icrc.org/web/eng/siteengO.nsf/htmlall/islam-ihl-interview- 281

innocents. Only between Muslims and non-believers. And the life of non-believers has no value."[72] Furthermore, the ICRC has been intentionally attacked at times. In October 2003 a bomb exploded near the ICRC's Baghdad office. Such attacks demonstrate that there are some groups that do not view the ICRC as a neutral humanitarian actor.

Thus, the debate is rife within the humanitarian system about how to reconcile the need to address the underlying causes of crises while also respecting the principles of impartiality, neutrality, and independence. Addressing the underlying causes of crises requires long-term engagements with national governments, local authorities, and the affected population so that they can strengthen their capacities. However, working with a government in a country where the conflict is taking place, automatically results in giving up neutrality to an extent. It is not uncommon for the government to be a party to the conflict and, also the inflictor of the population's suffering. Some observers have called for priority to humanitarian principles of neutrality and independence as means for access over the need to align with the official government. Protection activities often include working with governments to promote lasting changes, however, these principles should imply even to non-state armed groups having de facto control over a given population. For instance, the UN and some NGOs collaborated with the Moro Islamic Liberation Front in the Philippines, through the signature of an action plan in 2009, to convince it to issue a policy of non-recruitment of children.[73]There is thus a need to examine with a contextual lens the tension between addressing the causes of crises and upholding humanitarian principles. The risks involved in peacetime and wartime are evidently not the same. While humanity and impartiality can be seen as ideals, principles of neutrality and independence are not ends, but means to get access to people affected by conflicts.

The important question is not whether humanitarian principles are still relevant today, but whether they are equally relevant in all situations. Humanitarian principles were elevated to an inviolable status, and all relief activities are attempted to be branded as impartial, neutral, and independent regardless of the context and, more importantly, of the ability or capacity to respect them in practice. Yet, as argued by Rony Brauman, humanitarian principles are valid as long as they serve the purpose of saving lives: "In natural disasters, however, there's no

[72] Peter J. Hoffman & Thomas G. Weiss, "Sword and Salve: Confronting New Wars and Humanitarian Crises", *Journal of Refugee Studies*, Vol. 20, Issue 4 Oxford University Press, (2006). p. 670. https://doi.org/10.1093/jrs/fem045

[73] United Nations Secretary-General, "Report of the Secretary-General on Children and Armed Conflict", UN Doc. A/65/820-S/2011/250, (April 23, 2011). p. 5.

apparent reason not to cooperate with the military."[74] One might thus justifiably question if unconditional adherence to humanitarian principles in every situation is more damaging for the sector than calling for their abiding only in situations where it really matters.

The fact is that different humanitarian agencies have different conceptions of what humanitarianism entails. The tension between the tendency to increasingly address underlying causes of crises and respect for humanitarian principles has been accentuated in the aftermath of 9/11 terrorist attack. The 2005 humanitarian reform, accepted by the majority of humanitarian actors, succeeded in better bringing the international humanitarian system under the overall leadership of the UN. However, a number of NGOs have continued to show reluctance in participating in UN-led integrated missions, fearing that the UN's objectives of peacebuilding might conflict with neutral humanitarian action. For instance, the integrated nature of the UN Assistance Mission for Afghanistan (UNAMA) prompted several humanitarian organisations to withdraw from the UN-led coordination system, due to fears of being perceived as part of the coalition.[75] The fact remains that some actors are still not convinced about a broader agenda of change that is at odds with humanitarian principles, while others, more opportunists, embrace this agenda to ensure continued access to funding in an increasingly competitive humanitarian environment.

The point is not to judge one as a better approach than the other, but rather to acknowledge that both exist and will continue to exist. As a matter of fact, the fragmentation of the system is becoming more pronounced as non-traditional actors such as religious charities are becoming more prominent in international relief. While the multiplicity of actors poses risks in terms of coordination and coherence of the overall response, each actor has comparative advantages and might prove to be complementary depending on the circumstances. For example, the OIC and Islamic charities operating in Somalia have been able to deliver aid where traditional agencies could not.

Military Intervention and Neutrality

The contemporary trend of military humanitarian coordination for humanitarian intervention has complicated the neutrality debate even further. Some aid organisations are concerned that

[74] Rony Brauman, "Médecins Sans Frontières or the Unabashed Policy of 'Going It Alone'," *MSF-CRASH,* (2011), p. 10. URL: www.msf-crash.org/drive/f78d-rb-2011-unabashed-policy-of-going-it-alone.pdf .
[75] Victoria Metcalfe, Alison Giffen, and Samir Elhawary, "UN Integration and Humanitarian Space," *Stimson Center/Humanitarian Policy Group,* (2012). p. 28.

collaborating with military forces or alliances, like NATO, is a de facto breach of neutrality, particularly when it is a party to the conflict. Gil Loescher for example contented that humanitarianism is threatened because "the line between humanitarian activity and military activity has become blurred." In Afghanistan, for instance, American soldiers have frequently worn civilian clothing, carried guns and distributed food. As a result, humanitarian work has become confused with security operations.[76]

However, this trend of using humanitarian bodies by states to build support for their military and political ambitions has resulted in increased violence against humanitarian aid workers. It is in this context that the MSF has firmly denounced attempts to co-opt humanitarian aid. The co-option of humanitarian aid has made it difficult for aid to be seen as neutral. The ICRC has also expressed its objections regarding this trend. For instance, regarding the Provincial Reconstruction Teams in Afghanistan, it maintained that they were concerned as the teams integrated humanitarian responses into an overall military and security concept, where providing for the needs of the population was part of a strategy to defeat an opponent.[77] Thus there is now an increased risk that these trends would weaken the perception and reality of neutral humanitarian work in the eyes of both the belligerents and beneficiaries.

Armed forces initially were highly unwilling to accept the humanitarian ideals in conflicts. However, since NATO's military action in Kosovo in 1999, the armed forces have been much more accepting of humanitarian principles. In an attempt to be seen doing good, they attempted to position their military operations as being a 'humanitarian intervention.' This resulted in a total blurring of roles between humanitarian actors and the military. In 2001, the ICRC adopted the Guidelines for Civil-Military Relations (CMR).[78] These guidelines aim to address the threats presented by multinational military missions while engaging in humanitarian activities. This thus filled the gap left by the international humanitarian law about civil-military relations or the delivery of assistance by armed forces. However, IHL did not disallow a party to a conflict from meeting the needs of the civilian population by using armed forces.[79]

[76] Gil Loescher, "An Idea Lost in the Rubble", *New York Times*, (2004). URL: https://www.nytimes.com/2004/08/20/opinion/an-idea-lost-in-the-rubble.html
[77] "Humanitarian security: A matter of acceptance, perception, behaviour…", address given by the ICRC's Director of Operations to the High-level Humanitarian Forum, Palais des Nations, Geneva, (2004). URL: https://www.icrc.org/en/doc/resources/documents/statement/5xsgwe.htm
[78] Meinrad Studer, "The ICRC and civil-military relations in armed conflict", *International Review of the Red Cross,* Vol. 83, No. 842, (2001), p.372.
[79] Article 69(2) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 ("Additional Protocol I").

The armed forces with their very practical training generally consider the ICRC and its principles of neutrality somewhat outdated. Some States and armed forces often view the ICRC as resistant to change. The ICRC's position is limited by principles that exclude closer cooperation, or subordination of humanitarian action to broader political goals. These principles, however, do not exclude dialogue and engagement. The ICRC, in fact, has a dedicated Unit for Relations with Armed and Security Forces, which comprises military and police specialists who provide guidance to the organisation in its cooperation with armed forces.

The stance of the ICRC regarding cooperation with the armed forces has led to a certain level of frustration. This is because, on one hand, the ICRC expects a fixed relationship and a discussion on topics that are of importance to armed forces, that is, ICRC's access to victims, detention by armed forces, etc. On the other hand, the organisation is also concerned that the blurring of roles and actors will result in the perception of having taken sides in the conflict.

Military interventions have political motivations that can be opposed to humanitarian ethics. Nonetheless, in some conflict situations, only military forces have the logistical capacity and resources to adequately respond to the needs of the victims. Thus, the potential course of action must be weighed against the level of risk the activity will pose to staff members, the organisation's programmes, and its beneficiaries. Nonetheless, it is a given fact that the military's humanitarian impulses are secondary to its political objectives. Despite that humanitarian assistance organisations sometimes have to consider collaboration on a case-to-case basis.

While maintaining neutrality for humanitarian assistance organisations is important, they are sometimes faced with the dilemma of doing so at the expense of their beneficiaries. Also, while humanitarian organisations generally prefer to undertake humanitarian interventions that operate under the banner of the UN, past conflicts have shown that even in such situations, strict adherence to humanitarian principles is not guaranteed. Whatever side an aid agency takes in these debates is usually defended by their best intentions for their beneficiaries. In complex humanitarian emergencies where civilians are the primary targets, it becomes rather difficult to ascertain the best interest of affected populations. Almost all humanitarian activities carry political consequences owing to their complex nature. For instance, food aid to a starving population may result in prolonging a war or allow a despot to appropriate the aid to fund the war.

Médecins Sans Frontières and the Red Cross: Neutrality

Médecins Sans Frontières/Doctors Without Borders (MSF) is a non-governmental organisation that specialises in providing medical assistance to people caught in midst of humanitarian crises. Created in France in 1971, it is now regarded as an international movement, comprising nineteen associations, each under the direction of a board of directors elected by the association members during an annual general assembly. Unlike the International Committee of the Red Cross, the MSF has no formal mandate and it's work is instead based upon the principles enshrined in its Charter.[80] The legitimacy of MSF's humanitarian action was originally derived less from international humanitarian law than from the affirmation of medical care as a universal right and from a politico-philosophical engagement. According to David Reiff, the MSF is "in an important sense, the conscience of the humanitarian world."[81]

Formation and Principles

In 1967, Biafra declared itself independent and seceded from Nigeria which caused a breakout of civil war. At the time, the International Committee of the Red Cross hired some French doctors to help with their aid missions in Biafra. One of these doctors was Bernard Kouchner.[82] As part of his employment, Kouchner had to sign a statement agreeing to not speak of or communicate about his mission in Nigeria, even after its termination. Kouchner, who was Jewish, felt that the ICRC's Auschwitz history of silent approach towards the concentration camps was repeating itself. He felt that the ICRC's silence in the context of the Nigerian government's systematic killing was wrong.[83] Thus Kouchner decided to break with the organisation, later stating that, "by keeping silent, we doctors were accomplices in the systematic massacre of a population."[84]

When Kouchner returned to France, he tried to raise awareness about the events in Biafra and envisioned the formation of a humanitarian organisation that would combine medical aid with a willingness to speak out about atrocities witnessed in the field. Around the same time, a group of medical journalists advertised for volunteer doctors to help the victims of earthquakes and floods. Paris was politically active at the time as France's colonies were claiming

[80] MSF Charter. URL: www.msf.org/msf-charter-and-principles
[81] David Reiff, "A Bed for the Night: Humanitarianism in Crisis", *Simon and Schuster,* New York, (2002) p.5.
[82] Dan Bortolotti, "Hope in Hell: Inside the World of Doctors Without Borders", *Firefly Books*, Ontario, (2004). p 42.
[83] David Reiff, A Bed for the Night: Humanitarianism in Crisis, *Simon and Schuster*, New York, (2002). pp. 81-89.
[84] Ibid, 83

independence. Posters were hung on the streets that featured the words Frontiers (borders) = Repression.[85] Thus, on December 20th, 1971, Kouchner and his colleagues and the group of medical journalists came together to establish an independent relief organisation, Médecins Sans Frontières.

The MSF Charter refers to the three humanitarian principles of neutrality, impartiality and independence shared with the International Red Cross and Red Crescent Movement, but it is in the name of "universal medical ethics and the right to humanitarian assistance" and with respect for their "professional code of ethics" that the organisation's volunteers claim "full and unhindered freedom in the exercise of their function."[86] These principles are a trademark of its identity and proof of the adequacy and efficiency of its intervention. Strict adherence to these principles often results in a lack of collaboration with other actors or in not using the facilities and means of other humanitarian or international organisations in the field. Hence, some analysts consider the MSF more isolationist than independent. Unlike other humanitarian actors, MSF also enjoys financial independence.[87] "Temoinage" or testimony is also something very specific to the organisation, and it was one of the main reasons for its creation. MSF's original name was "Group d'Intervention Medico-Chirurgical d'Urgence, the name was meant to prioritise the rights of victims, thus opposing the type of silent relief that the ICRC had offered in Biafra.[88] Even today, temoinage is considered an integral part of MSF's work.

From the beginning, MSF has struggled with its neutrality, valuing the principle of "temoinage" or bearing witness and not wanting to be an agent of complicity. On the other hand, neutrality is the fundamental principle that aid organisations must hold to in order to prove that they have no political agenda and to gain access to victims. MSF recognised this limiting factor at its inception, and although there were some disagreements, placed the principle of neutrality in the fourth article of their charter.[89] Kouchner, the leading opponent of the neutrality article, signed the charter as a compromise. In 1974, when a Kurdish envoy asked Kouchner if MSF would help support their rebellion in northern Iraq, he accepted. Raymond Borel, co-founder of MSF, disagreed with Kouchner's decision. Helping the Kurds was taking sides in a political

[85] Dan Bortolotti, Hope in Hell: Inside the World of Doctors Without Borders, Firefly Books, Ontario, (2004). p. 45.
[86] MSF Charter, URL: www.msf.org/msf-charter-and-principles
[87] MSF 2020 International Activity Report, *MSF*, Switzerland, (2020). p. 25. URL: https://www.msf.org/sites/default/files/2021-09/international-activity-report-2020.pdf
[88] Dan Bortolotti, Hope in Hell: Inside the World of Doctors Without Borders, *Firefly Books*, Ontario, (2004). p. 46.
[89] Ibid, 48

dispute and thus abandoning the principle of neutrality. The disagreement grew as Kouchner acted on his decision to help by sending a team to Iraq.

The debate over which principles MSF should adhere to continued as international relations changed rapidly. First, in the mid-1970s, the number of refugees in the world increased rapidly. To help MSF rise to the occasion, Claude Malhuret, a doctor in MSF, developed a new vision for the MSF. With increasing support for Malhuret, Kouchner's leadership became less popular. Then in 1979, MSF was divided over its plan of action regarding the Vietnamese boat people. Kouchner wanted to send assistance to the stranded boat people and in the process attract media attention, pressurising action from Western states. However, Claude Malhuret and others disagreed. For them, the boat people were "symbolic" of the greater crisis occurring in Cambodia and not something to be used as a media stunt.[90] In a vote over the matter, majority voted in favour of Malhuret and Brauman. This made Kouchner start his own organisation called Medecins du Monde/ Doctors of the World (MDM). Even today MSF's principles remain fluid, evolving through internal debate, according to what is happening around them.

MSF is against collaboration with other states and international humanitarian organisations. This is based on its belief that using humanitarian relief as a tool to achieve political objectives by some actors can threaten its capacity for action. The association has, therefore, felt it necessary to distance itself from these attempts to manipulate humanitarian action by highlighting its independence through its communications and operations. Thus, from its beginnings in Paris, through its multiple changes in leadership, and finally to its commitment to long-term medical care, the MSF has proven itself to be flexible, changeable, and successful in the face of crisis.

Neutrality

MSF, since its inception, has been very careful in its adoption of the principle of neutrality. They claim that to them "the principle of neutrality is not a synonym to silence."[91]MSF will not support either side of a conflict, asserting its own political stance and evaluations of the conflict. However, it will speak out against atrocities, regardless of which side is responsible for them. It was during MSF's formation that the co-founder Bernard Kouchner stated that MSF will have the right to speak out against injustice it witnesses. Otherwise, he feared that

[90] David Reiff, A Bed for the Night: Humanitarianism in Crisis, *Simon and Schuster*, New York, (2002). p. 309.
[91] Dan Bortolotti, Hope in Hell: Inside the World of Doctors Without Borders, Firefly Books, Ontario, (2004). p. 47.

MSF would end up like the ICRC and passive role in the Holocaust incident. Kouchner dismissed the principle of neutrality altogether because of its misuse. Raymond Borel, another important personality, on the other hand, was a strong supporter of neutrality and believed that it could coexist with advocacy. In the end, MSF's charter incorporated the principle of neutrality. 1974 saw the organisation's first real test of neutrality when the Kurdish envoy in its rebellion in Iraq asked for and received support from MSF. The action could not be considered neutral in any way.

For the next twenty years, MSF continued to struggle with the paradox of maintaining neutrality along with aiding those in urgent need. It was in 2001 that this debate was resolved for MSF. While some argued that aid is by nature political and acknowledging this fact would help better the people in need. Others, however, opined that without neutrality MSF's humanitarian aid could no longer be based on need alone. In the end, the article on neutrality remained in the charter with the understanding that neutrality is only a means to the end of helping those in need, and if that end cannot be accomplished, neutrality can be abandoned.

Difference between the Position of ICRC and MSF

Since MSF's origin is directly related to the ICRC's failure to utilise its neutrality for the greatest good in Biafra, it is useful to compare the definition and the operation of neutrality between the two organisations. The International Committee of the Red Cross is also an impartial, neutral, and independent organisation whose exclusive humanitarian objective is to protect the lives and dignity of victims of violent conflicts and internal violence and disturbances. The ICRC implements its principle of neutrality by making no distinction between just and unjust causes; or between aggressors and innocents.[92] Thus in order to continue to enjoy the confidence of all concerned parties, the ICRC believes in not taking sides in hostilities or engaging at any time in controversies of political, racial, religious or ideological nature. ICRC also believes that 'neutrality is not an end in itself, but rather a means towards an end,' which is to provide assistance to people who are affected by armed violence. Neutrality means making no judgment about the merits of one person's needs as against another's.

This definition of neutrality may apparently seem identical to MSF's principle. However, there are some important distinctions. Firstly, when dealing with victims of a humanitarian crisis, MSF does measure one person's needs against another's as they are committed to help those

[92] Michael Ignatieff, "The Warrior's Honor: Ethnic War and Modern Conscience", *Henry and Holt Company,* Inc, New York,(1998).p. 119.

in greatest need. For instance, in the mid-1990s in Rwandan refugee camps, the refugees were being provided with food and health assistance, but not protection. While both ICRC and MSF, had worked in the refugee camps, both during, and immediately after the genocide, by the end of 1994, MSF decided to completely withdraw from these due to their desire to protect those in greatest need. However, soon, former members of the Rwandan army in the camps re-armed themselves, taking the refugees hostage. Thus, aid workers indirectly abetted the perpetrators of genocide by providing aid, access to healthcare, and food.[93] Thus the MSF decided to withdraw its aid completely, with other organisations following suit. The ICRC, on the other hand, did not speak out since they were bound by neutrality and thus could no longer help anyone in need. Another difference between the two organisations' practical interpretations of neutrality is in the context of negotiation. For MSF, the negotiation with leaders of a conflict is only about getting access to those in need. The ICRC, on the other hand, is also dedicated to being a neutral intermediary between opposing sides in a conflict.[94] Therefore, for them, engaging in dialogue with both sides remains a priority.

With the growing complexity of humanitarian relief, many different levels of intensity of neutrality can be identified. The level a humanitarian organisation adheres to is up to its discretion. The ICRC, for instance, is strictly neutral; some claim neutrality but are unable to implement it; and some are highly politicised, such as some sub-bodies of the United Nations.

Conclusion

Thus the Red Cross plays a crucial role in complex humanitarian emergencies, providing essential assistance and support to those affected by conflicts. With a long history of humanitarian work, the organisation has developed an extensive network of volunteers, staff, and resources to deliver aid and support to people in need across the globe. Its work in complex humanitarian emergencies includes a range of activities, such as providing emergency healthcare services, distributing food and shelter, reuniting families separated by conflict, and advocating for the protection of human rights. The organisation's commitment to impartiality,

[93] Marcel van Soest, "A Statement by MSF Regarding Central Africa for the Hearing at the House of Representatives House Committee on International Relations," (5 November 1997). URL: http://www.doctorswithoutborders.org/publications/speeches/before1999/mvs_statement.shtml.
[94] Hans Haug, "Neutrality as a Fundamental Principle of the Red Cross," *International Review of the Red Cross,* No. 315, (31 December 1996). URL: https://www.icrc.org/en/doc/resources/documents/article/other/57jncv.htm#:~:text=Neutrality%20is%20one%20of%20the,racial%2C%20religious%20or%20ideological%20nature..

neutrality, and independence allows it to work effectively in situations where political, cultural, and social tensions are high.

Moreover, with its role in the development of IHL, including the drafting of the existing Conventions, access to prisoners of war, ensuring compliance with IHL during times of war, the ICRC has remained a vital force in the response to CHEs. Overtime, it has proved to be an important and effective organisation outside the UN system to aid in the compliance of IHL in situations of humanitarian emergencies.

CHAPTER VI

THE SCOPE AND DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW

The term ‘international humanitarian law’ refers to the laws relating to the conduct of warfare, that is, the *jus in bello*. The ICRC, which is regarded as the guardian and promoter,[1] of the IHL has defined it as:

“International humanitarian law (IHL) is a set of rules that seeks, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not, or are no longer, directly or actively participating in hostilities, and imposes limits on the means and methods of warfare. IHL is also known as "the law of war" or "the law of armed conflict.”[2]

Thus IHL plays a major role in regulating Complex Humanitarian Emergencies (CHEs). This makes it important to review the content and limits of IHL in its application to CHE’s. This chapter appraises the factors that lead to or hinder compliance and reviews the applicable law and its enforcement.

The chapter also focusses on non-international armed conflicts which are subject to far fewer laws than international conflicts. The study determines aspects of customary international law that apply to non-international armed conflict and the extent to which double standards of the IHL regarding international and non-international conflicts contribute to the reduction of compliance by non-state actors. Finally, the chapter analyses how IHL is relevant in the face of the challenges posed by terrorism and cyber war. These represent emerging forms of warfare not explicitly addressed within the existing scope of international humanitarian law.

[1] International Committee of the Red Cross (ICRC), “War and International Humanitarian Law” (29 October 2010). URL: www.icrc.org/eng/war-and-law/overview-war-and-law.htm
[2] International Committee of the Red Cross (ICRC), “What is international humanitarian law?”, (2022). URL: https://www.icrc.org/en/document/what-international-humanitarian-law

Introduction

War has been governed by rules and rituals from a long time. Modern restraints can be traced back to the advent of centralised states with permanent armies. The law of war (the *jus in bello*) which started developing since then has taken a central place in the contemporary international legal order. This traditional law of war was undoubtedly influenced by humanitarian concerns. However, such concerns found expression only if they passed the test of state interest. In the twenty-first century, international law has largely become treaty-based and also aims at regulating peacetime conditions. The right of states to declare war has been significantly constrained, and limits on their peacetime armaments have also been increased. Furthermore, the protection of the individual has also been accorded increased priority. With these developments, the law of war finds itself in a significantly different context. The relatively new term for it is 'international humanitarian law' (IHL), which now encompasses a significant portion of the law of war.

A General Framework

The laws of war have never existed in isolation. Economic, political, and military developments have had a major impact in shaping them. The broader international legal framework has also affected their evolution. All these factors have resulted in international humanitarian law becoming broader than ever before. However, despite the expanding presence of IHL, its status is somewhat uncertain. For instance, IHL is mostly concerned with armed conflicts but had been introduced in order to put the focus on the protection of human beings. Aggressive wars have been outlawed by the Kellogg-Briand Pact (Pact of Paris) of 1928 and the UN Charter of 1945. Thus the main objective of humanitarian law is to protect human beings rather than regulate warfare.

IHL has been defined by the International Committee of the Red Cross (ICRC) to mean "international rules, established by treaties or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts and which, for humanitarian reasons, limit the right of parties to a conflict to use the methods and means of warfare of their choice or protect persons and property that are, or may be, affected by conflict.[3]" The historical roots of the IHL lie in the protection of the 'victims of war', that is, persons who do not take an active part in hostilities. The Geneva Conventions

[3]Yves Sandoz et al., "Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventinos of 12 August 1949", *International Committee of the Red Cross* (1986).

introduced rules on the protection of wounded and sick soldiers (1864), prisoners of war (1929), and civilian persons (1949). These comprise the four Geneva Conventions of 1949 and form the bulk of international humanitarian law applicable in armed conflicts. The term 'humanitarian law' however, does not appear in the Four Geneva Conventions, but the Conventions do make reference to 'humanitarian activities' carried out by the Red Cross and other 'humanitarian organisations'.

One of the most prominent and vocal advocates of humanitarian law was Jean Pictet, former Vice-President of the International Committee of the Red Cross (ICRC). He characterised humanitarian law as "that considerable portion of international law which is inspired by a feeling for humanity and is centred on the protection of the individual in time of war".[4] Pictet distinguished between 'humanitarian law properly so-called', which encompasses the Law of Geneva, and humanitarian law in a wider sense, encompassing also the Law of the Hague.[5] The Law of the Hague is more concerned with the actual regulation of warfare. It is based upon the Hague Conventions of 1907. When discussions started in the mid-1960s on the need to update the law of war, the term 'humanitarian law' soon gained ground. For instance, resolution No. XXVIII adopted by the XXth International Red Cross Conference, commended the ICRC "to pursue the development of International Humanitarian Law".[6] At the same time, there was general support for the need to include elements of the Law of the Hague in the process. To underline this widening of the subjects dealt with in the 1949 Geneva Conventions, the ICRC submitted a report titled 'Reaffirmation and Development of the Laws and Customs Applicable in Armed Conflicts' in 1969. As the concept of humanitarian law started to gain support it started appearing in important public areas. For instance, the 1974-1977 Geneva Diplomatic Conference, which adopted the two Additional Protocols to the 1949 Geneva Conventions, was titled as 'Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts'. Thus overtime the concept of humanitarian law has come to be used in the wider sense referred to by Pictet.

Additional Protocol I of 1977 contains a number of provisions on methods and means of warfare and on the protection of the civilian population against the effects of hostilities. It thus became difficult to draw a distinction between the Law of Geneva and the Law of the Hague.

---

[4] Jean Pictet, "Development and Principles of International Humanitarian Law", *Henry Dunant Institute*, Dordrecht, Boston, Lancaster, Nijhoff & Geneva, (1985).
[5] Jean Pictet, "The Principles of International Humanitarian Law," *International Committee of the Red Cross*, Geneva, (1966).
[6] Handbook of the International Red Cross and Red Crescent Movement, ICRC, (2008). p. 448.

Nevertheless, it would be wrong to state that humanitarian law covers the entire law of war. The term 'humanitarian law' implies a specific humanitarian interest. Examples of the 'non-humanitarian' areas of the law of war are the laws of economic warfare.[7] However, there is no sharp legal distinction between humanitarian law and other aspects of the law of war in application. This discussion assumes that the concept of humanitarian law is confined to situations of armed conflict, that is, situations of complex emergencies. However, some scholars define humanitarian law in a broader way, including human rights law, which is primarily applicable in times of peace.[8]

From Humanitarian Thought to Humanitarian Law

The origin of humanitarian law was as customary laws based on religious and moral ideas popular during different periods of history. War practices were historically very cruel and very few customs attempted to limit these practices. During the Middle Ages, an attempt was made to mitigate the effects of war through the influence of religion. Islam, for instance, advocated the observance of certain principles of 'Viqayet' applicable during armed conflicts. However, these norms were only applied to followers of the same faith. During the 16th century, increasing instances of providing for the wounded, sick and even prisoners could be observed. The formation of modern states and the decline of papal authority encouraged this trend.

The origin of the customary prohibition of direct attack upon the civilian population in the western world started with Hugo Grotius's book, 'De Jure Bellis ac Pacis', where he differentiated between civilians and combatants and recommended humane treatment for prisoners of war. Since the 18th century, the Enlightenment provided a more favourable environment for the development of humanitarian law. This period saw the development of the 'Rousseau-Portalis' doctrine which defined war as a relation between States and not individuals.[9] This new doctrine significantly impacted the thinkers and writers of the French Revolution and later writers of the 19th century.

However, with conscription, the conditions of warfare changed considerably. This period was marked by a setback for humanitarian principles. It was only after the battle of Solferino in

[7] Dietrich Schindler, "State of War, Belligerency, Armed Conflict", in Antonio Cassese ed., The New Humanitarian Law of Armed Conflict, Editoriale Scientifica, Napoli, (1979). pp. 3-20.
[8] Jean Pictet, "The Principles of International Humanitarian Law," *International Committee of the Red Cross*, Geneva, (1966).
[9] Jean Pictet, "Development and Principles of International Humanitarian Law", *Henry Dunant Institute*, Dordrecht, Boston, Lancaster, Nijhoff & Geneva, (1985).

1859, Henry Dunant endeavoured to establish a relief society across the world to assist an army's medical service during a war. He also attempted to establish an international treaty adopted by the various states to provide a legal basis for the protection of military hospitals and medical personnel. These efforts resulted in the Red Cross and the Geneva Conventions. These initiatives were successful because at that time public opinion in Europe was strongly in favour of humanitarian actions and the reform of traditional law. This was mainly the result of rapid advancement in military technology resulting in increased casualties during armed conflicts. Before the 1864 Geneva Convention, during the War of Secession of 1863 the US promulgated Instructions drafted by Professor Francis Lieber. These represented the first effort to codify the law of war inspired by humanitarian ideas.[10] Furthermore, on the initiative of the Tzars of Russia, Alexander II and Nicolas II, the Conferences in Brussels in 1874 and in the Hague in 1899 marked a new step forward in the codification of laws and customs of warfare on land. Thus, the law of warfare was born, limiting the evils of warfare and outlawing new destructive weapons.

Two key ideas emerge from the evolution of humanitarian thinking towards the codification of humanitarian law; the first consists in restricting the results of hostilities and regulating the combatants' behaviour and the conduct of military operations, and the second aims at providing protection to the victims of armed conflicts. The Law of The Hague and the Law of Geneva correspondingly deal with these two key ideas. Overtime, especially with the adoption of the Protocols Additional to the Geneva Conventions in 1977, these laws got virtually integrated. However, many of the rules had major gaps. For instance, the Hague rules had no provision for supervision with respect to the observance of humanitarian norms during military operations. Additionally, the Conventions had a clause mandating all belligerents to be contracting Parties. Thus if one belligerent was not a Party to the Conventions, those instruments did not apply to all Parties to the conflict. The First World War exposed these weaknesses in humanitarian law. During the inter-war period, very limited progress was achieved. This was primarily because, states, via the League of Nations, focussed on developing laws against war.

Humanitarian law also owes its progress to the influence of a series of developments. These includ the ongoing conflicts, the changes in balance of power, the creation of new weapons, and the efforts undertaken by the ICRC. The 1864 Geneva Convention provided protection to

[10] Francis Lieber, "Instructions for the Government of Armies of the United States in the Field", Articles 11, 22, 29. Washington, (1863).

the wounded and sick soldiers, about whom Henry Dunant was most concerned. Since there were large gaps in protection during sea battles in the early 20th century, a Convention was adopted in 1906 extending the protection to the wounded, sick and shipwrecked members of the armed forces at sea. The First World War also revealed a large gap regarding the condition of prisoners of war. The adoption of a special Convention relating to the Treatment of Prisoners of War in 1929, bridged this gap.

After the Second World War, states' primary concern was to develop a more efficient system of protection for the victims of conflicts, especially the civilian population. Upon the initiative of the ICRC, parts of the law of armed conflicts aiming at ensuring protection to the victims of conflicts were developed with the four Geneva Conventions adopted in 1949. In order to ensure their efficiency, a few modifications from the traditional law of warfare were made. These included, firstly, humanitarian law is applicable not only 'to all cases of declared war' but also in 'any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them'.[11] Secondly, humanitarian law is applicable 'to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance'.[12] Thirdly, 'although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations.'[13]

During and after the Second World War, armed resistance movements appeared. These combatants were not legal in accordance with existing law. The wars of national liberation against colonial territories and guerrilla warfare further increased the complexities. Thus a need was felt to fill this gap. This was filled in during the Diplomatic Conference on the Reaffirmation and the Development of International Humanitarian Law Applicable in Armed Conflict, held in Geneva from 1974 to 1977. It adopted two Additional Protocols to the Geneva Conventions which constitute a further important phase in the development of humanitarian law. These Protocols extended the concept of an international conflict. In accordance with Article 1 of Protocol I, international armed conflicts to which the Geneva Conventions and Protocol I are applicable included 'armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination.' It provided guerrilla fighters with combatant status, having the right to the

[11] Article 2, paragraph 1 common to 1949 Geneva Conventions
[12] Article 2, Paragraph 2 common to 1949 Geneva Conventions
[13] Article 2, Paragraph 3 common to 1949 Geneva Conventions

status of prisoners of war even if they did not fulfill all the conditions of international customary law. The protocols further highlighted the protection of the civilian population against the effects of hostilities. For example, war was to be directed only at the military forces of a state, and not at individuals or civilian objects. Terror, starvation, and indiscriminate and revenge bombings were also banned.

The provisions of Protocol II extended the protection of the victims of non-international conflicts as first defined in Article 3 common to all Geneva Conventions of 1949. Rules covering a conflict between the legal government and rebels do not guarantee to the latter the status of legitimate belligerents. The Protocol is more concerned with the protection of non-combatants during civil wars, especially civilians who do not take part in hostilities. Thus, the Protocols did not constitute a new set of rules, they merely reaffirmed, evolved and made more precise the existing humanitarian rules.

Humanitarian Law and Human Rights

The legal instruments on the protection of human rights that have emerged especially during the post-war period, form a major part of international law often referred to as international human rights law. However, the two Covenants of 1966 are regarded as the most significant instruments. Human rights norms focus on the individual. They contain rules of conduct and are applicable in peacetime, rather than in wartime. Historically, humanitarian law applicable in armed conflicts was only fully applicable when there was a war. The concept of armed conflicts was introduced by the Geneva Conventions of 1949. However, certain provisions of the Geneva Conventions of 1949 and the Additional Protocols of 1977 are applicable during times of peace, providing exceptions. For instance, provisions making it obligatory for the High Contracting Parties to disseminate, in times of peace as in times of armed conflict, the Conventions and the Protocols in their respective countries.

On the other hand, the 1966 International Covenant on Civil and Political Rights, have no mention of war or armed conflict. The Covenant applies to both times of peace and war. However, Article 4 of the Covenant allows the parties to deviate, from some of their obligations 'in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed.' This situation includes situations of armed conflict.'[14] Other types of public emergencies include internal tensions and disturbances that do not escalate into non-

[14] Thomas Buergenthal, "To Respect and to Ensure: State Obligations and Permissible Derogations", in Louis Henkin, ed. *The International Bill of Rights,* New York: Columbia University Press, (1981). p. 76

international armed conflict. Thus, this concept of public emergency is a compromise between 'armed conflict' and 'normal peacetime conditions.' The non-derogable rights under Article 4 of the 1966 Covenant represent those provisions that must be respected in all situations, including public emergencies. Thus, the right of High Contracting Parties to derogate in time of public emergency from their other obligations under the Covenant is not unlimited.

Since the Covenant requires a High Contracting Party to ensure to 'all individuals within its territory and subject to its jurisdiction the rights recognised in the Covenant, questions can be raised about the Covenant's applicability beyond a state's national territory.' A limited interpretation would suggest that the Covenant extends only to territory under the actual authority of that state.[15] This view ignores non-derogable rights which are to be applied in all circumstances. While some peacetime human rights may not be applicable during wartime, certain rights may come into existence only during wartime. However, the human rights instruments do not command the almost universal adherence that the 1949 Geneva Conventions do. Many states which are a party to the Geneva Conventions are outside the scope of human rights instruments. Nevertheless, some human rights principles can be found in humanitarian treaties applicable in armed conflicts. The existence of humanitarian law applicable in non-international armed conflicts, namely, common Article 3 of the 1949 Geneva Conventions and Additional Protocol II of 1977, portrays elements of human rights in contemporary humanitarian law. Furthermore, Additional Protocol I applicable in international armed conflicts contains an entire section on the 'treatment of persons in the power of a party to the conflict', and 'other applicable rules of international law relating to the protection of fundamental human rights during international armed conflict'[16]. A few provisions of this Section also apply to a party's own nationals. Article 75 on 'fundamental guarantees', in particular, draws upon common Article 3 of the 1949 Conventions, Articles 4-6 of Additional Protocol II of 1977 and general human rights instruments such as the 1966 Covenant on Civil and Political Rights.[17] Thus, the parties' own nationals are covered, on the condition that they, 'are affected by' the international armed conflict.[18]

[15] Ibid.
[16] Article 72 of Additional Protocol I to the Geneva Conventions of August 12, 1949
[17] Additional Protocol I to the Geneva Conventions of August 12, 1949
[18] Michael Bothe; Partsch Josef Karl & Solf A Waldemar, "New Rules for Victims of Armed Conflicts", *Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949*, The Hague, Boston, London, (1982). p. 458.

For many years the international community has debated about the relationship between International Humanitarian Law and International Human Rights Law (IHRL). The International Court of Justice considered their relationship in its Nuclear Weapons Advisory Opinion in 1996.[19] It stated that while IHRL applied during armed conflict, the prohibition on arbitrarily taking human life in Article 6 of the International Covenant on Civil and Political Rights 1966, had to be read in connection with IHL. The Court revisited the relationship between IHL and IHRL in the Wall Advisory Opinion and expanded on its previous view.[20] It stated that some rights may be the exclusive domain of IHL; others may be exclusively under human rights law; while others might belong to both branches of international law.[21]Another significant development relating to the relationship between IHL and IHRL occurred in 2006. In 2006 the International Law Commission (ILC) published a study on the fragmentation of international law.[22]This study focused on tools that are used to address conflicts between different rules and principles of international law. It also shed light upon the relationship between IHL and IHRL. The study concluded that a number of human rights norms have been generally recognised as peremptory.[23]The study further stated that when interpreting a treaty the interpreter shall take 'into account, together with the context (of the treaty) ... any relevant rules of international law applicable in the relations between the parties'.[24] Thus it was important to bring in the 'principle of harmonisation' between treaty law.

Thus much of the ILC's fragmentation report was concerned about relation between the different legal regimes. Such regimes differ not just in relation to the subject matter, but also in the way the norms are expressed. However, both regimes have protection as their primary objective. IHRL aims to protect human dignity. IHL is guided by the 'principles of humanity.' Both regimes contain obligations of an 'absolute rather than a reciprocal character'[25]such that violation by one treaty party of its protective obligations under an IHL or IHRL treaty does not allow the other party to suspend its obligations. Similarities, however, do not guarantee less

[19] "Legality of the Threat or Use of Nuclear Weapons" (Request by the United Nations General Assembly for an Advisory Opinion), ICJ Reports 226, (1996)
[20] "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory", *Advisory Opinion ICJ Reports* 136, (2004)
[21] ibid 136, 178, para 106
[22] International Law Commission, "Fragmentation of International Law: Difficulties Arising From the Diversification and Expansion of International Law", *Report of the Study Group of the International Law Commission*, Finalized by Martti Koskenniemi, UN Doc A/CN.4/L.682, (13 Apr 2006).
[23] Ibid.
[24] Ibid.
[25] Sir Gerald Fitzmaurice, "Law of Treaties, Second report by G Fitzmaurice", Special Rapporteur, *Yearbook of the International Law Commission*, Volume II, 16, (1957). p. 54.

inter-regime conflict. They might instead lead to overlapping operation and greater scope for conflict. The presence of emergency derogation clauses in human rights treaties and the reference to 'war' in some human rights treaties makes it difficult to avoid such overlap. Furthermore, there are also significant differences between the regimes which can result in increased misunderstanding and inter-regime conflict. IHL is 'based on the balance between military necessity and humanity.'[26] IHL does not attempt to obstruct the conduct of military operations. However, it attempts to ensure that it is done in a humane manner. IHL lawyers also 'fear that the politicisation associated with human rights work will compromise the neutral and purely humanitarian nature of their work'.[27]

The ILC fragmentation report noted, that firstly, one result of categorising the IHL and IHRL as distinct special regimes is that technical conflict rules must be applied with great caution. For instance, the tendency to prioritise IHL over IHRL only because IHL is a lot more detailed is not justified. The underlying objective of each regime needs to be considered with regard to each case of conflict. Both IHL and IHRL are parts of international law and must be interpreted in a way that does not threaten that integrity. Also, independent, third-party adjudication of inter-regime conflicts is important. The International Criminal Court has the potential to provide such independent third-party adjudication. This is because, on the IHL front, the court has jurisdiction over war crimes in international and internal armed conflicts and crimes against humanity and genocide committed during armed conflict. According to the IHRL genocide and crimes against humanity are not dependent on the presence of an armed conflict and are nonetheless seen as widespread violations of human rights.

Humanitarian Law and Peace

The need for military restraints and adherence to basic humanitarian principles was promoted not only due to the common interests of the parties involved during armed conflicts but also by the need to facilitate the restoration of peace.[28] With the emergence of the Kellogg-Briand Pact and the UN Charter, the relationship between the law of war and the prohibition of the use of force became a point of debate. Today there is a widespread agreement that humanitarian law should be applied to all parties in a conflict regardless of who may be responsible for the

[26] Louise Doswald-Beck and Sylvain Vitd, "International Humanitarian Law and Human Rights Law" *International Review of the Red Cross* 293, (1993).
[27] David Petrasek, "Current Developments -Moving Forward on the Development of Minimum Humanitarian Standards" *92 AJIL 557*, (1998). p. 560.
[28] Allan Rosas, "Nordic Human Rights Policies", *Current Research on Peace and Violence*, vol. 9, Special Issue on Human Rights and the Nordic Countries, Allan Rosas, ed., (1987). p. 17.

outbreak of hostilities. However, this consensus did not come about easily. The UN International Law Commission in 1949 decided to exclude the law of war from its programme of work, as its action might be interpreted as a lack efficiency of the United Nations in maintaining peace.[29]However, the four Geneva Conventions were adopted the same year. They dealt almost entirely with the protection of the 'victims of war' paving the way for future developments in the field. UN International Conference on Human Rights held at Teheran in 1968 stated that while "peace is the underlying condition for the full observance of human rights and war is their negation', however, 'even during the periods of armed conflict, humanitarian principles must prevail."[30] Within two years of the adoption of the two Covenants on human rights, attempts were there to extend human rights to situations of international and non-international armed conflict. The historical context of the 1974-1977 Diplomatic Conference emphasises the relevance of both the law of war and human rights in the development of humanitarian law. The Geneva Diplomatic Conference of 1949 too held that the conference's work was 'inspired solely by humanitarian aims', and it hoped that, 'in the future, Governments may never have to apply the Geneva Conventions for the Protection of War Victims.' 'It desired that peace shall reign on earth forever.'[31]This statement was included in a separate resolution adopted by the Diplomatic Conference rather than by the 1949 Conventions' themselves but, it did refer expressly to the desire to bring peace. The ICRC's 1973 Draft Additional Protocol I's preamble also proclaimed its 'earnest wish to see peace prevail among peoples.'[32]

During the Diplomatic Conference, a few states proposed avoiding using expressions like 'the right' of parties to armed conflicts to adopt or not to adopt certain methods and means of combat.[33] This was to prevent the interpretation that states have a right to resort to force except as permitted under the UN Charter.[34] The Conference did not follow this suggestion, rather it went even further than the ICRC draft in revalidating the traditional principles of the laws and customs of war. Articles 43 and 44 on 'Armed Forces' and 'Combatants and Prisoners of War'

[29] ILC Yearbook 1949, *Yearbook of the International Law Commission*, New York: The United Nations. p, 281.
[30] Dietrich Schindler, & Toman Jiri, "The Laws of Armed Conflicts: A Collection of Conventions, Resolutions and Other Documents", Second revised and completed edition, Henry Dunant Institute, Geneva, (1981). p.197.
[31] "Final Record of the Diplomatic Conference Convened by the Swiss Federal Council for the Establishment of International Conventions for the Protection of War Victims" Held at Geneva from April 21st to August 12th, (1949).
[32] ICRC, "Draft Additional Protocols to the Geneva Conventions of August 12, 1949", Submitted by the International Committee of the Red Cross, Geneva, *International Committee of the Red Cross*. (1973). p.3.
[33] Ibid. p.155.
[34] Allan Rosas, "The Legal Status of Prisoners of War: A Study in International Humanitarian Law Applicable in Armed Conflicts" *Dissertationes Humanarum Litterarum*, (1976). p.42.

are examples that prove the point. While the ICRC draft was restricted to a provision on the organisation and discipline of armed forces (draft article 41) and one on prisoner-of-war status (draft article 42), article 43 as adopted by the Conference, contains a comprehensive definition of armed forces and links it to the concept of combatants. Article 44 refers to the right of certain categories of persons 'to be a combatant and a prisoner of war'. This was done to emphasise the fact that combatants complying with the basic conditions cannot be tried just because they took part in hostilities.[35] This solution is valid from a strictly legal perspective. However, the important question is if these provisions further the cause of peace.

Some states have questioned the fairness of the principle that the law of war applies to both parties to an armed conflict alike, irrespective of which side is the aggressor.[36] Besides some exceptions in the application of the law of neutrality and the law on economic warfare, the 1949 Geneva Conventions must be equally applied to all parties to a conflict. This is required as guilt is a subjective issue in the context of a conflict. However, at the 1975 session of the Geneva Diplomatic Conference, the then Democratic Republic of Vietnam proposed denying the status of prisoners of war to 'persons taken in flagrante delicto when committing crimes against peace or crimes against humanity, as well as persons prosecuted and sentenced for any such crimes.'[37] However, these proposals were not adopted. Instead, the principle of equality was recognised in the Preamble of the Protocol.

The principle of equality covers 'all persons who are protected by those instruments.' Thus, the question arises if there are certain categories of persons who do not enjoy full protection under individual provisions of Additional Protocol I. Paragraph 3 of Article 44 states that combatants must distinguish themselves from civilian, unless 'owing to the nature of the hostilities an armed combatant cannot so distinguish himself.' These special circumstances can exist only in occupied territory and in wars of national liberation.[38]

[35] Ibid. p.496.
[36] Ibid. p.38.
[37] Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva (1974-1977), vol. III, Bern 1978: Federal Political Department. p. 191.
[38] Michael Bothe; Partsch Josef Karl & Solf A Waldemar, "New Rules for Victims of Armed Conflicts", *Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949*, The Hague, Boston, London, (1982). p.253.

International Humanitarian law and the Protection of Human Beings

In the evolution of humanitarian law, the individual is seen to be taking a central position. There has been a steady growth in the number of individuals who come within the scope of the protection of international law. The main objective behind the entire structure of humanitarian laws is the protection of human beings. However, this objective can be achieved only in steps. The significant progress made since the Second Conference of the Hague of 1907, is a case in point. However, even within the objective of protecting human beings, the main focus is upon civilians. Civilians are usually defined as individuals who are not members of the armed forces and who do not participate in military operations. Civilians who need protection in conflicts include, those living under belligerent occupation, those who are living in a territory which while not under the control of an enemy, is under the threat of an enemy attack and civilians who need protection in widespread internal conflict.

The greatest possible protection of human beings from armed conflict is the main purpose of IHL. However, armed conflicts invariably result in death and destruction. It is thus critical to develop legal standards for application in armed conflict that account for the realities of violence yet strive for best military practices. In a humanitarian emergency, it is unavoidable to have both lawful and unlawful casualties. It is therefore important to have a legal framework to help determine the category into which a particular victim falls. All persons who may be considered victims of serious violations of IHL occurring in armed conflict must first be classified as victims of an unlawful attack. Furthermore, depending on whether they meet other criteria, they may also be regarded as victims of other offenses like genocide. However, if there is no unlawful attack in the first place, no offence is taken to have been committed. IHL as a body of law developed with the help of military inputs. Thus, imperative military requirements are not acceptable excuses for the violation of the law. Presently, the legally relevant scope of military necessity is limited to:

First, areas of law that are not adequately addressed in existing treaty law. With the expansion of IHL over the years such areas of law are relatively limited. However, during the Second World War, for instance, there was no treaty law concerning the conduct of aerial bombardment. When such gaps exist, military necessity must be evaluated against humanitarian requirements. Only when the former outweighs the latter is an action considered permissible.

Second, specific provisions in treaties that explicitly allow certain activities. For instance, the destruction of certain types of property when it is justified by military necessity.

International Humanitarian Law: Paradoxes and Contradictions?

International Humanitarian Law is often considered a paradox as it is the law of armed conflict, an act that is fundamentally opposed to law. Armed conflicts by their very nature, aim at settling disputes through force and violence and not according to legal rules. Thus, restricting violence through legal rules is somewhat ironic. Immanuel Kant stated, "how is it possible to lay down laws to govern a situation which is inherently independent of all laws?"[39] This thinking regarding the futility of humanising war has been supported by many other theorists and military leaders. However, such scepticism is unjustified. Armed conflicts do not necessarily destroy the entire moral structure of mankind, made of humanitarian values deep-rooted in the conscience of peoples.

As Jean Pictet stated, "the laws of war are the products both of reason and of the deepest feelings of humanity and these must be respected by all men at all times."[40] In reality, the idea of 'humanising' violent conflict is a confusing one. It is more appropriate to attempt at limiting the effects of hostilities. Another important question is whether the law of armed conflict is justified when it has in no way lessened or outlawed war? The law of armed conflicts (*jus in bello*) does not aim at eliminating war, but at reducing its harmful effects, while the law against war (*jus contra bellum*) aims at preventing war. Humanitarian law acknowledges the realities of violence, while attempting to mitigate its effects.

Humanitarian law, in its essence, is a compromise between the requirements of humanity and military necessity. The 1907 Hague Convention, for example, is 'inspired by the objective to diminish the evils of war, as far as military necessities permit.' IHL thus tried to limit the right of the Parties to the conflict to choose means and methods of warfare. This principle is reflected in Protocol I of 1977 which states that 'it is prohibited to employ weapons, projectiles and material methods of warfare of a nature to cause superfluous injury or unnecessary suffering.'[41] However, the military necessity of using or not using a weapon has often been determined by the interest of States concerned. The Treaty on the Prohibition of Nuclear Weapons (TPNW)

[39] Jean Pictet, "Development and Principles of International Humanitarian Law", *Henry Dunant Institute*, Dordrecht, Boston, Lancaster, Nijhoff & Geneva, (1985).p.80.
[40] Ibid.
[41] Article 35, Additional Protocol 1 to 1949 Geneva Conventions.

which entered into force in 2021 has not yet been signed by 32 countries. This shows that there is no consensus on this issue. Despite continuing efforts to put restrictions upon the means whereby warfare is conducted, progress has been slow. Thus, in this context, the compromise between military necessity and humanitarian considerations is not fully satisfied. Another difficulty in enforcing these restrictions results from the way in which some of these prohibitions are worded. Article 23(e) of The Hague Regulations, for instance, outlaws the employment of 'arms, projectiles or material calculated to cause unnecessary suffering.' The limit of 'necessary' suffering has never been codified. This provides gap for states to commit illegal acts. Thus humanitarian law has a long way to go to overcome these paradoxes. However, beyond these apparent paradoxes, it is a body of law, whose principles go beyond the rules which compose it. Its purpose being the protection of humanity.

The Specificities of Humanitarian Law

Universal Application

Since the 19th century, humanitarian law has become applicable to a large number of states and situations of conflict. Common Article 2, paragraph 3 removed the si omnes clause[42] from the Geneva Conventions in 1949. Common Article 1, provides that 'The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.' This provision is again repeated in the Protocols Additional to the Geneva Conventions. Consequently, these legal instruments are not subject to reciprocity for their implementation.[43] This was further supported by Article 60(5) of the Vienna Convention on the Law of Treaties of 1969 which specifies that the provisions specifying the conditions of termination or suspensions of the operation of a treaty as a consequence of its breach 'do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character.' Humanitarian law is therefore no longer based on reciprocity but has become an absolute and universal commitment.

[42] "Si omnes" is a Latin phrase meaning "if all." The Si Omnes clause is a provision which states that the agreement will enter into force only if all parties to the treaty ratify or adhere to it.
[43] George Abi-Saab, "The Specificities of Humanitarian Law", in *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet, Geneva,* The Hague: ICRC, Nijhoff. (1984). p. 266.

A Law for the Individual

The growth and development of humanitarian law show that the protection of the individual is its primary objective. The adoption of Article 7 common to the first three Conventions, and Article 8 of the fourth Convention, stating that 'Protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention' and that 'No special agreement shall adversely affect the situation of protected persons, as defined by the present Convention, nor restrict the rights which it confers upon them' shows dedication towards protecting individuals. The adoption of Article 3 in 1949 to all four Conventions further held that the State was no longer authorised to ill-treat even those citizens who revolted against it.

Sources of IHL

The sources of IHL norms are conventional and customary international law, commonly referred to as "the Law of Geneva" (for the conventional law of armed conflicts) and "the Law of Hague" (for the customary law of armed conflicts) respectively. The Law of Hague is not, however, exclusively customary law as it is in part made of treaty law, and also because treaty law has become part of customary law. Similarly, the Law of Geneva is not exclusively treaty law, because it also reflects customary law. Thus, the traditional distinction between conventional and customary law has become significantly blurred.

The term international humanitarian law initially denoted the protections and obligations arising out of the 1949 Geneva Conventions.[44] However, the term has now expanded to cover all violations of the laws of armed conflict, whether they are contained in the 1949 Geneva Conventions and the two 1977 Additional Protocols or in customary international law contained primarily in the 1907 Hague Convention IV and its Annexed Regulations (1907 Hague IV), conventional and customary international law applicable to armed conflicts in connection with the protection of cultural property[45] and the prohibition of use of certain weapons.[46] The four Geneva Conventions of 1949 and parts of Protocols I and II are now considered part of customary international law.[47] However, these norms do not apply to purely

[44] Geneva I, supra note 23; Geneva II, supra note 23; Geneva III, supra note 23; Geneva IV, supra note 23.
[45] 1954 Hague Convention, supra note 24; Hague Convention Protocol I, supra note 24; Hague Convention Protocol II, supra note 24.
[46] 1954 Hague Convention, supra note 31.
[47] UN, G.A. Res. 59/36, Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts (Dec. 2, 2004). URL: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/478/42/PDF/N0447842.pdf?OpenElement

internal conflicts, in which non-state actors are subject only to the criminal laws of the state in whose territory the conflict occurs and international criminal law norms, such as those pertaining to genocide and crimes against humanity. Besides, these non-state actors have no specific protection under IHL, other than the ones provided in Common Article 3 and Protocol II.[48]

IHL is the body of rules that protects people during wartime who are not or are no longer participating in the hostilities.[49] These rules are to be complied with by not only the states and their armed forces, but also by rebel groups and any other parties to a conflict.[50] In 1950, the International Law Commission declared crimes against humanity to be unrelated to war crimes, and they became a separate category of international crimes, applicable in times of war and peace.[51] In 1948, the Genocide Convention[52] defined the new international crime of genocide, which is applicable in both war and peace. Genocide and crimes against humanity, as well as war crimes, are deemed *jus cogens*[53] international crimes, nevertheless, there are still doubts regarding genocide and crimes against humanity applying to non-state actors or not.

The evolution of IHL norms in both customary and conventional international law demonstrates the tension between humanitarian values and states' interests. Supporters of humanitarian values advocate expanding the scope of IHL for persons and non-military targets, as well as impose limits on the use of force and of specific weapons. Advocates of state interests, on the other hand, have resisted this attempt and have instead raised concerns about 'military necessity.' Wars have been traditionally fought with the objective of achieving military success with the minimum possible cost, irrespective of the harm caused.

Lastly, the two sources of IHL, namely customary and conventional international law and their respective legal regimes, not only overlap and have gaps, but they also exhibit an imbalance between rights and protections depending on the legal classification of the conflict. Thus, a

[48] T Meron, "International Criminalization of Internal Atrocities", *The American Journal of International Law*, Vol. 89, No. 3, Cambridge University Press, (1995), infra note 68
[49] ICRC, "What is International Humanitarian Law?" (2004). URL: http://www.icrc. orgAVeb/eng/siteeng0.nsf/htmlall/humanitarian-law-factsheet/$File/What_is _IHL.pdf.
[50] Ibid.
[51] International Law Commission, Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal, With Commentaries, 123, U.N. Doc. A/1316 (1950).
[52]UNGA, "Resolution adopted by the General Assembly 260 (III): Prevention and Punishment of the Crime of Genocide, Adoption of the Convention on the Prevention and Punishment of the Crime of Genocide, (1948). supra note 39, art. 2.
[53] In international law, jus cogens refers to a set of fundamental principles and norms that are recognised as binding on all nations, regardless of their consent.

person who would otherwise qualify as a lawful combatant in a conflict of an international character becomes a criminal in a non-international or internal conflict. This imbalance hinders voluntary compliance by non-state actors. Thus, different sub-legal regimes have been created within the overall regime of the Law of Armed Conflict. The 1907 Hague IV Convention and its Annexed Regulations apply only to conflicts of an international character, namely conflicts between states, [54]as do the Four Geneva Conventions of 1949, and Additional Protocol I but Common Article 3 apply to non-international.[55]Additionally, Protocol II deals exclusively with non-international conflicts. While Common Article 3 is considered a part of customary international law,[56]only some aspects of Protocol II are deemed customary international law. This leaves a gap in interpretation, regarding what aspects of customary international law are binding and what are not. These inequities are reflected in the fact that non-state actors in non-international conflicts are not granted combatant status and thus do not benefit from POW status. The only protection for these actors is provided in Common Article 3 and Protocol II. States' international legal positions maintain that they and non-state actors are equally bound by Common Article 3 and Protocol II, giving the appearance of reciprocity. In reality, states exclusively reserve to themselves the determination of when Common Article 3 and Protocol II are applicable.

Content of IHL

The body of IHL applicable to international armed conflicts is a lot more elaborate than the parts of IHL dealing with internal armed conflicts. This is mainly because states have been more willing to accept limitations on how they engage in conflict with other states than to external limitations on how they deal with disturbances within their own state. The main treaties applicable to international armed conflict comprise the Hague Convention IV (Laws and Customs of War on Land) of 1907; Geneva Convention I (Wounded and Sick) of 1949; Geneva Convention II (Maritime) of 1949; Geneva Convention III (Prisoner of War) of 1949; Geneva Convention IV (Civilians) of 1949; Additional Protocol I of 1977.

Most states are parties to all the above-mentioned treaties except for Additional Protocol I. Apart from some major states like the USA, most states are also parties to Protocol I. Moreover,

[54]International Conferences (The Hague), "Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land", (18 October 1907). supra note 25, article 2. URL: https://www.refworld.org/docid/4374cae64.html
[55] Geneva I, supra note 23, art. 3.
[56] Cherif Bassiouni, International Recognition of Victims' Rights, Human Rights Law Review, Volume 6, Issue 2 (2006). pp. 203–279, https://doi.org/10.1093/hrlr/ngl009

all states are also bound by customary international law, many of which are also in common with the provisions of Additional Protocol I. The treaty law provisions applicable to internal armed conflict are a lot fewer. They essentially consist of Article 3 common to the Geneva Conventions and Additional Protocol II of 1977. Common Article 3 is regarded as a miniature version of the Geneva Conventions, containing minimum standards applicable in all armed conflicts. Additional Protocol II covers non-international conflicts but excludes internal disturbances. Since genocide and crimes against humanity may, occur independent of peace or war, they may be committed in any type of conflict. The Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY), in the "Tadic Jurisdiction Decision",[57] held that customary international law applied to all conflicts. The ICTY both Additional Protocol I (Article 51(2)) and Additional Protocol 2 (Article 13(2)) of the Geneva Conventions, have the common sentence that "the civilian population as such, as well as individual civilians, shall not be the object of attack." This sentence captures the legal obligation applicable to all conflicts.

The Principle of Distinction

The principle of distinction is the fundamental principle that underlies the application of IHL to humanitarian emergencies. This excludes rules which prohibit or limit the use of certain weapons or methods of war. This principle states, 'in order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.'[58]The legal obligations that follows are based primarily in Additional Protocol I and therefore, applies only to the military forces of a state which is a party to Protocol I and is involved in an international conflict. On attacking military objectives, effort should be made to identify and locate the objective correctly and to ensure it will be at target when the projectile arrives, to identify and assess the risk to civilian persons and objects in the vicinity of the aim point, and to minimise incidental civilian casualties and damage to civilian objects.[59] If it is apparent before an attack that the risk to civilian persons or objects is disproportionate, the attack should not be launched. If it becomes so apparent after the attack is launched, it should

[57] Prosecutor v. Dusko Tadic, a/k/a "Dule", Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, The Hague (2 October 1995).
[58] Additional Protocol I, Article 48.
[59] Ibid, Article 57.

be aborted.[60] Indiscriminate attacks are prohibited. Attacks directed against military objectives which may be expected to cause excessive injury or death to civilians or to civilian objects in relation to the concrete and direct military advantage anticipated from the attack are prohibited.[61] When alternatives are present between different military objectives for achieving a similar advantage, the objective on which the attack is expected to cause the least injury to civilian lives or damage to civilian objects is to be selected.[62] Defending forces must not use the presence of the civilian to shield military objectives from attacks or to shield, favour or impede military operations. Even if the defending force does not comply with its obligations, the attacking force is still required to comply with all its obligations including the requirement to comply with the principle of proportionality.[63]

Military Objective

Military objectives can be both people and things. In terms of people, they are mostly combatants and civilians participating in hostilities. Combatants are members of a conflict party's armed forces, except medical personnel and chaplains.[64] Combatants can both attack as well as be attacked at any time unless they or the opposing party have surrendered or are injured and have ceased to take part in hostilities. However, wounded combatants who have not ceased fighting can be lawfully attacked. While the concept of combatant status is legally relevant only during international armed conflicts, in reality, the concept is applicable to internal conflicts as well.

Civilian participation in armed conflicts is far more complex. Armed forces of many states sometimes take recourse to outsourcing to fulfill their needs. Thus private contractors may be responsible for maintenance of the weapons, provision of logistical support and food. This leads to the involvement of civilians in armed conflicts. Moreover, civilians like defence scientists have a very significant role to play in war efforts. According to the ICRC hostile acts "should be understood to be acts which by their nature and purpose are intended to cause actual harm to the personnel and equipment of the armed forces."[65] "Direct participation in hostilities

[60] Ibid, Article 51(4).
[61] Ibid, Article 51(5)(b).
[62] Ibid, Article 57(3).
[63] Ibid, Article 57(7) and (8).
[64] Ibid, Article 43(2).
[65] Yves Sandoz,. et al. (eds), "Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949," *International Committee of the Red Cross*, Martinus Nijhoff Publishers, Geneva.(1987).

implies a direct causal relationship between the activity engaged in and harm done to the enemy at the time and place where the activity takes place."[66] A distinction needs to be made between direct participation in hostilities and participation in the war effort. Civilians are military objectives only when they take an active part in hostilities, not before or after. When making targeting decisions, if it is not clear if a person is a civilian or not, he is presumed to be a civilian. These laws have been codified in Additional Protocol I (Articles 43(1), 50(1), 51(2) and (3)). Internal conflicts are subject to the same standard as a result of Additional Protocol II (Article 13) and Article 3 common to the four Geneva Conventions of 1949.

Article 52(2) of Additional Protocol I maintain that military objectives are those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances, offers a definite military advantage. It further states that in case of ambiguity regarding a civilian object's use for making a contribution to the conflict, it shall be presumed not to be so. However military objects of dual-use nature cause some confusion. Objects like communications and transportation systems have civilian as well as military uses, making it difficult to determine their status. Another important unresolved issue concerning military objective is whether political leaders can be considered as legitimate targets during an armed conflict. It is pertinent to determine such legitimacy by analysing the scope and character of the concerned leader on a case-to-case basis.

Furthermore, protected individuals also include civilian non-combatants, those *hors de combat* such as the sick, wounded, shipwrecked, prisoners of war, those covered by the Red Cross and Red Crescent emblems, and those who provide medical and humanitarian assistance in the course of armed conflicts.[67] These norms also extend to protected targets, such as civilian installations, hospitals, religious and cultural monuments, and cultural artifacts.[68]

The Principle of Proportionality

Military objectives, civilians, and civilian objectives are sometimes located in the same area. Attacks on military objectives are legal unless they result in disproportionate civilian casualties.

[66] Ibid, paragraph. 1945.
[67] International Committee of the Red Cross (ICRC), "Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)", 12 August 1949, 75 UNTS 28. URL: https://www.refworld.org/docid/3ae6b36d2.html
[68] International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 UNTS 3, (8 June 1977). supra note 5, art. 52(2). URL: https://www.refworld.org/docid/3ae6b36b4.html.

To establish whether civilian casualties are lawful or not, it is important to determine whether or not the attack was intended against a military objective. If it was, were disproportionate civilian casualties anticipated or resulted? The term 'proportionality' is not present in Additional Protocol I but is rather implied in its provisions, including Articles 51(5)(b), 57(2)(a)(iii), 57(2)(b) and 85(3)(c). All these provisions prohibit attacks that "may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."[69] The discussions during the framing of Additional Protocol I suggest that the phrase "concrete and direct" was intended to imply that the advantage must be "substantial and relatively close."[70]

Meaning of Unlawful Attack

Additional Protocol I Article 51(2) and Additional Protocol 2 Article 13(2) both state that "the civilian population as such, as well as individual civilians, shall not be the object of attack." However, there are other forms of unlawful attack listed in Additional Protocol I. Article 51, for instance, prohibits indiscriminate attacks. Additionally, Article 85 contains grave breach provisions concerning unlawful attacks. Additional Protocol 2 has no provisions related to unlawful attacks on civilians except for Article 13(2). However, it might be argued that the provisions in Additional Protocol I are verified by Article 13(2) of Additional Protocol 2 and is therefore applicable to internal conflicts. The Commentary to Article 85 of Additional Protocol I states the importance of 'wilfulness'.[71] It states that 'the accused must have acted consciously and with intent willing them'. To claim damages during an armed conflict, it becomes important to determine that the damage was caused by an unlawful attack. If the attack was not unlawful then the consequent damages are also not unlawful. It is also important to determine if a casualty can be regarded as a war crime victim. All persons killed or injured using unlawful weapons or treachery in a complex emergency may be classified as victims of a war crime.

[69]Ibid, Article 57(2)(a)(iii) and 57(2)(b).
[70]Yves Sandoz,. et al. (eds), "Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949," *International Committee of the Red Cross*, Martinus Nijhoff Publishers, Geneva.(1987). Paragraph 2209.
[71] Ibid, Paragraph 3474.

Customary International Humanitarian Law

While treaty law is well developed to regulate the conduct of warfare, there some difficulties in its application that make customary international humanitarian law useful. Firstly, treaties apply only to the states that have ratified them. While the four Geneva Conventions of 1949 have been universally ratified, other treaties like the Additional Protocols have not been recognised. This limits the efficacy of the concerned treaty. It is therefore important to determine which rules of IHL are part of customary international law and thus apply to all parties to a conflict, irrespective of whether they have ratified the concerned treaties or not. Most of the provisions of the Geneva Conventions, including common Article 3, are regarded to be a part of customary international law.

Additional Protocol I codified pre-existing rules of customary law while also laying the groundwork for the development of additional customary rules. While it has not been universally ratified, its basic principles have been widely accepted. This is because there are many customary rules that are similar to those in Protocol I. For example, the principle of distinction that requires distinguishing between civilians and combatants and between civilian objects and military objects and the principle of proportionality in a violent attack are also part of customary law.

Non-international Armed Conflicts

In recent years, there has been a significant increase in non-international armed conflicts. This has greatly impacted the development of customary law applicable in non-international armed conflicts. Additional Protocol II was a significant step towards this and has many provisions which are now part of customary international law. The prohibition of attacks on civilians in Additional Protocol II, for instance, is part of customary law. However, customary international humanitarian law goes beyond the provisions of Additional Protocol II regarding non-international armed conflicts. Customary rules fill the gaps left by the very basic provisions contained in Additional Protocol II. This has mostly been through state practice that these requirements have developed into customary international law applicable in both international and non-international armed conflicts.

International Humanitarian Law and the Regulation of Armed Conflicts

In international armed conflicts, the most serious violations of the IHL are criminalised as ‘grave breaches’ of the Geneva Conventions and as war crimes when these violations occur

under customary IHL. For these violations, states are responsible to criminalise, prosecute and punish the offenders. However, in internal conflicts the same breaches are characterised as 'violations' and the states are not obliged to act in the same manner as they do during international conflicts. If the conflict is purely domestic with no external intervention, only domestic law applies. While national laws of most states address the regulation of armed conflicts, reflecting the obligations of international law, these laws mostly apply only to the armed forces. Individual violators of the law of armed conflict, are subject to disciplinary action depending upon the seriousness of the violation by the state of their nationality, as well as by any other state under the principle of universal jurisdiction for 'grave breaches' under IHL and as war crimes under customary law. Moreover, states whose personnel have committed such violations may owe compensatory and even punitive damages to the state whose nationals have been victimised.[72] These measures, however, apply mainly to international conflicts, as these might not be necessarily applicable to conflicts of a non-international and purely internal character. In these situations, human rights law and international criminal law are of relevance.

Application of IHL

The Lack of Binding Jurisdiction

International Humanitarian Law has no provision of a binding supranational jurisdiction to settle disputes between states except in cases where the states have previously accepted such an authority's competence. Resolution 1 adopted by the Diplomatic Conference convened in Geneva in 1949 recommended the services of the International Court of Justice to states on a voluntary basis. However, it is not practical to postpone humanitarian aid till a court verdict is declared. Thus the Parties to a conflict mostly interpret the law from their own perspective, resulting not only in the non-application of IHL but also in its violation.

International Armed Conflict and Application of IHL

While in the past the application of IHL required states involved to recognise that a state of war existed through such a declaration,[73] the Geneva Conventions relaxed this condition. This was because States often refused to implement the rules of IHL on the guise that there was no

[72] International Conferences (The Hague), "Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land", (18 October 1907). URL: https://www.refworld.org/docid/4374cae64.html

[73] "Convention (III) relative to the Opening of Hostilities" The Hague, 18 October 1907, Article 1,2. URL: https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iii-1907?activeTab=default.

war. The 1949 Geneva Conventions also recognised the concept of armed conflict. They reiterated that it is illegal for a state to commit armed aggression. Article 2 common to the four Conventions stated that the Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. However, there must be the presence of an armed conflict. An armed conflict usually arises in a situation of intervention by armed forces between two states, even if one of the Parties denies the existence of a state of war.[74] The duration of the conflict and the number of casualties is not considered. Thus the Convention ensures that the application the humanitarian laws are not dependent upon the subjective opinion of States.

The second paragraph of Article 2 applies to situations in which there are no armed hostilities. For instance, the occupation of a foreign territory is regarded as an armed conflict, regardless of whether it was met with resistance or not. Often an armed conflict is a movement for liberation. Thus, a conference was convened in Geneva from 1974 to 1977 to develop IHL further. This resulted in the adoption of two Additional Protocols to the Geneva Conventions. Protocol I deals with international armed conflicts, and Protocol II deals with non-international armed conflicts. Article 1 of the Protocol applies to the situations referred to in Common Article 2. Thus, to be applicable, the concerned must either be a state party to the Conventions and possibly also to Protocol I, in accordance with Article 2, paragraph 1, common to those Conventions, and Article 1(3) of Protocol I; a State not party to those instruments, if that State accepts and applies the provisions of the Conventions and the Protocol (Article 2, paragraph 3, common to the four Conventions and Article 96(2) of Protocol I); or a people if it is engaged in armed conflict in the exercise of its right to self-determination and if it meets the conditions laid down in Article 1(4) of Protocol I. The Commentary of Article 1 states that there is no definition of what constitutes a ‘people’, in international law. The most important factor is a common sentiment of forming a ‘people’, and a political will to live together. However, it is often argued that a ‘people’ need a certain recognition by the international community to be recognised as such under Article 1(4) of Protocol I.

[74] Jean Pictet, ed., “Commentary of the Geneva Conventions of 12 August 1949”, ICRC, Geneva, (1958).

Non-international Armed Conflict and Application of IHL

Determining the existence of a non-international armed conflict is lot more complex as compared to an international armed conflict. In the Geneva Conventions, only Article 3 refers to this type of situation. This article is common to the four Conventions, and states that, in the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply as a minimum, the following provisions:

"Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria."[75]

The drafting of this article gave rise to certain important questions. Firstly, the point at which an armed entity could be considered as a 'Party to the conflict'. Secondly, what degree of intensity of violence can be termed armed conflicts. Are the criteria for intensity same as that of international conflicts? The Commentary on the article stated that the conflicts referred to in Article 3 are armed conflicts, with armed forces on either side engaged in hostilities.[76] This interpretation should be read along with Article 1 of Protocol II Additional to the 1949 Conventions, which states that,

1. It shall apply to all armed conflicts which are not covered by Article 1 of the Additional I Protocol which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organised armed groups.
2. It shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

This article allows application in situations other than those mentioned in common Article 3. Unlike Article 3 of the Conventions, Protocol II specifically excludes situations of internal disturbances and tensions. Thus, the scope of its application is narrower. Finally, failure by one party to a conflict to respect IHL does not relieve the other of its obligations.[77] Also, the final paragraph of Article 3 as well as Protocol II mentions that "the application of the preceding

[75] Geneva Convention, Article 3
[76] Jean Pictet, ed., "Commentary of the Geneva Conventions of 12 August 1949", ICRC, Geneva, (1958). p. 36.
[77] United Nations, "Vienna Convention on the Law of Treaties, United Nations", Treaty Series, vol. 1155, (23 May 1969), p. 331, URL: https://www.refworld.org/docid/3ae6b3a10.html Art. 60, paragraph 5.

provisions shall not affect the legal status of the Parties to the conflict." This rule ensures that compliance with the Conventions should not imply the attribution of a specific status to a Party to a conflict.

Mixed Conflict and Application of IHL

The current geopolitical scene is such that developments within one state also affect developments within the other. Alliances and inter-dependencies are such that conflicts in one state influence other allied states. Sometimes states are also bound by a mutual defence treaty with a state which entered an armed conflict. Internal tensions and disturbances also often exacerbate due to foreign interventions. In such cases, the conflict becomes internationalised and is often referred to as a mixed conflict or an internationalised internal conflict. The Syrian conflict, for instance, has both non-state actors as well as governments intervening making it a mixed conflict. When states take part in a conflict there must be agreement on the type of conflict involved. This includes an international armed conflict requiring the implementation of IHL in its sum, an internal conflict requiring the application only of Common Article 3 and Protocol II, or a combination of the two types of conflict, with the selective application of IHL.[78]

Enforcement of the Humanitarian Law of Armed Conflict

Since the humanitarian law of armed conflicts has been created and agreed to by states, it is expected that states will comply with it. However, that has not always been the case. The Common Article 1 of the four Geneva Conventions of 1949 which deals with enforcement provides that "the High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances."[79] This was a unique provision since the states not only agreed to the provisions themselves, but also undertook to ensure compliance by other states. This means that if any state violates a provision of the four Geneva Conventions and any other state does not take urgent measures against it, both the states would be regarded as violators of the Convention. However, in reality most states have ignored honouring these obligations.

[78] Dietrich Schindler, "The Different Types of Armed Conflicts According to the Geneva Conventions and Protocols (Volume)", in: *Collected Courses of the Hague Academy of International Law*. (1979) URL: <http://dx.doi.org/10.1163/1875-8096_pplrdc_A9789028609303_03>
[79] Article1, Geneva Convention

Individual Responsibility for Compliance with the Laws of Armed Conflict

The laws of armed conflict also establish regulations for the individual. Violations of these can result in criminal sanctions. However, these individual crimes are not codified in any single instrument and come under customary international law. Secondly, there is no absolute defence for these violations. All defences are relative to time and place. Individual responsibility can be thought of at two different levels of military command. The first level, which can be referred to as the policy level, refers to those with decision powers. The second level is those in the field who implement that policy. However, there is no water-tight division between these two. Individuals working at the policy level could be responsible for initiating conflict in violation of international humanitarian law.

The most common defence to the violation of these prohibitions is 'military necessity.' Military necessity permits measures necessary to protect the safety of a force and to facilitate the success of the operation. However, military necessity does not allow the killing of civilians for purposes of revenge or the satisfaction of killing. The destruction of property too, to be lawful must be unavoidable by the necessities of war. Intentional destruction just for the sake of suffering is not permitted.[80] Military necessity is a value judgment at the policy level and can be judged only after the cessation of the conflict. It is also dependent upon the time factor. The time available to make decisions is limited. Thus, only in retrospect is it possible to ascertain if military necessity was present to justify the action. However, judgment must be without regard to the results of the conflict.

Problems of Applicability

When it comes to the application of the IHL during an armed conflict, states and non-state actors often face some problems of applicability. These include:

The Rapid Evolution of Armed Conflicts

IHL majorly protects the victims of international conflicts and provides only a minimum amount of protection to the victims of internal conflicts. However, most conflicts in recent years have been internal in character. These are further complicated by foreign intervention, a situation for which there are not yet sufficiently clear rules. Additionally, the awareness of

[80] United States v. List, "11 Trials of War Criminals Before the Nuremberg Military Tribunals 1253-4" (1950).

humanitarian law is still insufficient, and authorities often ignore to implement it or do so incorrectly.

Tendency to Avoid Applying the IHL

Parties to a conflict often prefer to settle their differences among themselves without the intrusion of the international humanitarian law or any other international body. Common Article 2, paragraph 1, however, states that the Conventions apply to a conflict even if a state of war is not recognised by the conflict parties.

Continuation of Diplomatic Relations

Many states do not sever their diplomatic relations even when they are engaged in an armed conflict. The maintenance of diplomatic relations is often used as justification for not observing humanitarian law. States argue that diplomatic representatives will be able to ensure the protection of their citizens, however in reality, no one deals with the victims' plight. Moreover, a conflict party often has different interests than those of the victims. The attitude of China towards its captive soldiers in India during the 1962 Indo- Chinese war, illustrates this point.[81]

The Neutrality Principle

During an internal conflict, a state's military may infiltrate into the territory of a third State to attack troops who have sought refuge there. The third State may consider itself neutral and refuse to apply IHL on the grounds that it is not engaged in armed conflict with the State making the incursion but merely defending its territory. That is certainly a flawed understanding of the IHL.

The Sovereignty Claim

A treaty is signed by a state as a sovereign entity. Thus it cannot refuse to comply with it on the grounds that it limits its sovereignty. Moreover, internal sovereignty implies respect for the confidence which the people have placed in its government. The application of Common Article 3 may appear to the government to be equivalent to admitting its failure in restoring order. However, Article 3 also states that the application of its provisions shall not affect the legal status of the parties to the conflict. Also, when an internal conflict breaks out,

[81] Forsythe, David 1976. "Who Guards the Guardians: Third Parties and the Law of Armed Conflict", *The American Journal of International Law*, vol. 70, No. 1 (1974). p. 55.

governments tend to deny the applicability of those rules by denying the existence of an internal conflict. The lack of a clear legal definition of an internal conflict aids this misinterpretation.

The States, however, do not always deny the applicability of IHL, and in more cases than not, even when it does, it nevertheless implements it and complies with all or part of its provisions. Israel, for instance, denied the applicability of the Fourth Geneva Convention, regarding the protection of civilian persons in times of war to the occupied territories. It has nevertheless complied with some of its provisions.

Competence to Categorise a Conflict

When the victims of conflict are denied protection because of a refusal to apply IHL, classifying the conflict becomes important. It is thus necessary to determine the competence of a body to classify conflicts.

An International Court

IHL does not contain a provision for appealing to a legal authority to classify a situation and determine the law applicable to it. However, the 1949 Diplomatic Conference recommended in Resolution 1 that differences over the interpretation or application of the Conventions be consulted with the International Court of Justice (ICJ). Each state party to the conflict would have to make a declaration accepting the ICJ's services. However, the ICJ is available only to states;[82] a non-state actor would therefore not be able to apply for its service. In mixed conflicts, states taking military action against a non-state actor, states are naturally unlikely to accept the competence of an international court.

The States

At this stage, it is the states themselves who determine the category of a conflict. Third states party to the Conventions could appeal to the ICJ to rule on the situation. However, in more cases than not, states are not willing to do this.

The ICRC

The ICRC has no legal competence to classify conflicts. Nevertheless, under the Geneva Conventions, the ICRC has the right of initiative around humanitarian assistance, and the right

[82] United Nations, Statute of the International Court of Justice, (18 April 1946), Art. 34 (1): URL: https://www.refworld.org/docid/3deb4b9c0.html'

to inspect the implementation of rules relating to the protection of prisoners of war and civilian detainees. When the ICRC concludes that the needs make it necessary to take action, it offers its services. If a state refuses access to the ICRC to carry out its mandates under the Conventions, the ICRC must justify its action on legal grounds. This action is an indirect classification of the conflict, as the ICRC feels that the conditions for the application of the Geneva Conventions are present.

The Role of International Humanitarian Law in Internal Disturbances

The increase in internal conflicts since the 1960s has revealed the inadequacy of the Geneva Conventions. These conventions were originally designed to regulate wars between states, that is international conflicts. It was in this context that the ICRC held conferences in Geneva in 1971 and 1972. These were followed by the 1974 Diplomatic Conference which presented Draft Protocol I, dealing with international armed conflict, and Draft Protocol II concerning with conflicts of a non-international character. These Protocols were authenticated in June 1977.[83]

Protocol I which supplements the Geneva Convention of August 12, 1949, for the protection of war victims applies in situations referred to in Article 2 common to those conventions.[84] The situations referred to include people fighting against colonial domination, alien domination, and racist regimes in the exercise of their right of self-determination.[85] In the context of self-determination, the Protocol addresses the war against colonial domination; war against alien domination; and war against racial discrimination. By restricting the scope to just 3 categories, other situations that might result in an internal conflict get excluded from the protection offered by the Protocol. These excluded areas have been covered by Protocol II. It supplements Common Article 3 of the Geneva Conventions. Common Article 3 prohibits certain acts, including, violence to life and person; the taking of hostages; outrages on human dignity; and the sentencing or execution of persons without applying the universally recognised judicial guarantees. It also obliges the High Contracting Parties to care for the wounded, sick and shipwrecked and accept offers of services from the ICRC. It further ensures that these measures

[83] George H. Aldrich, "Some Reflections on the Origins of 1977 Geneva Protocols" in C Swinarski (ed) *Studies and Essays on International Humanitarian Law* (1984). p. 132.
[84] Article 1(3)(4) Protocol I Additional to the Geneva Convention 1977
[85] Ibid.

will not affect the status of detainees. However, overall, the scope of Geneva Conventions regarding internal conflicts, is rather limited.

Protocol II basically restates the general international law rules governing armed conflicts and excludes all situations that cannot be characterised as such. For instance, Article 1(2) states that the Protocol shall not apply to situations of internal disturbances and tensions such as riots, isolated and sporadic acts of violence and other acts of similar nature as not being armed conflicts.[86] Thus, such situation will be within the domestic jurisdiction of the concerned state. Such a condition results in, firstly, the fighters not being regarded as combatants; secondly, captured fighters are denied the prisoner of war status; and thirdly, they are not immune from prosecution if captured by the forces of the concerned state and may be charged with sedition or treason.

Scope of Protection for Victims of Internal Disturbance and Tension Situations

While Protocol II excludes internal disturbances and tensions from its scope, it can also be argued that third-party states are excluded by international law from intervening in such conflicts. This is suggested by Article 2(7) of the UN Charter and Article 3 of Protocol II. "Nothing in this Protocol shall be invoked for the purposes of affecting the sovereignty of a state." "Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly… in the armed conflict or in the internal affairs of the High Contracting Party in the territory of which that conflict occurs."[87] The question that then arises is, what is the scope of the IHL in providing protection to the victims of internal disturbances? The general law of human rights becomes relevant in this context. The fact that the Geneva Conventions and Protocols do not have scope in internal disturbance does not give unlimited rights to states to behave in any manner. In accordance with the human rights normative system, states must protect, respect and implement human rights as well as ensure that the integrity and freedom of the individual are not violated.[88]

Furthermore, states in accordance with their human rights obligations must ensure effective remedies to any person whose rights or freedoms are violated.[89] Additionally, there are also several human rights instruments that are specifically applicable to internal disturbances and

[86] Article 1(2) Protocol II Additional to the Geneva Convention 1977
[87] Ibid.
[88] Article 2(1), Universal Declaration on Human Rights 1948.
[89] Article 2(3), Universal Declaration on Human Rights 1948.

tension. For instance, Article 3 of the Universal Declaration of Human Rights states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".[90] The 1984 Convention against Torture also prohibits torture. The United Nations Declaration on the Protection of all Persons from being subjected to Torture and Other Cruel Inhuman or Degrading Treatment or Punishment 1975, similarly condemned torture. The 1957 Economic and Social Council approved the Standard Minimum Rules for the Treatment of Prisoners and recommended their adoption by member states of the UN. Additionally, the Principles of Medical Ethics of 1982 and the Code of Conduct of Law Enforcement Officials adopted by the General Assembly in 1979 prohibit law enforcement officials to commit any act of torture or award any other degrading forms of punishment. This prohibition stands even under exceptional circumstances such as a state of war or internal political instability.[91] There are few laws and regulations applicable to the conduct of states during internal conflicts, they are outside the purview of the Geneva Conventions.

The Enforcement Mechanisms

Although the Geneva Conventions and Protocols provide an elaborate implementation system for international conflicts, there is no equivalent for internal conflicts. The Geneva Conventions and the Additional Protocol I provide for a system of inquiry.[92] These include international fact-finding commissions and UN-led inquiries.[93] They also have provisions for criminal prosecutions in case of 'grave breaches' and war crimes.[94] However, these provisions under Common Article 3, in internal conflicts would apply only when the opposing groups resort to arms and are captured by a contracting party. Therefore, situations, where there is no open confrontation, are excluded from Common Article 3. While human rights provisions may be relevant, they do not directly deal with restrictions on confrontations within a state. For example, there is no law concerning limits to methods and weapons used. Moreover, while some parts of international humanitarian law and the human rights conventions coincide, they have different supervision and sanctions mechanisms. The Geneva Conventions are applied with the cooperation and supervision of the Protecting Powers and of the ICRC, which has the mandate to visit prisoners of war. However, in case of internal armed conflicts a neutral

[90] Article 3 of the Universal Declaration of Human Rights
[91] Article 5 code of conduct for law enforcement officials 1979.
[92] Article 52 1st Geneva Convention; Article 53 2nd Geneva Convention; Article 132 3rd Geneva Convention and Article 149 4th Geneva Convention.
[93] Article 89 of Protocol I Additional to Geneva Conventions.
[94] Article 50 1st Geneva Convention; Article 51 2nd Geneva Convention; Article 130 3rd Geneva Convention; Article 147 4th Geneva Convention and Article 85 of Protocol I.

humanitarian organisation, like the ICRC, can only offer its services.[95] Moreover, IHL is binding not only on states but also on individuals. The Geneva Conventions require countries to provide penal sanctions for persons who commit breaches.[96] However, in case of human rights, the victim himself must institute proceedings before the concerned court. This limits the utility of the procedure.

Most human rights instruments contain derogation clauses. Article 4 of the Covenant on Civil and Political Rights, for instance, allows for the limited derogation of some human rights "in times of public emergency which threatens the life of a nation."[97] Nevertheless, a state may not derogate from rights that come within the category of 'non-derogable.'[98] International law also sets out certain restrictions by which states must abide. These include, firstly, the declaration of emergency must be made only in exceptional circumstances that can constitute a threat to the organised life.[99] Secondly, the derogation must not be more than what is strictly required. Thirdly, a state of emergency must be officially proclaimed.[100] Furthermore, such declaration must be immediately reported to the Secretary-General. Fourthly, the derogation must be applied consistently with other obligations under international law. Lastly, derogation must not be done discriminately. It is thus reasonable to conclude that the derogation clauses do not permit states to treat their nationals in any manner.

The Imbalance in International Humanitarian Law

The 1949 Geneva Conventions and Protocol I are applicable to conflicts of an international character. Certain acts like murder, torture, rape, mistreatment of prisoners of war, and others are regarded as 'grave breaches.'[101] However, these same acts are not deemed 'grave breaches' in conflicts of a non-international and purely internal character.[102] Instead, they are regarded

[95]"Action by the International Committee of the Red Cross in the event of violations of international humanitarian law or of other fundamental rules protecting persons in situations of violence", *International Review of the Red Cross,* Vol. 87, No. 858, 2005, pp. 393–400.
[96] Article 49 1st Geneva Convention; Article 50 2nd Geneva Convention; Articles 129 and 130, 3rd Geneva Convention; Article 50 2nd Geneva Convention; Articles 129 and 130, 3rd Geneva Convention; Article 146 4th Geneva Convention.
[97] Article 4 of the Covenant on Civil and Political Rights
[98] Article 4(2) Covenant on Civil and Political Rights.
[99] Case of Lawless v. Ireland, *Yearbook European Convention on Human Rights 438,* European Court of Human Rights, (1961). URL: https://70.coe.int/pdf/lawless-v.-ireland.pdf
[100] Ireland v United Kingdom, *Yearbook of The European Convention on Human Rights,* European Court of Human Rights, (1972).
[101] Geneva I, supra note 23, art. 50; Geneva II, supra note 23, art. 51; Geneva III, supra note 23, art. 130; Geneva IV, supra note 23, art. 147.
[102] Geneva I, supra note 23, art. 3; Geneva II, supra note 23, art. 3; Geneva III, supra note 23, art. 3; Geneva IV, supra note 23, art. 3; Geneva Convention Protocol II, supra note 24.

as ‘violations’ in Protocol II and Common Article 3. Consequently, the legal implications between the two differ.

The imbalance that exists in IHL with respect to the norms applicable to international, non-international and purely internal conflicts is significant. The protection provided by common Article 3 to persons not taking an active part in the hostilities, is considerable but insufficient. Moreover, the Article has no provisions governing the conduct of hostilities. This gap becomes critical when the need arises to identify and apply the relevant rules. Protocol II reflects the reluctance of the states participating in the Geneva Conference to regulate non-international armed conflicts. This reluctance is mainly due to the need to protect their sovereignty which makes states prefer non-interference in their domestic affairs.

The terms ‘international’ and ‘non-international’ are based on a policy decision that leads to IHL not covering some conflicts. This division is rather irrational as often it is these “non-international” conflicts that are more violent and long-lasting. This distinction permits most armed conflicts to escape full international regulation. Common Article 3 establishes a minimum set of protections that apply to all conflicts in which a party to the Conventions is involved. However, these protections are far less than their equivalent in common Article 2. Unlike Article 2, Article 3 forbids only the most flagrant violations of humanitarian norms. Moreover, Article 3, does not mandate supervision by a neutral ‘protecting power’ or an organisation like the ICRC. Protocol II applies to non-international conflicts, but not to those covered by Article 3 of the Conventions. Moreover, Article 1(1) of Protocol II imposes several conditions that make the scope of Protocol II narrower than Common Article 3 of the 1949 Conventions. Its application depends on the control of territory by the group opposing the established government and on that group’s ability to apply the Protocol. Furthermore, it only applies to conflicts between the state and rebels. Protocol II is to apply automatically if its requirements are fulfilled and require no declaration. However humanitarian activities of relief societies such as the ICRC are subject to the consent of the state concerned.

The division between international and non-international conflicts is not only not compatible with the underlying objective of IHL; it is no longer realistically possible to maintain. One of the consequences of the deterrence caused by nuclear weapons most ‘international’ conflicts are now fought in the disguise of ‘internal’ conflict. However, eliminating the legal distinction has been claimed as impossible owing to political reasons. Many states are unwilling either to accept international scrutiny over their internal affairs or to create an international regime that

might provide recognition to rebel groups. In 1971 and 1972, the ICRC proposed applying the rules of IHL to civil wars where foreign troops intervened. The suggestion was unacceptable to most states. They contended that it would encourage the rebels to seek foreign intervention so as to apply the Conventions.

Moreover, it is difficult to draw a line of distinction between international and non-international conflicts. In wars of concealed participation, for instance, a state conducts armed hostilities in the territory of and against the government of another state without being exposed. Another example is the indirect participation of an outside state in a conflict characterised as internal. The third state's objectives may range from sustaining the conflict to changing the internal balance of power. Participation may be in the form of a supply of materiel, training, and diplomatic support. Moreover, a third state may participate in a conflict by providing a safe haven for one of the belligerents. Examples include Pakistan in the Afghan war. Also, states, whether engaged in internal turmoil or not, have to deal with a large number of refugee outflows. This is the by-product of an internal conflict. The characterisation of whether a particular conflict is international or non-international has depended, in some cases, on the interests of other state actors and the diplomatic strength of a state in resisting one or the other categorisation. A clear jurisprudence for making the distinction is yet to emerge.

Apart from providing protection another important objective of humanitarian law is to limit the geographical extension of conflicts. This has been used as a justification for the international and non-international divide. However, a restriction on outside forces from intervening in internal conflicts does not have to be conditional upon the non-application of IHL. Another argument is that the very application of the law of armed conflict provides a degree of legitimacy to an insurgent. This argument is based upon the belief that only state-affiliated actors are entitled to the protection of international humanitarian law. A third argument is that the international and non-international divide is the unavoidable compromise needed for the wider acceptance of humanitarian law. This would mean that it is better to have a minimalist convention signed by a large number of states than to have an effective one signed by a smaller group. This strategy can prove to be counterproductive. States wanting to become involved in an international conflict have an interest in a meaningful regime that will be respected by the international community. The major consequence of the international and non-international divide is that it insulates a majority of armed conflicts from the reach of IHL. Moreover, it permits states that have become parties to the Conventions to pay lip service to the humanitarian law and avoid the real obligations which that regime brings.

International Humanitarian Law in Changing Circumstances: Contemporary Challenges

Terrorism as a challenge to the application of IHL

The traditional view that IHL solely regulates the use of force in armed conflict was significantly challenged in the twenty-first century. September 11, 2001, attack altered the face of modern conflict making it increasingly more complex. Terrorist groups rely on the advantages of globalisation and technological advances to conduct operations across international borders, threatening the maintenance of international order. They use both conventional weapons of war as well as modern weapons of mass destruction, including cyber-attacks.

The 9/11 incident highlighted the potential overlap between international conflict, non-international conflict, and law enforcement. Moreover, the high level of violence that non-state actors have the capacity to inflict has caused doubts regarding the capacity of domestic criminal acts to regulate terrorism. The application of IHL depends on whether an armed conflict exists. Traditionally an armed conflict is understood as a conflict between states.[103] The term 'armed conflict not of an international character' found space in Common Article 3 of the 1949 Geneva Conventions. There is a difference in opinion among legal scholars regarding whether attacks by non-state actors with global reach constitute an international armed conflict. While some have opined that the involvement of the Security Council is required to provide legitimacy,[104] others deem terrorist groups with global reach as acceptable targets of a military response.[105] It has also been suggested by some that the US operations in Afghanistan constituted an intervention in an internal armed conflict.[106] Few scholars believe that response to terrorism should not be viewed in the context of an armed conflict but rather should fall under domestic law enforcement mechanisms.[107] The question of whether an act of terrorism can be regarded

[103] Antonio Cassese, "Terrorism Is Also Disrupting Some Crucial Legal Categories of International Law, *EJIL*, vol.12 no. 5 (2001). p. 993.
[104] Leila Nadya Sadat, "Terrorism and the Rule of Law", 3 Wash. U. Global Stud. L. Rev. 135 (2004), https://openscholarship.wustl.edu/law_globalstudies/vol3/iss1/5.
[105] Davis Brown, "Use of Force Against Terrorism After September 11th: State Responsibility, Self-Defense and Other Responses," 11 Cardozo Journal of International and Comparative Law 1, 6 (2003). p. 24-25.
[106] Joan Fitzpatrick, "Jurisdiction of Military Commissions and the Ambiguous War on Terrorism", 96 AJIL 345, 348, (2002). p.350.
[107] Anthony Dworkin, "Revising the Law of War to Account for Terrorism: The Case Against Updating the Geneva Conventions, on the Ground That Changes Are Likely Only to Damage Human Rights", Findlaw's Writ: Commentary (Feb. 4, 2003). URL: <http://writ.news.findlaw.com/commentary/20030204_dworkin.html>Google Scholar.

as an international armed conflict will have to determine if a terrorist attack is an armed attack. However, a lack of agreement over the interpretation of the IJC's 1986 Judgment in Military and Paramilitary Activities in and Against Nicaragua complicates the issue.[108] The Court in the Nicaragua case held that the use of force could be divided into, "most grave" and "less grave."[109] A few experts have viewed the Court's opinion as narrow and restrictive.[110] Others see the principle of collective self-defence in combination with a low threshold of violence, as a threat to world peace leading to "a risk of the internationalisation of civil conflicts and the expansion of inter-state conflicts."[111] While a very low threshold of what constitutes an armed attack has the potential to blur the lines between armed conflict and criminal law enforcement, too high a threshold may leave a state at risk.

Attacks by non-state actors challenge the neat division of armed conflict into international and non-international. IHL has a limited impact in situations that do not reach a level above "internal disturbances and tensions, such as riots, isolated and sporadic acts of violence."[112] However, the scale of force that terrorist attacks usually involve and the strong international response they tend to generate does not seem to justify identifying it as only a criminal matter not constituting an armed attack. It was with this view that in the immediate aftermath of September 11 both the right of self-defence as well as the application of international humanitarian law were triggered.

Non-state Actors

A similar issue is that of 'non-state' status of some participants in armed conflicts. The term largely relates to 'private' participants in a conflict, as opposed to regular forces of a state. The category of 'terrorist' makes the task even more complex. A legal definition of terrorism has yet to be agreed upon, and most states prefer limiting it to the criminal sphere or non-state activity. Moreover, illegal acts of terror can also be carried out by or on behalf of states during armed conflicts.

[108] Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), Merits, 1986 ICJ REP. 14 (June 27 1986).
[109] Ibid. 101, paragraph 191
[110] Christine Gray, "International Law and the Use of Force" Oxford University Press, (2000). p. 141. doi: 10.1093/law/9780198808411.001.0001.
[111] Ibid. p.141-142.
[112] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, Art. 1.

The lack of consensus regarding the meaning of the term terrorist makes it difficult to determine if they are involved in an armed conflict. Persons with no or little connection to the armed forces of a state have often participated in international armed conflicts. The status of 'non-state' participants in armed conflict has been a challenging issue in humanitarian law since the earliest attempts at codification. The provisions of Additional Protocol I marked a significant step forward by providing the qualifying armed forces of non-state 'national liberation movements' with combatant status. Nevertheless, there is still a large number of state and non-state participants in armed conflicts who can be termed 'unprivileged belligerents' or 'unlawful combatants.' These non-state actors often participate in hostilities at a scale equal to those of the regular armed forces. Nation-states are usually reluctant to give any legitimacy to such groups. Thus, a state can be engaged in an armed conflict with an insurgent or revolutionary group, irrespective of that group's legitimacy.

International Humanitarian Law and the Use of Violence

Interstate Conflict

Traditionally state monopolised the use of violence. After the Second World War, Additional Protocol I acknowledged the right of national liberation movements to legitimately use violence. Such forces must however fulfill the requirements of the Protocol. Even today states remain primarily responsible for engaging in wars. If peaceful means of controlling terrorist violence are ineffective, the state may consider using military force to remove the threat. However, regulations regarding the control of violent groups are rather unclear. Although the UNSC is the most competent authority in this context, it is susceptible to political deadlocks that obstruct its ability to regulate the use of force. Usually the decision to act collectively and individually in self-defence set out in Article 51 of the UN Charter is left to the involved states themselves, at least until the Security Council can come to a decision.

Internal Conflict

In case of internal conflicts human rights norms become relevant. Human rights norms attempt to control the power of the state and its impact on individual citizens. Within states, the application of human rights norms reflects the challenges associated with maintaining order. However, some human rights may be derogated from during "emergencies" to facilitate the maintenance of public order.

The Challenge of Terrorism

Until the September 11 terrorist attack, the international community was reluctant to acknowledge that an international armed conflict can occur between a state and a private actor. Today however a non-state actor can attain such a level of organisation and technical sophistication that it poses a threat comparable to that presented by military forces acting for or on behalf of a state. These attacks call for a response other than one focused exclusively on law enforcement.

Both international humanitarian law and human rights law control the application of force in different ways. IHL gives combatants "the right to participate directly in hostilities."[113]They receive immunity from prosecution, for killings done in accordance with the law. Moreover, civilians are also separated from combatants and force must be employed only against valid military objectives. However, even within the category of civilians, the connection to the war effort can affect targeting decisions. For example, civilians like supply contractors and war correspondents are granted prisoner-of-war status on being captured.[114] Thus Additional Protocol I specifically protect civilians from intentional attack "unless and for such time as they take a direct part in hostilities."[115] Thus targeting decisions in armed conflicts are affected by the nature of the conflict and the role played by the participants.

In contrast, the human rights framework focuses on the protection of individuals and questions any use of deadly force. It calls for stringent control not only of force intended to kill but also of any unintended use of force that led to a loss of life. Political instability or any other public emergency cannot be cited as a justification for departing from the principles. However, in the case of a terrorist attack, a human-rights-based approach may not be practical. Combatting terrorism may sometimes require the use of great force. In such a case, a proportionality assessment would have to be made regarding the expected civilian casualties if force is used on terrorists. Thus an assessment of such attacks in terms of a human rights context would have to apply IHL targeting principles. Thus, acts of terrorism on the scale now threatened to bring new challenges to the traditional human rights concepts regarding the use of force.

[113] Protocol I, supra note 42, Art. 43.
[114] Geneva Convention No. III, supra note 10, Arts. 4(4), (5).
[115] Protocol I, supra note 42, Art. 51(3).

Privileged and Unprivileged/ Unlawful Combatants

The international customs and laws of war provide captured and confined combatants who had taken part in international armed conflicts, guarantee of lenient and dignified treatment. Customary international humanitarian law grants several privileges to surrendered, captured, sick and disabled combatants, whether on the battlefield or in captivity. Disabled, surrendered, or captured combatants may therefore not be prosecuted for their wartime hostilities.[116] They must, however, when engaged in armed conflict, comply with the laws regulating the conduct of war. The 1907 Hague Convention on Land Warfare specified the qualifications of privileged belligerents.[117] The Geneva Prisoner of War Convention,[118] similarly specified in Article 4 (A) requirements for entitlement to the prisoner of war status. The grant of such a status requires service in the armed forces of a party to a military conflict, or in a militia or volunteer group under responsible command, wearing distinctive insignias, carrying arms openly and conducting operations in accordance with the IHL. With an increase in acts of terrorism, a new concern for the humanitarian law rights of the non-state belligerents has risen. Should these groups, who usually do not comply with the IHL be regarded as combatants or criminals? Also, if prosecuted should domestic criminal law be applied or the IHL? Should suspected terrorists be treated as PoW or as war criminals?

The US government following the 9/11 attack referred to suspected terrorists as 'unlawful combatants.' However, such a term has no presence in the treaties and conventions of international humanitarian law. Neither can the term 'unprivileged combatants,' preferred by the ICRC be found anywhere in the official terminology of IHL. The term 'unlawful combatants' perceive suspected terrorists as war criminals, subject to martial law. 'Unprivileged combatants,' on the other hand, provide some, if not all, benefits of the prisoner-of-war and combatant status. State practice has generally assumed that combatants not acting on behalf of state and not identifiable by uniforms, symbols and weapons, or have violated the international laws of war, were no longer eligible to combatant status.

[116] International Conferences (The Hague), "Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land", (18 October 1907). URL: https://www.refworld.org/docid/4374cae64.htm

[117] Annex to the Convention, Sec. 1, Art. 1 (1907).
[118] Geneva Convention III Relative to the Treatment of Prisoners of War, Part I, Art. 4 (1949).

In a 1951 article on "So-called 'Unprivileged Belligerency': Spies Guerrillas, and Saboteurs,"[119] Richard Baxter, a distinguished jurist, argued that "unlawful combatants" should rather be addressed as "unprivileged combatants." Unprivileged belligerency, Baxter urged, did not constitute an international crime and was not punishable by international law. Only domestic laws and tribunals had the authority to punish. A 2002 American Society of International Law Task Force (ASIL) report, by Robert Goldman and Brian Tittemore,[120] held that "unlawful" combatants only indicated that the accused lacked the lawful combatant's privilege to take part in the hostilities. "Mere combatancy by such persons is not tantamount to a violation of the international laws of armed conflict."[121] The ASIL report made reference to Article 44 (2) of the 1977 Protocol 1, which states that "the sanction for a combatant, who fails to distinguish himself when so required, is trial and punishment for a breach of the laws of war, but not loss of combatant and prisoner of war status."[122]

The legal status was further complicated after the 9/11 attack. The United States, while acknowledging that the proclamation of a "war on terror" was without legal significance, continued to claim that it was engaged in an armed conflict with Al Qaeda. However, the US could not be technically engaged in an armed conflict with Al Qaeda. Being a non-state actor, AI Qaeda did not possess the legal authority to ratify the Geneva Conventions. Protocol I Additional to the Geneva Conventions, shows no sharp division between lawful and the unprivileged combatants regarding POW status. It rather states that any person "who takes part in hostilities" and is captured "shall be presumed to be a prisoner of war" and no such prisoner of war status is to be terminated until such time "as his status has been determined by a competent tribunal."[123]

The End of Reciprocity

The effort towards granting POW privileges to suspected belligerents in detention, irrespective of whether they had complied with the requirements of IHL are resisted on the grounds of lack of reciprocity. Reciprocity refers to mutuality of duties and privileges by all parties to

[119] Richard R. Baxter, "So Called 'Unprivileged Belligerency': Spys Gueril las and Saboteurs" *British Handbook of International Law*. 323, Oxford University Press: London, (1951).
[120] Robert K. Goldman & Brian D. Tittemore, Unprivileged Combatants and the Hostilities in Afghanistan: Their Status and Rights Under International Humanitarian and Human Rights Law, *The American Society of International Law Task Force on Terrorism, 2002.* (December, 2002).URL: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2762865
[121] Ibid. p.5.
[122] Ibid. p.20.
[123] Protocol I, at Art. 45(1).

international agreements. Waiving such reciprocity in the spirit of humanitarianism for non-conforming belligerents, is a highly contested topic. Granting such concessions to adversaries who have contempt for the entire framework of international humanitarian law, is likely to be counter-productive for the credibility of humanitarian law. Expanding the grant of prisoner-of-war status to participants in internal armed conflicts is likely to increase and intensify violence against the state. Such self-defeating charity cannot be expected from most governments in power.

Cyber Attacks and International Humanitarian Law

There has been a new form of attack that is increasing by the day. These include cyber-attacks. Internet computers control much of a state's civilian and military infrastructure, including communications, power systems, sewage regulation, and healthcare. Military cyber operations are becoming a part of today's armed conflict which can interrupt the operation of critical infrastructure and important services to the civilian population. These attacks illustrate the need to confront the seriousness of cyber warfare. However, while addressing the problem of defending against such attacks, the legal questions must not be ignored. For example, does a cyber-attack constitute an 'armed attack' under the UN Charter?[124] If a state actor is found to be involved in the attack, would the attack justify the defending state in invoking its right of self-defence under the Charter?[125] Or, should the international community consider the attack as merely a criminal act to be addressed under the criminal justice system? Should the Geneva and The Hague treaties apply to this form of warfare? The question whether IHL applies to cyber-attacks is a point of contention within the international community. Another important point to consider is how would IHL apply to these attacks if the concerned states are already engaged in an armed conflict against each other? While a general consensus exists that legal restrictions should apply to the use of cyber weapons in war, no apparent provision of international law explicitly bans or addresses their use.[126] Unfortunately, the international community has yet to reach consensus on the application of IHL to this new form of conflict. Some have argued the existing framework of IHL is ill-suited to cope with cyber warfare and

[124] United Nations, Charter of the United Nations, 1 UNTS XVI,(24 October 1945). art. 51URL: https://www.refworld.org/docid/3ae6b3930.html.
[125] Ibid.
[126] Knut Dormann, "Computer network attack and international humanitarian law", *International Committee of the Red Cross,* (May 19, 2001). para. 29. http://www.icrc.org/web/eng/ siteengO.nsf/htmlall/5

have called for a new international convention to regulate its use.[127]Others, including the US government, have opposed efforts to create a new treaty and have argued that the current IHL framework can be applied to cyber warfare by analogy.[128] Those who have argued against a new treaty hold that, given the pace of technological changes, the relative lack of practice in such situations, and the relatively small number of claims and counterclaims in the worldwide electronic arena, any legal agreement on cyber warfare has the potential to become obsolete in terms of hardware and practice very soon.[129] This uncertainty gives rise to a situation where states and non-state actors have strong incentives to engage in cyber-attacks that violate the traditional notions of distinction and neutrality. As such, violations of these legal principles are likely to be more common in cyber warfare than in conventional warfare.

Cyber Attacks and the Principle of Distinction

The principle of distinction found in the 1977 Additional Protocol I to the Geneva Convention connotes that parties to an armed conflict must always distinguish between civilians and civilian objects on the one hand, and combatants and military targets on the other.[130] Civilians and civilian objects cannot be the targets of attack. The analysis of a cyber attack's compliance with the principle of distinction is similar to such an analysis for a conventional attack. Some military operators believe that anything qualifying as a legitimate military target for a conventional attack is a legitimate military target for a cyber-attack.[131] Additionally, the relevant prohibitions in IHL do not depend on the type of weapons or warfare used and should unquestionably apply to cyber warfare. For example, an attack that neutralises an air defence station would offer the belligerent a definite military advantage. The use of a cyber-weapon may in fact result in fewer civilian deaths than the use of a conventional aerial bombing. IHL requires military commanders to "know not just where to strike but be able to anticipate all the repercussions of an attack."[132] If such a cyber-attack could endanger relief planes or

[127] Jeffrey K. Walker, "The Demise of the Nation-State, The Dawn of New Paradigm Warfare, and a Future for the Profession of Arms", Air Force Law Review, U.S. Air Force Academy, Department of Law, U.S. Air Force Academy, Department of Law, (2001). pp. 337-38
[128] Dept. of Defense Office of Gen. Counsel, "An Assessment of International Legal Issues In Information Operations" 11 (1999). URL: http://www.maxwell.af.mil/ au/awc/awcgate/dod-io-legal/dod-io-legal.pdf.
[129]George K. Walker, "Information Warfare and Neutrality", 33 *Vanderbilt Law Review* 1079 (2021) URL: https://scholarship.law.vanderbilt.edu/vjtl/vol33/iss5/1
[130] Heike Spieker, "Civilian Immunity", in Roy Gutman and David Rieff eds. *Crimes of War*: *What the Public Should Know*, W.W. Norton and Company, New York (1999) p.84.
[131] Bradley Graham, "Cyberwar: A New Weapon Awaits a Set of Rules: Military, Spy Agencies Struggle to Define Computers' Place in U.S. Arsenal", *The Washington Post*. (July 8, 1998). supra note. 15. URL: https://cryptome.org/jya/cyber-how.htm
[132] Ibid.

commercial aircraft, the principle of distinction would necessitate an assessment regarding the justifiability of such an attack. Moreover, IHL will likely ban a cyber-attack that is done with the intention to cause civilian death and destruction. Similarly, any cyber-attack that would damage the environment would be banned in accordance with Articles 54, 55, and 56 of Additional Protocol I.

The potentially non-lethal nature of cyber weapons may prejudice the judgment of an attack's legality, leading to more frequent violations of the principle of distinction in this new form of warfare than in conventional warfare. Additionally, there is the complexity of dual-used objects where the principle of distinction may not be an effective guide. This is owing to the highly interconnected nature of the military and civilian networks, which makes much of the Internet a dual-use target.

Cyber Warfare and the Principle of Neutrality

Neutrality law regulates the coexistence of war and peace, giving states not participating in a conflict the ability to maintain relations with all sides.[133] The Hague Conventions, which are the primary source of the rules governing neutrality, outline the rights and duties of neutral states during an armed conflict.[134] The principle of neutrality similarly applies to cyber warfare, but the structure of the Internet makes the application complex. A cyber-attack against another state may be routed through neutral countries. According to IHL the territory of a neutral state is inviolable.[135] Belligerents may not move troops, weapons, or other materials of war across the territory of a neutral state.[136] However, under Article 8 of the 1907 Hague Convention V, "neutral Power is not called upon to forbid or restrict the use on behalf of the belligerents of telegraph or telephone cables or of wireless telegraphy apparatus belonging to it or to companies or private individuals,"[137] so long as the neutral state impartially permits the use of those structures by all belligerents. The United States holds that this article applies to cyber

[133] Stephen C. Neff, "The Rights and Duties of Neutrals: A General History," Manchester University Press, (2000).
[134] International Conferences (The Hague), Hague Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval War, (1907). supra note 24.
[135] International Conferences (The Hague), Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, (1907).URL: https://www.refworld.org/docid/3ddca4e14.html. supra note 24, art. 1.
[136] Ibid. art. 2.
[137] Ibid. note 24, art. 8.

technology.[138] However, nothing in the 1907 Hague Convention V suggests that this exception applies beyond communications infrastructure.

Thus the use of the Internet to conduct cross-border cyber-attacks violates the principle of neutrality when it crosses the Internet nodes of a neutral state. Both the text of the 1907 Hague Convention V and the ultimate effect of such attacks support this view. Moreover, Hague Convention V also explicitly states that belligerents "are forbidden to move troops, or convoys of either munitions of war or supplies across the territory of a neutral Power."[139] Rather than merely transmitting a communication signal, a cyber-attack moves a weapon across the territory of the neutral state. Furthermore, a cyber-attack, like any other attack conducted across the neutral state's territory, may have the effect of drawing the neutral state into the conflict. For instance, if the neutral state is unable or unwilling to take action to stop the attack, the opposing belligerent may opt to attack the neutral state's communication infrastructure to limit or halt the cyber-attack. Cyber warfare is thus a new challenge to the application of international humanitarian law.

Conclusion

International humanitarian law has come a long way from the First Geneva Convention of August 22, 1864, which established the standards for the humane treatment of wounded and sick military personnel in the field and laid the foundation for the subsequent development of IHL. In the 21st century, IHL has developed in new directions, with a closer association with human rights law. However, it is also facing new challenges of terrorism and cyber wars which defy the traditional interpretations of the existing law. There is thus a need for IHL to expand through new jurisdictions, legal interpretations, and state practices to include these new forms of war which are mostly concerned with non-state actors and are non-international in scope.

Further, many of the provisions of the IHL have continued to remain vague and disputed. Filling these gaps would ensure a wider acceptance and compliance with the principles of the law by all actors. This would ensure the fulfillment of the humanitarian vision which the law outlined from the beginning. Having said that, the contribution of IHL in humanising armed

[138] Dept. of Defense Office of Gen. Counsel, "An Assessment of International Legal Issues In Information Operations" 11 (1999). URL: http://www.maxwell.af.mil/ au/awc/awcgate/dod-io-legal/dod-io-legal.pdf. p.10.
[139] 1907 Hague Convention V, supra note 24, art.

conflicts and providing assistance to victims of humanitarian emergencies can in no way be underestimated.

CHAPTER VII

THE APPLICATION OF INTERNATIONAL HUMANITARIAN LAW: A CASE STUDY OF THE SOMALIAN CONFLICT

This chapter examines the international response and the application of international humanitarian law to the ongoing conflict in Somalia. The case study of Somalia was chosen as the violations of international human rights and humanitarian law are most acute. Moreover, Somalia represents a protracted conflict where the nature and players have changed multiple times giving the opportunity to analyse the application of IHL at different levels.

The first part of the chapter provides a sequence of the most relevant events of Somalia's armed conflicts dating back to the era of Siad Barre in the 1980s. It seeks to evaluate the extent to which Common Article 2 and Common Article 3 of the Geneva Conventions apply to the Somalia armed conflict. The chapter then re-evaluates the failed 1992 Somalia mission retrospectively and acknowledges the errors unique to the Somalia mission. It also analyses the compliance with IHL during the Ethiopian invasion of Somalia as well as some recent examples of violations and compliance of IHL in the conflict.

Introduction

Africa has suffered from wars and other forms of violent conflicts for most of its post-independent history. This has led to tragic consequences for the civilian populations, including the killing, displacement and starvation of innocent victims, as well as problems of providing humanitarian assistance. International humanitarian organisations, including the International Committee of the Red Cross, as well as the UN and third-party states are getting increasingly involved in the conflicts in Africa. This involvement has raised considerable debate about the international community's responses to the humanitarian crises. Questions have been raised about the applicability and compliance with International Humanitarian Law in these conflicts,

by both internal as well as external players. The Somalia case, as demonstrated below, sheds light on all these aspects of the debate.

The African region is highly vulnerable to armed conflicts. This is mainly the result of historically drawn national boundaries in Africa that do not recognise differences in ethnicity. Ethnic differences have been used by corrupt politicians to their advantage, leaving the region highly vulnerable to foreign interference, poverty, and violence. The 'Horn of Africa' region especially has been experiencing prolonged conflict. The protracted conflict in Somalia has served as a leading source of instability in the 'Horn of Africa'. This conflict has caused immeasurable suffering to millions of civilians for decades. Since the collapse of the Barre regime in 1991, multiple factions have completed for control over the decades. This has resulted in a long, drawn-out and comprehensive state collapse.[1] The south and central parts of the country have been engulfed in protracted violent conflict and a web of international military intervention. The north however has become relatively more stable declaring itself as the independent polity of Somaliland.

Although never unified under a single national state in the contemporary sense, Somalis form one of the largest ethnolinguistic groups in eastern Africa.[2] Regardless of their nationality, Somalis have long shared a common language, religion, customs, and traditions. However, Somalia's population is divided into a number of clans. The existence of these clans cannot be underestimated as Somalis put their primary loyalty towards their clans.

Since the fall of the Barre regime, a large number of innocent men, women and children have been subjected to the gravest forms of war crimes, including torture. The dire humanitarian situation with citizens living under the oppression of militias and terrorists continues in a seemingly never-ending armed conflict. The devastation has also resulted in a refugee crisis with millions of Somali refugees spilling over the neighbouring countries of Kenya and Ethiopia. Others have sought shelter as far as Yemen, South Africa, Europe and the Americas. None of the parties to the conflict take the necessary precautions to avoid loss of civilian life and injury, in violation of their obligations to do so under international humanitarian law. Since late 2008, the armed Islamist group al-Shabab has emerged as the main opponent and has extended its control to most of the territory in southern and central Somalia, including major

[1] K. Menkhaus, "State collapse in Somalia: Second thoughts", *Review of African Political Economy*, vol. 30, no. 97 (2003), p. 405–22

[2] Mary Harper, "Getting Somalia Wrong?: Faith, War and Hope in a Shattered State (African Arguments)" New York: Zed Books, (2012). p. 31.

towns. This group has been responsible for grave violations of human rights and violence. The al-Shabab, is also known to recruit children into their forces. Children as young as 10 years-old are recruited by al-Shabab and some girls and young women are also reported to be forcibly married to members of armed groups.[3]

The armed conflict and associated human rights abuses have resulted in massive displacement. Scores of Somalis have fled their homes and are now displaced both within and outside the country.[4] The internally displaced Somalis have minimal or no access to humanitarian aid and healthcare services and are vulnerable to eviction. The insecurity and indiscriminate violence have put both humanitarian operations and the infrastructure at risk. Attacks on humanitarian workers and medical facilities have been a frequent phenomenon. Violent attacks also obstruct the mobility of humanitarian staff, and the high number of casualties has often overwhelmed the capacity of medical facilities. In areas controlled by the al-Shabab humanitarian access has been severely restricted, with many NGOs closing their operations after being accused of "spying" for the international community.[5]

Somalia: A Complex Humanitarian Emergency

According to the United Nations "A complex emergency can be defined as a humanitarian crisis in a country, region or society where there is a total or considerable breakdown of authority resulting from internal or external conflict, and which requires an international response that goes beyond the mandate or capacity of any single agency and/or the ongoing UN country programme."[6]

According to the United Nations High Commission for Refugees, a complex emergency is characterised by certain features. These include a large number of civilian victims, substantial international assistance as a response to the emergency, impediments in the delivery of humanitarian assistance and attacks on relief workers.[7]

[3] "Somalia: Al-Shabab Demanding Children", *Human Rights Watch*,(14 January 2018). URL: https://www.hrw.org/news/2018/01/15/somalia-al-shabab-demanding-children
[4] UNHCR, "Briefing notes: Fresh fighting displaces some 60,000 in Somalia," (2010). URL: http://www.unhcr.org/4cc6f48a9.html.
[5] Amnesty International, "Somalia: Violations of human rights and international humanitarian law in Central and Southern Somalia," *Amnesty International submission to the UN Universal Periodic Review*, (May 2011).

[6] UNHCR, "Coordination in Complex Emergencies,"(2001). URL: https://www.unhcr.org/partners/partners/3ba88e7c6/coordination-complex-emergencies.html
[7] Ibid.

The Somalia conflict reveals all the characteristics of a CHE listed above. The United Nations Assistance Mission in Somalia (UNSOM) estimated about 899 civilian casualties between late November 2020 and late July 2021 itself.[8] A majority of these casualties are the result of targeted and indiscriminate armed attacks by the Al-Shabab. Moreover, about 60,000 to 100,000 people were displaced after the extension of Presidential term in April 2021.[9] Thus Somalia conflict gives rise to a high number of civilian victims every year. Furthermore, the conflict has attracted a complex and large response from the international community. The UN, its peacekeeping missions, the ICRC, NGO's and INGO's as well as third party states have all attempted to provide humanitarian assistance or intervened in Somalia at different points in time. The United Nations Assistance Mission in Somalia (UNSOM) and the AU Transition Mission in Somalia (ATMIS) are still operating from within Somalia. In 2010, Al-Shabab, banned several aid organisations from operating in the areas under its control, including the World Food Programme (WFP) and the United Nations Children's Fund (UNICEF. Al-Shabab accused these organisations of being spies and interfering in the group's affairs. The ban on these aid organisations created a humanitarian crisis in southern Somalia, where millions of people were already suffering from drought and food shortages. Furthermore, attacks on humanitarian aid workers are a frequent phenomenon. This hampers effort at reaching the Somali population in need of assistance. Thus, since the Somalia conflict has all the characteristics of a CHE as listed by the UN, it can be safely concluded that the protracted conflict in Somalia is an example of a Complex Humanitarian Emergency.

Historical Background

In 1969, Muhammad Siad Barre, originating from the Marehad /Marihan clan become the leader of the state of Somalia through a military coup. The regime's authoritarian rule was characterised by domination of certain clans and sub-clans. This resulted in a progressive erosion of the state and its institutions. Barre managed to effectively misrepresent Somalia to the international community as a stable constitutional nation ready to dominate the region diplomatically, economically and militarily. This was evident in Barre's aspirations for a "greater Somalia" to be formed by gaining control over Kenya's North-eastern region and Ethiopia's Ogaden region. With the promise of Soviet support, in 1977 Somali forces made a

[8] Somalia Events of 2021, Human Rights Watch, (2022). URL: https://www.hrw.org/world-report/2022/country-chapters/somalia
[9] Ibid.

military invasion into Ethiopia's Ogaden region. Before the war started, Somalia received financial and military support from the USSR. Ethiopia also sought the support of the USA and other western countries.[10] When the war broke out, the USSR withdrew its support for Somalia and supported Ethiopia instead.[11] During the course of the war, Somalia financed and armed Ethiopian mercenaries from marginalised parts of Ogaden. The war ended in a disaster for Somalia and marked the beginning of the end of the Barre regime.

With President Barre weakened, opposition quickly mobilised along clan lines, under the Somali National Movement (SNM). Barre responded by increasing repression and tightening control. According to Ken Menkhaus "by the mid-1980s, Somalia was already a failed state."[12] In January 1991, after a three-year civil war that claimed a large number of civilian casualties and produced millions of refugees, Barre fled the capital. The ouster of the Barre regime resulted in the outbreak of a civil war among different clans, bringing Somalia increasingly towards a state collapse. Somaliland declared its independence in the wake of this conflict under the leadership of the SNM and embarked on a state-building process with minimal support from outside powers. The south however continued to rot in civil war for another two decades.

The humanitarian impact of the civil war was severe. An estimated 15000 casualties were reported between the beginning of 1990 and the end of 1992.[13] The UN assessed that 4.5 million people were on the brink of starvation, and 2 million people were displaced as a consequence of the war. As humanitarian relief was extremely delayed and dangerous to deliver, food scarcity followed.[14] To provide protection for humanitarian aid personnel, the UN established the UN Operation in Somalia (UNOSOM I) in April 1991.UNOSOM I was followed by the UN Task Force in December 1992. In 1993 the UN negotiated the formation of a unity government by unifying about a dozen warring clans and termed it as the Transitional National Council. Unfortunately, the success of the TNC government was greatly hampered by opposition from rival armed factions. The most significant of such groups was the Islamic Courts Union (ICU). The ICU was sophisticated in its organisation and had advanced weapons

[10] Bronwen Everill and Josiah Kaplan, "The History and Practice of Humanitarian Intervention and Aid in Africa", The Palgrave Macmillan (2013) p.125
[11] Micheal Clodfelter, "Warfare and Armed Conflicts: A Statistical Encyclopedia of Casualty and Other Figures-1492-2015", McFarland (2017).
[12] Ken Menkhaus, "Governance Without Government in Somalia," International Security 31, no. 3 (Winter 2006/2007). p.80.
[13] Uppsala Conflict Data Program, UCDP Conflict Encyclopedia, Uppsala University), URL: https://ucdp.uu.se/?id=1&id=1
[14] Human Rights Watch, "World Report 1993—Somalia," *Human Rights Watch*, (1993).

and a huge number of fighters within its ranks, including radical jihadists from the Middle East. This concerned the international community which was already feeling the effects of global terrorism. Thus the UNSC replaced the task force by UNOSOM II, which operated in Somalia from March 1993 until March 1995. The deployment of UNOSOM II was followed by the killing of 24 UN peacekeepers in June 1993.[15] Soon after a US helicopter carrying 18 US soldiers in Mogadishu was shot down. This resulted in a withdrawal of US troops and a subsequent dissolution of the mission by March 1995. Low-scale conflict in the absence of a functioning state continued until the early 2000s.[16] The exit of foreign forces created a vacuum which was filled up by the Islamic Courts Union (ICU). Initially, civilians welcomed the ICU's promise of stability. They undertook many developmental activities, and it appeared that the group could finally bring security and stability back to Somalia. However, the group itself lacked unity as there were both moderates and radical elements within the ICU. This soon resulted in the disintegration of the group.

In the early 2000s, mediation efforts by the international community led to the formation of transitional governments in Somalia. The most prominent among them was the Transitional National Government (2000–2004) and the Transitional Federal Government (TFG) (2004–12), which operated from Kenya in the first five years.[17] However, opposition within Somalia against the new government arrangements led to increasingly violent opposition between the TFG and the Union of Islamic Courts. The combined effects of protracted conflict and severe drought and flood events caused a massive humanitarian crisis and displacement with '160,000 Somali refugees in northern Kenya alone and 400,000 internally displaced in Somalia'.[18]

The violence and instability led to the rise of Al-Shabab militant group in Somalia. The group rose from a radical faction of the Islamic Courts Union termed Hezb-ul Islam. In its initial days it proved itself to be less corrupt and provided efficient services in areas under its control. This increased public confidence in its potential leading to increased youth enrolment.[19] However,

[15] S. Autesserre, "The crisis of peacekeeping: why the UN can't end wars", Foreign Affairs, vol. 98, no. 1 (2019). p. 101–16. URL: https://www.foreignaffairs.com/articles/2018-12-11/crisis-peacekeeping
[16] New York Times, "UN report describes Somalia's swift descent into anarchy", (19 Aug. 1999). URL: https://www.nytimes.com/1999/08/19/world/un-report-describes-somalia-s-swift-descent-into-anarchy.html
[17] P. J. Quaranto, "Building States While Fighting Terror: Contradictions in United States Strategy in Somalia from 2001 to 2007", *ISS Monograph*, Series no. 143, Institute for Security Studies, Pretoria, (2008). URL: https://www.africaportal.org/documents/3262/M143FULL.pdf
[18] Security Council Report, 'December 2006 monthly forecast', *Security Council Reports,* New York, (2006). URL: https://www.securitycouncilreport.org/security-council-report-2006-annual-report
[19]Tricia Bacon, "This is Why Al-Shabab Won't be Going Away Anytime Soon" , *Washington Post* (6 July 2017). URL: https://www.washingtonpost.com/news/monkey-cage/wp/2017/07/06/this-is-why-al-shabaab-wont-be-going-away-any-time-soon/

soon, Al-Shabab started committing the gravest of human rights abuses in its alleged enforcement of the Sharia law. Punishments like amputation and stoning to death in public became common. The al-Shabab also forced young girls to marry their male fighters and boys to join as suicide bombers. Terrorist attacks on hotels, schools and offices of humanitarian and government agencies also became frequent. To help stabilise the situation, African Union Mission in Somalia (AMISOM) was authorised by the AU Peace and Security Council in January 2007.[20] AMISOM did not have the mandate to use force except for self-defence. However, the deployment of AMISOM could not prevent the spread of the Islamist extremist group al-Shabab since 2008, as the main insurgent group in Somalia. Al-Shabab was also engaged in an armed conflict with Somali and Ethiopian forces. By 2011 it controlled substantial parts of southern and central Somalia, including the important port of Kismayo and parts of Mogadishu.[21]After a massive increase in AMISOM troop size from around 9000 troops in 2011 to 16970 in 2012, al-Shabab lost some ground but still maintained substantial control in southern Somalia.[22] In June 2013 the UN Security Council established the United Nations Assistance Mission in Somalia (UNSOM) with the mandate to support establishment of the Federal Government of Somalia (FGS) following the agreement on a new constitution in 2012. The UNSC has over the years enhanced the mandate of AMISOM in Somalia. This has been through the enhancement of AMISOM with the mandate beyond peace keeping.[23]

In 2017, Somalia elected a new president, Mohamed Abdullahi Mohamed who promised to bring security. However, militant attacks by the al-Shabab continued along with clan-based conflicts, and the Somaliland separatist movement. In response, Somalia's military, along with African Union troops, has launched offensives against the al-Shabab. However, the group continues to control large parts of the country, particularly in rural areas. The humanitarian situation in Somalia remains dire, with millions of people in need of assistance due to ongoing conflict, drought, and poverty. In 2021, when the country witnessed it's most sever drought in history, the UN issued the warning of Somalia facing a "catastrophic emergency" of conflict and drought, which had left millions at risk of famine.[24]

[20] UN Security Council, Security Council resolution 1772 (2007) [Somalia], 20 August 2007, S/RES/1772 (2007).URL: https://www.un.org/securitycouncil/s/res/1772-%282007%29
[21] Uppsala Conflict Data Program, UCDP Conflict Encyclopedia, Uppsala University. URL: www.ucdp.uu.se.
[22] Ibid.
[23] UN Security Council, Security Council resolution 1851 (2008) [on fight against piracy and armed robbery at sea off the coast of Somalia], 16 December 2008, S/RES/1851 (2008). URL: https://www.un.org/securitycouncil/s/res/1851-%282008%29
[24] Rédaction Africanews, "UN: Somalia drought causing catastrophic emergency," *Africa news,* (2021). URL: https://www.africanews.com/2022/12/06/un-somalia-drought-causing-catastrophic-emergency//

In 2022, the UNSC decided to reconfigure AMISOM into the African Union Transition Mission in Somalia, with the hope that the Government of Somalia will gradually assume greater security responsibilities going forward. However, the country continues to remain marred by ongoing violence, political instability, and humanitarian crises with no clear resolution in sight.

Classifying the Somalia Armed Conflict

The International Armed Conflict (IAC) and the Non-International Armed Conflict (NIAC) are the two primary forms of armed conflicts. They often occur in the same territory and are triggered by the same set of events. Sometimes a NIAC or IAC can lead to the emergence of an IAC or NIAC respectively. The underlying principles that differentiate these conflicts can be traced to Common Article 2 and Common Article 3 of the Geneva Conventions and their Additional Protocols. There are two main criteria that determine whether an armed conflict is an IAC or a NIAC. Firstly, it must be determined whether forces of another state are involved in hostilities in a state. If so, the conflict is deemed an international armed conflict. This is particularly so if the foreign state backs a non-state armed group (NSAG) against the first state. Secondly, the interpretation of common Article 3 of the Geneva Conventions is that it is the territory and not the nature of the actors, which determines whether an armed conflict is international or non-international. Thus when a state's armed forces cross the territorial boundaries of another state to participate in an armed conflict which was so far a NIAC between a State and NSAGs, it internationalises the NIAC. While according to common Articles 2 and 3 of the Geneva Conventions, the main types of armed conflicts are IACs and NIACs, however, apart from these main types one may also encounter hybrid conflicts. These might include conflicts involving two or more NSAGs within the context of an IAC involving states, or even an armed conflict between states and NSAGs within the context of a NIAC.

In the case of Somalia, the conflict since the beginning has been characterised by three interrelated layers at the local, national and international levels. Each level has correlated causes and actors of the conflict. At the local level, conflicts in Somalia are often characterised by low-level communal violence owing their origin to resources and clan affiliations. As clan identities became politicised, clan-based violence has regularly spilled over to the national level and was an important reason behind the outbreak of the civil war in the 1990s. Even after the peak of the civil war of the early 1990s, violent conflict among different clans continued.

At the national level, Somalia's conflicts are linked to territorial claims, clan affiliations, and claims of sovereignty. The northern region of Somaliland for instance, claims and operates as an independent polity, even though it has not been granted international recognition as an independent state. The national-level conflict is a legacy of Somalia's colonial history where borders were drawn without regard for clan identities.[25] Additionally, competition amongst elites for national power has aggravated these local-level fault lines. Easy access to small weapons, as well as social and demographic pressures such as large quantities of unemployed youth, amplify local and national conflicts.[26] After 2007, the Islamist extremist group al-Shabab became the most significant contestant for government power on the national level.[27]

The absence of a functioning state governance and the high level of corruption aided the emergence of this militant group. It's links to the Al-Qaeda, a prime actor in the 'global war on terrorism', gave the conflict an international character. A wide variety of international actors have operated in Somalia, including Turkey, the United Arab Emirates, the United Kingdom and the United States.[28] Multilateral international organisations, including the European Union (EU), the African Union (AU) and the UN, have undertaken missions in Somalia. Regional power relations, especially with Ethiopia, have also affected the conflict in Somalia on multiple levels.[29]

International Armed Conflict in Somalia

The nature of the armed conflict in Somalia has been continuously evolving. There is evidence that Somalia has lapsed into an International Armed conflict at various times. During the regime of Siad Barre, Somalia harboured expansionist aspirations. Barre desired the creation of a "greater Somalia" comprising Somalia and Kenya's North-eastern region and Ethiopia's southern region of Ogaden which are predominantly occupied by ethnic Somalis. The law on IACs comes from the Geneva Conventions, and The Hague Conventions among other treaties

[25] Ion M Lewis," Understanding Somalia and Somaliland: Culture, History, Society", *Hurst & Co*, London, (2008).
[26]Afyare Abdi Elmi & Dr Abdullahi Barise, "The Somali conflict: root causes, obstacles, and peace-building strategies", *African Security Review,* vol. 15, no. 1 (2006). p. 32–54
[27] Uppsala Conflict Data Program, *UCDP Conflict Encyclopedia*, Uppsala University, https://ucdp.uu.se/?id=1&id=1
[28] Neil Melvin, "The foreign military presence in the Horn of Africa region", *SIPRI Background Paper*, (2019). URL: https://www.sipri.org/publications/2019/sipri-background-papers/foreign-military-presence-horn-africa-region
[29] J. P. Quaranto, "Building States While Fighting Terror: Contradictions in United States Strategy in Somalia from 2001 to 2007", *ISS Monograph*, Series no. 143, Institute for Security Studies, Pretoria, (2008). URL: https://www.africaportal.org/documents/3262/M143FULL.pdf

that constitute international humanitarian law. International law jurisprudence has also aided to fill the gaps in treaty law. The International Criminal Tribunal for the former Yugoslavia (ICTY) had stated that an armed conflict exists where States resort to armed force against, between or among each other and subsists until the cessation of such hostilities and the conclusion of a peace treaty.[30] The IHL imposes certain obligations upon the state involved in the IAC. These obligations are found in diverse IHL treaties whose application, is dependent upon the concerned state's ratification of the respective treaties.

Within Somalia, there is evidence that it was involved in a NIAC. The opposite could be said regarding Somalia's involvement with Non-State Armed Groups (NSAGs) in Ethiopia. The interplay of various actors helps determines whether a NIAC has been internationalised. Generally, the involvement of foreign forces leads to the internationalisation of the NIAC. IHL necessitates that for internationalisation to occur the foreign state must provide support to the non-state armed group to extent that it has 'overall control' over an NSAG perpetrating violence in a NIAC.[31] This however does not apply to multinational peacekeeping forces as they do not come under NSAG category.[32]

Application of Common Article 2 to conflict in Somalia

Article 2 of the Geneva Conventions applies to armed conflicts between states, irrespective of whether or not a state of war is declared by either or both of the state parties involved. Total or partial occupation of a territory by a foreign state, even if it is not resisted, is also included within the scope of Common Article 2. While it is true that Somali state forces have not been frequently engaged in an armed conflict against the forces of a foreign State in contemporary history, during Barre's regime, it was involved in an armed conflict with Ethiopia. In 1977 Somali state forces invaded Ethiopia's Ogaden region with the intention to gain control over it. Siad Barre had aspirations of gaining control over neighbouring countries having ethnic Somali majority to form a larger Somalia nation-state. An analysis of Common Article 2 and Common Article 3 reveals that the threshold for establishing the existence of an IAC is relatively low as compared to a NIAC. Thus to be categorised under an IAC, the duration of armed violence and its intensity is inconsequential. Somalia's July 1977 invasion of the

[30] Prosecutor v Dusko Tadic (Judgment), International Criminal Tribunal for the Former Yugoslavia (ICTY) Appeals Chamber Case No. IT-94-I-T (7th May 1997)
[31] Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui, Decision on the confirmation of charges, ICC-01/04- 01/07 OA 8 (30 September 2008). para 243.
[32] Eric David and Ola Engdahl, "How does the Involvement of a Multinational Peacekeeping Force affect the Classification of a Situation?" *International Review of the Red Cross*, 95 (2013).

Ethiopian region of Ogaden, triggered an armed conflict between its forces and Ethiopian forces. Additionally, third-party states, including the USA and the USSR also got involved by providing support and assistance to either Somalia or Ethiopia. Before the invasion, Somalia was backed by the USSR while the USA and other western countries backed Ethiopia by providing financial assistance and arms. However, after the outbreak of the war, USSR withdrew its support for Somalia and instead assisted Ethiopia by sending soldiers and military advisors to Ethiopia.[33] While Somalia initially managed to gain control over some parts of Ethiopian territory, the victory was short-lived. Ethiopia managed to acquire back the lost territories with the help of the USSR.[34] Somalia suffered a major defeat at the hands of Ethiopia, which ended the war in March 1978. Thus this armed conflict of 1977 between Somalia and Ethiopian forces can be categorised as an IAC within the meaning of Common Article 2 of the Geneva Conventions.

NSAGs and Somalia's International Armed Conflicts

Sometimes International Armed Conflicts also involve NSAGs. This may result in either the emergence of a new IAC or of a NIAC alongside an IAC or it may transform a hitherto IAC into a NIAC. During the 1977 Somalia-Ethiopia armed conflict, Somalia was revealed to be making use of Ethiopian mercenaries. These mercenaries were later caught in regions that had been earlier occupied by Somalia. These mercenaries received reimbursement and technical training from the Somalia army.

IHL recognises that 'state-controlled NSAGs' may be involved in IACs as agents of states involved in the armed conflict. However, such NSAG must depend on its supporting state for financial, logistical and military support. International criminal jurisprudence holds that the supporting state can be held liable for IHL violations committed by the NSAG.[35] This is known as the 'control and dependence' test of the International Court of Justice (ICJ). When the International Criminal Tribunal for the former Yugoslavia (ICTY) adopted this test, it gave it a more liberal interpretation, terming the ICJ test as rigid. The ICJ version held that a state must have financed and/or supervised the NSAG. The ICTY version, on the other hand, held that

[33] Micheal Clodfelter, "Warfare and Armed Conflicts: A Statistical Encyclopedia of Casualty and Other Figures, 1492-2015," McFarland, (2017).
[34]Gebru Tareke, "The Ethiopia-Somalia War of 1977 Revisited," The International Journal of African Historical Studies Vol. 33, No. 3, Boston University African Studies Center (2000). p.635
[35] International Law Commission, "Report of the Work of the ILC's Fifty-Third Session' (23rd April 2001 – 1st June 2001 and 2nd July 2001- 10th August 2001), *UNGA 55th Session Supplement No. 10 (A/56/10).* Article 4, Article 8

lower levels of control in such agency relationship must also be acknowledged.[36] In an already existing IAC like the 1977 war, the effect of the Ethiopian NSAGs would be that the IHL violations of the Ethiopian NSAGs could be attributed to the Somalia state. The same applies to the Somalia-Ethiopia war of 1982 when Ethiopia, with the support of the Somali Democratic Salvation Front seized and occupied a few border towns.

Non-International Armed Conflict in Somalia

Application of Common Article 3 to conflict in Somalia

Common Article 3 of the Geneva Conventions addresses Non-International Armed Conflicts which may occur in the territory of High Contracting Parties and prohibits Parties to the NIAC from committing IHL violations against protected persons. The IHL violations include committing acts of violence including murder, cruel treatment and torture, the taking of hostages, humiliating and degrading treatment as well as subjecting protected persons to sentences and executions in absence of proper judicial trials. Furthermore, Common Article 3 is considered a part of customary international law and thus applies to situations appearing in any state.[37]

While a NIAC has to be differentiated from an IAC, it also has to be distinguished from lower levels of violent confrontations. Thus internal disturbances and tensions like riots and isolated and sporadic acts of a similar nature do not qualify as NIACs. These come within a state's criminal jurisdiction and is therefore dealt by the state's law enforcement institutions and mechanisms.[38] There is international consensus that whenever there are higher instances of violence and a state or one or more foreign states deploy their armed forces then a NIAC is considered as existing.[39] The conflict in Somalia involved various groups at different times, including the al-Shabab and the Somalia National Army (SNA). Moreover, the SNA is supported by military forces mainly from African countries, under the auspices of the African

[36] Prosecutor v Dusko Tadic (Judgment), International Criminal Tribunal for the Former Yugoslavia (ICTY) Appeals Chamber Case No. IT-94-I-T (7th May 1997)
[37] Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), Merits, 1986 ICJ REP. 14 (June 27, 1986). p.100
[38] International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 609, (8 June 1977). Art. 1(1).URL: https://www.refworld.org/docid/3ae6b37f40.htm
[39] International Committee of the Red Cross (ICRC), "How is the term "armed conflict" defined in international humanitarian law?", ICRC, (2008).

Mission on Somalia (AMISOM). In this context, it can be stated that the conflict in Somalia is not an internal disturbance but an armed conflict.

Furthermore, IHL maintains that an NSAG to be recognised as such must possess a certain level of organisation. Additional Protocol II to the Geneva Conventions which addresses NIACs requires that NSAGs must be under a responsible command and exercise control over a part of the territory of a State where they carry out their operations.[40] Thus Additional Protocol II sets higher qualification criteria as compared to Common Article 3. Al-Shabab possesses a sophisticated level of organisation. A recent estimate of its membership range between seven thousand to twelve.[41] Most of its recruits are youth, including children.[42] Their hierarchical structure comprises of a Shura Council headed by the emir/ leader who has a deputy. It has several branches headed by its respective leaders. Such branches include the military and the intelligence wing, the security arm, the operations arm, the finance arm, the preaching arm, the media wing and explosives operations and manufacturing.[43] Al-Shabab also has spokespersons responsible for making announcements locally and abroad.[44]

While Additional Protocol II mentions the criteria for the recognition of NSAGS, states are usually hesitant to recognise them as such. This further complicates the situation. State practice avoids acknowledging their existence due to the fear of granting them legitimacy. International community has however arrived at the consensus that an organisation within the meaning of Common Article 3 must first have a command structure as well as internal rules for discipline and operations.[45] Thus, al-Shabab has the characteristic of an NSAG within IHL.

Somalia conflict and the application of IHL

Somalia has been engaged in multiple armed conflicts for a long period of time. A vast majority of them have been internal, with the state's forces in conflict with NSAGs. However, Somalia has also frequently seen foreign interventions, whether individually or in the form of multi-national forces (MNFs). Reports by humanitarian organisations show that grave violations of

[40] Ibid.
[41] UNSC, S/2022/547, (15 July 2022). URL: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S%202022%20547.pdf
[42]Diana Wanyonyi Mombasa, "Escape from Al-Shabab: 'I was Turned into a Sex Slave," DW, (2018). URL: https://www.dw.com/en/escape-from-al-shabab-i-was-turned-into-a-sex-slave/a-42762342#:~:text=She%20fled%20from%20al%2DShabab,find%20work%20as%20a%20cook.
[43] Michael Pompeo, "State Department Designates Two Senior Al-Shabaab Leaders as Terrorists," US Department of State (17 November 2020).
[44] Ibid n.138 p.9
[45] Prosecutor v. Limaj et al, "(Trial Judgment) ICTY IT-03-66-T,"(30 November 2005). URL: https://www.icty.org/x/cases/limaj/tjug/en/lim-tj051130-e.pdf

human rights and principles of international humanitarian law have been committed by state forces as well as NSAGS with little to no accountability. IHL holds that States must be held accountable for grave breaches committed by their forces or organs. Further, States may be held responsible for the actions of NSAGs where it is proved that the state provides financial and arms support to such groups. Thus states will be held responsible when such groups commit grave breaches while acting on the instructions of the state, or when they commit breaches on their own, but the state later adopted or acknowledges such conduct.[46] The universal recognition accorded to these rules give them the status of customary international law. Treaty provisions such as Article 91 of the Additional Protocol I[47] further prove the point.

Accounting responsibility to state and non-state actors require an analysis of the actions of each party, in relation to the corresponding principles contained in the international humanitarian law. NSAGs can be involved in a variety of NIACs. Firstly, a NSAG may be engaged in a NIAC with the forces of a state in which the armed conflict is occurring. Secondly, a NSAG can be engaged in a NIAC with one or more other NSAGs. Thirdly, a NSAG can be involved in an armed conflict where it crosses over to the territory of a neighbouring state thereby 'spilling' the armed conflict across the border. Fourthly, a NSAG may be engaged in an armed conflict with a state that is assisted by forces of a multi-national force (MNFs), including the UN or NATO, or peacekeeping forces like AMISOM. Fifthly, a NSAG can be operating against a state from the territory of another (host) state without the host state's consent.[48] Sixthly, the NSAG may be a global terrorist group like Al -Qaeda which does not have a single host state and is engaged in conflict with one or multiple states. This case is usually considered to be a form of a NIAC. The US Supreme Court has held that such a scenario is covered under Common Article 3 of the Geneva Conventions.[49] Furthermore, NSAGs are defined by Article 1(1) of Additional Protocol II as groups which are governed under a responsible command and which exercise control over a portion of the territory of a State that is significant enough to enable the NSAG to undertake constant and intensive armed operations and to implement Additional Protocol II.

[46] Jean-Marie Henckaerts, "ICRC: Customary International Law Volume I Rules," Cambridge University Press (2005) Rule 149, p.530
[47] Protocol Additional to the Geneva Conventions of 12 August 1949 (Relating to the Protection of Victims of International Armed Conflicts) (12 December 1977) U.N Doc. a/32/144, Annex.1, Art.91 (Protocol I)
[48] Jelena Pejic, "The Protective Scope of Common Article 3: More than Meets the Eye" *International Review of the Red Cross 93*, ICRC (2011). p. 6
[49] Hamdan v. Rumsfeld, 548 U.S. 557 (2006) (The Hamdan case), pp. 628–631

According to the ICRC, NSAGs operate in a fluid manner, often fragmenting into smaller splinter groups or merging into two or more splinter groups.[50] The responsibility of each NSAG for IHL breaches is determined on a case to case basis with an inquiry that establishes different parameters including whether the NSAG satisfies the criteria to be considered a party to the conflict.[51] Somalia's constantly evolving conflict has seen a variety of NIACs between one or more NSAGs and state forces. For instance, in 1989 during Barre's regime, the Somalia National Army (SNA) was involved in a NIAC with two NSAG called the Somali National Movement (SNM) and the United Somali Congress (USC). An examination into the possibility of a NIAC between the SNA forces and the SNM group reveals that the SNM is within the meaning of IHL a NSAG and thus can be held accountable for IHL violations. The Hague Regulations maintain that the privileges and obligations of war are obligatory not only upon the militaries of states but also upon the NSAGs. However, such NSAGs must be directed by an individual accountable for his subordinates, have a permanent distinguishing insignia identifiable from afar, carry weaponries openly and conducts their operations in accordance with IHL. Groups having these characteristics are accorded the status of "belligerents". In the 1989 Somalia conflict, the group operated under a responsible command, particularly Mohamed Ibrahim Egal who led the group in 1993 and was succeeded by Abdurahman Ali Tour who then led the Somaliland movement, a definitive territory with over a million inhabitants complete with a flag and almost ready to secede, with their "army" carrying weapons openly.[52] Other armed groups were also involved in armed conflict with the SNA. However, these NSAGs were primarily based outside Somalia as government's repressive measures made it difficult to operate from within. These groups included the Somali Democratic Action Front (SODAF) and its successor the Somali Salvation Front (SSF).[53] Such groups operated from Ethiopia and the UK. The Democratic Front for the Salvation of Somalia (SFSS) and Somalia Workers Party (SWP) were based in Yemen.[54] These groups were well organised and often received support from foreign states. For instance, the SSF received financial and military support from Ethiopia.

[50] ICRC, 'International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions, ICRC.
[51] Jelena Pejic, "The Protective Scope of Common Article 3: More than Meets the Eye" *International Review of the Red Cross* 93, ICRC (2011). p.51.
[52] United States Bureau of Citizenship and Immigration Services, "Somalia: Somali National Movement from its inception through the Present", Reliefweb, (1999).
[53] Harold D. Nelson, "Somalia, a Country Study", US Department of the Army Headquarters (1982). p.266
[54] ICRC, "International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions", *ICRC*, (2019).

Additional Protocol II to the Geneva Conventions holds that to be considered a NSAG, apart from being under a responsible command, a group must exercise control over a part of the territory of a State where they carry out their operations. Many of the above-mentioned groups would fail as a NSAG if these criteria are applied. This is because most of the groups operated from outside Somalia, conducted their military operations through militias waging guerrilla warfare and did not control any territory. However, according to Common Article 3 the requirement for armed groups having control over territory is not present. This more liberal approach is encouraged by ICRC as it makes it easier for groups to be held liable for human rights abuses and IHL violations. Moreover, in practice, states have not particularly been keen on distinguishing between NSAGs that control territory and those who do not.

With regard to the NIAC between Somalia and al-Shabab, the application of IHL is even more complicated. Traditionally, terrorist groups were not held accountable for their role in armed conflicts. Additional Protocol I and II recognise terrorism as a breach by prohibiting acts of terrorism.[55] These provisions however did not foresee the emergence of large-scale organised terrorist groups like Al-Shabab and Al-Qaeda. The US Supreme Court held that the US could be deemed to be in an IAC with Al-Qaeda and that the 'war on terror' by the US and allies in Iraq and Afghanistan could be looked at as an armed conflict between the US and the NSAG in each country and instance separately.[56] Furthermore, Article 1 of the Hague Regulations provides that the privileges and obligations of war are obligatory not only upon the militaries of states but also upon NSAGs as long as the NSAGs are directed by an individual accountable for his subordinates, the group has a permanent distinguishing insignia identifiable at afar, carries weaponries openly and conducts their operations in accordance with the IHL. Al-Shabab operates under a very sophisticated command and hierarchical structure. It also has an emblem and is therefore subject to the IHL with The Hague Regulations recognising them as belligerents. In this context, it can be concluded that the Somalia state is currently engaged in a NIAC with al-Shabab.

[55] International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 UNTS 3, (8 June 1977). Annex.1, Art.48. URL: https://www.refworld.org/docid/3ae6b36b4.html.; International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 609, (8 June 1977). Annex II, Article 13(2). URL: https://www.refworld.org/docid/3ae6b37f40.htm

[56] Marco Milanovic, "Lessons for Human Rights and Humanitarian Law in the War on Terror: Comparing Hamdan and the Israeli Targeted Killings Case," *International Review of the Red Cross*, (2007).

NIACs between two or more NSAGs in Somalia

Common Article 3 of the Geneva Conventions recognises circumstances when NSAGs may be involved in a Non-International Armed Conflict with each other. Such NSAGs must satisfy the criteria provided by the IHL to be recognised as such. These criteria include a certain level of organisation with organisational hierarchy and defined roles for the various departments. Furthermore, an NSAG must possess the capacity to exercise control over a part of the territory of a state where they carry out their operations. A NIAC between two or more NSAGs may occur alongside a NIAC between a State and one or more NSAGs. It can also occur alongside an IAC involving one or more state forces. Since 2015 the Islamic State has spread and gained a foothold in Somalia. Due to its links with Al-Qaeda, al-Shabab has rejected offers for alliances with Islamic State in Somalia (ISS).[57] There has been various killing of the members of either side by the other group.[58] However, the frequency and intensity of these attacks have been relatively low and thus the violent confrontations between Al-Shabab and ISS does not satisfy the criteria required by IHL for NIACs between NSAGs.[59]

NIACs with a spill-over effect

Traditionally IHL was held to be dependent upon the territorial boundaries of states, that is, if armed conflict occurs across borders it is thought as international, particularly where a state force crosses such borders. This interpretation is now being abandoned by IHL jurists. Michael Schmitt stated that Common Article 2 did not intend to provide a geographical scope to Non-International Armed Conflicts, as it would have resulted in strict interpretation and defeated the broader objectives of the provision.[60] It has been suggested that a broader interpretation is required to achieve the objectives of the provision.

It is therefore acknowledged that both a NIAC as well as an IAC may spill-over into a neighbouring state. In such cases of spill-over, IHL maintains that the party responsible for the breaches committed across borders will be held accountable. These types of conflicts are

[57] The Organisation for World Peace, "Islamic State in Somalia", OWP, (2021). URL: https://theowp.org/crisis_index/islamic-state-in-somalia/.
[58] Caleb Weiss, "Reigniting the Rivalry: The Islamic State in Somalia vs. Al-Shabaab," CTC Sentinel, (2019).
[59] Abdisaid M. Ali, "The Al-Shabaab Al-Mujahidiin - A Profile of the First Somali Terrorist Organisation", The IGAD Joint Kenya-Uganda Border Security and Management Workshop, Jinja Uganda, (2008).
[60] Michael Schmitt, "Charting the Legal Geography of Non-International Armed Conflict," Vol. 90 Journal of International Law Studies, (2014) <https://digitalcommons.usnwc.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1014&context=ils>

termed as delocalised, exported or extraterritorial conflicts.[61] On certain occasions, this "spill-over" of an armed conflict may even occur with the consent of the neighbouring state into whose territory the conflict spills. For instance, when a NIAC involves a non-state armed group and a state, the members of the NSAG may flee into the territory of a neighbouring state. Such neighbouring state may then grant consent to the first state to pursue the NSAG on its territory or agree to host the NSAG. In such a case, the first State will not be held liable for breaching the territorial integrity of the second state. A narrow interpretation of Common Article 3 would conclude that in this instance the NIAC has been internationalised since it has crossed the territorial borders of States. However, a broader interpretation of the IHL would mean that the NIAC has not been internationalised but only been delocalised. Furthermore, internationalisation is also avoided as the two states are not engaged militarily with each other. IACs involve armed conflict either between states or between a state and a NSAG. Common Article 3 has great utility in issues relating to terrorist groups because their operations are almost always extra-territorial. Al-Shabab, for instance, while based and engaged in armed conflict in Somalia, also conducts its operations across borders, especially in Kenya's North Eastern and Coastal regions.[62] However, States are usually reluctant to apply IHL while dealing with terrorist groups and instead prefer to apply their national jurisdiction in the situation. This is mainly because of the concern that recognising such groups as NSAGs may grant legitimacy to such groups.

Somalia presents the case of such a conflict. Al-Shabab, a NSAG is engaged in a NIAC with the state forces of Somalia. However, due to its operations in Kenya, Kenya considers al-Shabab to be a terrorist organisation and has in the past, depended solely on its counter-terrorism laws to deal with al-Shabab. Kenya has ignored international norms of fair court trials for terrorist suspects and has instead tortured and executed them. Such an approach makes it difficult to hold such terrorist groups accountable for their IHL violations.

NIACs between NSAGs and Multinational Forces or Peacekeeping Forces in Somalia

A NIAC may also occur between NSAGs and a Multi-National Force (MNF) or a Peacekeeping Force. Normally, MNFs or Peacekeeping Forces intervene in NIACs to assist the host state in

[61] Sylvain Vite, "Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations", International Review of the Red Cross No. 873, (2009). p. 89.
[62] Lara Jakes, "1998 U.S. Embassy Bombing Victims are assured Equal Compensation in Deal with Sudan", *The New York Times*, (21 December 2020). URL: https://www.nytimes.com/2020/12/21/us/politics/sudan-embassy-bombing-compensation.html

restoring order and stability when mandated through a resolution of the UNSC or a multilateral treaty. MNF intervention in a NIAC has the potential to internationalise the NIAC. Peacekeeping forces, however, unlike MNFs do not support either side in the hostilities and only use force for self-defence. In Somalia, AMISOM was initially given the mandate of a Peacekeeping force.[63] Over time however, the UNSC granted AMISOM the mandate to use force in special circumstances.[64] Thus the mandate of AMISOM changed from a Peacekeeping force under UNSC Resolution 1744 to a MNF under UNSC Resolution 1851. Under the IHL, MNFs are also held accountable for any IHL violations that they may commit. There is no consensus within the international community as to when the intervention of a MNF internationalises a NIAC. Some scholars hold that till the time the MNF assists a state in its NIAC with a NSAG, the conflict remains a NIAC. However, if the state steps back and the conflict continues between the MNF and the NSAG, it is considered to be internationalised.[65] Contrarily, when the MNF intervenes to assist the NSAG against a state, the conflict is already deemed to be an IAC.

Holding MNFs responsible for violations of IHL, raises the further complexity of holding troop-contributing states also accountable the MNF is equally accountable as an international legal personality. International organisations like NATO often allow troop-contributing states a lot of freehand in conducting operations in their respective states. Holding states directly responsible for IHL violations of their troops within an MNF would imply the existence of an IAC. It has been suggested that when the MNF is under the command and control of the UN for example, and is acting under a UNSC mandate, the troop-contributing states cannot be held responsible. Internationalisation will not be deemed to have occurred in such cases. Thus the Somalia NIAC was not internationalised due to the involvement of AMISOM. Firstly, AMISOM intervened in the armed conflict to assist the government of Somalia and not an NSAG. Secondly, AMISOM operated under the UN mandate of restoring and maintaining international peace and security. The Somalia NIAC thus remained a NIAC.

[63] UN Security Council, Security Council resolution 1744 (2007) [Somalia], 20 February 2007, S/RES/1744 (2007). URL: https://www.refworld.org/docid/582435bb7.htm
[64]UN Security Council, Security Council resolution 1851 (2008) [on fight against piracy and armed robbery at sea off the coast of Somalia], 16 December 2008, S/RES/1851 (2008). URL: https://www.un.org/securitycouncil/s/res/1851-%282008%29
[65] Jelena Pejic, "The Protective Scope of Common Article 3: More than Meets the Eye", International Review of the Red Cross, 93, (2011). p.6

IACs between states and NSAGs in Somalia

According to Common Article 2 of the Geneva Conventions, an IAC occurs in cases of armed conflict between two or more of the High Contracting Parties, even if a state of war is not recognised by either or one of them. Compared to NIACs, IACs do not have many stringent criteria to be recognised as such. If armed force is applied by the forces of one state against another, an IAC is deemed to have occurred. There is no clause of minimum level of intensity involved, although factors like crossing a state's border by mistake may not be regarded as contributing to an IAC.[66] However, a state comprises of elements other than the government, including population and territory. Thus when the armed forces of a state attack the territory of another state or the infrastructure of that state, an IAC is deemed to exist. The IHL acknowledges that NSAGs may be engaged in an IAC. Article 1(4) of Additional Protocol I hold that an IAC may occur where a state is engaged in an armed conflict with a NSAG fighting against colonial domination and alien occupation. An IAC may also occur where a NSAG is fighting a racist regime in the exercise of its right to self-determination in accordance with the UN Charter. IACs also recognises fighters from third states as mercenaries. Thus captured mercenaries must be granted 'prisoner of war' status and given the entitlements that the POW title brings under the Third Geneva Convention. Thus these POWs are entitled to access the services of the ICRC as guaranteed under Common Article 3 of the Geneva Conventions which provides the right to assistance from impartial humanitarian organisations. In Somalia there is no IAC at the moment, however, during Barre's rule, Somalia was engaged in IACs in order to forward its expansionist plans of a 'greater Somalia.' In the IAC between Somalia and Ethiopia, the external states including the USA and the USSR were involved. They are known to have provided financial, technical and military support to both Somalia and Ethiopia at different times. Also, both Somalia and Ethiopia made use of NSAG allies to wage the IAC.

1992 Humanitarian Intervention and Application of IHL

The December 1992 US-led humanitarian intervention in Somalia till date continues to affect the debate over humanitarian intervention. In an ode to this intervention "crossing the Mogadishu line." has become a recognised phrase in the field of International Humanitarian Law. This expression, reportedly coined by Lieutenant General Sir Michael Rose, former commander of the United Nations Protection Force in Bosnia, describes the need to maintain

[66] The Rule of Law in Armed Conflicts: project of the Geneva Academy of International Humanitarian Law and Human Rights, 'International armed conflict' (Rulac).

neutrality in the face of provocation for fear of becoming an unwilling participant in a civil war. Later UN humanitarian interventions, especially the U.N. Implementation Force in Bosnia were greatly influenced by the lessons learned in Somalia. In April 1994, shortly after the U.S. forces withdrew from Somalia, the then US President Clinton issued a policy directive that implied a sharp curtailment of American involvement in future armed humanitarian interventions.[67] This was in sharp contrast to his earlier rhetoric of assertive multilateralism. Similarly, in the 1995 second edition of 'An Agenda for Peace', the then UN Secretary-General Boutros Boutros Ghali expressed less optimism about the possibilities for intervention than he did in the first edition of the Agenda in 1992. This was mainly the effect of the failed intervention in Somalia.

Background of the Mission

The most common excuse provided by the international community for the Somalia intervention disaster is that the mission changed. It is argued that the limited U.S.-led intervention initiated by President Bush to combat famine in Somalia in December 1992, that is, the Unified Task Force (UNITAF), was a success. However, the operation suffered when the second U.N. Operation in Somalia (UNOSOM II) took over in May 1993 and included the agenda of 'nation-building.' Former Assistant Secretary of State for African Affairs Chester Crocker argued that the Security Council's resolution in March 1993 marked a major break from the U.S. and UN's earlier mission in Somalia. This led to a prevalent view that a separation should be maintained between humanitarian interventions and nation-building. The US administration under Clinton thus blamed the United Nations for the disaster in Somalia.[68]

However, this allegation upon the UN by the United States is unjustified on many grounds. All the major Security Council resolutions on Somalia, including the one on 'nation-building' were prepared by U.S. officials, and were submitted to the UN fully prepared. It was only after the deaths of 18 U.S. Army Rangers in October 1993 that the United States withdrew from the operation that was started and almost completely directed by it. Under heavy domestic pressure, the Clinton administration instructed U.S. forces to adopt a purely defensive posture, end the hunt for General Mohamed Farah Aideed and set March 31, 1994, as the deadline for American withdrawal. US, with the intention of getting out of Somalia as soon as possible, simply ignored

[67] Russell L. Riley, "Bill Clinton: Foreign Affairs", Miller Centre, University of Virginia. URL: https://millercenter.org/president/clinton/foreign-affairs
[68] "Ill-fated Raid Surprised, Angered Clinton," The Buffalo News, (May 13,1994). p. 6. URL: https://buffalonews.com/news/article_12dc7fed-aa63-5793-82b6-721bce6d0c1c.html.

the repercussions that were sure to follow the intervention. The United Nations was left to face these consequences. It had the task of rebuilding Somali society and preventing it from lapsing into chaos again. The repercussions of the intervention were especially detrimental to the cause of disarmament of the belligerents. U.S. officials had allowed Somali warlords to keep their weapons in exchange for moving the arms out of Mogadishu. This failure to disarm the warlords made them challenge the UN force as soon as the United States and its allies withdrew.

Moreover, the principle of neutrality is a hallmark of any humanitarian work. However, in Somalia, instead of remaining neutral, the United States and the United Nations helped the warlords enhance their status and power. The failure to disarm the major combatants meant that the United States and the United Nations in effect sided with those who had the most weapons, leaving the disarmed weaker.

The principle of division between humanitarian intervention and nation-building activities is itself problematic. In the case of Somalia, the supporters of humanitarian intervention argue that Somalis were suffering from famine. However, the famine was a result of the country's political and economic collapse. It was soon realised that food grains imported for the relief effort became a plunder currency for merchants and unemployed youth gangs. Militants also made use of looted food grains to purchase weapons and new recruits. U.S. troops' efforts in December 1992 to stop the loot of food aid, can indirectly be regarded as a part of a nation-building exercise as it aimed to end anarchy, the primary objective of nation-building. Thus the 'Mogadishu line' was crossed as soon as troops entered Somalia. Thus a strict division between intervention and nation-building may not always be practically feasible.

In accordance with humanitarian law, peacekeeping forces are to be guided by the principle of neutrality and impartiality. However, in Somalia even the pretence of such neutrality and impartiality were given up. When General Mohamed Farah Aideed's forces killed a group of Pakistani soldiers on June 5,1993, a reward was promised for General Aideed's head. The UN and U.S. soldiers undertook violent operations to capture him. Given the limits of neutrality and impartiality, the crackdown upon General Aideed contradicted the principles of IHL.

The 2006-2009 Ethiopia Invasion and Application of IHL

To justify its military invasion in Somalia, Ethiopia gave the reasons of the right of self-defence; threat of terrorism; intervention by invitation and the protection of the right to self-

determination of the Ethiopian Somalis.[69] It requires an analysis of the operation to determine if the invasion was justified under international humanitarian law. The first issue is that of intervention upon invitation. IHL permits third state to intervene by force into another State, provided there is clear consent from the government of the state where the intervention takes place. This is usually the case when a state is under a foreign military attack or an attack from an NSAG with foreign support. A request for assistance from a third state can be made under the right of self- defence. However, a military intervention by invitation into a civil war makes it a legally complex issue. Usually such interventions are considered illegal unless the inviting government is constitutional and enjoys popular support, the intervention is not contrary to Article 2 (4) of the UN Charter[70] and the intervention does not violate humanitarian laws.[71] Until December 2006, Ethiopia claimed that its intervention was based upon the Somali government's invitation. This statement is true to the extent that the Somali Parliament had approved such an invitation. However, the then government under President Yusuf's was not constitutionally elected. Nevertheless, it had enjoyed international recognition. Yet, it controlled only a small part of the country when the Ethiopian offenses began. It was the ICU that controlled the majority of Somalia. In this context the military intervention by invitation of Ethiopia is very controversial, however it cannot be regarded as fully unlawful.

The second justification of Ethiopia for the intervention was to fight the ICU in its right to self-defence. This was Ethiopia's claim mainly after December 2006. The IHL recognises the right to self-defence for all states when faced with an armed attack from another state, or a state-sponsored armed group. Article 51 of the UN Charter provides for this right explicitly as well. While initially intended for attacks from a state, the 9/11 attack brought terrorist actions within the domain of self-defence. Resolution 1373 of the United Nations Security Council determined that international terrorism constitutes a threat to international peace and security. Resolution 1516 of 2003, proclaimed the need to combat by all means 'threats to international peace and security caused by terrorist acts.'[72] However necessity, proportionality and immediacy of the actions needs to be considered.[73] Ethiopia maintained that "there is a clear

[69] G Dawit, "A Critical and Timely Resolution to Defend our Sovereignty", *The Ethiopian Herald* (3 Dec 2006).
[70] Prohibition of threat or use of force in international relations. Article 2 (4) of the Charter prohibits the threat or use of force and calls on all Members to respect the sovereignty, territorial integrity and political independence of other States.
[71] Antonio Cassese, "International Law", 2nd edn, OUP, Oxford,(2005). p.371.
[72] UNSC, "Resolution 1189/1998, SC Res 1269/1999", SC Res 1377/2003. URL: https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf
[73] Yoram Dinstein, "War, Aggression and Self-Defence", 4th edn, CUP, Cambridge, (2005). pp. 219-43.

and present danger to our country" and there was a need to "take all necessary and legal steps to avert the danger arising from the repeated declaration of a 'holy war' against the Country."[74] However, Ethiopia's declaration did not authorise automatic military action and insisted on dialogue as the first recourse before military action.[75] Opinions were divided on military intervention within Ethiopia. The former US Ambassador to Ethiopia, Professor David Shinn held that 'Ethiopian military was far more superior than the militias of the Islamic Courts, there was thus no serious military threat to Ethiopia.'[76]

The Security Council passed Resolution 1725 on 6th December 2006, in an attempt to restore peace. It called upon "all other states to refrain from action that could provoke or perpetuate violence." During the vote for the Resolution, Qatar condemned Ethiopia's intervention while the United States blamed the ICU for regularly violating the ceasefire.[77] The Council however neither condemned nor formally supported Ethiopia's action. This may be viewed as an indirect approval by the international community to the Ethiopian military action. The US, which approved of the invasion, assisted Ethiopia by carrying out air raids on ICU targets. The necessity of US's military intervention in the conflict and the civilian losses it caused cannot be justified in accordance with the IHL.

Evidence found both pre and post-Ethiopia's military operation confirms the majority of the claims that Ethiopia had made for the military action. The intervention was intended mainly against the ICU. Ethiopia's claim that the ICU constituted a real threat to its security and territorial sovereignty was true. Some members of the ICU had strong links to the Al-Qaeda.[78] International law recognises the right of self-defence against terrorism. The main point of contention is whether Ethiopia's action satisfy the requirements of necessity and immediacy. The fact that the ICU regularly broke ceasefires, engaged in armed attacks at the Ethiopian border, and declared 'holy war' against Ethiopia seems to satisfy the necessity and immediacy requirements of self-defence.

The last question to consider is whether the attack against the ICU was proportionate. Ethiopia's action cannot be considered as disproportionate as Ethiopia completed its operation in a short time and started withdrawing within a month of its first intervention. However, Ethiopia

[74] "Ethiopian parliament authorizes "all necessary" steps against Somalia's UIC", Hiraan Online, (30 Nov 2006).
[75] G Dawit, "A Critical and Timely Resolution to Defend our Sovereignty", *The Ethiopian Herald* (3 Dec 2006).
[76] D Shinn, "Stabilizing Somalia and Ethiopia's Role: Key Points" (2007). URL: http://www.ethiopiafirst.com/
[77] UNSC, UN Doc S/PV 5579 (6 Dec 2006).p. 2.
[78] UN Security Council, Security Council resolution 1725 (2006) [Somalia], 6 December 2006, S/RES/1725 (2006), URL: https://www.refworld.org/docid/5821d48f7.html

ignored reporting the measure to the UN Security Council. Nevertheless, when seen within the context of the circumstances neither reporting nor failure to do so alone could conclusively determine the legality of claim of self-defence.

Recent Violations of IHL in Somalia

Since the Ethiopian military intervention in Somalia in 2006, a non-international armed conflict has continued in Somalia between various parties including the Somali state forces, the al-Shabab, the African Union Mission to Somalia (AMISOM), now replaced by the African Union Transition Mission in Somalia (ATMIS) as well as Ethiopian armed forces. The UN mission in Somalia, the United Nations Assistance Mission in Somalia (UNSOM) is a primarily political mission that works to support the Federal Government of Somalia and promote peace and stability in the country. It does not have a military component and therefore does not engage in direct combat operations.

The Islamist armed group al-Shabab has continued to conduct indiscriminate and targeted attacks on civilians. This violates the IHL principle of distinction, which makes it imperative for a non-state armed group to distinguish between military and civilian targets. Civilian casualties and displacements are also often caused by military operations against al-Shabab by Somali government forces and troops from the African Union Mission in Somalia (AMISOM), and other foreign forces, especially the United States. The United States recently "conducted a collective self-defense strike" in support of Somalia National Army forces who were "engaged in heavy fighting following a complex, extended, intense attack by more than 100 al-Shabab fighters," which resulted in about 30 al-Shabab casualties.[79] US's use of direct military strikes in Somalia raises the question of the legality of the action in accordance with international humanitarian law. The US claims that its operations in Somalia rely upon the consent of the Federal Government of Somalia (FGS), and on US national self-defence.[80] While the right of self-defence alone is inadequate in this case, the consent of FGS, gives adequate legal authority for the ongoing operations.

[79] Michael Callahan, "US strike kills approximately 30 al-Shabaab fighters in Somalia", CNN, (2023). URL: https://edition.cnn.com/2023/01/21/politics/somalia-strike-al-shabaab-us/index.html

[80] The White House, Report on the legal and policy frameworks guiding the United State's use of military force and related national security operations, (2016). URL: https://www.justsecurity.org/wp-content/uploads/2016/12/framework.Report_Final.pdf

Moreover, Somalia continues to use military court proceedings to prosecute suspected al-Shabab militants. This practice violates international fair trial standards.[81] Civilian casualties have also been caused by the operations of the AMISOM in the country. For instance, the UN reported six civilian casualties to AMISOM forces between late 2020 and late July.[82] Moreover, an increase in civilian victims resulting from airstrikes by the US and AMISOM forces has also been reported. Attacks against health workers by the al-Shabab have further deteriorated the efforts at rebuilding of Somali society. Also, regions under the control of the al-Shabab receive only a small percentage of humanitarian aid. This is because most non-governmental organisations fear al-Shabab attacks on their aid workers. Moreover, NGOs fear facing legal action for providing assistance to terrorist groups, as al-Shabab imposes a tax on humanitarian aid. It was these concerns that delayed the delivery of humanitarian aid to Somalia during the 2011 famine causing Somali deaths that could have been otherwise avoided.[83] Thus as a compromise in December 2022, the United Nations passed resolution 2664, exempting humanitarian deliveries from U.N. sanctions.[84]

Conclusion

The Somalia conflict thus depicts a unique example of a protracted crisis where the nature and players have changed multiple times giving the opportunity to analyse the application of IHL at different levels. The conflict which has lasted for more than three decades has witnessed the gravest violations of international humanitarian law and human rights standards. The presence of multiple players in the crisis has made it a truly complex emergency.

This complexity is likely to continue. Somalia's main militant opponent group, al- Shabab, though weakened in recent years is far from extinct. The clan uprisings against the al-Shabab since the mid-2022's have further added to the complexity. Thus the Somalia conflict is far from over and will continue to remain a source of insecurity and concern for the international humanitarian community.

[81] Human Rights Watch, Somalia: Events of 2021", (2022). URL: https://www.hrw.org/world-report/2022/country-chapters/somalia
[82] Ibid.
[83] The Guardian, "Somalia famine relief effort hit harder by food aid delays than by rebels", *The Guardian.* (2011). URL: https://www.theguardian.com/world/2011/aug/04/somalia-famine-food-aid-unicef-al-shabab
[84] UNSC, "Adopting Resolution 2664 (2022), Security Council Approves Humanitarian Exemption to Asset Freeze Measures Imposed by United Nations Sanctions Regimes", SC/15134 (9 Dec 2022). URL: https://press.un.org/en/2022/sc15134.doc.htm

CHAPTER VIII

CONCLUSION TO THE THESIS

The emergence of Complex Humanitarian Emergencies (CHEs) has fundamentally changed the understanding of contemporary armed conflicts. The traditional style of war fought between states, with the help of a state's armed forces is getting replaced by a new form of social and political disruption known as complex humanitarian emergencies. CHEs are a mixture of armed conflict, total or partial breakdown of governmental authority, massive violations of human rights, and economic stagnation among others. CHEs are also sometimes accompanied by droughts and famines which make providing a humanitarian response more complicated. Moreover, CHEs usually involve a multitude of actors both, global and local, public and private and most violence is directed against civilians leading to large-scale displacement of the victims of the emergency. These facts differentiate complex humanitarian emergencies from civil wars. Despite being localised, CHEs unlike civil wars combine a set of internal and external factors. Thus CHEs represent a new form of challenge to the international community making it imperative to analyse the emergency response mechanisms in place. They challenge the dichotomy of the two types of armed conflicts governed under international humanitarian law, that is, international and non-international armed conflicts. The Geneva Convention of 1949, framed after the Second World War is still used to govern modern armed conflicts that are significantly different in nature and scope. Moreover, the concept of complex humanitarian emergencies has not been formally included in the IHL and hence there is no mechanism available to deal with it. Instead, these are being accommodated in the existing framework creating confusion. Thus the aim of this study is to determine the applicability of the existing framework of international humanitarian law to complex humanitarian emergencies and identify gaps in its application.

To achieve this, the thesis has been divided into eight chapters, with each chapter underlining various aspects of the response mechanism to complex humanitarian emergencies.

Analysis in the Chapters

The first chapter titled, 'Introduction to the Thesis' deals with a brief introduction to the study. It focuses on the background, research problems, scope, objectives of the study, methodology of research work, research questions and a review of the literature.

The second chapter titled, 'Complex Humanitarian Emergencies: A Theoretical Exploration' introduced the concept of CHEs. The chapter argues that CHEs are not only the result of warfare but rather represent a much broader phenomenon. They are the intersection of massive political, social, economic, health, and security problems that are linked to large-scale violent conflict and cause humanitarian crises. Moreover, they tend to crop up in places where the state institutions have not developed or have been worn down or have become overwhelmed by the strength, extent, and magnitude of these problems. Thus, governance is impaired and conceiving or reconstructing it is a fundamental condition for mitigating the humanitarian crisis over the long term. The 'complexity' refers to the multidimensional responses provided by the international community and additionally complicated by the absence of protection usually provided by international treaties, covenants, and the United Nations Charter during conventional wars. The understanding in this chapter is used in the succeeding chapters to determine the challenges and difficulties facing interveners and forms the basis for analysing the application of IHL in the light of current realities.

The third chapter titled, 'Complex Humanitarian Emergencies and Humanitarianism', examines the role of humanitarianism as an important response to CHEs. The chapter began by discussing humanitarianism and attempted to define the dilemmas that humanitarian organisations face and the implications for humanitarian aid delivery. The chapter has also addressed the security issues, including counter-terrorism laws that have led to a restrictive environment for humanitarian aid. Furthermore, the chapter has argued that military in humanitarian aid delivery should only be used as a last resort as there is an inherently insurmountable gap between political/military objectives and humanitarian objectives in an armed conflict that extends into the emergency response, causing an exacerbated bias in the provision of aid. The chapter then assesses the evidence that humanitarian organisations have also contributed inadvertently to the escalation of violence rather than only to conflict resolution. This has mainly been due to the emergence of 'war economies', where aid provided by humanitarian bodies is captured or taxed by militant bodies and then used as a currency to fund and thus perpetuate the crisis. In such cases where humanitarian work does more harm

than good, sometimes as a last resort, humanitarian organisations have to consider the option of withdrawal. Withdrawal during an emergency goes against the very basic humanitarian objective of protecting lives at risk. However, the chapter argues that sometimes withdrawal gives humanitarian organisations the scope to regain control over aid supplies. When there are no other possibilities, humanitarian bodies have to take necessary steps to avoid becoming part of the problems they were meant to solve. Withdrawal might also serve as a warning message to other militants hoping to use humanitarian aid for their own purposes.

The fourth chapter titled, 'The International Humanitarian System in Complex Emergencies: The Role of the United Nations' has focused on the first major actor of the international humanitarian system, that is, the United Nations. It has aimed to summarise the history of the UN humanitarian assistance system, highlighting how this system has altered over the years to respond to the changing nature of complex humanitarian emergencies. In this light, the concept of humanitarian intervention has been explored and the current legal status of the concept under contemporary international law and the Charter of the United Nations is investigated. The chapter has also attempted to illustrate the increasing legitimacy of humanitarian intervention and its relation with the changing meaning of state sovereignty. The chapter argues that having the 'primary responsibility for the maintenance of international peace and security' (Article 24 of the UN Charter) and the authority to determine whether a situation is a 'threat to international peace and security' (Article 39), under Chapter VII, the Security Council may opt for coercive action, including the collective use of force (Article 42) and the imposition of sanctions (Article 41). Further, although not formally included in the UN Charter, the Council has authorised the deployment of Peacekeeping Operations, whose mandate under Chapter VII includes the limited use of force. While the Security Council has been greatly criticised on grounds of its typically uneven performance and unrepresentative composition, nevertheless, the fact remains that there is no institution as powerful as the UNSC to deal with issues of human protection. Moreover, the UN's use of humanitarian interventions in situations of complex emergencies has been questioned in terms of sovereignty. This chapter concludes that states are sovereign only within the context of a larger global system of states, and thus they can maintain their sovereignty only by ensuring the survival of the system that imposes constraints on their independence. This possibly justifies the role that the Security Council has played with regard to humanitarian intervention over the years.

The fifth chapter titled, 'The International Humanitarian System in Complex Emergencies: The Role of the of the International Red Cross and Red Crescent Movement' examines the role of

the International Red Cross and Red Crescent Movement in complex humanitarian emergencies and in the development of international humanitarian law (IHL). The chapter argues that since the International Committee of the Red Cross (ICRC) is regarded as the guardian of the IHL, it constitutes an effective international body, outside the UN system to implement and operationalise the IHL for the assistance needs and protection concerns of the victims of CHEs. At the field level, the Red Cross Movement's national societies are often instrumental in delivering assistance to these victims. Henry Dunant, the founder of the Red Cross movement was the first to suggest that states should adopt a convention protecting the wounded soldiers of war. This led to the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field in 1864. This Convention can be seen as the inception of modern IHL. Moreover, the ICRC's recognition as an international legal personality under the IHL, enables it to carry out humanitarian functions by acting as a substitute for, or complementing the actions of the Protecting Powers, visiting prisoners of war and other protected persons, operating the Central Tracing Agency, providing humanitarian assistance, fulfilling the ICRC's special mandate with regard to IHL, and exercising a general right of humanitarian initiative. The chapter argues that the achievements of the ICRC in mitigating the sufferings of the victims of CHEs have been commendable. However, its conservative attitude to change and strict adherence to neutrality has prevented it from advancing swiftly in mobilising concerns for victims of CHEs. Given ICRC's special mandate under the IHL and its vast expanse and scope, it has failed to utilise its full potential to provide humanitarian assistance in complex emergencies.

The sixth chapter titled, 'The Scope and Development of International Humanitarian Law', reviews the content and limits of IHL in its application to CHE's. In doing so it appraises the factors that lead to or hinder compliance and reviews the applicable law and its enforcement. The chapter comes to the conclusion that since the end of the Second World War, the world has witnessed numerous conflicts, however the majority of these have been non-international or internal conflicts. Several challenges emerge that needs redressal into the practicalities involving the non-international armed conflicts and the law surrounding it.

While the inclusion of non-international armed conflicts in the Geneva Conventions represented a major change in the international humanitarian law, these laws are very limited in scope. Only Common Article 3 and the Additional Protocol II cover these conflicts. Furthermore, while customary international law has attempted to fill the void, several issues like detention, combatant immunity, status of prisoners of war are still ambiguous during a

non-international armed conflict. International humanitarian law has provided a neat division between international armed conflicts and non-international armed conflicts and has given a very low threshold to qualify as an international armed conflict. However, the scope and applicability of the treaty provisions on non-international armed conflict are neither simple nor uniform. Three different provision, Common Article 3, Article 1 of Additional Protocol II and Article 8 of the Rome Statue, defining a non-international armed conflict provide three different thresholds for the classification of any hostilities as a non-international armed conflict thereby leaving room for confusion and ambiguity. Moreover, in the case of CHEs where myriad forms of violence occur simultaneously, the assessment of intensity of conflicts and categorisation of non-state actors as armed groups has made the application even more complex.

The seventh chapter titled 'The Application of International Humanitarian Law: A Case Study of the Somalian Conflict,' examines the international response and the application of international humanitarian law to the ongoing conflict in Somalia. The case of Somalia was chosen as it represents all the characteristics of a complex humanitarian emergency and is protracted in nature where the players and character of the conflict have changed multiple times. This gave the opportunity to analyse the application of IHL at different levels. Some important points relating to the application of IHL that the case study discovered included, firstly, the existence of 'Internationalised Non-International Armed Conflicts'. An important aspect of complex humanitarian emergencies is that they are local as well as global in scope and character. A non-international armed conflict is internationalised due to third state or multinational intervention. These interventions can be direct and indirect, rendering different classification in both the cases. As per the ruling in the Tadic case, an internal conflict can be internationalised in two scenarios: when armed forces of other states intervene through their troops to intentionally support non-state armed groups and when the non-state armed groups of a non-international armed conflict act on behalf of other state. When a foreign state intervenes, even a minor military intervention would trigger the application of law of international armed conflict. If this intervention has no connection to the internal conflict, it will still be termed as an international armed conflict, alongside an existing internal conflict. Thus the categorisation of the conflict becomes confusing when a direct foreign intervention is intentional and with an aim to support a non-state armed groups. The 'overall control test' used for determining the agency between the foreign state and the non-state actors has no clear-cut principles. A non-state actor will not be called as an agent of a foreign state despite being

provided with military, financial and intelligence aid until and unless the other state has an overall control on the non-state armed groups. Thus, the lack of clarity in determination of the effect of foreign military intervention has raised practical difficulties in the application of law of armed conflict.

The same complex issues arise in the second type of intervention that is indirect in nature, where the primary test of 'effective control' is applied to determine the foreign intervention that renders a conflict internationalised. Different standards govern the control of a foreign state over non-state actors so as to categorise a non-state entity as an agent of a State. For acts of single individual or non-organised military groups, the foreign state is held liable if it specifically gave instructions to the group or the individual or later claimed responsibility for it. For acts of subordinate armed forces, militias, or paramilitary units, over all control and not just mere military or financial aid is required. Thus, irrespective of several tests laid down, howsoever broad they may sound, they still remain incompatible to the mixed conflicts which is usually witnessed in a CHE. The Somalia conflict follows the pattern of an internationalised non -international armed conflict. As, international humanitarian law does not provide for a quasi-categorisation, a conflict either must be an international armed conflict or non-international armed conflict. A same conflict cannot be both at the same time. Thus, even though it has been recognised that internationalised armed conflicts are of common occurrence in contemporary conflicts, law of armed conflict cannot be applied until and unless the dichotomy and the distinction between the international and non-international armed conflict is done away with.

The eighth chapter titled, 'Conclusion to the Thesis' brings together the understanding and findings gathered in the previous chapters. The chapter attempts to answer the research questions posed in the introductory chapter and present the findings of the research.

Research Findings

The present study has attempted to respond to the research questions posed in the introductory chapter in the following manner:

How to identify the existence of a complex humanitarian emergency?

Since complex humanitarian emergencies usually crop up in places where the state institutions have not developed or have been worn down or have become overwhelmed by the strength, extent, and magnitude of the problems, it represents a failure of the concerned state. This

sometimes leads to a tendency by the concerned state to hide the existence of a humanitarian emergency from the outside world or portray it as only a short term social disruption. In order for the international community to respond to the crisis, it is first important to identify and determine the existence of one.

To gauge the existence of a CHE, one has to depend upon two chief quantitative indicators and a number of other derivative qualitative ones. First, since CHEs are characterised by a large number of civilian casualties, wherever possible, the number of civilian deaths is the most apparent pointer of the devastation caused. However, more often than not, authentic data about civilian deaths is not easily available. Thus, the degree of population dislocation can also be used to gain an understanding of the extent of vulnerabilities that the civilian population is exposed to. This displaced population may include refugees and asylum seekers, as well as internally displaced persons (IDPs). CHEs often represent a situation where actors perpetrating violence block access to the territory for journalists or humanitarian workers. In such cases, refugees and asylum seekers reaching neighbouring states for shelter and protection become the primary, if not the sole proof for the outside world about the atrocities going on within the disrupted state. In most complex emergencies it is displacement-related problems like forceful exodus of population, hindrance in food supplies, and demolition of the public health infrastructure, that results in maximum calamities.

However, there might be few cases where data regarding both civilian deaths as well as displacement are unavailable, especially when an armed conflict is ongoing. In such condition one may need to look at other supplementary qualitative indexes. These indicators may offer additional clue about the existing state of affairs. They can provide evidence that either substantiates the claim of considerable disruption to civilian life, or may alleviate such fears, proving that the disruption may not be as calamitous as it may seem. For instance, an outburst of an infectious disease, leading to worsening health data, poor sanitation conditions at displaced-person camps, or a shortage of basic amenities such as food, health care, or shelter, can prove to be substantiating evidence of a severe threat to civilian life. On the other hand, contradictory evidence showing that the disruption is only temporary may alleviate the fear of a severe case of humanitarian crisis. This is mainly because a short-term displacement usually does not signify outbreaks of disease or a major disruption of the food supply.

A true assessment of a state's capability and willingness to protect its citizens from the repercussions of violence can only be made by using qualitative indicators. These indicators

may either confirm or mitigate the concern about the existence of a complex emergency. First, evidence regarding the intended targeting of civilians where they are a victim of state abuses is the most reliable indicator of the failure of the government machinery. In such a case, the government is either the perpetrator of abuse, thus unwilling to protect, or the government is not strong enough to protect its citizens. Similarly, if a government conducts aggression without first attempting to remove or protect the population, it can show its absence of concern for welfare of the civilian. Evidence relating to the existence of a humanitarian emergency can also be provided by relief organisations. Complex emergencies tend to involve hindrances or prevention of humanitarian assistance by political and military constraints and security risks to humanitarian relief workers. Thus, an active effort to block them from entering, or the failure of the state to protect them is indicative of the breakdown of the state machinery. On the other hand, evidence that a government is capable and prepared to respond to a conflict-affected population's requirements may include international commendation for its efforts. This might include rapid response to the humanitarian crisis, an effective effort at terminating inter-communal violence, or implications that suggests that most displaced persons are satisfactorily cared for. Given that complex emergencies are intended to identify the very worst conflicts for civilians, it would be safest to rely on high quantitative parameters for deaths and displacement. These indicators should encourage agreement that these conflicts truly involve large-scale civilian suffering.

How has the increasing use of the military in humanitarian assistance impacted the nature and work of humanitarian organisations?

Owing to impediments common to CHEs like attacks on humanitarian workers or denial of access to them, humanitarian organisations are often unable to provide assistance in such crises. In such cases, there is an increasing tendency to use the military to fill the void. It is argued that military assets can offer not just the necessary relief supplies but also the security and logistical support required for the rapid delivery of aid. This increase has led to a shrinkage of 'humanitarian space' and blurred the boundaries between civil-military activities. On the positive side the use of military ensures greater security against relief being captured and diverted, but it also leads to a negative perception regarding humanitarian assistance, especially if the military is considered an enemy by any of the warring factions or civilians. These ties between humanitarianism and the military can lead to the general idea that humanitarian organisations are a part of counterinsurgency efforts. It was in response to this situation that in 2008, the UN issued the Civil-Military Guidelines & Reference for Complex Emergencies,

wherein it maintained that humanitarian access is not dependent upon support to parties involved in a conflict. It also mentioned that the military should be used only as a last resort and operational control should remain with the NGO.

Viewing humanitarian organisations as partners in counterinsurgency efforts ignore the fact that these organisations are not government units and are bound to the principles of independence, neutrality, and impartiality. Also, their objective is to give relief assistance, not to combat an insurgency. Thus while military and humanitarians might operate in the same region, their goals are different. Information sharing is another major problem between humanitarian organisations and military partnerships. Humanitarian organisations have mistrust regarding information sharing with militaries. The military, owing to strategic reasons is reluctant to share security information with humanitarian bodies.

Moreover, since humanitarian organisations possess no 'hard power', that is, military strength, they have to depend upon the power of negotiation to gain access to victims of a conflict. To retain their negotiating power, it is important for these organisations, to maintain their reputation for which adherence to their principles becomes crucial. The impression of strong links between the military and humanitarian aims indicated in counterinsurgency strategies has damaged the trust in humanitarian actors and exposed them to increased attacks. Similarly, most of these organisations have close ties to the major world powers as the majority of their funding comes from these countries. These countries also provide military support in major conflicts. Thus, the barriers between humanitarian organisations and the military have become distorted because of increased military humanitarian aid.

However, blaming these processes as the only reason behind recent concerns of increased attacks on humanitarian workers and limited access to conflict zones, fails to acknowledge the tensions that already existed between security objectives and humanitarian goals of providing impartial and independent aid to the vulnerable. First, aid provision has always been contingent upon the ability of the government, the armed forces, and the humanitarian organisation to negotiate in the situation. From the government's standpoint, humanitarian relief is a part of the response, which can result in a biased distribution of aid. Humanitarian organisations on the other hand believe that all should get unbiased aid with priority to the most vulnerable, without any political interference. It is the two opposing viewpoints that lead to tension during a conflict. Thus the chapter argues that, while there have been new challenges, there is an inherently insurmountable gap between political/military objectives and humanitarian

objectives in an armed conflict that extends into the emergency response, causing an exacerbated bias and corruption in the provision of aid. Thus the use of the military should only be used as a last resort.

Why does the United Nations respond in different ways to similar humanitarian emergencies?

With the 'primary responsibility for the maintenance of international peace and security' (Article 24 of the UN charter) and the authority to determine whether a situation is a 'threat to international peace and security' (Article 39), under Chapter VII, the Security Council may opt for coercive action, including the collective use of force (Article 42) and the imposition of sanctions (Article 41). Similarly, the Council may also decide to undertake non-coercive actions, including observer missions, or deployment of humanitarian aid in order to restore peace and stability. Finally, the UNSC might also not take any action.

Over the past few decades, the Security Council has deployed peacekeeping operations and authorised and carried out military interventions in response to various humanitarian crises across the globe. However, the UNSC's response has been often criticised as exceedingly selective. It has responded more forcefully to some humanitarian crises than to others. The Security Council is often keen to diverge from traditional Westphalian ideas of sovereignty in certain cases of rights violation, yet is not willing to contravene them in other similar situations.

Given the complexity of intervention decisions, these decisions are not governed by any single cause, but rather by a combination of objectives. The present study has thus attempted to examine which combinations of conditions are sufficient for the Security Council to authorise intervention. The December 2004 report of the High-level Panel on Threats, Challenges, and Change recommended that the Security Council agree to a set of guidelines for deciding whether or not to authorise the use of force. It enumerated the seriousness of threat; proper purpose; last resort; proportional means; and balance of consequences as certain recommended guidelines. These references are however general in character, and the Security Council usually makes decisions based on the practical situation, often ignoring these recommendations.

Past cases of conflicts and humanitarian interventions suggest that there are two causal indicators that determine humanitarian intervention. A large extent of human suffering and significant previous involvement in a crisis by international institutions may be identified as the key explanatory conditions for UN intervention. However, for the UN to take decisive action, normally these conditions must also be accompanied by either negative spillover effects

to neighbouring regions or low capabilities of the target state. None of these requirements are necessary or sufficient on their own but combined they explain why the Council responds more forcefully to some crises than to others.

This study has ascertained the following specific criteria or a combination thereof, contributing to a better explanation of selective UN intervention.

Normative considerations

The rise in humanitarian interventions is mainly due to the emerging norms of human security and rights over and above the traditional principles of sovereignty in cases of CHEs. While normative considerations alone fail to explain selectivity for humanitarian intervention, it suggests that intervention decisions depend on the severity of a crisis. Higher the level of human suffering, the greater the moral pressure to intervene and help the needy. However, while massive human suffering is a necessary criterion for intervention, it is not sufficient.

Status of sovereignty

In cases where the state authorities are identified as illegitimate actors, the course of humanitarian intervention becomes more likely. Humanitarian intervention usually occurs in circumstances when sovereignty is either believed to be contested or absent or weak. Where sovereign authority in the target state is seen as lacking; it becomes easy for the Council to justify an intervention. Similar is the case of a weak sovereign, where it could benefit from protection; or where sovereignty is contested and the existing governing authorities are deemed illegitimate and sovereign authority conceptually goes back to the people of that state. In each of these cases, Council can justify a humanitarian intervention with ease. On the other hand, if the perpetrators of violence have their sovereign authority uncontested and thus deemed legitimate by the Security Council, humanitarian intervention is unlikely to become politically possible. In this context, the protection of civilians through the use or threat of force would conflict with the protection of state sovereignty through the principle of domestic non-intervention.

Media attention

Pressure to come to the rescue of human suffering in conflict situations, may be influenced not just by the 'real extent' of a crisis but also by its perceived magnitude. The decision to intervene in humanitarian crises is affected by the extent of international media attention on a particular

conflict. More extensive media coverage ensures that a larger public creates pressure upon decision-makers who, act strategically, to avoid reputational damage from inaction. However, media coverage might follow foreign policy decisions rather than the other way round. Furthermore, there has been non-intervention despite widespread media attention. Thus, media coverage, though important is not sufficient on its own to cause intervention.

Spill-over effects and countervailing power

Spill-over effects emanating from a crisis is important in this regard. The greater the spill-over, the larger the extent of threat it is to international peace and security. Spill-over often results in refugee flows, international terrorism, or economic downturn which produce negative consequences for neighbouring countries. The second important factor is the ability of potential target states to provide countervailing resistance against outside intervention. The greater the extent of such strength, the greater the costs and risks of intervention. Furthermore, target states might also resist UN action if they are themselves or are allied with other powerful states that can use its political influence in the Council to prevent UN intervention.

Moreover, depending on the extent to which regional or international institutions have previously been involved in a humanitarian emergency, the desire to secure these investments by sustained or greater commitment can be considered a powerful motive for UN action.

Thus, these findings reveal that distinct trends can be identified in the way the UN responds to humanitarian emergencies. While every crisis is unique, the Security Council's responses to them are not random. Rather, the Council selects crises for intervention based on specific causal factors. Moreover, none of these conditions are individually necessary or sufficient for UN intervention. Together, however, they provide a powerful rationale behind variation in UN humanitarian intervention. Thus, the prospect of humanitarian intervention involves a combination of competing factors, principles, interests, motivations, and trade-offs.

Is the ICRC's principle of neutrality relevant to cases of complex humanitarian emergencies?

The principle of neutrality allows the ICRC to access prisoners of war, negotiate their release, and perform a variety of other vital humanitarian functions. International humanitarian law gives recognition to the ICRC as a neutral actor. The ICRC has been questioned time and again about the appropriateness of its code of strict neutrality. The ICRC believes that incorporating political agenda will hinder access, endanger its staff members, and compromise the life-saving programmes. They hold that such activities are better addressed by other governmental and

intergovernmental agencies involved in advocacy and human rights concerns. However, CHEs now represent a different conflict environment, where not acting beyond providing assistance has rendered the ICRC as a mere bystander to the tragedies that befell its beneficiaries. Moreover, this chapter has argued that neutrality should no longer be treated as a valued concept when fighting parties targeting civilians, as is the case in most CHEs.

Neutral humanitarianism is no longer feasible as many non-state actors like terrorist groups indulge in total war. In such cases strict neutrality might encourage passivity that might lead to undesirable results. Moreover, working with a government in a country where the conflict is taking place, automatically results in giving up neutrality to an extent. It is not uncommon for the government to be a party to the conflict and, also the inflictor of the population's suffering. Thus the chapter argues that while neutrality is a useful principle to gain access to people affected by conflicts, it should not be treated as an end but rather only as a means.

The important question is not whether humanitarian principles are still relevant today, but whether they are equally relevant in all situations. Neutrality was elevated to an inviolable status, and all relief activities are attempted to be branded as neutral regardless of the context and the capacity to practice it. Neutrality should thus be valid only as long as it serves the purpose of saving lives. In complex emergencies, which frequently involves non -state actors like terrorist groups, who have civilians as their primary targets, neutral and unbiased assistance might end up helping perpetuate the crisis.

Whether the gap in the applicable legal regimes on non-international armed conflicts, and their rigid legal characterisations contribute to both noncompliance and non-enforcement of law by non- state actors?

As the non-international armed conflicts are the most prominent in contemporary times, the study has attempted to underline the challenges that non-state armed actors present to the existing framework of international humanitarian law. IHL does regulate the actions of non-state actors. However, their increasing influence presses for better application, implementation, and compliance with the law. In times when, majority of the conflicts have non-state actors as participants, the international humanitarian law is in jeopardy as on one side, with so many conflicts its prominence and importance is increasing day by day, however with majority being non-international, respect for and compliance with IHL is endangered like never before. The cause for the same are, their illegitimacy in the domestic law enforcement keeps them out of purview of state recognition. Secondly, the high threshold to be qualified as a party under

Common Article 3 restricts the recognition of many non-state armed groups as 'armed groups' for the purpose of Geneva Conventions. Even if they gain recognition by states as 'armed groups', denial of responsibility towards humanitarian norms and seeking compliance and holding them accountable for the violations has remained a challenge.

Further, expecting compliance from non-state actors is also somewhat ironical as they themselves don't consent voluntarily to be bound by the Geneva Conventions, but instead are made legally bound because of being provided rights by the Conventions and by being de facto party to the conflict. Thus, there is an urgent need to seek respect and reciprocation of the rules of armed conflict from the non-State armed group participating in the armed conflicts.

The terms 'international' and 'non-international' are based on a policy decision that leads to IHL not covering some conflicts. This division is not tenable as often it is these "non-international" conflicts that are more violent and long-lasting. This distinction permits most armed conflicts to escape full international regulation. Common Article 3 establishes a minimum set of protections that apply to all conflicts in which a party to the Conventions is involved. However, these protections are far less than their equivalent in common Article 2. Unlike Article 2, Article 3 forbids only the most flagrant violations of humanitarian norms. Moreover, Article 3, does not mandate supervision by a neutral 'protecting power' or an organisation like the ICRC. Protocol II applies to non-international conflicts, but not to those covered by Article 3 of the Conventions. Moreover, Article 1(1) of Protocol II imposes several conditions that make the scope of Protocol II narrower than Common Article 3 of the 1949 Conventions. Its application depends on the control of territory by the group opposing the established government and on that group's ability to apply the Protocol. Furthermore, it only applies to conflicts between the state and rebels. Protocol II is to apply automatically if its requirements are fulfilled and require no declaration. However humanitarian activities of relief societies such as the ICRC are subject to the consent of the state concerned. All these loopholes allow non-state actors to escape obligations under the IHL.

The division between international and non-international conflicts is not only not compatible with the underlying objective of IHL; it is no longer realistically possible to maintain. The major consequence of the international and non-international divide is that it insulates a majority of armed conflicts from the reach of IHL.

What gaps in the application of IHL to CHEs does the Somalia conflict represent?

Somalia is an example of a protracted complex humanitarian emergency that has seen multiple actors actively participating in the conflict at different periods of time. Thus owing to the participation of both local and international actors, the character and nature of the conflict in Somalia has changed multiple times. However despite the participation of a large number of international actors including Ethiopia as well as the USA, the Somalia conflict has been regarded as a non-international armed conflict under the IHL. This is due to the fact that most of these interventions were said to be based upon invitation to intervene or in coalition with the government of Somalia. This showed that IHL has not been able to address such mixed forms of conflict that Somalia represents. In accordance with IHL a conflict is either an international conflict or a non- international conflict. However most CHEs today include a multiplicity of actors, both domestic as well as international. There is thus a felt need for IHL to cover such conflicts within its protective scope.

The African Union Mission in Somalia (AMISOM) was a Multi-National Force (MNF) that operated in Somalia. MNF intervention in a Non-international Armed Conflict (NIAC) has the potential to internationalise the NIAC. Under the IHL, MNFs are also held accountable for any IHL violations that they may commit. However there is no consensus within the international community as to when the intervention of a MNF internationalises a NIAC. In Somalia, despite AMISOM operating, the conflict was considered to not have been internationalised as it was held that AMISOM was assisting the state against a non-state armed group. This prevented the application of the laws of International Armed Conflict which are more expansive in their protective scope. Thus there is a need for IHL to develop more consistent standards in this regard.

Thus the endeavour of this research has been to locate sources of response mechanisms to complex humanitarian emergencies and determine the protection accorded to its victims. It can be safely concluded that the existing framework of international humanitarian law does not formally include complex humanitarian emergencies, and hence there is no mechanism available to deal with it. However international humanitarian law accords and affords protection of civilian victims of war and armed conflict. Since armed conflicts are the primary source of disruption in CHEs, its victims are entitled to get the protection of IHL as part of the civilian population. However, the existing framework needs to evolve and develop in the light of the new challenges presented by CHEs so that the existing gaps and lacunas can be filled

up. In times when, majority of humanitarian crisis have a combination of state and non-state actors as participants, the focus of international humanitarian law upon international armed conflicts seems pre-dated. With the number of humanitarian emergencies increasing, the prominence and importance of IHL is also increasing. However with majority of the complex emergencies remaining outside its protective scope, respect for IHL and compliance with its priorities is endangered like never before.

BIBLIOGRAPHY

Primary Sources

"Agreement For United Nations Relief and Rehabilitation Administration", *Australian Treaty Series* (1943).

Amnesty International, "Somalia: Violations of human rights and international humanitarian law in Central and Southern Somalia," *Amnesty International submission to the UN Universal Periodic Review* (May 2011).

Bothe, Michael; Karl Josef Partsch & Waldemar A. Solf, "New Rules for Victims of Armed Conflicts", *Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949,* The Hague, Boston, London (1982).

Brahimi, L., "Report of the Panel on United Nations Peace Operations", [A/55/305], *United Nations,* New York (2000).

Carnegie Commission, "Preventing Deadly Conflict", *Final Report of the Carnegie Commission on Preventing Deadly Conflict,* Carnegie Corporation of New York, New York (1997).

Case of Lawless v. Ireland, *Yearbook European Convention on Human Rights 438 (European Court of Human Rights)* (1961). URL: https://70.coe.int/pdf/lawless-v.-ireland.pdf

Department of the Army, "Counterinsurgency (FM 3-24)," *Department of Army,* Washington, DC (2006).

Dept. of Defense Office of Gen. Counsel, "An Assessment of International Legal Issues In Information Operations" 11 (1999). URL: http://www.maxwell.af.mil/ au/awc/awcgate/dod-io-legal/dod-io-legal.pdf.

Eide, Expen Barth; Kasperson, Ajna Therese; Kent Randolph and Hippel, Karen von, "UN Integrated Missions: Practical Perspectives and Recommendations", *Independent Study for the Expanded ECHA Core Group* (2005).

Eliasson, Jan, "Paying Tribute to Fallen Personnel, Speakers Call for More Effective Use of Judicial Tools, Sanctions, Resolutions," speech, *United Nations Security Council* (August 19, 2014).

"Final Record of the Diplomatic Conference Convened by the Swiss Federal Council for the Establishment of International Conventions for the Protection of War Victims" Held at Geneva from April 21st to August 12th (1949).

Final Report of the Independent Panel to Review DoD Detention Operations, Government Printing Office, Washington, *The Schlesinger Report* (2004). URL: http://www.isn.ethz.ch/pubs/ph/details.cfm?id5 10157.

Handbook of the International Red Cross and Red Crescent Movement, ICRC (2008). pp. 1-1278.

Humanitarian Policy Group and ICRC, "Roundtable on Civil–Military Coordination: The Concept of Protection: Towards a Mutual Understanding," *ICRC* (2011). pp. 8-20 https://www.icrc.org/eng/assets/files/2012/hpg-icrc-roundtable-summary-note-2011-12-12.pdf.

Human Rights Watch, "World Report 1993—Somalia," *Human Rights Watch* (1993).

Human Rights Watch, Somalia: Events of 2021" (2022). URL: https://www.hrw.org/world-report/2022/country-chapters/somalia

"Humanitarian security: A matter of acceptance, perception, behaviour…", address given by *the ICRC's Director of Operations to the High-level Humanitarian Forum*, Palais des Nations, Geneva (2004). URL: https://www.icrc.org/en/doc/resources/documents/statement/5xsgwe.htm

Hamdan v. Rumsfeld, 29 June 2006. URL: https://ihl-databases.icrc.org/en/national-practice/hamdan-v-rumsfeld-supreme-court-29-june-2006

IASC, "Definition of Complex Emergencies," *Inter-Agency Standing Committee Working Group XVITH Meeting* (1994).

ICRC, "Annual Report 2002," *ICRC*, Geneva, (2003). pp. 11–13. URL: https://www.icrc.org/en/doc/resources/documents/annual-report/icrc-annual-report-2002.htm

ICRC, ICRC report on IHL and the challenges of contemporary armed conflicts, *ICRC* (2019). URL: https://www.icrc.org/en/document/icrc-report-ihl-and-challenges-contemporary-armed-conflicts

ICRC, Red Cross and Red Crescent relief aid in Yemen, *International Committee of the Red Cross* (2015). URL: https://www.icrc.org/en/document/red-crossred-crescent-relief-efforts-yemen

International Committee of the Red Cross (ICRC), Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention) 75 UNTS 31 (12 August 1949). URL: https://www.refworld.org/docid/3ae6b3694.html

International Committee of the Red Cross (ICRC), Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention) 75 UNTS 85 (12 August 1949). URL: https://www.refworld.org/docid/3ae6b37927.html

International Committee of the Red Cross (ICRC), "Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention)" 75 UNTS 135 (12 August 1949). URL: https://www.refworld.org/docid/3ae6b36c8.html

International Committee of the Red Cross (ICRC), “Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)”, 75 UNTS 28 (12 August 1949). URL: https://www.refworld.org/docid/3ae6b36d2.html

International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 UNTS 3 (8 June 1977). URL: https://www.refworld.org/docid/3ae6b36b4.html.

International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 609 (8 June 1977). URL: https://www.refworld.org/docid/3ae6b37f40.htm

International Committee of the Red Cross (ICRC), “What is international humanitarian law?” (2022). URL: https://www.icrc.org/en/document/what-international-humanitarian-law

International Court of Justice, “Report Dissenting opinion of the Judges: Basdevant, Winiarski, Sir Arnold McNair and Read,” (1947-1948). URL: https://www.icj-cij.org/public/files/case-related/3/003-19480528-ADV-01-03-EN.pdf

Internal Displacement Monitoring Centre, “2020 Global Report on Internal Displacement,” Geneva, (2020).

ICRC, “International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions”, ICRC (2019).

ICRC, “Draft Additional Protocols to the Geneva Conventions of August 12, 1949”, Submitted by the International Committee of the Red Cross, *International Committee of the Red Cross*, Geneva, (1973).

International Committee, “The Action of the ICRC in Cyprus”.

International Committee of the Red Cross (ICRC), War and International Humanitarian Law (29 October 2010). URL: www.icrc.org/eng/war-and-law/overview-war-and-law.htm

International Conferences (The Hague), “Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land” (18 October 1907). URL: https://www.refworld.org/docid/4374cae64.html

International Conferences (The Hague), Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (1907). URL: https://www.refworld.org/docid/3ddca4e14.html.

Internal Displacement Monitoring Center, “Indonesia/Central Sulawesi: IDP return and recovery hampered by persistent tensions, land disputes and limited access to livelihoods,” *Norwegian Refugee Council* (2009). URL:https://reliefweb.int/sites/reliefweb.int/files/resources/67A5CADE941D856DC12577FA00491415-Full_Report.pdf.)

International Conferences (The Hague), Hague Convention (XIII) concerning the Rights and Duties of Neutral Powers in Naval War (1907).

International Criminal Court (ICC), "Press Release: ICC Prosecutor Presents Case Against Sudanese President, Hassan Ahmad AL BASHIR, for Genocide, *Crimes Against Humanity and war Crimes in Darfur* (2008). URL: https://www.icc-cpi.int/news/icc-prosecutor-presents-case-against-sudanese-president-hassan-ahmad-al-bashir-genocide-crimes

ICISS, "Report of the International Commission on Intervention and State Sovereignty: The Responsibility to Protect," *International Development Research Centre,* (2001). URL: https://www.globalr2p.org/wp-content/uploads/2019/10/2001-ICISS-Report.pdf

ILC Yearbook 1949, *Yearbook of the International Law Commission,* New York, The United Nations.

International Law Commission, "Fragmentation of International Law: Difficulties Arising From the Diversification and Expansion of International Law", *Report of the Study Group of the International Law Commission,* Finalized by Martti Koskenniemi, UN Doc A/CN.4/L.682 (13 Apr 2006).

International Law Commission, "Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal, With Commentaries", 123, *U.N. Doc. A/1316* (1950).

International Law Commission, "Report of the Work of the ILC's Fifty-Third Session' (23rd April 2001 – 1st June 2001 and 2nd July 2001- 10th August 2001), *UNGA 55th Session Supplement No. 10 (A/56/10).*

INSCR, "Political Instability Task Force (PITF) State Failure Problem Set 1955-2018", *Center for Systemic Peace*. URL http://www.systemicpeace.org/inscrdata.html.

Ireland v United Kingdom, *Yearbook of The European Convention on Human Rights,* European Court of Human Rights (1972).

Israel/Lebanon/Hezbollah Conflict in 2006, *How does law protect in war,* ICRC (2006). URL: https://casebook.icrc.org/case-study/israellebanonhezbollah-conflict-2006

Iqbal, Zareen, "Democratic Republic of Congo (DRC): MONUC's Impending Withdrawal", *International Institute for Justice and Development* (2010). URL: https://www.iijd.org/2021/05/31/democratic-republic-of-congo-drc-monucs-impending-withdrawal/

Joint Committee for the Re-Appraisal of the Role of the Red Cross, Donald D Tansley, "Final Report: An Agenda for the Red Cross," *Red Cross*, Geneva (1975).

"Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory", *Advisory Opinion ICJ Reports* 136 (2004).

"Legality of the Threat or Use of Nuclear Weapons" (Request by the United Nations General Assembly for an Advisory Opinion), *ICJ Reports* 226 (1996).

Lieber, Francis “Instructions for the Government of Armies of the United States in the Field”, Articles 11, 22, 29. Washington (1863). URL: https://ihl-databases.icrc.org/en/ihl-treaties/liebercode-1863

Magat, Richard, “As Others See Us: Views on Red Cros”, *Joint Committee for the Re-appraisal of the Role of the Red Cross* (1975).

Margesson, Rhoda, “Indian Ocean Earthquake and Tsunami: Humanitarian Assistance and Relief Operations” CRS Report for Congress NO. RL32715, 2005, *Congressional Research Service*, Washington, DC (2005). URL: https://apps.dtic.mil/sti/citations/ADA461370

Menkhaus, Ken “Elite Bargains and Political Deals Project: Somalia Case Study”, *Stabilisation Unit, UK* (2018). URL: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766049/Somalia_case_study.pdf

Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), Merits, 1986 ICJ REP. 14 (June 27 1986).

MSF, MSF Charter.URL: www.msf.org/msf-charter-and-principles

MSF 2020 International Activity Report, *MSF*, Switzerland, (2020). URL: https://www.msf.org/sites/default/files/2021-09/international-activity-report-2020.pdf

Nelson, D. Harold, “Somalia, a Country Study”, *US Department of the Army Headquarters* (1982).

OCHA, OCHA Orientation Handbook on Complex Emergencies, *UN*, (1999). URL: https://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%C2%A0ORIENTATION%20HANDBOOK.pdf.

OCHA, “Thematic Areas: Humanitarian Access,” *OCHA*. http://www.unocha.org/what-we-do/policy/thematic-areas/humanitarian-access.

Office of the Director of National Intelligence, “White House Releases National Strategy for Counterterrorism.” URL:https://www.dni.gov/index.php/nctc-features/2622-white-house-releases-national-strategy-for counterterrorism#:~:text=The%20National%20Strategy%20for%20Counterterrorism,citizens%2C%20and%20our%20interests%20abroad.

Office for the Coordination of Humanitarian Affairs, “OCHA Orientation Handbook on Complex Emergencies” (2002). URL: https://reliefweb.int/report/world/ocha-orientation-handbook-complex-emergencies

Office of the United Nations High Commissioner for Refugees (UNHCR), “Mid-year Trends 2020”, Copenhagen (2020).

"Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts", Geneva (1974-1977), vol. III, *Federal Political Department,* Bern, (1978).

Organization for Economic Co-operation and Development, "Evaluation and Aid Effectiveness 1- Guidance for Evaluating Humanitarian Assistance in Complex Emergencies," *DAC, OECD,* Paris (1999). http://www.oecd.org/dataoecd/9/50/2667294.pdf.

"Policy on ICRC co-operation with National Societies", *International Review of the Red Cross,* Vol. 85, No. 851 (2003). pp. 663–78.

Pompeo, Michael, "State Department Designates Two Senior Al-Shabaab Leaders as Terrorists," *US Department of State* (17 November 2020).

Powell L. Colin, "September 1 1, 2001: Attack on America", *Remarks to the National Foreign Policy Conference for Leaders of Nongovernmental Organizations* (2001). URL: http://avalon.law.yale.edu/sept1 1/powell_brief31.asp.

Prosecutor v. Dusko Tadic, a/k/a "Dule", Case No. IT-94-1-AR72, *Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction,* The Hague (2 October 1995).

Prosecutor v Dusko Tadic (Judgment), International Criminal Tribunal for the Former Yugoslavia (ICTY) Appeals Chamber Case No. IT-94-I-T (7th May 1997)

Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui, Decision on the confirmation of charges, *ICC-01/04- 01/07 OA 8* (30 September 2008).

Prosecutor v. Limaj et al, "(Trial Judgment) ICTY IT-03-66-T,"(30 November 2005). URL: https://www.icty.org/x/cases/limaj/tjug/en/lim-tj051130-e.pdf

Rees, Edward, Harris Susan Rimmer, Scambary, James, "Timor-Leste Armed Violence Assessment Final Report, 2011, *Small Arms Survey Special Reports,* Small Arms Survey (2011). URL: https://www.files.ethz.ch/isn/143631/Timor-Leste-Violence-Special-Report-12.pdf

Sandoz,Yves et al., "Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventinos of 12 August 1949", International Committee of the Red Cross (1986).

Sandoz, Yves. et al. (eds), "Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949," *International Committee of the Red Cross,* Martinus Nijhoff Publishers, Geneva (1987).

Security Council Report, 'December 2006 monthly forecast', *Security Council Reports,* New York (2006). URL: https://www.securitycouncilreport.org/security-council-report-2006-annual-report

Secretary-General of the United Nations, "Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict, 1999," *S/1999/957,* United Nations, New York (1999).

Soest, Marcel van, "A Statement by MSF Regarding Central Africa for the Hearing at the House of Representatives House Committee on International Relations" (5 November 1997). URL: http://www.doctorswithoutborders.org/publications/speeches/before1999/mvs_statement.shtml.

Sidhu, Gretchen, United Nations Non-Governmental Liaison Service, "Intergovernmental Negotiations and Decision Making at the United Nations: A Guide with Gretchen Sidhu", United Nations Non-Governmental Liaison Service (2007). URL: https://digitallibrary.un.org/record/610622/files/UNDecisionMaking.pdf

"Somalia: Al-Shabab Demanding Children", *Human Rights Watch* (14 January 2018). URL: https://www.hrw.org/news/2018/01/15/somalia-al-shabab-demanding-children

The London Treaty for the Pacification of Greece (1827). URL: https://sourcebooks.fordham.edu/mod/1827gktreaty.asp

The White House, Report on the legal and policy frameworks guiding the United State's use of military force and related national security operations (2016). URL: https://www.justsecurity.org/wp-content/uploads/2016/12/framework.Report_Final

United Nations, "Civil-Military Guidelines & Reference for Complex Emergencies" *United Nations*, New York (2008). URL: https://docs.unocha.org/sites/dms/Documents/ENGLISH%20VERSION%20Guidelines%20for%20Complex%20Emergencies.pdf.

United Nations, "Transition from relief to development: Key issues related to humanitarian and recovery/transition programmes", *United Nations: Office of the Secretary General: High Level Panel on UN System-wide Coherence in the Areas of Development, Humanitarian Assistance and the Environment*, Rome, Italy (2006).

USIP and PSKOI, "Guiding Principles for Stabilization and Reconstruction", *USIP Press,* Washington DC (2009).

United States Committee for Refugees, "World Refugee Survey 1999", *United States Committee for Refugees,* New York (1999).

UN Security Council, "Security Council resolution 687" [on restoration of the sovereignty, independence and territorial integrity of Kuwait] (1991).

UN Security Council, Security Council resolution 794 (1992) [Somalia], 3 December 1992, S/RES/794 (1992). URL: https://www.refworld.org/docid/3b00f21137.html.

UN Security Council, Security Council resolution 1725 (2006) [Somalia], 6 December 2006, S/RES/1725 (2006). URL: https://www.refworld.org/docid/5821d48f7.html

UN Security Council, 53rd Session, Resolution 1270, U.N. Doc. S/RES/1270 (22 Oct. 1999).

UN Security Council, UN Security Council Resolution 1564, *U.N. Doc. S/Res/1564, 5040 Mtg* (18 Sept. 2004).

UN Security Council, 61st Session, 5519th Mtg., *U.N. Doc. S/PV.5519* (31 Aug. 2006).

UN Security Council, 66th Session, 6498th Mtg., *U.N. Doc. S/PV.6498* (17 Mar. 2011).

UN Security Council, Security Council Resolution 1744 (2007) [Somalia], 20 February 2007, *S/RES/1744* (2007). URL: https://www.refworld.org/docid/582435bb7.htm

UN Security Council, Security Council Resolution 1772 (2007) [Somalia], 20 August 2007, *S/RES/1772* (2007).URL: https://www.un.org/securitycouncil/s/res/1772-%282007%29

UN Security Council, Security Council Resolution 1851, 2008 [on fight against piracy and armed robbery at sea off the coast of Somalia], 16 December 2008, *S/RES/1851* (2008). URL: https://www.un.org/securitycouncil/s/res/1851-%282008%29

UN Security Council, UN Security Council Resolution, 1970, *U.N. Doc. S/Res/1970* (2011). URL: https://www.un.org/securitycouncil/s/res/1970-%282011%29

UN Security Council Resolution 1973, *U.N. Doc. S/Res/1973* (17 Mar. 2011).

UNSC, S/2022/547 (15 July 2022). URL: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S%202022%20547.pdf

UNSC, S/RES/2178 (2014), *Resolution 2178 (2014)*. https://www.undocs.org/S/RES/2178%20(2014)

UNSC, "Resolution 1189/1998, SC Res 1269/1999", *SC Res 1377/2003*. URL: https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf

UNSC, UN Doc S/PV 5579 (6 Dec 2006).

UN Security Council, 45th Session, *U.N. Doc. S/PV.2982* (5 Apr. 1991).

UN Security Council, 45th Session, *U.N. Doc. S.PV.2983* (9 Apr. 1991).

UN Security Council, 3106th Meeting.

UN Security Council, 2982nd Meeting.

UN Security Council, 46th Session, Res. 746, *U.N. Doc. S/RES/746* (1992).

UN Security Council, 47th Session. 3105th Meeting, *U.N. Doc. S/PV.3105* (11 Aug. 1992).

UN Security Council, 48th Session, 3377th Meeting, *U.N. Doc. S/PV.3377* (1994).

UN Security Council, 52nd Session, 3836th Meeting, *U.N. Doc. S/PV 3868* (31 Mar. 1998).

UN Security Council, 53rd Session, 3868th Meeting, *U.N. Doc. Record, S/PV.3868* (31 March 1998).

UN Security Council, 53rd Session, 3989th Meeting, *U.N. Doc. S/PV.3989* (26 Mar. 1999).

UN Security Council, 53rd Session, 4011th Meeting, *U.N. Doc. S/PV.4011* (10 June 1999).

UN Security Council, 69th Session Resolution 2165, *U.N. Doc. S/RES/2165* (14 July 2014).

UN Secretary-General, "Model Status-of-Forces Agreement for Peace-keeping Operations: report of the Secretary-General," *UN Doc. A/45/594,* United Nations Digital Library (1990).

UN Secretary-General, "Note by the Secretary General to the UN General Assembly: Follow-up to the Outcome of the Millennium Summit," *A/59/565, 2* (2004).

UN Secretary-General, "Report of the Secretary-General, Financing of the United Nations Protection Force, *UN Doc. A/51/389* (1996).

UN Secretary-General (UNSG), "Secretary-General's Bulletin: Observance by United Nations Forces of International Humanitarian Law," *ST/SGB/1999/13* (1999).URL: https://www.refworld.org/docid/451bb5724.html

UN, "Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations", *Report of the Secretary General,* A/48/536, New York: United Nations (1994)

United Nations and Rwanda, "Agreement on the Status of the United Nations Assistance Mission for Rwanda (UNAMIR), 1748 UNTS (1993). URL: https://treaties.un.org/doc/Publication/UNTS/Volume%201748/volume-1748-I-30482-English.pdf

United Nations, Charter of the United Nations, 1 UNTS XVI (24 October 1945). URL: https://www.refworld.org/docid/3ae6b3930.html.

UN. Department of Humanitarian Affairs, "Model agreement on customs facilitation in international emergency humanitarian assistance," *UN*, Geneva (1996). URL: https://digitallibrary.un.org/record/230021/files/ST_DHA_96_134-EN.pdf

UN General Assembly, "Convention on the Privileges and Immunities of the United Nations" (1946). URL: https://www.refworld.org/docid/3ae6b3902.html

UN, G.A. Res. 59/36, Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts (Dec. 2, 2004). URL: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/478/42/PDF/N0447842.pdf?OpenElement

United Nations General Assembly, "The Universal Declaration of Human Rights (UDHR)", *United Nations General Assembly*, New York (1948).

United Nations General Assembly Resolution 57(I) (1946).

UN General Assembly, "An Agenda for Peace", *UN Doc. A/RES/47/120 B* (20 September 1993).

UN General Assembly, Humanitarian Assistance, 4 July 1967, *UN Doc. A/RES/2252 (ES-V)* (1967).

UN General Assembly, "Further Measures for the Restructuring and Revitalization of the United Nations in the Economic, Social and Related Fields", *UN Doc. A/RES/48/162* (20 December 1993).

UN General Assembly, Persons Displaced as a Result of the June 1967 and Subsequent Hostilities, *UN Doc. A/RES/60/101* (2006).

UN General Assembly, "Relief and Rehabilitation for Korea", *UN Doc. A/RES/ 410 A (V)* (1 December 1950).

UN General Assembly, "Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations", *UN Doc. A/RES/46/182* (19 December 1991).

UN General Assembly, "Strengthening of the Coordination of Emergency Humanitarian Assistance of the United Nations" *UN Doc.A/RES/59/141*.

UNHCR, "Briefing notes: Fresh fighting displaces some 60,000 in Somalia" (2010). URL: http://www.unhcr.org/4cc6f48a9.html.

UNHCR, "Coordination in Complex Emergencies" (2001). URL: https://www.unhcr.org/partners/partners/3ba88e7c6/coordination-complex-emergencies.html

UN Educational, Scientific and Cultural Organisation (UNESCO), "*Convention for the Protection of Cultural Property in the Event of Armed Conflict*" (1954). URL: https://www.refworld.org/docid/40422c914.html

UN General Assembly, "Convention on the Safety of United Nations and Associated Personnel" (1994).URL: https://www.refworld.org/docid/3ae6b3b60.html

United Nations General Assembly, GA Res. 50/235, UN GAOR, 50th Sess., Supp. No. 49, Vol. 2, at 33, *UN Doc. A/50/49* (1996).

UN. General Assembly, "General Assembly Resolution 52/247: Third-party liability: temporal and financial limitations," *United Nations Digital Library* (1998).

UN General Assembly, "International Covenant on Civil and Political Rights, *United Nations, Treaty Series,"* vol. 999 (16 December 1966). URL: https://www.refworld.org/docid/3ae6b3aa0.html

UN General Assembly, "Optional Protocol to the Convention on the Safety of United Nations and Associated Personnel," *A/RES/60/42* (2006). URL:https://www.refworld.org/docid/44168a999.html

UN General Assembly, “Report of the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel,” *UN Doc. A/60/52,* Supplement No. 52. (11–15 April 2005).

UNGA, “Resolution adopted by the General Assembly 260 (III): Prevention and Punishment of the Crime of Genocide,” *Adoption of the Convention on the Prevention and Punishment of the Crime of Genocide* (1948).

UN General Assembly, “Rome Statute of the International Criminal Court (last amended 2010),” *UN Doc. A/CONF.183/9* (1998). URL: https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf

UN General Assembly, “Safety and Security of Humanitarian Personnel and Protection of United Nations Personnel,” *UN Doc. A/RES/60/123 (*2005).

United Nations General Assembly, “Safety and Security of Humanitarian Personnel and Protection of United Nations Personnel,” *UN Doc. A/RES/62/95* (2007).

UN General Assembly, “World Food Programme,” *UN Doc. A/RES/1714 (XVI)* (19 December 1961).

UN General Assembly, “World Shortage of Cereals”, *UN Doc. A/RES/27 (I)* (13 February 1946).

UNICEF, “Fifty years for children”, *The State of the World’s Children 1996,* 50th Anniversary Edition (1996).

UNOCHA, “Customs Model Agreement between the United Nations and a State/Government” (2011).
URL: https://www.unocha.org/sites/dms/Documents/Model_en_2011.pdf.

United Nations Secretary-General, “Report of the Secretary-General on Children and Armed Conflict”, *UN Doc. A/65/820-S/2011/250* (April 23, 2011).

United Nations, “Statute of the International Court of Justice”, (18 April 1946). URL: https://www.refworld.org/docid/3deb4b9c0.html’

United Nations, “Vienna Convention on the Law of Treaties, United Nations”, *Treaty Series, vol. 1155* (23 May 1969). URL: https://www.refworld.org/docid/3ae6b3a10.html Art. 60, paragraph 5.

UN Security Council, “Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993)” [Contains text of the Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991], *S/25704,* (1993).
URL: https://www.icty.org/x/file/Legal%20Library/Statute/statute_re808_1993_en.pdf

United States Bureau of Citizenship and Immigration Services, “Somalia: Somali National Movement from its inception through the Present”, *Reliefweb* (1999).

United States v. List, "11 Trials of War Criminals Before the Nuremberg Military Tribunals" (1950).

WHO, "Complex Emergencies," *Environmental Health in Emergencies,* World Health Organization. URL: http://www.who.int/environmental_health_emergencies/complex_emergencies/en/

Wiharta, Sharon and Ahmad, Hassan, "The Effectiveness of Foreign Military Assets in Natural Disaster Response", *Stockholm International Peace Research Institute,* Solna, Sweden, (2008). pp.1-160. URL: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/224421/evidence-nato-disaster-response.pdf

World Bank, "Breaking the Conflict Trap: Civil War and Development Policy", *World Bank Policy Research Report,* World Bank, Washington DC, (2003).

Secondary Sources

Books

Anderson, Mary B., "Do No Harm: How Aid Can Support Peace – or War", *Boulder, CO: Lynne Rienner* (1999).

Azar, Edward. E *"*The Management of Protracted Social Conflict: Theory and Cases,*" Dartmouth,* Michigan (1990).

Baudendistel, Rainer, "Between Bombs and Good Intentions: The Red Cross and the Italo-Ethiopian War", 1935–1936, *Berghahn Books,* New York (2006).

Berry, Nicholas, "War and the Red Cross: The Unspoken Mission", *St. Martin's Press,* New York (1997).

Bortolotti, Dan "Hope in Hell: Inside the World of Doctors Without Borders". *Firefly Books,* Ontario (2004).

Bowetl, Derek W. "Self-Defence In International Law," *Praeger,* New York (1958).

Brownlie, Ian, "International Law and The Use of Force bv States," *Clarendon Press,* Oxford (1963).

Carlsson, Jerker, Koehlin, Gunnar and Ekbom, Anders "The Political Economy of Evaluation: International Aid Agencies and the Effectiveness of Aid", *Macmillan Press,* London (1994).

Cassese, Antonio "International Law", 2nd edn, *OUP*, Oxford (2005).

Chomsky, Noam, "The New Military Humanism: Lessons from Kosovo," *Pluto Press,* London (1999).

Clodfelter, Micheal, “Warfare and Armed Conflicts: A Statistical Encyclopedia of Casualty and Other Figures- 1492-2015”, *McFarland* (2017).

Coulter, Chris, “Bush Wives and Girl Soldiers: Women’s Lives Through War and Peace in Sierra Leone,”1st ed., *Cornell University Press* (2009).

Cramer, Christoper, “Civil War Is Not a Stupid Thing? Accounting for Violence in Developing Countries”, *Hurst & Co.,* London (2006).

Davidson, Scott, “Grenada: A Study in Politics and the Limit of International Law,” *Dartmouth Publishing Co Ltd* (1987).

Dinstein, Yoram “War, Aggression and Self-Defence”, 4th edn, *CUP,* Cambridge (2005).

Duffield, Mark, “Development, Security and Unending War: Governing the World of Peoples”, *Polity,* Cambridge (2007).

Duffield, Mark, “Global Governance and the New Wars: The Merging of Development and Security,” *Zed Books,* London (2001).

Duffield, Mark, “NGOs, Disaster Relief, and Asset Transfer in the Horn: Political Survival in a Permanent Emergency”, *National Emergency Training Center* (1993).

Dunant, Henri “A Memory of Solferino”, *ICRC,* Geneva (1986).

Edwards, Michael & Hulme, David (Eds.), “Beyond the magic bullet: NGO performance and accountability in the post-Cold War world”, *Kumarian Press,* Hartford, CT (1996).

Everill, Bronwen and Kaplan, Josiah, “The History and Practice of Humanitarian Intervention and Aid in Africa,” *The Palgrave Macmillan* (2013).

Forsythe, P. David, “Humanitarian Politics: The International Committee of the Red Cross”, *Johns Hopkins University Press,* Baltimore (1977).

Forsythe, P. David, “The Humanitarians: The International Committee of the Red Cross”, Cambridge University Press (2005).

Forsythe P. David & Rieffer-Flanagan, Ann J. Barbara, “The International Committee of the Red Cross: A Neutral Humanitarian Actor”, *Routledge* (2007).

Gilpin, Robert, “War and Change in World Politics”, *Cambridge University Press,* Cambridge (1981).

Gray, Christine, “International Law and the Use of Force” *Oxford University Press* (2000). doi: 10.1093/law/9780198808411.001.0001.

Harper, Mary “Getting Somalia Wrong?: Faith, War and Hope in a Shattered State (African Arguments)” *Zed Books,* New York (2012).

Harris, D. J, "Cases And Materials On International Law," (3rd ed). *Sweet & Maxwell,* London (1983).

Henckaerts, Jean-Marie, "ICRC: Customary International Law Volume I Rules," *Cambridge University Press* (2005).

Holt, Victoria K. and Tobias, Berkman C, "The Impossible Mandate?: Military Preparedness, the Responsibility to Protect and Modern Peace Operations," *The Henry L. Stimson Center,* Washington DC (2006).

Hutchinson, John F., "Champions of Charity: War and the Rise of the Red Cross", *Westview Press,* Boulder (1996).

Ignatieff, Michael, "The Warrior's Honor: Ethnic War and Modern Conscience", *Henry and Holt Company,* Inc, New York (1998).

International Federation of Red Cross and Red Crescent Societies, "World disasters report 1997", *Oxford University Press,* Oxford, England (1997).

Islam, Raifqual, "Bangladesh Liberation Movement," *The University Press Limited,* Bangladesh (1987).

Kaldor, Mary, "New and Old Wars", *Polity Press,* Cambridge (2001).

Keen, David, "Complex Emergencies", *Polity Press,* Cambridge (2008).

Krause, Monika, "The Good Project: Humanitarian Relief NGOs and the Fragmentation of Reason," *University of Chicago Press,* Chicago (2014).

Lauterpacht, Hersch, "International Law and Haman Rights." *Stevens & Sons,* London (1950).

Lebrun E. (Ed.), "Small Arms Survey 2011: States of Security, 2011," *Cambridge University Press,* Cambridge (2011).

Lewis, Ion M, "Understanding Somalia and Somaliland: Culture, History, Society", *Hurst & Co,* London (2008).

Lillich, Richard B. ed., "Humanitarian Intervention And The United Nations" *University Press of Virginia* (1973).

Loescher, Gil, "The UNHCR and World Politics: A Perilous Path", *Oxford University Press,* Oxford (2001).

Macrae, J. and Zwi, A., eds., "War and Hunger: Rethinking International Responses to Complex Emergencies," *Zed Press,* London and New Jersey (1994).

Mandela, Nelson, "Long Walk to Freedom", *Little, Brown,* Boston (1995).

Metcalfe,Victoria; Giffen, Alison and Elhawary, Samir "UN Integration and Humanitarian Space," *Stimson Center/Humanitarian Policy Group* (2012).

Neff, Stephen C, "The Rights and Duties of Neutrals: A General History," *Manchester University Press* (2000).

Neff, Stephen C, "War and the Law of Nations: A General History," *Cambridge University Press,* Cambridge (2005) doi:10.1017/CBO9780511494253.

Pictet, Jean "Development and Principles of International Humanitarian Law", *Henry Dunant Institute,* Dordrecht, Boston, Lancaster, Nijhoff & Geneva (1985).

Pictet, Jean, "The Principles of International Humanitarian Law," *International Committee of the Red Cross,* Geneva (1966).

Prendergast, John "Crisis Response: Humanitarian Band-Aids in Sudan and Somalia," Pluto Press, London (1997).

Ramsbotham, Oliver and Woodhouse, Tom "Humanitarian Intervention in Contemporary Conflict," *Polity Press,* Cambridge (1996).

Reisman, William Michael, "Nullity And Revision," *Yale University Press,* London (1971).

Rieff, David, "Bed for the Night: Humanitarianism in Crisis" *Simon and Schuster,* New York (2003).

Rosas, Allan "The Legal Status of Prisoners of War: A Study in International Humanitarian Law Applicable in Armed Conflicts" *Dissertationes Humanarum Litterarum* (1976).

Sampson, Anthony, "Mandela: The Authorised Biography", *Harper Collins,* London (1999).

Sen, Amartya "Poverty and Famines: An Essay on Entitlement and Deprivation", *Clarendon Press,* Oxford (1981).

Shaw, Malcolm, "International law", *Cambridge University Press,* Cambridge (2008).

Sivakumaran, Sandesh, "The Law of Non-International Armed Conflict," *OUP,* Oxford (2012).

Sommer, John, "Hope Restored? Humanitarian Aid in Somalia 1990-1994," *RPG Refugee Policy Group,* Center for Policy Analysis and Research on Refugee Issues, Washington (1994).

Stephenson, Max & Schnitzer, Lisa, "The role of trust and boundary spanning behavior in humanitarian assistance coordination", *Non-Profit Management and Leadership,* 17(2) (2006).

Stone, Julius, "Of Law and Nation: Between Power Politics and Human Hopes," *W. S. Hein,* New York (1974).

Terry, Fiona, “Condemned to Repeat? The Paradox of Humanitarian Action,” *Cornell University Press*, Ithaca, NY (2002).

Wilmshurst, Elizabeth, “International Law and the Classification of Conflicts,” *OUP*, Oxford (2018).

Zartman, William (ed.), Collapsed States: The Disintegration and Restoration of Legitimate Authority, *Lynne Rienner Publishers,* Boulder, CO and London (1995).

Book Chapters

Abi-Saab, George “The Specificities of Humanitarian Law”, in Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet, Geneva, The Hague: ICRC, Nijhoff (1984). pp. 265-280.

Abi-Saab, Georges ,“The 1977 Additional Protocols and General International Law: Some Preliminary Reflexions,” in: *Dordrecht, Humanitarian law of armed conflict challenges ahead : essays in honour of Frits Kalshoven,* M. Nijhoff (1991).

Anderson, B, Mary, “You save my life today, but for what tomorrow?: Some moral dilemmas of humanitarian aid’’, in Jonathan Moore (ed.), *Hard Choices: Moral Dilemmas in Humanitarian Intervention,* Rowman & Littlefield for the ICRC, Geneva (1998). pp. 137–56.

Barnett, Michael and Synder, J., “Grand Strategies of Humanitarianism,” in Michael Barnett and Thomas Weiss (eds) *Humanitarianism in Question: Politics, Power and Ethics*, Cornell University Press, New York, (2008).

Barnett, Michael and Weiss, Thomas, “Humanitarianism: A Brief History of the Present”, in Barnett and Weiss T. (eds), *Humanitarianism in Question: Politics, Power and Ethics,* Cornell University Press, New York, (2008).

Bennett, Jon “Coordination, Control, and Competition: NGOs on the Front Line,” in James Whitman and David Pocock, eds. *After Rwanda: The Coordination of United Nations’ Humanitarian Assistance*, St. Martin’s Press. New York (1996).

Buergenthal, Thomas, “To Respect and to Ensure: State Obligations and Permissible Derogations”, in Louis Henkin, ed. The International Bill of Rights, New York: Columbia University Press (1981).

Burkle, Frederick, “The epidemiology of war and conflict, in *Handbook of Bioterrorism and Disaster Medicine,* ed. RE Antosia and JD Cahill, Boston, MA (2006). https://doi.org/10.1007/978-0-387-32804-1_20

Collier, Paul, ‘Doing Well Out of War’ in Mats Berdal and David Malone (eds), *Greed and Grievance: Economic Agendas in Civil Wars,* Boulder, CO: Lynne Rienner (2000).

Duffield, Mark, “NGO Relief in War Zones: Toward an Analysis of the New Aid Paradigm,” in Thomas G. Weiss, ed. *Beyond UN Subcontracting: Task Sharing with Regional Security*

Arrangements and Service-Providing NGOS, St. Martin's Press, New York (1998). pp. 139-159.

Duffield, Mark, "The Political Economy of Internal War: Asset Transfer, Complex Emergencies, and International Aid," in Anthony Zvi, ed. *War and Hunger: Rethinking International Responses to Complex Emergencies,* Zed Books, London (1994).

Francis, David ,'ECOMOG: A New Security Agenda in World Politics' in Tswah Bakut Bakut and Sagarika Dutt (eds*), Africa at the Millennium: An Agenda for Mature Development,* Palgrave, London (2000). https://doi.org/10.1007/978-0-333-97727-9_10.

Gottelmann and Munch, "Article 101, para. 23", in Simma B (ed) *The charter of the United Nations: a commentary,* vol 2, 2nd edn, Oxford University Press (2002).

Hammond, Laura, "The Power of Holding Humanitarianism Hostage and the Myth of Protective Principles," *in Humanitarianism in Question: Power, Politics, Ethics,* ed. Micahel Barnett and Thomas G. Weiss, Cornell University Press, Ithaca, NY (2008).

Hansen, Wibke, Ramsbotham, Oliver and Woodhouse, Tom, "Hawks and Doves: Peacekeeping and Conflict Resolution," In: A. Austin, M. Fischer, N. Ropers. (eds) *Transforming Ethnopolitical Conflict,* VS Verlag für Sozialwissenschaften, Wiesbaden (2004). doi: 10.1007/978-3-663-05642-3_15.

Jonah, J. O.C , "Humanitarian Intervention," in *Humanitarianism Across Borders: Sustaining Civilians in Times of War,* ed. Thomas G. Weiss and Larry Minear, Boulder, CO and London: Lynne Rienner (1993).

Keen, David and Wilson, Ken,"Engaging with Violence: A Reassessment of Relief in Wartime," in J. Macrae and A. Zwi, eds. *War and Hunger: Rethinking International Responses to Complex Emergencies,* Zed Press, London and New Jersey (1994).

Malone, David M, "Introduction", in *The UN Security Council: From the Cold War to the 21st Century,* Lynne Rienner Publishers (2004).

Menkhaus, Kenneth, "International Peacebuilding and the Dynamics of Local and National Reconciliation in Somalia," in Walter Clarke and Jeffrey Herbst, eds. *Learning from Somalia: The Lessons of Armed Humanitarian Intervention*, Boulder: Westview Press (1997). pp. 42-63.

Natsios, Andrew S., "Humanitarian Relief Intervention in Somalia: The Economics of Chaos," in Walter Clarke and Jeffrey Herbst, *Learning from Somalia: The Lessons of Armed Humanitarian Intervention,* Boulder, Westview Press (1997). pp.77-95.

Ramly, Ali Aulia "Modes of Displacement during Martial Law, Refugee Studies Centre," in *Aceh under Martial Law: Conflict, Violence, and Displacement*, RSC Working Paper No. 24, edt. by EvaLotta E. Hedman, University of Oxford, Oxford (2005).

Schindler, Dietrich "State of War, Belligerency, Armed Conflict", in Antonio Cassese ed., *The New Humanitarian Law of Armed Conflict*, Editoriale Scientifica, Napoli (1979).

Shaw, T.M. and Okolo, J.E., "African Political Economy and Foreign Policy in the 1990s: Towards a Revisionist Framework for ECOWAS States." in Timothy M. Shaw and Julius Emeka Okolo (eds), *The Political Economy of Foreign Policy in ECOWAS,* Basingstoke, St Martin's Press (1994).

Shiras, Peter, "Humanitarian Emergencies and the Role of NGOs," in James Whitman and David Pocock, eds. *After Rwanda: The Coordination of United Nations Humanitarian Assistance,* St. Martin's Press, New York (1996).

Spieker, Heike, "Civilian Immunity", in Roy Gutman and David Rieff eds. *Crimes of War: What the Public Should Know,* W.W. Norton and Company, New York (1999).

Wallensteen, Peter & Johansson, Patrick, "Security Council Decision in Perspective," *in The UN Security Council: From the Cold War to the 21st Century,* Lynne Rienner Publishers (2004).

Weiss, Thomas G, "The humanitarian impulse", In David M Malone (ed.) The UN Security Council: From the Cold War to the 21st Century, Boulder, CO: Lynne Rienner (2004). pp. 37–54.

Journal Articles

Afyare Abdi Elmi & Dr Abdullahi Barise, "The Somali conflict: root causes, obstacles, and peace-building strategies", *African Security Review,* vol. 15, no. 1 (2006). pp. 32–54

Albala-Bertrand, J.M., "Natural disaster situations and growth: A macroeconomic model for sudden disaster impacts", *World Development,* vol 21, Issue 9 (1993).pp. 1397-1425. https://doi.org/10.1016/0305-750X(93)90122-P.

Albala-Bertrand, J. M., "Responses to Complex Humanitarian Emergencies and Natural Disasters: An Analytical Comparison," *Third World Quarterly* 21, no. 2 (2000). pp. 200-25. http://www.jstor.org/stable/3993417.

Aldrich, H.George, "Some Reflections on the Origins of 1977 Geneva Protocols" in C Swinarski (ed) *Studies and Essays on International Humanitarian Law* (1984).

Ali,M. Abdisaid, "The Al-Shabaab Al-Mujahidiin - A Profile of the First Somali Terrorist Organisation", *The IGAD Joint Kenya-Uganda Border Security and Management Workshop,* Jinja Uganda (2008).

Autesserre, S., "The crisis of peacekeeping: why the UN can't end wars", *Foreign Affairs,* vol. 98, no. 1 (2019). URL: https://www.foreignaffairs.com/articles/2018-12-11/crisis-peacekeeping

Barnett, Michael, "Humanitarianism with a Sovereign Face: UNHCR in the Global Undertow," 35 *International Migration Review* (2001).

Bassiouni, Cherif, "International Recognition of Victims' Rights", *Human Rights Law Review,* Vol 6, Issue 2 (2006). pp. 203–279, https://doi.org/10.1093/hrlr/ngl009

Bajoria, Jayshree “Improving UN Responses to Humanitarian Crises,” *7 Billion People, 1 United Nations, Hand in Hands,* No. 4 Vol. XLVIII (2011). URL: https://www.un.org/en/chronicle/article/improving-un-responses-humanitarian-crises

Baxter, R. Richard, "Humanitarian Law or Humanitarian Politics," *Harvard International Law Journal,* Vol. 16, No. 1 (1975). pp. 1-26.

Baxter, R. Richard, “So Called 'Unprivileged Belligerency': Spys Gueril las and Saboteurs” *British Handbook of International Law*. 323, Oxford University Press: London (1951).

Beerli, Christine, “ICRC Operations and Engagement with Non-state Armed Groups in Noninternational Armed Conflicts,” speech, *Paul Reuter Prize Award Conference on Contemporary Challenges of Non-International Armed Conflicts,* Geneva, Switzerland (November 7, 2013).

Bloodgood, Elizabeth, Tremblay-Boire, Joannie and Prakash, Aseem, “National Styles of NGO Regulation,” *Nonprofit and Voluntary Sector Quarterly* 43, no. 4 (2014).pp. 716–36. https://doi.org/10.1177/0899764013481111.

Borton, John, “An account of co-ordination mechanisms for humanitarian assistance during the international response to the 1994 crisis in Rwanda.” *Disasters* 20 4 (1996). doi:10.1111/j.1467-7717.1996.tb01046.x.

Bossier, Pierre, “History of the International Committee of the Red Cross: From Solverino to Tushima”, *Henry Dunant Institute, Geneva* (1985).

Boulden, Jane, “Double standards, distance and disengagement: Collective legitimization in the post-Cold War Security Council.” *Security Dialogue* 37(3) (2006).pp. 409–23. URL: http://www.jstor.org/stable/26299515.

Bourloyannis-Vrailas, M.Christiane, “The Convention on the Safety of United Nations and Associated Personnel.” *The International and Comparative Law Quarterly* 44, no. 3 (1995). URL: http://www.jstor.org/stable/761203.

Bouvier, Antoine, “‘Convention on the Safety of United Nations and Associated Personnel’: Presentation and Analysis.” *International Review of the Red Cross* 35, no. 309 (1995).pp. 638–66. doi:10.1017/S002086040008726X.

Brauman, Rony “Médecins Sans Frontières or the Unabashed Policy of ‘Going It Alone’,” *MSF-CRASH* (2011). URL: available at www.msf-crash.org/drive/f78d-rb-2011-unabashed-policy-of-going-it-alone.pdf .

Brown, Davis, “Use of Force Against Terrorism After September 11th: State Responsibility, Self-Defense and Other Responses,” *Cardozo Journal of International and Comparative Law* 1, 6 (2003).

Buchanan-Smith, M and Maxwell, Simon “Linking relief and development: an introduction and overview”, *Institute of Development Studies Bulletin* 25, (1994). pp. 2-16. doi: 10.1111/j.1759-5436.1994.mp25004002.

Burkle, Frederick, “Fortnightly review: Lessons learnt and future expectations of complex emergencies”, *BMJ Clinical research ed.,* 319 (1999).pp. 425-445. doi:10.1136/bmj.319.7207.422.

Carment, David, “Anticipating State Failure’, paper presented to the Conference on *Why Sates Fail and How to Resuscitate Them* (2001).pp. 1-10. URL. http://www.carleton.ca/cifp/docs/anticipatingstatefailure.pdf.

Cassese, Antonio “Terrorism Is Also Disrupting Some Crucial Legal Categories of International Law”, *EJIL,* vol.12 no. 5. (2001). pp. 993-1001.

Chilstrom, Robert M., “Humanitarian Intervention Under Contemporary International Law: A Policy Oriented Approach”? *Yale Studies In World Politic Order,* vol. I (1974). pp. 93-147.

Ciro, Jose and Eng, Brent “The unintended consequences of emergency food aid: neutrality, sovereignty and politics in the Syrian civil war, 2012–15”, *International Affairs* 92:1 (2016). pp. 1-15. URL: https://www.ecbproject.org/system/files/content/resource/files/main/inta92-1-08-martinezeng.pdf

Clark, Jeffrey “Debacle in Somalia”, *Foreign Affairs,* 72 (1992).pp. 90-113.URL: https://www.foreignaffairs.com/articles/somalia/1992-01-01/debacle-somalia.

Claude, Inis L., “The United Nations, The United States, and the Maintenance of Peace”, *International Organization* 23, no. 3 (1969). pp. 600-621. doi:10.1017/S0020818300013990.

Cohen, D., “Between Relief and Politics: Refugee Humanitarianism in Occupied Germany 1945-1946.” *Journal of Contemporary History* 43, no. 3 (2008). URL: http://www.jstor.org/stable/40542969.

Collinson, Sarah, Elhawary, Samir and Muggah, Robert “States of fragility: stabilisation and its implications for humanitarian action”, *Humanitarian Policy Group,* London (2010).

Coupland, R. M, “Epidemiological approach to surgical management of the casualties of war,” *BMJ Clinical research ed., 308*(6945) (1994). URL: https://doi.org/10.1136/bmj.308.6945.1693.

David, Eric and Engdahl, Ola, “How does the Involvement of a Multinational Peacekeeping Force affect the Classification of a Situation?” *International Review of the Red Cross,* 95 (2013).

Desgrandchamps, Marie-Luce, “‘Organising the Unpredictable’: The Nigeria–Biafra War and its Impact on the ICRC,” *International Review of the Red Cross* 94, no. 888 (2012).pp. 1390-1414. doi: 10.1017/S1816383113000428

DFID, “Why We Need to Work More Effectively in Fragile States”, *DFID,* London (2005).pp. 1-30. URL: https://www.jica.go.jp/cdstudy/library/pdf/20071101_11.pdf

Dormann, Knut “Computer network attack and international humanitarian law”, *International Committee of the Red Cross* (May 19, 2001). para. 29. URL: http://www.icrc.org/web/eng/siteengO.nsf/htmlall/5

Doswald-Beck, Louise and Vitd, Sylvain, “International Humanitarian Law and Human Rights Law” *International Review of the Red Cross* 293 (1993).

Duffield, Mark, “Complex Emergencies and the Crisis of Developmentalism”, *IDS Bulletin* Vol 25 No 4 (1994).

Duffield, Mark, “Post-Modern Conflict, Aid Policy, and Humanitarian Conditionality”, *Department for International Development (DFID), Emergency Aid Department*, London (1997).

Dyke, Van M. Jon, "Nixon and the Prisoners of War," *New York Review of Books* (1971). URL: https://www.nybooks.com/articles/1971/01/07/nixon-and-the-prisoners-of-war/

“East Pakistan Staff Study”, *The Review*, International Committee Of Jurists, No. 8 (1972). URL: https://www.icj.org/wp-content/uploads/2013/07/ICJ-Review-8-1972-eng.pdf

Eck, Kristine and Hultman, Lisa, "One-Sided Violence Against Civilians in War: Insights from New Fatality Data," *Journal of Peace Research* 44, no. 2 (2007).pp. 233-36. URL: http://www.jstor.org/stable/27640485.

Eliasson, Jan, Loehr, Robert C. and Wong, Eric M., “Interview: The U.N. and Humanitarian Assistance: Ambassador Jan.” *Journal of International Affairs* 48, no. 2 (1995).pp. 460-491. http://www.jstor.org/stable/24357600.

Elmi, A. and Barise, A., “The Somali conflict: root causes, obstacles, and peace-building strategies”, *African Security Review,* vol. 15, no. 1 (2006).

Everett, Andrea L, “Post-Cold War Complex Humanitarian Emergencies: Introducing A New Dataset,” *Conflict Management and Peace Science* 33 (2016).

Fisher, David, “Domestic Regulation of International Humanitarian Relief in Disasters and Armed Conflict: A Comparative Analysis,” *International Review of the Red Cross* 89, no. 866 (2007).

Fitzmaurice, Gerald Sir, “Law of Treaties, Second report by G Fitzmaurice”, Special Rapporteur, *Yearbook of the International Law Commission,* Volume II, 16 (1957).

Harmer, Adele “Humanitarian action: in need of a steer or an anchor?” *Humanitarian Policy Group* (2004).

Fitzpatrick, Joan “Jurisdiction of Military Commissions and the Ambiguous War on Terrorism,” 96 *AJIL* (2002). pp. 325- 350

Forges, Alison Des, “Leave None to Tell the Story: Genocide in Rwanda,” *Human Rights Watch* (1999).

Forsythe, David, “UNHCR's Mandate: The Politics of Being Non-political,” *New Issues in Refugee Research,* Working Paper No. 33 (2001).
URL: http:// www.unhcr.ore/research/RESEARCH^aeGaOdOS.p

Forsythe, David, "Who Guards the Guardians: Third Parties and the Law of Armed Conflict," *American Journal of International Law*, Vol. 70, No. 1 (January 1976).pp. 41-61.

Francis, David "The economic community of West African states, the defence of democracy in Sierra Leone and future prospects." *Democratization* Vol. 6, No. 4 (1999). doi: 10.1080/13510349908403636.

Freymond, Jacques "The International Committee of the Red Cross Within the International System," *International Review of the Red Cross,* No. 134 (1972).pp. 245-66.

Gazzini, Tarcisio, "A Unique Non-State Actor: The International Committee of the Red Cross," *Human Rights and International Legal Discourse* (2010). pp. 32-46. URL: https://ghum.kuleuven.be/ggs/projects/non_state_actors/publications/gazzini_bis.pdf.

Gilligan, Michael, and Stephen John Stedman, "Where Do the Peacekeepers Go?" *International Studies Review* 5, no. 4 (2003). pp. 37–54. URL: http://www.jstor.org/stable/3186392.

Ghobarah, HA, Huth, Paul, Hazem Adam and Russett, Bruce "Civil Wars Kill and Maim People—Long After the Shooting Stops." *American Political Science Review* 97, no. 2 (2003).pp. 189–202. doi:10.1017/S0003055403000613.

Goldman K. Robert & Tittemore, D. Brian "Combatants and the Hostilities in Afghanistan: Their Status and Rights Under International Humanitarian and Human Rights Law", *The American Society of International Law Task Force on Terrorism, 2002* (2002). URL: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2762865

Goodhand, Jonathan and Hulme, David, "From Wars to Complex Political Emergencies: Understanding Conflict and Peace-Building in the New World Disorder," *Third World Quarterly* 20, no. 1 (1999).pp. 13-26. http://www.jstor.org/stable/3993180.

Goodhand, Jonathan and Sedra, Mark, "Who Owns the Peace? Aid, Reconstruction and Peace-building in Afghanistan", *Disasters* 34(1) (2009). pp. 78–101.

Gottlieb, Gidon, "International Assistance to Civil Populations in Civil Wars," *Israeli Yearbook on Human Rights,* Tel-Aviv: Israel Press (1971).

Hamilton, R, "The responsibility to protect: From document to doctrine - but what of implementation?", *Harvard Human Rights Law Journal* 19 (2006). pp. 289–97.

Haug, Hans, "Neutrality as a Fundamental Principle of the Red Cross," International Review of the Red Cross, No. 315, (31 December 1996). URL: https://www.icrc.org/en/doc/resources/documents/article/other/57jncv.htm#:~:text=Neutrality%20is%20one%20of%20the,racial%2C%20religious%20or%20ideological%20nature.

Hazan, Pierre and Berger, Jean-François, "Humanitarian Action: From Risk to Real Danger." *The Magazine of the International Red Cross and Red Crescent Movement* 1 (2004).pp. 4–9.

Henkins, Louis, "Remark", *Proceeding Of The American Society Of International Law,* Cambridge University Press, vol. 66 (1971).

Hoffman J. Peter & Weiss, G. Thomas, "Sword and Salve: Confronting New Wars and Humanitarian Crises", *Journal of Refugee Studies,* Vol. 20, Issue 4 Oxford University Press (2006). pp.670-671. https://doi.org/10.1093/jrs/fem045

Howe, Jonathan T. "The United States and the United Nations in Somalia: The Limits of Involvement," *Washington Quarterly* 18, no. 3 (1995).

Humanitarian Policy Group, "A Clash of Principles? Humanitarian Action and the Search for Stability in Pakistan," *HPG Policy Brief* 36 (2009). URL: https://www.odi.org/sites/odi.org.uk/ files/odi-assets/publications-opinion-files/4854.pdf.

Humanitarian Policy Group, "Beyond the continuum: The changing role of aid policy in protracted crises", *Humanitarian Policy Group at ODI,* Edt. by Adele Harmer and Joanna Macrae (2004). URL: https://lccn.loc.gov/2006445863.

Huntington, P. Samuel, "Transnational Organizations in World Politics," *World Politics,* Vol. 25, No. 3 (1973).

ICRC, "Action by the International Committee of the Red Cross in the event of violations of international humanitarian law or of other fundamental rules protecting persons in situations of violence", *International Review of the Red Cross,* Vol. 87, No. 858 (2005) pp. 393–400.

ICRC, "International Humanitarian Law and the Challenges of Contemporary Armed Conflicts," *International Review of the Red Cross* 89, no. 867 (2019).

ICRC, "Policy on ICRC co-operation with National Societies", *International Review of the Red Cross,* Vol. 85, No. 851 (2003). pp. 663–78.

ICRC, "The ICRC in WW II: The Holocaust," International Committee of the Red Cross (2014). https://www.icrc.org/eng/resources/ documents/misc/history-holocauste-020205.htm.

Jackson, Ashley and Aynte, Abdi "Al-Shabaab Engagement with Aid Agencies," *HPG Policy Brief* 53 (2013). https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinionfiles/8749.pdf

Jackson, H. Robert. "Armed Humanitarianism," *International Journal* 48(4) (1993).pp. 579–606. URL: https://doi.org/10.1177/002070209304800401.

Jamnejad, Maziar and Wood, Michael, "The Principle of Non-Intervention," *Leiden Journal of International Law* 22, no. 2 (2009). pp. 320-350. doi:10.1017/S0922156509005858.

Lanord, Christophe ''The legal status of National Red Cross and Red Crescent Societies'', *International Review of the Red Cross,* Vol. 82, No. 840 (2000), pp. 1053–78.

Jones, Bruce, "The Changing Role of the UN in Protracted Crises", *HPG Research Briefing 17,* ODI, London (2004).

Keen, David, Darcy, James, Foliot, Gullaume and Gurtner,Thomas “Humanitarian assistance in conflict and complex emergencies: conference report and background papers,” *United Nations World Food Program,* Rome (2009). URL http://eprints.lse.ac.uk/60359/.

Keohane, Robert O., and Joseph S. Nye. “Transgovernmental Relations and International Organizations.” *World Politics* 27, no. 1 (1974).pp. 39–62. doi:10.2307/2009925.

Kilcullen, David, “Counter-insurgency Redux”, *Survival,* vol. 48 (4), (2006). pp. 111–130. URL: https://www.tandfonline.com/doi/abs/10.1080/00396330601062790

Klugman, Jeni, “Social and Economic Policies To Prevent Complex Humanitarian Emergencies Lessons From Experience,” *WIDER Policy Brief* 2/1999, UNU-WIDER, vi, Helsink (1999).

Kritsiotis, Dino, “Learning from Somalia: The Lessons of Armed Humanitarian Intervention,” edited by Walter Clarke and Jeffrey Herbst, Journal of International Peacekeeping 5, 2, Westview Press, Boulder, Colorado (1997). p. xi – 253. doi: https://doi.org/10.1163/187541198X00123

Labbe, J., “Rethinking Humanitarianism: Adapting to 21st Century Challenges”, *International Peace Institute,* New York (2012).

Lacina, Bethany and Gleditsch, Bethany, “Monitoring Trends in Global Combat: A New Dataset of Battle Deaths,” *European Journal of Population.* 21 (2005).pp. 145-160. doi:10.1007/s10680-005-6851-6.

Lanord, Christophe, ‘‘The legal status of National Red Cross and Red Crescent Societies’’, *International Review of the Red Cross,* Vol. 82, No. 840 (2000).

Lautze, Sue and Hammock, John “Coping with Crisis, Coping with Aid: Capacity Building, Coping Mechanisms and Dependency, Linking Relief and Development”, UNDP, New York (1996). pp. 1-36.

Lawland, Kathleen, interview by International Committee of the Red Cross, “What Is a Non-international Armed Conflict?” (2012). URL: https://www.icrc.org/eng/resources/documents/interview/ 2012/12-10-niac-non-international-armed-conflict.htm.

Lillich, Richard B., “Intervention to Protect Human Rights”, *McGill Law Journal,* vol. 15 (1959).

Melvin, Neil, “The foreign military presence in the Horn of Africa region”, *SIPRI Background Paper* (2019). URL: https://www.sipri.org/publications/2019/sipri-background-papers/foreign-military-presence-horn-africa-region

Menkhaus, Ken, “Governance Without Government in Somalia,” *International Security* 31, no. 3 (Winter 2006/2007).

Menkhaus, K, “State collapse in Somalia: Second thoughts”, *Review of African Political Economy,* vol. 30, no. 97 (2003). pp. 405–22

Meron,T, “International Criminalization of Internal Atrocities”, *The American Journal of International Law,* Vol. 89, No. 3, Cambridge University Press (1995). pp. 554-577.

Milanovic, Marco, “Lessons for Human Rights and Humanitarian Law in the War on Terror: Comparing Hamdan and the Israeli Targeted Killings Case,” *International Review of the Red Cross* (2007).

Mills, Kurt, “Neo-Humanitananism: The Role or International Humanitarian Norms and Organizations in Contemporary Conflict,” *Global Governance* (2005).

Moskowitz, Moses, “Human Rights and World Order,” Journal of Church and State, Vol 3, I 1, Oceana Publications, London (1959).

Muggah, Robert and Krause, Keith “Closing the Gap Between Peace Operations and Post-Conflict Insecurity: Towards a Violence Reduction Agenda”, *International Peacekeeping* 16 (1) (2009). pp. 136–150.

Myers, Denys P., “International Law: A Treatise. By L. Oppenheim. Vol. I : Peace. (8th Edition; Ed. by H. Lauterpacht.) London, New York, Toronto: Longmans, Green, and Co., 1955. Lvi, 1072. 90 s.” *American Journal of International Law* 49, no. 3 (1955). pp. 426–27. doi:10.2307/2194894.

Nilsson, Cecilia “Contextualizing the Agreement on the Privileges and Immunities of the International Criminal Court.” *Leiden Journal of International Law* 17, no. 3 (2004). doi:10.1017/S0922156504002031.

Pantuliano, Sara et al., “Counter-terrorism and Humanitarian Action,” *HPG Policy Brief* 43 (2011). URL:https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7347.pdf

Pavanello, Sara and Darcy, James, “Improving the provision of basic services for the poor in fragile environments”, International Literature Review Synthesis Paper, ODI, London (2008).pp. 1-32. URL:

Pechayre, Marion, “Humanitarian Action in Pakistan 2005–2010: Challenges, Principles, and Politics,” *Humanitarianism and Politics: Briefing Note Series,* Tufts University, Medford, MA (2011). URL: http://fic.tufts.edu/assets/pakistan.pdf

Pejic, Jelena, “The Protective Scope of Common Article 3: More than Meets the Eye”, *International Review of the Red Cross,* 93 (2011).

Petrasek, David, “Current Developments -Moving Forward on the Development of Minimum Humanitarian Standards” *92 AJIL 557* (1998).

Pictet, Jean, “Red Cross Principles: Commentary,” *ICRC* (1956). URL: https://international-review.icrc.org/sites/default/files/S0020860400019872a.pdf

Plattner, Denise, “ICRC Neutrality and Neutrality in Humanitarian Assistance”, *International Review of the Red Cross,* 36 (1996). pp. 1-22.

Pradhan-Blach, Flemming, Schaub, Gary and LeRiche, Matthew "The Dilemmas of Complex Emergencies," *Cooperation between International Organizations in Complex Emergencies in Eastern Africa: The Views of Danish Practitioners on Cooperation from an Expert Seminar*. Report. Centre for Military Studies (2014).

Prendergast, John, "Minimizing Negative Externalities of Aid: the Ten Commandments, Paper prepared for the *United States Institute of Peace* (1995).

Quaranto, P. J., "Building States While Fighting Terror: Contradictions in United States Strategy in Somalia from 2001 to 2007", *ISS Monograph,* Series no. 143, Institute for Security Studies, Pretoria (2008). URL: https://www.africaportal.org/documents/3262/M143FULL.pdf

Riley, L. Russell, "Bill Clinton: Foreign Affairs", Miller Centre, University of Virginia. URL: https://millercenter.org/president/clinton/foreign-affairs

Robinson, Piers, "The CNN Effect Reconsidered: Mapping a Research Agenda for the Future." *Media, War & Conflict* 4, no. 1 (2011). pp. 3–11. https://doi.org/10.1177/1750635210397434.

Robinson, Piers, "Operation Restore Hope and the Illusion of a News Media Driven Intervention." *Political Studies* 49, no. 5 (2001). pp. 941–956. https://doi.org/10.1111/1467-9248.00348.

Rolling, B. V. A, "On the Probation of the Use of Force", in George P. Smith, II, *Legal Change: Essay In Honor Of Julius Stone,* A. R. Blackshield, ed. Sydney (1983). URL: https://doi.org/10.1093/ajj/30.1.231

Rosas, Allan "Nordic Human Rights Policies", Current Research on Peace and Violence, vol. 9, *Special Issue on Human Rights and the Nordic Countries,* Allan Rosas, ed. (1987).

Sadat, Nadya Leila, "Terrorism and the Rule of Law", 3 *Washington University Global Studies Law Review* 135 (2004). URL:https://openscholarship.wustl.edu/law_globalstudies/vol3/iss1/5.

Schmitt, Michael, "Charting the Legal Geography of Non-International Armed Conflict," Vol. 90 *Journal of International Law Studies* (2014). URL: https://digitalcommons.usnwc.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1014&context=ils>

Schwendimann, Felix "The legal framework of humanitarian access in armed conflict", *International Review of the Red Cross,* Vol 93 No. 884 (2011).pp. 1-16. doi:10.1017/S1816383112000434

Smith, M.L.R.,"Guerrillas in the Mist: Reassessing Strategy and Low Intensity Warfare." *Review of International Studies* Vol. 29, no. 1 (2003). doi:10.1017/S0260210503000020.

Smock, David R., "Humanitarian Assistance in Africa," *United States Institute of Peace,* Washington, DC (1996). URL: http://www.usip.org/sites/default/files/pwks6.pdf.

Social and Humanitarian Assistance- UN Children's Fund (UNICEF), URL: https://www.nationsencyclopedia.com/United-Nations/Social-and-Humanitarian-Assistance-UN-CHILDREN-S-FUND-UNICEF.html

Stewart, G. James, ''Towards a single definition of armed conflict in international humanitarian law: a critique of internationalized armed conflict'', *International Review of the Red Cross,* Vol. 85, No. 850 (2003) pp. 313–50.

Studer, Meinrad "The ICRC and civil-military relations in armed conflict", *International Review of the Red Cross,* Vol. 83, No. 842 (2001) pp. 367-392.

Sundberg, Ralph, Eck Kristine and Kreutz, Joakim "Introducing the UCDP Non-State Conflict Dataset," *Journal of Peace Research.* 49 (2012).pp.1-15. doi10.1177/0022343311431598.

Simma, Bruno (ed), "The charter of the United Nations: a commentary", *Oxford Commentaries on International Law,* vol 1, 2nd edn., Oxford University Press (2002a).

Tareke, Gebru "The Ethiopia-Somalia War of 1977 Revisited," *The International Journal of African Historical Studies* Vol. 33, No. 3, Boston University African Studies Center (2000). pp.635-667.

The Organisation for World Peace, "Islamic State in Somalia", *OWP* (2021). URL: https://theowp.org/crisis_index/islamic-state-in-somalia/.

"Uppsala Conflict Data Program," *UCDP Conflict Encyclopedia*, Uppsala University, URL: https://ucdp.uu.se/?id=1&id=1

Valentino, Benjamin, Paul, Huth and Dylan, Balch-Lindsay "'Draining the Sea': Mass Killing and Guerrilla Warfare," International Organization 58, no. 2 (2004).pp. 375–380. doi:10.1017/S0020818304582061.

Vite, Sylvain "Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations", International Review of the Red Cross No. 873 (2009).

Walker, K George, "Information Warfare and Neutrality", 33 *Vanderbilt Law Review* 1079 (2021). URL: https://scholarship.law.vanderbilt.edu/vjtl/vol33/iss5/1

Walker, K. Jeffrey, "The Demise of the Nation-State, The Dawn of New Paradigm Warfare, and a Future for the Profession of Arms", *Air Force Law Review,* U.S. Air Force Academy, Department of Law, U.S. Air Force Academy, Department of Law (2001).

Weiss, Thomas G., "Principles, Politics, and Humanitarian Action." *Ethics and International Affairs* 13, no. 1 (1999).pp. 1–22. doi: 10.1111/j.1747- 7093.1999.tb00322.x.

Werwey, W. D., “Humanitarian Intervention Under International Law”, *Netherlands International Law Review,* vol. 32, issue 111 (1985). pp. 357-418. doi:10.1017/S0165070X00011062.

Wheeler, J Nicholas. “*Saving Strangers: Humanitarian Intervention in International Society,”* Oxford University Press (2002). https://doi.org/10.1093/0199253102.001.0001

Wilson, Gordon “Knowledge, innovation and re-inventing technical assistance for development", *Progress in Development Studies,* 7(3) (2007). pp. 183–199. https://doi.org/10.1177/146499340700700301

Wise, Charles, “Organizing for Homeland Security after Katrina: Is adaptive management what’s missing?”, *Public Administration Review,* 3(66) (2006).pp. 302–318.

Wortel, Eva, “Humanitarians and their Moral Stance in War: The Underlying Values”, *International Review of the Red Cross,* 91 (2009). pp. 779-802.

Zoellick, Robert, “Fragile States: Securing Development”, *Survival,* vol 50(6) (2008). URL: 10.1080/00396330802601859

News magazines, Newspapers and Websites

Africanews, Rédaction “UN: Somalia drought causing catastrophic emergency,” *Africa news* (2021). URL: https://www.africanews.com/2022/12/06/un-somalia-drought-causing-catastrophic-emergency//

Bacon, Tricia, “This is Why Al-Shabab Won’t be Going Away Anytime Soon”, *Washington Post* (2017). URL: https://www.washingtonpost.com/news/monkey-cage/wp/2017/07/06/this-is-why-al-shabaab-wont-be-going-away-any-time-soon/

Brown, Gordon, “west is sleepwalking into Afghanistan disaster”, *The Guardian* (2021). URL: https://www.theguardian.com/world/2021/dec/29/gordon-brown-west-sleepwalking-afghanistan-disaster

Callahan, Michael, “US strike kills approximately 30 al-Shabaab fighters in Somalia”, CNN (2023). URL: https://edition.cnn.com/2023/01/21/politics/somalia-strike-al-shabaab-us/index.html

CNBC, “Rival Koreas agree to military, Red Cross talks for peace,” *CNBC* (2018). URL: https://www.cnbc.com/2018/06/01/rival-koreas-agree-to-military-red-cross-talks-for-peace.html

Dawit, G, “A Critical and Timely Resolution to Defend our Sovereignty”, *The Ethiopian Herald* (3 Dec 2006).

Elon, Amos, “Switzerland’s lasting demon”, *New York Times Magazine,* (12 April 1998). p. 40. URL: https://www.nytimes.com/1998/05/03/magazine/l-switzerland-s-lasting-demon-698784.html

"Ethiopian parliament authorizes "all necessary" steps against Somalia's UIC", *Hiraan Online* (30 Nov 2006).

Fisher, Ian, "Searing uncertainty for Iraqis' missing loved ones", *New York Times* (1 June 2004).

Graham, Bradley "Cyberwar: A New Weapon Awaits a Set of Rules: Military, Spy Agencies Struggle to Define Computers' Place in U.S. Arsenal", *The Washington Post* (July 8, 1998). URL: https://cryptome.org/jya/cyber-how.htm

IASC, "About the Inter-Agency Standing Committee".URL https://interagencystandingcommittee.org/the-inter-agency-standing-committee

ICRC, Colombia: The ICRC clarifies its role in the transport of FARC-EP negotiators, ICRC (2016). URL: https://www.icrc.org/en/document/colombia-icrc-clarifies-its-role-transport-farc-ep-negotiators

"ICRC demands access to those wounded in S. Sudan town", *Sudan Tribune* (2017). URL: https://sudantribune.com/article61871/

ICRC, "Internationalized Internal Armed Conflict," *How Does Law Protect in War*. URL: https://casebook.icrc.org/casebook/doc/glossary/internationalized-internal-armed-conflict-glossary.htm.

ICRC, ICRC mission statement.URL: https://www.icrc.org/en/who-we-are/mandate

ICRC, "Restoring Family Links." URL: https://www.icrc.org/en/what-we-do/restoring-family-links#:~:text=In%20many%20cases%2C%20RFL%20work,help%20to%20reunite%20the%20families.

ICRC, "Statutes of the International Red Cross and Red Crescent Movement" (1986). URL: https://www.icrc.org/en/doc/assets/files/other/statutes-en-a5.pdf

ICRC, Syria: request for immediate access to violence-stricken areas, ICRC, Geneva (2011). URL: https://www.icrc.org/en/doc/resources/documents/news-release/2011/syria-news-2011-06-10.htm

ICRC, "What is International Humanitarian Law?" (2004). URL: http://www.icrc. orgAVeb/eng/siteeng0.nsf/htmlall/humanitarian-law-factsheet/$File/What_is _IHL.pdf.

IFRC, "Complex/manmade hazards: complex emergencies," *International Federation of Red Cross and Red Crescent Societies.* URL: http://www.ifrc.org/en/what-we-do/disaster-management/aboutdisasters/definition-of-hazard/complex-emergencies/

IFRC, "People and Culture." URL: https://www.ifrc.org/who-we-are/people-and-structures/ifrc-governance/governing-board

Interview with Andreas Wigger, Deputy Director of Operations, ICRC (26 Nov. 2006). URL: http://www.icrc.org/web/eng/siteengO.nsf/htmlall/islam-ihl-interview- 281

“Ill-fated Raid Surprised, Angered Clinton," The Buffalo News (May 13,1994). p. 6. URL: https://buffalonews.com/news/article_12dc7fed-aa63-5793-82b6-721bce6d0c1c.html.

Jakes, Lara, “1998 U.S. Embassy Bombing Victims are assured Equal Compensation in Deal with Sudan”, *The New York Times* (21 December 2020). URL: https://www.nytimes.com/2020/12/21/us/politics/sudan-embassy-bombing-compensation.html

Loescher, Gil “An Idea Lost in the Rubble”, *The New York Times* (2004). URL: https://www.nytimes.com/2004/08/20/opinion/an-idea-lost-in-the-rubble.html

McGreal, Chris, “Threat to Sierra Leone Hostages Splits UN,” *Guardian* (2000). URL: http://www.theguardian.com/world/2000/may/17/sierraleone1.

Mombasa, Wanyonyi Diana, “Escape from Al-Shabab: ‘I was Turned into a Sex Slave,” DW (2018). URL: https://www.dw.com/en/escape-from-al-shabab-i-was-turned-into-a-sex-slave/a42762342#:~:text=She%20fled%20from%20al%2DShabab,find%20work%20as%20a%20cook.

Nebehay, Stephanie, “Guantanamo conditions improve under scrutiny: ICRC”, Reuters (2009). URL: https://www.reuters.com/article/us-aid-cross-guantanamo-idUSTRE57A45Z20090811

New York Times, “P.O.W.'s Back in Israel Charge Cases of Brutality,” *The New York Times* (June 8, 1974). p. 3. URL: https://www.nytimes.com/1974/06/08/archives/pows-back-in-israel-charge-cases-of-brutality.html

OCHA, History of OCHA. URL shorturl.at/bxKQX

New York Times, “UN report describes Somalia’s swift descent into anarchy” (19 Aug. 1999). URL: https://www.nytimes.com/1999/08/19/world/un-report-describes-somalia-s-swift-descent-into-anarchy.html

“Red Cross medical aid enters Yemen's besieged Taiz”, *Middle East Eye* (2016). URL: https://www.middleeasteye.net/news/red-cross-medical-aid-enters-yemens-besieged-taiz

Shinn, D, “Stabilizing Somalia and Ethiopia's Role: Key Points” (2007). URL: http://www.ethiopiafirst.com/

“Statement to the Somali People,” Somalia NGO Consortium (2009). URL: http://somaliangoconsortium.org/resource-detail/?cat=16

Tavernise, Sabrina ‘‘Iraqi death toll exceeded 34,000 in ’06, U.N. says,” *The New York Times* (17 January 2007).

UN News Service, “Somalia: International Community Failing Uprooted Somalis, Says UN Rights Expert,” *All-Africa-com* (21 October 2009). URL: http://allafrica.com/stories/200910211164.html

VoaNews, “Rebels Ban WFP Aid to Its Territory in Somalia” (2010).
URL: https://www.voanews.com/a/al-shabab-bans-wfp-85824252/159789.html

Weiss, Caleb “Reigniting the Rivalry: The Islamic State in Somalia vs. Al-Shabaab,” *CTC Sentinel* (2019).

WHO, “Complex Emergencies,” *Environmental Health in Emergencies,* World Health Organization.
URL: http://www.who.int/environmental_health_emergencies/complex_emergencies/en/

“You Are Either with Us or Against Us”, *CNN.com* (6 Nov. 2001).
URL: https://edition.cnn.com/2001/US/11/06/gen.attack.on.terror/