

**COMPLEX HUMANITARIAN EMERGENCY: MANAGEMENT AND
DEVELOPMENT OF INTERNATIONAL LEGAL REGIME**

SYNOPSIS OF THE THESIS
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SYNOPSIS OF 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.

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.

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.

Chapter Content

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 dominate the response mechanism to 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 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 to act 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 law 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.

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