MITIGATION OF HUMANITARIAN CRISIS DURING NON-INTERNATIONAL ARMED CONFLICT IN THE 21ST CENTURY

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ABSTRACT

The very purpose of establishing humanitarian law as a branch of international law was to assure just the conduction of wars amongst the countries. This major aspect to achieve the goal includes the regulation of armed conflicts which are at large in today's world. Non-international armed conflicts have acquired a status wherein their existence and occurrence in today's world is no more a rarity. Be it the conflict in Syria or the one in Sudanbe it between an armed force and the Government of a country or merely between armed forces of a State. Thus, the huge loss of lives and resources carried out in the absence of any laws or rules regulating the same would defeat the whole purpose of creating the various rights and obligations of participants of such armed conflicts under international humanitarian law. This paper attempts to identify the applicability of such rules, the extent of their application, and the various ways and means, both through soft law and hard law, in which the crisis, as well as the violent effects of this crisis, can be mitigated. The paper highlights how there still exists a lack of political will and hence suggests responsible means and steps that can be undertaken by various parties to the conflict so as to ease the norms and their consequent follow-up by them.

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INTRODUCTION

Human rights carry within themselves both rights as well as obligations. The ambit of human rights essentially acts as a guide to these obligations which must be complied with by the States in their conduct and hence safeguard and promote the fundamental rights of individuals and groups.

While humanitarian law has gained ground when it comes to international armed conflict in regulating human rights violations, the non-international armed conflicts remain deprived of developed international humanitarian law rules governing such conflicts. The crisis is further aggravated by the lack of recognition of human rights obligations on the part of non-state actors, who are a party to such non-international armed conflict. Non-international armed conflicts have become more commonplace in today's world thus requiring an urgent need for stringent law mechanisms to safeguard and protect basic human rights during such times of crisis. The seriousness of the need for the development of laws can be seen by the fate of Syria. Millions of citizens of Syria have not only been killed but forced to leave their houses and are dying because of a lack of basic living supplies such as food, water, and shelter while the fight for power between the State (Government) and the armed group (ISIS) is continuing.

The mere making of laws and drafting of provisions for the protection of human rights during non-international armed conflict especially of the people who do not directly participate in these conflicts such as the civilians or those who eventually no more remain a participant in such conflicts including the combatants who become sick and wounded during the conflict. The key to this objective lies in the ability of the political will of the State forces as well as the non-State actors attempting to mitigate the conflict, to persuade the conflicting parties to make them better comply with the legal tools and policy.

ICRC suggests the following ways to improve compliance with the humanitarian laws in an attempt to mitigate the crisis during Non-International Armed Conflict:-

a) **Creating Awareness and Veneration:** ICRC aims to influence the very attitude and the behaviour of people to sensitize them towards the humanitarian crisis during the conflict. The three-pronged approach adopted includes awareness building, using teaching and training to create awareness and inclusion of official, legal, educational, and operational curricula. The duty to train members in IHL is recognized, in customary law, as binding both States and

armed groups party to non-international armed conflicts. Following the treaty law approach, the Geneva Conventions provide for the spread of 'humanitarian' knowledge, Article 19 of Additional Protocol II specifically provides the same for non-international armed conflicts. ICRC further plays an important role in reminding parties of their duties either at the beginning of such non-international conflict or during such conflict when situations warranting the need for interference emerges. Such communication is made by way of a letter or a memorandum sent to the parties directly or via a press release publicly when such communication is not possible due to the conditions of the conflict.

b) **Special Agreements:** states to the non-international armed conflict to enter into 'special agreements' between themselves wherein the parties may be a State and an armed group or even the armed groups themselves. Based on mutual consent, such special agreements are capable of not only establishing explicit commitments for the parties with respect to humanitarian law to be adhered to during the conflict but also the creation of new legal obligations beyond the scope of already existing laws and guidelines under the humanitarian law to be followed during non-international armed conflict. When such special agreements are meant for special circumstances arising out of a particular ongoing conflict, it should be made clear that the limited scope of the agreement is without prejudice to other applicable rules not mentioned in the agreement. A third party intervention to arrive at such agreements in an attempt to mitigate the humanitarian crisis includes the likes of ICRC's intervention during the Bosnia and Herzegovina crisis in 1992 where not only the parties pledged compliance to the existing humanitarian law but also additional provisions such as the protection of the wounded, sick and shipwrecked, of hospitals and other medical units, of the civilian population, etc. Similarly, a 1962 agreement in Yemen and a 1967 agreement in Nigeria, both negotiated by the ICRC and both containing commitments to abide by the 1949 Geneva Conventions also fall within the ambit of Special Agreements. Special Agreements dealing specifically with only non-international armed conflicts include the likes of San José Agreement on Human Rights wherein the State of El Salvador and the armed group *Frente Farabundo Martí para la Liberación Nacional*agreed to comply with a number of human rights obligation as well as Common Article 3 and Additional Protocol II. Similarly, a special agreement to respect the human rights and humanitarian law during the non-international armed conflict was entered into between the Philippines (State Party) and the National

Democratic Front of Philippines (NDFP) in the year 1998.[2] The most important role played by these agreements is the provision of 'follow-up' whereby parties to a conflict can be made to adhere to acts either concerning respect for IHL in general or related to a specific issue or operational objective.

c) **Unilateral Declaration**: Sometimes, such circumstances arise such that armed groups themselves issue declarations in an attempt to adhere to humanitarian law whereby they commit to complying with international humanitarian law during an ongoing non-international armed conflict or an approaching one. The vitalness of 'unilateral declaration' lies in the fact that armed forces or groups cannot legally become a party to the various international treaties dealing with humanitarian laws like State Parties even though are bound by the various human rights and humanitarian obligation in case a non-international armed conflict ensues. However, such declarations by the forces would later provide a base for follow-up activities in case divergence from the commitments take place. In practice, requests for such unilateral declarations have been made to the armed forces in the countries of Columbia, Indonesia, Liberia, and Sudan, etc by organizations such as ICRC and others. Such a request had become fruitful in the year 1987 when he Coordinadora Guerrillera SimonBolivar (CGSB), an umbrella organization including several armed groups party to the conflict in Colombia, issued a unilateral declaration with its intention to respect IHL. Other than ICRC, an organization called Geneva Call encourages armed groups to sign a "Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and Cooperation in Mine Action."

d) **Inclusion of Humanitarian Law in Codes of Conduct for Armed Groups**: Inclusion of Humanitarian Law within the Code of Conduct for the armed groups would, like the mechanisms adopted by the States under State Practice for implementation of IHL, supplement the armed forces with the requisite information, the correct methods and the means necessary to implement IHL, including internal sanctions. This legal tool can have a direct impact on the dissemination of the rules and the training of armed group members because the very fact that the hierarchy of an armed group initiates or agrees to a code of conduct indicates a degree of ownership and of commitment to ensure respect for the law.

[2]Rosanne Rutten, Revolutionary specialists, strongmen, and the state: post-movement careers of CPP–NPA cadres in a Philippine province, 1990s–2001, South East Asia Research, Vol. 9, No. 3 (NOVEMBER 2001), pp. 319-361

Thus, if an armed group has made a unilateral declaration, the development of a code of conduct that includes IHL can be suggested as a logical next step.

e) **Grant of Amnesty for mere participation in hostilities**: Amnesties in general act as incentives for the wrong-doers and criminals to confess to the crimes committed. In case of a non-international armed conflict, amnesty as an incentive gains an even better ground when it comes to armed forces acting against the state to carry out the conflict. The inevitable conclusion to such fights against the State is to face domestic criminal prosecution and serious penalties for having taken part in the conflict, even if they comply with IHL.[3] Thus, amnesty to participants of armed forces in such a scenario would not only encourage surrender but also facilitate the peace negotiations and a process of post-conflict national reconciliation. However, the exception to this principle exists whereby amnesty cannot be granted to participants alleged to have committed war crimes or other crimes under international law. Instead, the law provides that, "*At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained."* Similarly, the customary international law also provides that *"the authorities must endeavour to grant the broadest possible amnesty, with the exception of persons suspected of, accused of, or sentenced for, war crimes."*

CEASEFIRE AGREEMENTS

Ceasefire agreements sometimes referred to as 'peace agreements' are made with the purpose of complete cessation of hostilities. Similarly, ceasefire agreements can be temporarily entered into which provides the parties to the conflict with a certain time to be able to carry out the process of negotiation to reach a full peace agreement. Such temporariness also occurs or is made to happen. The practical example for this purpose can be seen in the 72-hour ceasefire agreement arrived at between Israel and Hamas.[4]

[3]Naomi Roht-Arriaza and Lauren Gibson, The Developing Jurisprudence on Amnesty, Human Rights Quarterly, Vol. 20, No. 4 (1998), pp. 843-885

[4]Burke J, Kingsley P (2014) Israel and Hamas agree Egyptian proposal for 72-hour Gaza ceasefire., The Guardian, http://www.theguardian.com/world/2014/aug/10/gaza-israel-hamas-agree-72-hour-ceasefire-egyptian-proposal. Accessed 11 November, 2020]

Ceasefire Agreements essentially consist of three core elements[5]:-

1. a cessation of hostilities;
2. the separation of forces;
3. the verification, supervision, and monitoring of the agreement.

The ICRC observed, "*as ceasefire agreements do not necessarily guarantee the end of hostilities, the suspension of hostilities might be an opportunity to remind the parties of their obligations under IHL and secure a commitment to compliance, should hostilities be taken up again.*"[6]The Sudan People's LiberationMovement/Army (SPLM/A)[7] are other examples where commitment to refrain from acts of violence against the civilians.

However, the greatest disadvantage of ceasefire agreements includes the fragility of the chances with which such agreements are followed by the parties entered into between non-international armed conflicts.[8] This itself increases the likelihood of future human rights agreements being breached by the parties to the non-international armed conflict. However, techniques exist with the help of which these breaches or violations can be reduced such as drafting of agreements as precisely as possible can facilitate effective implementation.[9]

CONCLUSION

The prevalence of humanitarian crisis during armed conflicts, be it international or non-international is a commonly accepted and fact. Examples and instances mentioned in the aforementioned paper further narrow down the violence and cruelty suffered by civilians as well as other participants during conflicts arising between armed forces within the boundaries of the state giving rise to non-international armed conflicts whether or not the State Forces are a party to these conflicts. Hence, it becomes all the more necessary to safeguard the humans who become involved willingly or unwillingly in such times of crisis. While

[5]Roberts A, Sivakumaran S (2012) Lawmaking by nonstate actors: engaging armed groups in the creation of international humanitarian law. 37(1). The Yale Jof Int Law 37(1):107–152
[6]*Supra at 6*
[7] John Young, A Flawed Peace Process Leading to a Flawed Peace, Review of African Political Economy, Vol. 32, No. 103, Imperialism & African Social Formations (Mar., 2005), pp. 99-113
[8]Solis GD (2010) The law of armed conflict: international humanitarian law in war. Cambridge University Press, Cambridge
[9]Hayson N, Hottinger J (2004) 'Do's and dont's of sustainable ceasefire agreements, Peace Appeal Foundation 2. http://peacemaker.un.org/sites/peacemaker.un.org/files/DosAndDontofCeasefireAgreements_HaysomHottinger2010.pdf.

international humanitarian, as well as international human rights law, carry within their ambit, well-developed rules of law to be applied when conflicts arising between countries, rules applicable to non-international armed conflicts can still be considered to be in their rudimentary stage in terms of formation and nascent stage in terms of an obligation. Thus, this paper has attempted to initially, identify the laws which can be made applicable to mitigate the crisis caused during such conflicts to the best possible extent through the employment of legal means, both nationally as well as internationally. Secondly, this paper attempts at identifying other ways and means which do not find a mention in the international treaties and conventions agreed and entered into between parties. The problem of armed forces being a party to non-international conflicts but not being legally capable to become a signatory to international agreement has also sought to be resolved by the introduction of other mechanisms such as unilateral declarations. While all of these attempts are being continuously made by States with supplementary help and support from the international organizations and non-governmental international organizations, a lot of gaps still exist in the proper implementation of such agreed-upon laws and mechanisms. The political will of various countries as well as the question of their sovereignty and interference in it raises the biggest problem and still needs to be resolved. Therefore, the concluding remarks would indicate a situation where in the rules have been put into place and all they require is proper tailor-made implementation and the will to carry out such implementation to mitigate and eventually completely erase the humanitarian crisis during the non-international armed conflict.