

Irregular Armed Conflicts and Human Rights

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The humankind today is haunted by conflicts and violence among and within the weakest states of the world. This intra-state and intra-societal violence has posed grave human rights problems all over the world. Human rights violations by the states have been taken care of by the international human rights regimes and international human rights laws have delineated acceptable limits of behaviour for warring parties. But in recent years, the dynamics of armed engagements have changed and in most of the cases non-state actors have emerged as agents of violence and they are taking on the might of the state through armed insurgencies and subversive activities and violating human rights with little respect for the human rights laws or regimes. The present paper by Mokbul Ali Laskar presents an argument for understanding these conflicts and human rights issues associated with them and goes on to suggest that armed non-state actors should be brought within the ambit of international human rights laws and conventions pertaining to war so that international community and HR regimes can monitor their activities and pressurize these groups to refrain from activities that violate international principle of Human Rights. [Editorial Board]

“War is in no way a relationship of man with man but a relationship between states, in which individuals are only enemies by accident, not as men, but as soldiers”
“The Social Contract” of J. Jacques Rousseau.

The above statement is logically followed by another statement of Rousseau: “Soldiers may only be fought as long as they themselves are fighting. Once they lay down their weapons they again become mere men. Their lives must be spared”. This laid the foundation of the international humanitarian law (IHL), which later developed through the initial efforts of Henry Durant and Francis Lieber.

In traditional warfare military casualties were more while civilians suffered less. But the improvement in air-power has enabled strikes well behind enemy lines, at ‘the lines of communication and logistics that kept enemy armies supplied and made civilians much more vulnerable in modern day warfare. This strategy of attacking through air-borne bombers seeks to cut the confronting army off from reinforcements, fuel, and food and ammunitions and thereby contain its ability to fight. This inevitably means strikes at areas that are likely to be populated by civilians as well as civilian labour employed in factories producing weapons, warships and

military aircrafts, their armaments and components and in installations producing the fuel to drive vehicle and the raw materials such as steel needed to build ships. The emphasis on target-bombing is thus gradually shifting away from enemy-combatants to the equipments and supplies on which they depend, but at great cost to the enemy's civilian population.

Besides, there has been a significant change in the nature of war. Almost 90 percent of the present day wars are intra-state armed conflicts, taking place within the boundaries of the state and in which there are increasing threats to civilians' lives and properties. The number of civilian casualties in the present day intra-state conflicts is too high. The wars are becoming irregular and there are widespread violations of IHL and human rights law, both by the states and the non-state actors.

Internal armed conflict and its irregular nature

In today's world, the war is characterised by conflicts and violence among and within the weakest states of the world. Many of the least developed or developing countries suffer the worst societal violence, which in turn takes the shape of armed conflicts. The latest incidents all over the world confirm that the most dramatic and prevalent threats to the civilians arise in internal armed conflicts. For the period 1990-2000, 56 major armed conflicts were recorded for 44 locations. All but three of the conflicts (Iraq-Kuwait, India-Pakistan, Ethiopia-Eritrea) registered during those 11 years were internal. Of the 25 major armed conflicts recorded in 2002, 23 were internal.[1] Most internal armed conflicts of the last few years often involved communal identity as a source of conflict. Virtually all the conflicts elicited direct political, economic or military involvement of other states and even multinational organisations.

The "low-intensity" conflicts— those in which fatalities number less than 1000 and so are often not counted as "significant or major conflicts" by the organizations who keep records— have almost doubled in annual incidence, linking such violence to persistent terrorism and organised international crime. The origin of all such irregular conflicts is diverse and can be found in social, economic, environmental and health factors. These issues are increasingly transcending state borders and are having global repercussions. In fact, as a side effect of globalization, the impact of violent conflicts can no longer be easily contained within specific regions; each conflict carries shock waves of the hostilities in concentric circles to every sphere of transnational activities and across the continents.

The salient features of the present day wars are:

* A common feature of internal armed conflicts is the widespread violation of IHL and human rights law by state and non-state actors. The threats to civilians have also increased with the proliferation of weapons, especially small arms and landmines and as a result of the organised crime and random violence that occur in these chaotic condition. States appear more and more ineffective and incompetent agents for the implementation of IHL and human rights.

* The most disappointing feature of the present day armed conflicts is the presence of armed groups among civilians. It is much harder to establish who is a civilian in modern civil wars where the entire population can be seen as taking part in one way or another[2].

* In contemporary conflicts and warfare civilians suffer disproportionately— the ratio of civil to military casualties in warfare is now around 8:1.[3] The belligerents are similarly fragmented in these conflicts and they often include warlords, mercenaries, private sector companies, organised criminal groups, etc.

* Most internal armed conflicts rely heavily on external inputs and assistance to maintain their momentum, whether through illicit trafficking, government contracts or other commercial opportunities. Corporate interests in natural/other resources play an increasing part in sustaining armed conflicts and thereby making the situation worse in humanitarian terms.

* The domestic conflicts are internationalized in the post-modern era by the media, the growing focus on human rights and IHL and also by the ability of local belligerents in a conflict to operate internationally. Conflicts affect population migration, regional ecosystems, financial markets, commodity markets, etc.; they can no longer be considered isolated events in time or space.

Similarly in the case of inter-state armed conflicts or interventionist armed attacks (by military superpowers) the consequences are beyond the norms of international behaviour. These armed attacks or conflicts indeed cause more damage to civilians and civilian objectives. Some have declared their attacks as “war for human rights” (as NATO proclaimed in Kosovo) or “global war against terrorism”, but what about the massive/collateral damage to civilian lives and civilian objectives? Are they not against the laws of war? Can these be not characterised as “War Crimes” or “Crimes against humanity”? In reality, millions of children, women and men (civilian) are victims of unimaginable atrocities, caused by such irregular violence that deeply shocks the conscience of humanity.

Irregular Warfare and human rights issues

It is now universally recognized that human development is essential for realizing human rights, and human rights are essential for full human development.[4] According to UNDP Human Development Report, 2000:

“Human rights are the rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity. They give all people moral claims on the behaviour of individuals and on the designs of social arrangements— and are universal, inalienable and indivisible. Human rights express our deepest commitments to ensuring that all persons are secure in their enjoyments of the goods and freedoms that are necessary for dignified living.”

But irregular warfare has destroyed our sense of respect towards humanity and human beings are unable to enjoy even the basic and most fundamental human rights. In today's "anarchic" wars we are witnessing that ethnic groups are massacred wholesale, young children are dragged and pressed into military service and civilians (mostly children) are punished by having their limbs amputated (in landmines)[5]. The surge of violence against civilians has increased day by day and the constant images of violence in the media have desensitized human beings the world over to the basic issue of human suffering. The civilian have been displaced, harassed or subjected to extreme forms of violence. An estimated 5 million people died in intrastate conflicts in the 1990s[6]. Globally in 1998, there were more than 10 million refugees and 5 million internally displaced persons. The intensity of intrastate conflicts has increased with the increasing inequalities and the marginalisation of the poor countries and poor people.

In the UN Report (titled We, the people: The role of the United Nations in the 21st century, March 2000) to the Millennium Assembly, United Nations Secretary General Kofi Annan wrote:

"International conventions have traditionally looked at states to protect civilians, but today this expectation is threatened in several ways. First, states are some times the principal perpetrator of violence against the very citizens that humanitarian law requires them to protect. Second, non-state combatants, particularly in collapsed states are often ignorant or contemptuous of humanitarian law. Third, international conventions do not adequately address the specific needs of vulnerable groups, such as internally displaced persons, or women and children in complex emergencies".

According to UNICEF (1999), around 50 per cent of all civilian war casualties currently are children. Unaccompanied children and pregnant women are the most vulnerable to such irregular armed conflicts. Before America attacked Afghanistan there were between 150 and 300 new landmine victims every month and half of them were children[7]. But the deadly cluster bombs dropped by American aircraft have released hundreds of little bombs which are yet to explode; and like landmines, they may kill, maim and make land inaccessible long after the fighting actually would stop. Today, there is no estimation of how many civilians and children will be victim of this added landmines in Afghanistan.

Protection of human rights in armed conflicts

There is a basic assumption that "war will continue to exist as long as there are people who feel that their grievances cannot be redressed by any other means." But we can at least try to reduce the atrocities and mitigate the sufferings of the civilians and the most vulnerable groups in such wars. Based on such assumption there have emerged some basic principles and instruments of IHL, which must be respected by the state and its armed forces.

The process began in 1864, with the adoption of the first Geneva Convention. Today, there are four Geneva conventions (of 12 August, 1949) and two additional protocols, which include around 600 articles and they together form the main instrument of IHL. The Article 3 common to the four Geneva Conventions and the additional protocols II gives the various rules and regulations of internal armed conflicts. The basic principle of the series of Geneva Conventions and its Additional Protocols is:

“the protection and humanitarian treatment of those not (or no longer) participating in an armed conflict, including civilians, the sick, the wounded and prisoners of war”

Besides Geneva Conventions and its Additional Protocols, today there are many other instruments to deal with humanitarian law; the most recent and notable being the APM treaty and the Rome Statute of International Criminal Court.

There are three fundamental principles of IHL, which are to be followed by all the parties in an armed conflict.

* “Principle of proportionality”, which means that there must be a balance between military and humanitarian considerations. Unnecessary military attacks should not be allowed to happen at any costs. Besides, in taking care to protect civilians, soldiers must accept some element of risk to themselves.

* “*Principle of military necessity*”, which means that only military objectives/targets should be attacked. There is no meaning (at least in military terms) in attacking universities, historical and cultural locations or many other safe havens.

* “*Principles of distinction*”, which means attacks should be limited to combatants and other military objectives. The civilian population and civilian objects must not be deliberately targeted.

The other fundamental rules of humanitarian law applicable in armed conflicts are:

* *Persons “hors de combat”* (i.e. non-combatant) and those who do not take a direct part in hostilities are entitled to respect for their lives and physical and moral integrity. They shall in all circumstances be protected and treated humanely without any adverse destruction.

* It is forbidden to kill or injure an enemy who surrenders or who is “hors de combat”

* The wounded and sick shall be collected and cared for by the party to the conflict, which has them in its power. Protection also covers medical personnel, establishments, transports and material. The emblem of the ICRC is the sign of such protection and must be respected.

* Captured combatants and civilians under the authority of an adverse party are entitled to respect for their lives, dignity, personal rights and convictions. They shall be protected against all acts of violence and reprisals. They shall have the right to correspond with their families and to receive relief.

* Everyone shall be entitled to benefit from fundamental judicial guarantees. No one shall be held responsible for an act he has not committed. No one shall be subjected to physical mental torture, corporal punishment or cruel or degrading treatment.

* Parties to a conflict and member of its armed forces do not have an unlimited choice of means and methods of warfare. It is prohibited to employ weapon or method of warfare of a nature to cause unnecessary losses or excessive sufferings (i.e. blinding weapon, landmines etc are prohibited in a war because they do not kill, but cause unnecessary sufferings).

* Besides, state parties should, as far as possible, remove civilians from the vicinity of military objectives; avoid locating military objectives in or near densely populated areas.

It is unfortunate that there is evidence that some states do not merely fail to comply with the requirements of international law, but deliberately put military assets close to protected objects or place civilians in military locations with the intentions of protecting military objectives from attack or even in the hope of attracting international condemnation of the enemy if civilians are killed or civilians objects destroyed. Then there are other problems: application of the “principle of proportionality” is more easily stated than applied in practice, as by adopting a method of attack that would reduce incidental damage, the risk to the attacking troops may be increased. The law is not clear as to the degree of care required of the attacker and the degree of risk that he must be prepared to take.

Another great problem of the IHL is the separation of non-international/internal armed conflicts from international one. The decision as regard to the declaration of a war as an internal/non-international armed conflicts rests on the states and till date no country has declared that there is an internal armed conflict. No country is willing to accept that they are having an internal armed conflict, only to avoid the stringent rules to be followed in that circumstance and also to maintain a high sovereign status in the conflict situation. To say in clear terms, there are no stringent rules (of IHL) to deal with the atrocities in the intra-state armed conflicts. The various non-state actors involved in intra-state armed conflicts have never been recognized as part of any international conventions; these non-state armed groups are not aware of the various provisions of the IHL and as such there are gross human rights violation.

Conclusion

In conclusion it can be said that the origin of the most intra-state/irregular armed conflicts lies in the socio-economic and political set up of a particular country. The globalization of the

economy and increasing disparity and inequality and the marginalisation of the poor countries/peoples are the main reasons of these conflicts and their solutions can be found in addressing such issues. There is a need to pay attention to these issues. Besides democracy, good governance and the rule of law can help in eliminating such armed conflicts. The state and its armed forces should be compelled to, through some coercive means, to obey IHL. And the non-state armed groups (those who are fighting and have succeeded in having control over some territory, those who are fighting are in a command position or command structure with a commander and are carrying weapons openly, those belonging to liberation movement and follow the well-established norms or customs of war) operating within or across the states must be given some form of recognition, at least in the above cases, so that they can be given same guidelines to follow IHL and Human rights laws.

Endnotes

1. *SIPRI Yearbook* 2001, p.52
2. Survey shows fighters don't separate civilians from enemies, Associated press, October 18, 1999
3. *International Affairs* Vol. 77, No.3, July 2001, pp 663-673
4. *Human Development Report 2000*, UNDP, p. 2
5. A Mission to Protect Non-combatants, *International Herald Tribune*, October 25 1999
6. *UNDP Human Development Report 2000*, p. 6
7. *The Economist*, November 10, 2001, p. 18

References

1. Geneva Conventions of August 12, 1949
2. Additional Protocol I & II to Geneva Conventions of August 12, 1949 (1977)
3. International Review of the Red Cross (IRRC), June 2001, Vol. 83, No. 842
4. NISCAIR- National Institute of Science Communication and Information Resources.