

Chapter 18

Human Rights With Respect To Armed Conflict Zones

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Over the years it has been observed that in conflict zones there is an increasing infringement of human violations. Overall this paper will answer the pertinent questions that include reporting and data dissemination mechanisms, implementation of international and national legal framework and inter-state and individual complaint procedures with special emphasis on the Crimean situation and global and municipal political influence over the same. It is also observed by the researchers that war ethics in olden times used to protect civilians especially children and women which but now there is no distinction between volatile conflict zones and social rights.

At this juncture it is also important to note the need for obligations on involved parties to provide humanitarian assistance and a need for a sense of collective responsibility from the international community. The stakeholders this paper will be dealing with are governments, non-state actors, internally displaced persons (IDP's), civilians and military personnel. This paper will further dwell on the rise of weapon transfer surpassing trade and legal restrictions by different frameworks especially Arms and Non- Proliferation treaties ratified by member states of the United Nations and safe repatriation of displaced people and protection during rehabilitation, recovery and resettlement.

In overview this research will aim at not only the legal but also the political and socio-economic status of these zones. The researchers will also deal with the different type of conflicts including protracted and regionalized conflicts and give key attention to the fact that the post conflict time period is also very susceptible to human right violations and that these frameworks and solutions need to look at the long term effects of the situation. It is important to also note that the complaint mechanisms against state parties should ensure

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that the supervisory body or authority is not biased or constituted by the state itself as it defeats the entire purpose.

Introduction

This paper recognizes sectarian and communal tensions often inflame these crises and complicate the process of solving the conflict and bringing normalcy to the issue. While bringing in an end to the fighting and conflict is indeed a major challenge, what is equally important is to usher in political processes and reconstruction mechanisms that do not threaten a fragile peace and threaten to plunge the regions into a crisis again. Often, this is what the world has witnessed sadly, with conflict rearing its ugly head and regions sliding into chaos again. Too often, post conflict reconstruction processes are taken up keeping in mind short term goals and achievements without due consideration for the long-term stability of the region in chaos. Such processes are often motivated by a urge for intervening parties to not prolong their involvement in the region, and retreat without further damage. This was witnessed in the case of Libya, where even though the government of Gaddafi was toppled by NATO forces, the immediate retreat of forces lead to rebel infighting that once again toppled the region into chaos. As mentioned before, communal and sectarian reasons are often the most prominent reasons for eruption of conflicts, due to the entrenchment of authoritarianism and political forces that actively look to oppress certain sections of society. Therefore, it is obvious that any post conflict reconstruction mechanism must factor in these issues while making lasting changes. This takes multiple facets, such as political representation and power-sharing agreements between different groups, the involvement of all groups at decision making levels of the government, their involvement in judicial process and law making, and in other economic and social institution building. Thereby it is important to discuss these issues and delve into how such processes could be made solid and thereby incorporated.

Key Definitions and Aspects of direct importance to this Research Paper:

Inclusion: This is by and large explanatory but to clarify, this refers to the active involvement of members of all groups in political, legislative, judicial processes etc. Inclusion takes many forms, from provisions for political representation, to affirmative action, to representation on decision making bodies that dictate the governance of the country post conflict.

Post Conflict Reconstruction: The term refers to any mechanism at helping establish stable governance and rebuild the damage the conflict leads to. The process underlying

post conflict reconstruction are multifold as they must factor in many elements, such as political

considerations, economic rebuilding, restoring governance etc. The Centre for Strategic and International Studies (CSIS) and the Association of the United States Army published a comprehensive framework of activities essential for successful post-conflict reconstruction.

The CSIS Task Framework describes three phases of post conflict reconstruction:

Initial response This phase immediately follows the cessation of violence and is often characterized by the provision of emergency humanitarian services and military interventions to create basic security.

Disarmament: It is the first step of the DDRP wherein weapons are collected, documented and suitably disposed in accordance with the brokered peace agreement. The weapons and ammunition may range from SALWs to explosives and even the development of responsible arms management programs fall under disarmament. It can be also viewed as a confidence- building measure to promote peace in the post conflict zone.

Demobilization: Demobilization is the process of turning combatants into civilians. It involves the assembly, disarmament, administration, and discharge of former combatants, and it can apply to irregular combatants, guerrilla or freedom fighters, and even regular soldiers. The process begins with a selection criteria, followed by the actual selection and processing of prospective ex-combatants to be demobilized. It may be a short-term process or may even extend to a long term stay in a secured area. It may include intermediate steps during which a combatant relinquishes weapons and equipment, undergoes medical screening and administrative processing, expresses desire for necessary life skill training and receives information and new identification documents and discharge papers. The process may also include assistance in the form of reinsertion.

Transformation/transition: During this time, legitimate local capabilities emerge and should be cultivated. A specific emphasis is placed on economic development, government reconstitution, and the establishment of basic social welfare infrastructure.

Fostering sustainability: Cultivating sustainability is a long-term process that consolidates recovery efforts in order to prevent the resurgence of conflict. Ideally, international military actors withdraw during this phase and society begins a process of normalization, moving the country from post-conflict recovery to peacetime economic development, with clean government and civil society institutions fully functioning.

Economic Terms concerning this Research Paper:

Reparation Payments: War reparations are compensation payments made after a conflict by the vanquished to the victors. They are intended to cover damage or injury inflicted during the conflict. The time period over which these payments are stretched out, directly affect the rate of economic recovery of a nation. In a post conflict region, a holistic approach involving all sections of the society are necessary including the Minorities. Reparations cannot be hurried.

Subsidies: Subsidies are a sum of money granted by the state or a public body to help an industry or business keep the price of a commodity or service low. It is an incredibly important tool in maintaining market balance of a nation after conflict.

Preferential Trade: Preferential Trade by certain nations with other nations involve a complex system of subsidized trade, duties and so on. It can be a very influential tool post conflict.

Social Aspects concerning Conflict zones and Human Rights

This aspect deals with basic social and economic needs, especially provisions for emergency relief, the restoration of essential services, the creation of a foundation for a viable economy, and the initiation of a sustainable development program. In the initial response phase, post-

conflict reconstruction activities mostly focus on providing emergency humanitarian aid. In the transformation phase, they establish the foundation for an independent economy. In the fostering sustainability phase, they institutionalize long-term development. The establishment of a safe environment and development of stable security institutions. Individual and collective security are preconditions for achieving positive outcomes in the other pillars. In the initial response phase, post-conflict reconstruction activities establish basic security. In the transformation phase, they develop legitimate security institutions. In the final fostering sustainability phase, they consolidate local security capacity, reducing the reliance on

international actors. For example, “belligerent control” efforts include programs supporting demobilization. In the initial response, demobilization camps providing health, food, and physical security are established. In the transformation stage, programs identify, gather, and disband belligerent groups while ensuring their safety, the safety of their families, and the safety of civilians and communities. In the final fostering sustainability stage, decommission camps are established.

Political Aspects concerning Conflict Zones and Human Rights

This aspect deals with the construction of effective administration bodies especially with constitutional representative character. It is important to include religious, sectional minorities, and women and increase their role and participation in the political process. There are three phases that are the initial response phase, transformation phase, and the final fostering sustainability phase. In the first stage it is important to formulate processes for citizen participation, following which there needs to be stature created to enforce these processes and lastly suggestive steps and methods to improve the national legislation. Key elements of this pillar include effective law enforcement, an open judicial system, fair laws, humane corrections systems, and formal and informal mechanisms for resolving conflicts.

It is important to have institutions or grievance hubs established by neutral forces such as the international community or international organizations such as United Nations Organizations that register both past and current complaints against both state and non-state actors. The reason for the establishment of a panel that is constituted of non-government officials is due to the fact that most violations that are by state officials.

Case Study: Syrian Arab Republic:

The conflict in Syria started in 2011 when protests broke out against President Bashar Al Assad and his government. It soon escalated to a war between three parties.

The Syrian Government with Assad at the helm,

The opposition who consist of the rebels against Assad, and,

The Islamic State which is a non-state actor with heavy influence in the region.

The Human Rights situation in Syria is dire with 400,000 casualties, 5 million refugees internationally and 6 million internally displaced persons. There are reports of usage of chemical weapons by both the government and the rebels with no end in sight. In terms of social development, the damage is varied across the State. Cities such as Aleppo Damascus and Homs serve as military battlegrounds for offensives and this has resulted in massive damage to infrastructure including hospitals, roads, and schools and hence causing sanitation services with over two-thirds of all water-related infrastructure being damaged. There is a similar impact on power and electricity.

Before the conflicts, 56% of the total population occupied urban areas of the region however the conflict escalated this rural-urban migration to almost 73% of the total population living in the urban areas. One other major concern is lack of medical facilities and personnel with the number of physicians dropping to half the initial amount. At this

juncture it is pertinent to note that there was worsening of mental conditions of citizens as well.

Case Study: Southern Sudan

South Sudan is one of the most disturbing conflicts of the current time. It has a complex history and numerous causes. It serves as an example for how Minority Representation is incredibly important. Given Below is an analysis on how Minority Representation could have stopped/improved the situation in Sudan to a point where the 2011 Break-up would not have happened. Governments and External Factors often fail to understand the relevance of minority rights in resolving or avoiding a conflict. It provides humanitarian actors to work alongside a framework for bringing back balance to the region. Access to equal resources by all sections of the society is key. Minorities need access to the same to ensure that a holistic development takes place. This paves the way for a future avoidance for conflict. We can identify 2 stages of unrest in the history of the North/South war in Sudan (1962- 1972) and (1983-2002). Minority rights were completely abandoned during these 2 periods. War crimes

aimed towards minorities, abduction into slavery, economic and political marginalization were among the few scenarios witnessed by the minorities. The Khartoum Government highlighted the differences in the cultures of the tribes served as the spark for the upcoming conflict. Before moving on, it is important to understand what exactly encompass Minority Rights: The International Covenant on Civil and Political Rights (ICCPR) [2] highlights the following rights in it's 27th Article. They were further expanded by the Declaration on the Rights of National or Ethnic, Religious or Linguistic Minorities, which was adopted unanimously by the UN General Assembly in 1992.

The Right to Exist: Nations are also obliged to protect the existence of minority communities as a whole, which means the prohibition of assimilation – which would lead to the disappearance of a minority as a community with its own identity – and of genocide and ethnic cleansing. It also means that the state must provide security to minority communities, to ensure they are not targeted by other Non-State or State actors.

The Right to Non-Discrimination: Protecting minorities from direct or indirect discrimination on the basis of ethnic, religious, linguistic or cultural identity. The right to non-discrimination is contained in all the UN human rights treaties and is addressed under the African Charter on Human and Peoples' Rights.

The Right to Protection of Identity: Identities in Southern Sudan were complex: two tribes might speak different languages yet share a religion, making them part of a different larger group. The same attributes that some people use to define commonality are used by others to define uniqueness: tribes which speak essentially the same language, such as the Atuot and the Nuer, who are often grouped together on a linguistic basis, take small

linguistic differences as proof of distinctiveness. Groups considered by many outsiders as having a common identity, such as the Nuba, actually comprise 1.5 million people with many different languages, cultures and ethnicities.

The Comprehensive Peace Agreement explicitly protects the right to identity. But, for a document based on the principle of decentralization, there is a failure to understand that in decentralized systems, legal protection is often enacted at the level of the decentralized unit – at the state level, in the case of Sudan. Therefore, minority identities at the state level need protection as much as those within the nation as a whole. This was not achieved and hence proved problematic in the future.

Reprisals and the violation of other human rights-the urgent need for protection

Acts of violence or threats against human rights defenders when they communicate with the UN system, or their intimidation or coercion, violate both their right to communicate with UN mechanisms, and other human rights. Legislation has been misused to intimidate human rights defenders. The Special Representative to the Secretary-General on the situation of human rights defenders indicated that the main areas of concern were laws and regulations on public order, morality, national security, and emergencies, and laws to register associations and organizations and regulate their management. She noted that, when laws to regulate NGOs and their financing hinder their activity, states interfere with individual rights to freedom of association, expression, and assembly. The use of legislation to obstruct the work of human rights defenders, rendering them liable to prosecution under domestic law, has the same effect. Arbitrary measures taken against human rights defenders may also deprive them of fair trial guarantees or effective remedies. For example, the use of specialized courts and procedures may deprive defenders of due process rights. Representatives of NGOs have been charged with spreading false information, defamation, or disturbance of public order. As a result, defenders may: be kept under constant surveillance; have their telephone lines cut or tapped; have their documents confiscated (including travel documents, identity cards, and electronic files); have their offices and homes searched, broken into, burgled, and raided; and have their bank accounts seized. A report of the UN Secretary General noted that NGOs in Bangladesh had been monitored and kept under surveillance by public authorities after they submitted information to the Office of the High Commissioner for Human Rights for the Universal Periodic Review of that country. Human rights defenders may also face arrest, prosecution, detention, and conviction on charges that accuse them of serious crimes.

Defenders have faced allegations of attempted murder of police officers; arson; conspiracy to commit unnatural acts; affiliation and contact with foreign organizations; contempt of

court; illegal exercise of their profession; propagation of false information likely to threaten public order by distribution of posters and leaflets, and the release of reports on the human rights situation in their countries; aiding and abetting terrorism; advocacy of hatred; and accepting foreign funds. In the absence of further investigation, these charges may breach provisions of the 1998 Declaration on the Right and Responsibility of Individuals, and treaty provisions,

that affirm the right to freedom of expression and the right to private life. Treaty provisions also affirm the non-derogatory of certain rights, including habeas corpus and non-discrimination. In many cases, legal proceedings end in acquittal. In other cases, defenders have been sentenced to terms of imprisonment, including life terms, after trials that failed to meet standards of due process. In some situations, defenders were judged by military or security courts in closed trials where the accused was not able to present evidence in his or her defence. In 2008, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression jointly sent an urgent appeal to the Islamic Republic of Iran on the case of a journalist who had been sentenced to 10 years' imprisonment on charges that included 'sending untrue reports on the situation of human rights to international organizations, e.g. the Secretary-General of the United Nations'. States may also violate human rights and their obligations by failing to protect defenders against harmful actions by non-state actors. In some cases, such conduct amounts to a reprisal, or complicity with reprisals by third parties.

A report by the Special Representative noted that human rights defenders were being targeted increasingly frequently by non-state actors who could be linked directly or indirectly with public authorities.

Conclusion

This research paper answers the following questions. The reasons of conflict with emphasis on religious and communal violence. How to better evaluate Demographics to understand the Statistical approach for constructing policies aimed at holistic development with special emphasis on minorities. How to implement post conflict indicators to understand the level of involvement for minorities. How to evaluate Post Conflict Socio- Economic and Political Reconstruction and construct a roadmap for the same.