

ROLE OF NON-STATE ACTORS IN TAKING FORWARD HUMANITARIAN DIALOGUE

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ABSTRACT

The decision to respect the law or not is far from automatic, regardless of whether it is taken by an armed group or a state. Respect for humanitarian law can only be encouraged and hence improved, if the reasons to justify the respect or lack of it are understood. In conflicts, it is extremely crucial to engage into humanitarian dialogue with all actors concerned, be it the state or a belligerent group. A dialogue is essential to provide humanitarian assistance to the affected population and promote protection.

Engagement with belligerent groups is required in order to obtain security guarantees and facilitate the free movement of affected populations. “In both international and internal armed conflicts, IHL imposes minimum obligations on belligerents with regard to humanitarian assistance. Awareness of and respect for the legal provisions governing humanitarian assistance vary considerably across the environments in which humanitarian actors operate. IHL and other streams of international law, such as international human rights law, can be important negotiating tools, but the extent to which they can be utilised is dependent on the interests and structure of the armed non-state actors. Armed non-state actors have a number of reasons to deny humanitarian access from strategic advantage through control of resources which in turn does not help the negotiation process and puts the belligerent group in a negative light.

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There is a dire need to bridge this gap which would help both sides of a conflict. In this paper, the authors will attempt to elucidate the role of non-state actors in both international and non-international armed conflicts in taking forward humanitarian dialogue owing to the challenges faced, with the help of several real-world examples. The authors will also make an attempt to highlight the role that International Committee of Red Cross plays during such humanitarian dialogues.”

INTRODUCTION

Post the Second World War, the worlds take on warfare has progressively changed. Today there are very small number of conflicts exist but nothing like the world wars between states. The number of conflicts where one or more states have backed troops to one or both sides has increased significantly.²¹⁰ The 2014 border skirmishes between India and Pakistan characterised the lone interstate conflict recorded.²¹¹ The primary feature of the most modern-day conflicts is the participation of at least one but many times numerous non-state armed groups (“NSAGs”), which cause difficulty and continuously challenge the state’s control of legitimate coercive force.

NSAGs are entities that are not shared in a formalized state institution such as army forces, police forces which essentially belong to the state. NSAGs on the other hand are capable of using force and violence as per their own objective and control. NSAGs are often found commonly in non-international armed conflicts (“NIAC”) with a State in which they mostly are based in. These groups are considered responsible for violence against non-combatants and breach of IHL by facilitating a role of criminals with their allegedly illegal activities.

²¹⁰ Claudia Hofmann, *Engaging Non-State Armed Groups In Humanitarian Action*, 13 INTERNATIONAL PEACEKEEPING, 396 (2006).

²¹¹ *id.*

It is therefore extremely crucial to establish a proper mechanism of humanitarian dialogue between these groups and the state. To limit the growth and involvement of non-state actors in modern-day conflict, states and international organisations have engaged number of strategies, ranging from counter-insurgency to negotiations. However, in this process these groups are usually shown in the negative light and therefore considered an enemy to the state.

The objective of this paper is to elucidate the role of non-state actors in both international and non-international armed conflicts in taking forward humanitarian dialogue owing to the challenges faced, with the help of several real-world examples.

NEGOTIATION OBLIGATIONS WITH NON-STATE ACTORS

Predominantly speaking there is typically an agreement that under IHL all parties to an international armed conflict (“IAC”) or a NIAC have the duty to follow or fulfil certain rules which are broadly based on the principle of equality of belligerents. However, the direct application of this principle still remains uncertain.²¹² Over the past 20 years, the approach to reach out to these NSAGs have fallen into the following four categories:

- a) Direct or Indirect, Bilateral and inter-agency negotiations.
- b) Protocols and joint principles which are generally facilitated by facilitated by United Nations office for Coordination of Humanitarian Affairs, an NGO consortium, or any other Humanitarian team.²¹³

²¹² Annyssa Bellal and Ezequiel Heffes, ‘Yes, I Do’: *Binding Armed Non-State Actors To IHL And Human Rights Norms Through Their Consent*, 12 HUM. RTS. & INT’L LEGAL DISCOURSE, (2018).

²¹³ Felix Schwendimann, *Humanitarian Access In Armed Conflict: A Need For New Principles?* 93 INT’L REV RED, CROSS 993, (2011).

- c) Red lines or rules recognised for internal use by humanitarian organisations.²¹⁴
- d) Peace agreements amid parties to the conflict which include requests such as observing IHL, humanitarian principles, and ensuring the safety of aid operations.²¹⁵

1. BILATERAL AND INTER-AGENCY NEGOTIATIONS:

As per evidence it is suggested that access agreements are done bilaterally and the organisations prefer to work and operate independently by ways of either a direct dialogue with the conflicting parties or by involving third parties or their own intermediaries. Most agreements in case of NIACs are done on a local level and are usually unpublished however, some organisations like Médecins Sans Frontières (“MSF”) and International Committee of Red Cross (“ICRC”) invest at national as well as regional level negotiations which follow regularised protocols and procedures with the conflicting parties.

This is mainly because of their unique approach to negotiation where they do not part-take with a negative bias towards the other side. It is also due to their strong internal ‘triage’ culture which aims at reaching out to the population based on their needs rather than simply executing the missions to easily reachable areas.²¹⁶ One more advantage these organisations have is their independent and accommodating structure provides more time and scope to perform better and build an understanding relationship. Finally, they have aiding programs for not just for but for the conflicting parties as well (e.g. Field hospitals) and ICRC also provides with prisoner services and exchange

²¹⁴ Felix Schwendimann, *Humanitarian Access In Armed Conflict: A Need For New Principles?*, 93 INT'L REV RED CROSS 993, (2011).

²¹⁵ *id* at 994.

²¹⁶ *id* at 998.

of remains. This in turn leads to a positive approach since both sides to a conflict are respected.

Agreements between conflicting parties the normative commitments offer distribution and training and form yardsticks for effective compliance.²¹⁷ There are various examples from El Salvador, Bosnia and Herzegovina, Sudan and Uganda.²¹⁸ Agreements are probable where a conflict is prolonged and the NSAG is well organised with a command structure and it controls a territory.²¹⁹ IHL standards may be raised in such agreements for the application, like where the parties agreed in 1992 to apply some rules of international conflicts (“AP-I”) to NIAC in Bosnia.²²⁰ This agreement later formed ground war liability in the ICTY.²²¹

2. UNILATERAL COMMITMENTS BY NSAGS

NSAGs do often make unilateral commitments and take steps to adhere to humanitarian principles diligently by following domestic or international procedures. The first movement that declared acceptance by the depositary state as Switzerland was Polisario in June 2015. This procedure is otherwise not used frequently mainly because in today’s world there are no liberation

²¹⁷ Michelle Mack, *Increasing Respect for International Humanitarian Law in Non-International Armed Conflicts*, INTERNATIONAL COMMITTEE OF THE RED CROSS, (Jun. 10, 2020), <https://www.icrc.org/en/publication/0923-increasing-respect-international-humanitarian-law-non-international-armed-conflicts>.

²¹⁸ Olivier Bangerter, *Internal Control Codes of Conduct within Insurgent Armed Groups*, SMALL SURVEY, <http://www.smallarmssurvey.org/fileadmin/docs/B-Occasional-papers/SAS-OP31-internal-control.pdf> (last visited Jul. 31, 2020).

²¹⁹ Hofmann, *supra* note 1.

²²⁰ Andrew MacLeod, Claudia Hofmann, Ben Saul, Joshua Webb and Charu Lata Hogg, *Humanitarian Engagement with Non-state Armed Groups*, CHATHAM HOUSE, (Apr. 29, 2020), <https://www.chathamhouse.org/publication/humanitarian-engagement-non-state-armed-groups>.

²²¹ Prosecutor v Galić, 95 ICTY Trial Chamber, (2003).

struggles remaining and AP-I cannot be applicable since the state did not ratify the same.

These commitments are comparatively more effective while influencing NSAG's conduct where they are consorted by the machineries for proper implementation, execution and regulation. Commitments can also provide a valuable entry ticket for peripheral actors to engage with, and seek to influence, an NSAG to abide by the norms the NSAG itself set out.²²²

Superlatively, these declarations must contain a pledge to conform to IHL but also an internal penalizing code for the group to enforce compliance. In additions to these declarations, special agreements as provided under Common Article 3 of the Geneva Conventions between parties to the conflict must also be adhered. An example in this case would be that of Bosnia and Herzegovina. In that agreement, unambiguous commitments and representations as to its execution and a commitment to take on enquiries into allegations of violation of IHL and to take initiative to provide sanctions for failure to comply with these implementations.²²³

3. JOINT PRINCIPLES, PROTOCOLS AND RED LINES

The joint principles are not intended to constitute a joint negotiation process, but instead to communicate very clearly the rights and interests involved and how the humanitarian community functions and how it works to provide for an adjustable framework on for a bilateral joint negotiation. Sadly, with

²²² Anthea Roberts & Sandesh Sivakumaran, *Law-making by Nonstate Actors: Engaging Armed Groups in the Creation of International Humanitarian Law*, YALE J INT'L L 107, 37 (2012).

²²³ V Seshaiiah Shastri, *Role of International Humanitarian Institutions in Ensuring that Armed Non State Actors Augment the Fundamental Notions of International Humanitarian Law - A Critique*, 10 ISIL YB INT'L HUMAN & REFUGEE L 114, (2010).

regards to this ‘joint’ principles, no initiatives have been taken till date since not all joint agreements include parties to the conflict.

As far as red lines are concerned, they are defined as “the actions or conditions deemed unacceptable by aid providers and beyond which they will not operate.” Red lines can be single-handedly used or they can be accompanied with joint operating principles/protocols. Over the years, there have been some developments, for example in Syria the protocols of engagement with parties to the conflict to deliver humanitarian assistance in Northern Syria, was signed by nearly 30 NSAGs.²²⁴ “Recently in Yemen, Joint Operating Principles of the Humanitarian Country Team: A Principled Delivery of Humanitarian Assistance was established which is accompanied by a Triggers for Action document, which outlines specific points as to when to discontinue humanitarian assistance if the operating principles are not adhered to. In certain places the parties/authorities have also come up with their own protocols; for example, town councils in Southern Syria devised a set of protocols for operating in their area, and then also sought to coordinate its implementation.²²⁵”

4. PEACE AGREEMENTS

The convergence of humanitarian objectives into peace agreements is well established. There are peace agreements where reference to protecting human rights and humanitarian principles have been successfully made²²⁶ for example, the Libyan National Transitional Council has made public statements regarding adherence of International humanitarian principles

²²⁴ Schwendimann, *supra* note 4.

²²⁵ OCHA, *Joint Operating Principles of the Humanitarian Country Team: A Principled Delivery of Humanitarian Assistance*, HUMANITARIAN RESPONSE (Mar. 28, 2017), <https://www.humanitarianresponse.info/en/operations/yemen/document/joint-operating-principles-humanitarian-country-team-yemen-final>

²²⁶ Schwendimann, *supra* note 4.

during the civil war which would in turn facilitate the safe-keeping of the civilians and paves the way for post-conflict negotiations and reconciliations.²²⁷ The ICRC and other humanitarian organisations have supported the adherence of international humanitarian standards may facilitate peace agreements and strengthen the opportunity of a long lasting peace and reconciliation agreement between all parties involved in the conflict. During several interviews the interviewees have attested to the fact that having a humanitarian agenda in a peace agreement or agreement to ceasefire from both sides helps to establish common ground and coherence among the conflicting parties which in turns aids the mechanisms of maintaining the ceasefire.²²⁸

On the other hand, initiating an opportunity for a separate peace dialogue, it also a valuable humanitarian step to bridge the gaps and create another road to work out access challenges. However, it contains a huge risk factor since such a step may not be perceived in a positive light and might result in repercussions. Further, to preserve the integrity of the humanitarian principles during negotiations and to minimise political influence which might hamper the negotiation process.²²⁹

NSAGs who may not be included in the peace process may try to acquire a good record among the fighters which would aid their chances to be involved in peace negotiations. Being a part of peace of negotiations maybe valuable for the NSAGs to strive to seek recognition and legitimacy. Some groups may also sometimes wish to publicise their observance to IHL norms and

²²⁷ *Non-international armed conflicts in Libya*, RULAC, GENEVA ACADEMY, <http://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-libya#collapse3accord>, (Jan. 22, 2020).

²²⁸ Olivier Bangerter, *Reasons why armed groups choose to respect international humanitarian law or not*, 93 INT'L REV RED CROSS 353, (2011).

²²⁹ *id* at 359.

principles which convey their independence and their impression of striving to be a good citizens in the international community.²³⁰

THE LIMITS OF INTERNATIONAL HUMANITARIAN LAW

IHL aims to normalise hostilities. It seeks to provide licit basis for all humanitarian agencies which exercise their right to access innocent civilians. The Geneva Conventions and Additional Protocols give the establishes rights for the conflict-affected civilians to receive aid and assistance and prohibits arbitrary denials. Likewise, the Rome Statute also states that such a denial may constitute a war crime during an IAC.²³¹ However, despite of these formal international legal procedures and obligations, it is extremely difficult to access these civilians zones for humanitarian assistance due to the high influence and pressure of these NSAGs.

This is due to the international legal regime's attitude towards these NSAGs. Moreover, there are only a few mechanisms that are effective with which these armed groups can live up to. The United Nations has established various tribunals and courts to regulate effective implementations and provide for sanctions in case of IHL violations.²³² Unfortunately, these efforts have in turn led to more sensitivity among these armed groups and their hostile conducts, so the extent to which these violations persist in contemporary armed conflict is an indication to the limited impacts of these efforts by the authorities across the globe.²³³ Further, because of this the armed groups end up resorting to offering only symbolic support for humanitarian assistance and choose not open doors for negotiations by way of resistance.

²³⁰ Huma Haider, *International humanitarian law and peace processes*, GSDRC, UNIVERSITY OF BIRMINGHAM, (Sept. 22, 2016), <https://gsdrc.org/publications/international-humanitarian-law-and-peace-processes/>.

²³¹ Ashley Jonathan Clements, *Overcoming Power Asymmetry in Humanitarian Negotiations with Armed Groups*, 23(3) INT'L NEGOTIATION, (2018).

²³² *id.*

²³³ Clements, *supra* note 22.

Numerous international law approaches bind armed groups to IHL. The most frequently used example is the doctrine of legislative jurisdiction; The group's "parent" state accepts a specific rule of IHL and the state has the ability to legislate or all of its nationals, including the state's right to execute commitments on its people that arise from international law, even if some of those citizens should later take up arms or call war against the state.²³⁴ The rebel group need not have consented to such IHL rules involved but they are inevitably binding on them. These practices even though being legitimate spark a negative backlash among these groups which end up making the situation non-negotiable.²³⁵

The responsibilities of armed groups including non-state actors and NSAGs, for example, Al Qaeda and the Taliban, are fundamentally to respect the basic humanitarian norms and agree as per common article 3 and agree to give access to humanitarian aid groups. The experience of Geneva Call is that arrangement with NSAGs can progress compliance with humanitarian norms and protect civilians.²³⁶ One of the success stories is the demoralization of hundreds of child soldiers and launching new humanitarian assistance projects in the NSAG-controlled areas.²³⁷ Sadly, the legal basis on which humanitarian groups negotiate therefore carry little weight and effectiveness in the new world armed conflicts. Also many negotiators hide the reality as to how the negotiations really takes place and how law is rarely invoked in such processes.²³⁸

²³⁴ Gary D. Solis, *The law of Armed Conflict, International Humanitarian Law in War*, 169 (2nd Edition, 2006).

²³⁵ *id.* at 171.

²³⁶ Pascal Bongard, *Engaging Armed Non-State Actors on Humanitarian Norms: Reflections on Geneva Call's Experience*, HUMANITARIAN PRACTICE NETWORK, <https://odihpn.org/wp-content/uploads/2013/08/HE58web.pdf>, (last visited Jul. 25, 2020).

²³⁷ *id.*

²³⁸ Shasthri, *supra* note_14.

1. CONFLICTING INTERESTS

The result of humanitarian negotiation often led to or are subjected to conflicting interests. These might consist of the tensivity between the humanitarian groups and the NSAGs in terms of broader geo-political or strategic approaches.

Humanitarian actors seek to gain as much as they can from a humanitarian negotiation, however their interests can diverge from that of the armed groups in such an agreement. The key to a fruitful negotiation is interdependence of parties and the belief that both the sides would be able to benefit by reaching a negotiated agreement.

If the parties lack such an interdependence then the negotiations are likely to fail. Negotiations over humanitarian access in Bosnia, particularly were conditioned by low and almost absent interdependence.²³⁹ United Nations High Commissioner for Refugees (“UNHCR”) was taking the lead through which many other humanitarian actors worked. UNHCR also led the humanitarian negotiation process throughout the conflict. Internal divisions were still destabilised the negotiating process even after that, there existed a centralised structure where conflicting priorities became ostensible among humanitarian actors.²⁴⁰ Therefore, a group which is known for its acts of violence would generally choose to let go of external political and public support for securing victory and gaining military victory which in turn cannot be side-lined in negotiations and there is where the divide occurs.²⁴¹

²³⁹ UN High Commissioner for Refugees (UNHCR), *The humanitarian operation in Bosnia, 1992-95: dilemmas of negotiating humanitarian access*, UNHCR (May 31, 1999), <https://www.refworld.org/docid/4ff5940e2.html>.

²⁴⁰ *id* at 4.

²⁴¹ Olivier Bangerter, *Reasons why armed groups choose to respect international humanitarian law or not*, 93 INT'L REV RED CROSS 353, (2011).

2. FEEBLE ALTERNATIVES

Entering into negotiations is generally perceived to be out of necessity. The humanitarian actors for this purpose require access to the area which is under the control of the NSAGs in which civilians are in need humanitarian aid. However, such a negotiation with armed groups brings with it risk to the safety of the staff. Therefore, many agencies are sometimes hesitant to engage into such direct negotiations.

During the Bosnian wars, humanitarian agencies were deprived of fall back and forced to proceed with the negotiations when their judgement to delay the operation was countermanded by the Secretary General of the United Nations.²⁴²

3. LACK OF KNOWLEDGE AND AWARENESS OF IHL

In spite of the well accessible nature of IHL related discourses among armed groups, one is not completely aware of the fact as to what extend are these armed groups acquainted with the law. Some consider that using an aircraft against soldiers is the violation of the principle of proportionality²⁴³ and thus it would be a war crime. While others might know that they are bound by IHL and it is their duty to not kill the adverse party soldiers who end up surrendering, however they might not be aware of the fact that those soldiers are entitled to necessary and appropriate medical care when they are taken captive. However, fairly new groups have access to lawyers who are well-versed with the IHL rules and procedures. Therefore, it may be incorrect to assume that these groups are completely unaware of the law by which they are bound. The violation would in turn lead to prosecution and sanctions. In

²⁴² Haider, *supra* note 21.

²⁴³ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, (*Protocol I*), 8 June 1977, 1125 UNTS 3, (hereinafter AP-I), Article 51(5)(b).

many cases IHL is not the only law that governs warfare. Most traditional societies, tend to establish their own rules and regulations regarding the limits of as to what is permissible and what is not in a war. These rules maybe in coherence with international law principles and sometimes they maybe contradictory.²⁴⁴

During the civil war in southern Sudan pillaging, kidnapping and enslavement of civilians was considered to be a normal traditional practice of war even though when such activities are strictly prohibited by the Geneva Conventions.²⁴⁵ NSAGs might deny the applicability of IHL by refusing to recognise the same or by claiming that they cannot be forced to comply with the obligations that the government has imposed. In such situations, law seldom works especially for those groups who strongly believe in their own ideology and therefore act accordingly.²⁴⁶

4. ABSENCE OF POLITICAL SUPPORT TO IMPLEMENT IHL

A humanitarian actor willing to secure respect for the law might face difficulties due to lack of political support to comply with the provisions of humanitarian law. An example of such a case would be when a military wing of a party might be aware of the law and recognise the importance of its compliance and implementations, its political representatives might have a different opinion as they might neither hide the applicability of humanitarian law not support its implementation and vice-versa.²⁴⁷

²⁴⁴ Clements, *supra* note 22.

²⁴⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 UNTS 609, Article 4(2)(g).

²⁴⁶ Michelle Mack, *Increasing Respect for International Humanitarian Law in Non-International Armed Conflicts*, INTERNATIONAL COMMITTEE OF THE RED CROSS, (Jun. 10, 2020), <https://www.icrc.org/en/publication/0923-increasing-respect-international-humanitarian-law-non-international-armed-conflicts>.

²⁴⁷ *id.*

Many times humanitarian organisations are not well-resourced to handle a political crises where there is a government collapse or a civil war. This is because political organs such as the United Nations General Assembly (“UNGA”) and the Security Council (“UNSC”) are unable and sometimes unwilling to deal with such situation.²⁴⁸

ROLE OF INTERNATIONAL COMMITTEE OF RED CROSS

Since its creation in 1863, the ICRC has been offering humanitarian services in times of armed conflicts to protect and assist the victims. In its role as a humanitarian organisation is to promote and guide “faithful application” of humanitarian law principles.²⁴⁹ Humanitarian action is defined by the International Red Cross and Red Crescent Code of Conduct through the concepts of humanity, neutrality, impartiality and independence.²⁵⁰ In order to achieve the humanitarian goals and principles, it is crucial for these humanitarian actors to have access to the civilians and to the NSAGs with whom a negotiation dialogue is very likely to initiate. Their ability to follow and adhere the fundamental principles of humanitarian law depend on their own ability to negotiate with the NSAGs and to gain access to the civilians while putting themselves in a dangerous situation. Such a process is known as “Humanitarian Negotiations.”²⁵¹

During an armed conflict, it pertinent that all parties are to be formally informed of the legal characterisation of the nature of the conflict and their legal obligations. The ICRC most often arranges for communication by way of letters or memorandums which are directly submitted to the parties to the

²⁴⁸ Daniel Warner, *The Politics of The Political/Humanitarian Divide*, INT'L REV RED CROSS 833, (1999).

²⁴⁹ Jean-Philippe Lavoyer and Louis Marcesca, *Role of the ICRC in the Development of International Humanitarian Law*, 4 INT'L NEGOTIATION 501, (1999).

²⁵⁰ ICRC, *The Fundamental Principles of the International Red Cross and Red Crescent Movement*, ICRC, (Dec. 1, 2015),

https://www.icrc.org/en/doc/assets/files/other/icrc_002_0513.pdf.

²⁵¹ *id* at 2.

conflict. The ICRC sends its communication at the very start of the conflict or during the conflict however the situation warrants. This is mostly considered the beginning of the dialogue to inculcate compliance of the law. Such preliminary communication is of utmost importance, as otherwise it is considerably difficult to invoke specific protective rules, if and when a violation takes place.²⁵²

With humanitarian crises becoming protracted, there is a growing number of humanitarian negotiations are conducted by organisations such as ICRC. These negotiations ascertain who will receive or have access to emergency care when health care systems are broken down. Such negotiations play a paramount role in any organisations ability to provide humanitarian assistance.²⁵³

Whilst negotiations both for safety and access fail, an organisation maybe compelled to withdraw entirely which is huge loss to the civilian population since they lose their access to healthcare or other services which are necessary for survival. To prevent such a situation, ICRC and other humanitarian groups strive to maintain the balance between upholding neutrality and independence principle which define their work and making practical concessions to gain access. Future tools of humanitarian negotiations are built upon a greater understanding of practically applying the fundamental principles.²⁵⁴ In the Democratic Republic of Congo when the conflicts took place, ICRC

²⁵² ICRC, *The need to know: Restoring links between dispersed family members*, ICRC, <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4037.pdf> (last visited Jul. 29, 2020).

²⁵³ UNHCR, *The humanitarian operation in Bosnia, 1992-95: dilemmas of negotiating humanitarian access*, UNHCR (May 31, 1999), <https://www.refworld.org/docid/4ff5940e2.html>.

²⁵⁴ Gabriela Gil, *Humanitarian Negotiations & Humanitarian Principles: The interaction between humanitarian negotiations for access and organizations' ability to adhere to humanitarian principles*, INDEPENDENT STUDY PROJECT (ISP) COLLECTION (Oct. 30, 2019), https://digitalcollections.sit.edu/isp_collection/3035/.

interacted with 40 different rebel armed groups, and going beyond the traditional conceptions of conflict between two states or even two distinct actors.²⁵⁵

The ICRC predominantly is motivated by their mandate to achieve the complimentary though independence and harmony. It is with this mandate that the ICRC is actively engaged with the dialogue with military actors, rebel groups and governments. While ICRC enjoys immunity its contribution is limited to humanitarian work under IHL.²⁵⁶

It is extremely disheartening to know how toady humanitarian aid workers and staff have become victims of kidnappings and even killings, as their presence is not accepted in certain countries. Recently in Afghanistan, the murder of an international ICRC staff is a sad reminder of the struggles that these groups have to face on a daily basis to complete their humanitarian missions.²⁵⁷

TAKING TO THE OTHER-SIDE: A WAY FORWARD

The outcome of humanitarian negotiations does not always emulate the power irregularities of the parties involved. While armed groups generally enjoy a stronger initial negotiating and bargaining position, the aftermath of these negotiations differs in various cases. Despite the innate weakness of international humanitarian law in practice, it tends to work to put forth a positive step from both sides to a conflict. However, the solution to the humanitarian access issue still remains a challenge in an armed conflict situation, be it an IAC or a NIAC. The issue that actually prevails is that these

²⁵⁵ *id* at 10.

²⁵⁶ V Seshaiiah Shastri, *Role of International Humanitarian Institutions in Ensuring that Armed Non State Actors' Augment the Fundamental Notions of International Humanitarian Law - A Critique*, 10 ISIL YB INT'L HUMAN & REFUGEE L 114, (2010).

²⁵⁷ *id*.

NSAGs do not feel the adequate pressure or motivation to comply with humanitarian norms and therefore, they do not end up respecting them. In such a case, even when these groups do take a step forward they are cast into a negative light. Respect for IHL can only be encouraged and hence eventually improve if the reasons given by the NSAGs successfully justify the respect of or lack of the same. Therefore in light of the above, the humanitarian organisations must conduct an empirical evidence of ‘what works’ in bilateral and unilateral approaches in successfully establishing peace agreements with conflicting parties. They should invest in more rigorous learning culture, where access strategies, advocacy efforts are the main focus while training for negotiation process. Further, wherever possible new trainees should be encouraged and should be given opportunities to access a dialogue.

In modern conflict, humanitarian negotiations with NSAGs have been routinely criminalized on the basis of non-neutrality, lack of understanding between negotiators have hindered the application of the principles in negotiations with NSAGs, and the humanitarian sector itself remains uncertain about how it should now apply humanitarian principles that seem to be from a different era. Therefore, there is a dire need to establish a workable mechanism to overcome this pressing issue.