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I. The disintegration of State structures

Under international law, a State is an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities.

The disintegration of State structures seems to occur when the third constitutive element of statehood, a government in effective control, fades away. [...]

A situation of this type has roots that go much deeper than a mere rebellion or coup d'état. It involves the implosion of national institutions, authority, law and order, in short the body politic as a whole. It also implies the breakdown of a set of values on which the State's legitimacy is based, often resulting in a withdrawal of the population into a form of nationalism which is based on religious or ethnic affiliation and which becomes a residual and viable form of identity. In most cases, when State structures collapse, the maintenance of law and order as well as other forms of authority fall into the hands of various factions. The State itself does not physically disappear, but gradually loses the capacity to carry out the normal functions of government.

The disintegration of the State occurs at various levels of intensity and may affect different parts of the country. At the low end of the spectrum, the government may remain in office but have only little control over the population and the territory. At a higher level of disintegration, certain crucial structures may formally remain in operation, so that the State can still be legitimately represented before the international community but is nevertheless composed of several warring factions. The government is in effect no longer characterized by uncontested power and a monopoly on the use of force. The regular armed forces, which are often one of the only institutions remaining in these weakened States, also gradually fall apart. A particularly alarming development is the proliferation of veritable private armies and "security" detachments, which are often nothing but branches of conglomerates with economic interests and which are free of any real State control.

The next level in the process is marked by the total implosion of government structures, so that the State is no longer legitimately represented before the international community. Chaos and crime – already widespread during the preceding phases and often foreshadowing total disintegration – become generalized and the factions no longer exercise effective control over their members and have no clearly established chain of command. There are no valid representatives with whom humanitarian organizations can talk and insecurity becomes a real problem.

The armed conflicts which arose or evolved in such a context have brought and continue to bring humanitarian organizations face to face with new challenges and growing difficulties. These conflicts have been defined in turn “destructured” or “anarchic”. [...] We have chosen to use the term “anarchic” conflicts in this document.

II. "Anarchic" conflicts

1. Characteristics

On the basis of an analysis of several conflicts involving the disintegration of State structures in which the ICRC and other humanitarian organizations have found it most difficult to perform their work and to keep their bearings, the essential characteristics of these internal conflicts may be described as follows:

- the disintegration of the organs of the central government, which is no longer able to exercise its rights or perform its duties in relation to the territory and the population;
- the presence of many armed factions;
- divided control of the national territory;
- the breakdown of the chain of command within the various factions and their militias.

These characteristics are generally closely interconnected. They are fundamental and cumulative, for in the absence of any one of them, the conflict in question would not be “anarchic” within the meaning we ascribe to it. On the other hand, they may be found, and hence a conflict may be described as “anarchic”, only at a certain stage in the hostilities. [...]

2. The effects in humanitarian terms

Internal conflicts, which were financed from abroad during the years of the Cold War, now tend to be waged within an autarkic kind of war economy based on robbery and illicit traffic. This has led to a splintering of guerrilla movements, which the providers of external aid had, often artificially, regarded as united. When a movement or faction relies exclusively on robbery and contraband for its subsistence, it is drawn into a spiral of crime in which every small group, or even every individual, acts for himself.

The ICRC has found from its direct experience in the field that these effects tend to be greater in “anarchic conflicts”. Indeed, in conflicts that take place amid the disintegration of State structures, the civilian population is often directly at stake, since the aim of each faction is to acquire living space.

The main humanitarian effects of this type of conflict are:

1. Humanitarian organizations are obliged to establish and to maintain at all times contacts with each of the various factions and with a plethora of their representatives. This is necessary in order for them to understand the social, political and economic context in which they are called upon to work; to thwart attempts at manipulating humanitarian assistance on the part of various factions wishing to cultivate or acquire supporters through the distribution of humanitarian aid; and to ensure the safety of local and expatriate humanitarian staff. The extreme individualization of the factions has made contacts and negotiations very uncertain. Every soldier – adult or child – virtually becomes a spokesperson, or in any case someone with whom to negotiate.
2. The more fragmented the territory is by fighting between the factions involved in a conflict, the less civilians will be likely to identify with the dominant local faction, and therefore remain in their places of origin. This leads to mass population movements, both within the national borders (internally displaced people) and beyond them (refugees). [...]
3. Because of the prevailing chaos, discipline among the troops is rare and in extreme cases every combatant is his own commander. Accordingly, the concept of a “war ethic” becomes a delusion, while rape, kidnapping, hostage-taking, looting and other penal-law crimes become practically commonplace. Total lack of discipline combined with the stress of combat and fear always leads to wanton violence. In these contexts, efforts to spread knowledge of the rules of military conduct, of principles such as respect for the red cross/red crescent emblem and for humanitarian organizations, are meeting with increasing obstacles, which call for innovative approaches. The message to be conveyed can no longer, as in more traditional conflicts, be addressed to members of the hierarchy in the hope that it will be passed on to their subordinates. [...]
4. The loose structure characteristic of factions and their militia makes it more and more difficult, if not impossible, to distinguish between combatants and civilians. This has always been a problem in internal conflicts, particularly because guerrillas made their social basis – the “masses” – an important factor of their struggle. This phenomenon is accentuated in “anarchic” conflicts, for during most of the time the militiamen mingle with civilians, often without wearing a uniform or any other distinguishing sign. An additional problem is thus created for humanitarian organizations, which are finding it more and more difficult to ensure that only civilians benefit from humanitarian assistance.
5. The anarchy that results from the disintegration of the State undermines the values that lie at the very heart of humanitarian action and international humanitarian law. The breakdown of the set of values symbolic of the State fosters a strong identity-related component which makes principles such as impartiality unacceptable to the parties to a conflict and even to individuals. The obvious consequence is increased risk for all those present. In this framework, it is even more difficult for humanitarian organizations to respect a

nonetheless vitally important work ethic in all circumstances. The latter includes refusing to make any compromises when it comes to their operational methods of action, for this can only have a negative impact on all aid agencies in the future.

6. In this context of disintegration, new, more immediate and tangible interests have appeared: they reflect local and/or regional economic concerns and often the personal interests of faction leaders or of groups with links to organized crime networks. The primacy of this race for personal and direct profit over the collective interest also exposes humanitarian workers to growing risks, since the factions will not hesitate to appropriate the goods those workers administer with a view to assisting the victims of armed conflicts. The humanitarian organizations are no longer considered as independent purveyors of relief but as an economically “interesting” component. [...]

7. At the same time, in “anarchic” conflicts, humanitarian organizations are often compelled to take the place of State structures or services that no longer exist. This is particularly striking in the case of medical activities. [...]

Once the State has imploded, a paradox is created: humanitarian action becomes both more necessary and more difficult, if not impossible. This is because the hierarchical structure of the parties to the conflict is insufficient to enable them to respect international humanitarian law, and also because that structure is inadequate for providing humanitarian organizations with the minimum security conditions they need in order to operate. [...]

III. Applicability and application of IHL

States that are in the process of disintegration are nevertheless [...] subject to international law, even in the absence of a government able to ensure the continuity of the State’s functions. By the same token, the treaties to which the failed State is a party remain in force.

Human rights instruments play only a minor role in such situations since their implementation depends largely on the existence of effective State structures. A more prominent role is played by international humanitarian law instruments applicable in armed conflicts [...]. This is because international humanitarian law is binding not only upon States but also upon non-State entities, such as insurgent groups, the armed factions taking part in the hostilities, and the individuals belonging to them.

The emergence of “anarchic” conflicts, however, raises questions of both the applicability and the application of international humanitarian law.

1. Applicability of Article 3 common to the 1949 Geneva Conventions

Common Article 3 obliges the parties to a non-international armed conflict to respect certain minimum

humanitarian rules [...].

Accordingly, the main questions with regard to the applicability of common Article 3 in “anarchic” conflicts are (a) whether the factions participating in such a conflict constitute “parties to the conflict” and (b) whether the intensity and form of the hostilities between these factions are characteristic of an armed conflict.

(a) Definition of a “party to the conflict”

Common Article 3 does not define the term “party to the conflict”. [...] The general consensus of expert opinion is that armed groups opposing a government must have a minimum degree of organization and discipline – enough to enable them to respect international humanitarian law – in order to be recognized as a party to the conflict.

[...] The question therefore arises as to whether, in situations where there is a proliferation of warring factions characterized by their lack of organization, these factions qualify as “parties to the conflict” and hence common Article 3 can be considered to apply?

Given the humanitarian purpose of common Article 3, its scope of application must be as wide as possible and should not be limited by unduly formal requirements. It is revealing in this respect that various recent UN Security Council resolutions have called upon “all parties to the conflict” to respect international humanitarian law, and this also in the context of such “anarchic conflicts” as those in Somalia and Liberia.

[Footnote 7 reads: See, e.g., S.C. Res 814, 26 March 1993, para. 13 “[...] reiterates its demand that all Somali parties, including movements and factions, immediately cease and desist from all breaches of international humanitarian law [...]”]; S.C. Res. 788, 19 November 1992, para. 5 “[...] calls upon all parties to the conflict [in Liberia] [...] to respect strictly the provisions of international humanitarian law”.]

(b) Existence of an armed conflict

With regard to the term “armed conflict”, expert opinion has also and almost exclusively taken into account conflicts between a government and a rebel party, but not conflicts between different factions in a country. The experts moreover agree that internal tensions and disturbances, such as riots and isolated and sporadic acts of violence, do not constitute an armed conflict within the meaning of common Article 3.

In the cases cited above, however, the Security Council implicitly stated that hostilities linked to the disintegration of the State constituted an armed conflict. The International Court of Justice has declared for its part that the rules of common Article 3, in so far as they constitute “elementary considerations of humanity”, apply not only in cases of armed conflict, but in all situations by virtue of customary law.

[Footnote 8 reads: International Court of Justice, Reports of judgments, advisory opinions and orders: Case concerning military and paramilitary activities in and against Nicaragua, 27 June 1986, p. 114, para. 218. [...]]

There can thus be no doubt that the rules of Article 3 apply in an “anarchic” conflict. Moreover, when these rules are applicable, all individuals belonging to a faction have the duty to respect them.

2. Applicability of Protocol II

For Protocol II to be applicable requires, first of all, that a faction must be fighting against the government, thereby excluding situations of confrontation between non-governmental factions. Another condition laid down in Protocol II is that a party to a conflict must exercise such control over the national territory as to enable it to carry out sustained and concerted military operations and to implement the Protocol. Experience shows that this condition is hardly ever fulfilled by an armed faction party to an “anarchic” conflict. [...]

3. Application of the fundamental principles of common Article 3

As referred to above, the International Court of Justice has declared that the rules laid down in common Article 3 correspond to “elementary considerations of humanity” which are binding on all individuals. Moreover, a number of Security Council resolutions, including those on “anarchic conflicts”, call upon all parties to respect international humanitarian law and reaffirm that those responsible for breaches thereof should be held individually accountable. It is therefore clear that these exceptional situations are not beyond the scope of the law. Quite the contrary, they are subject to a series of customary norms which are collectively binding on the various parties to the conflict and individually binding on each individual taking part in the hostilities. [...]

The problem posed by this type of conflict is therefore not so much that of which norms are applicable as it is that of their implementation. This can be said of all national and international legislation applicable on the territory of the State which is disintegrating. Since by definition the disintegration of the State carries with it the risk of non-compliance with the entire corpus of the law, it is in the interest of the international community to make sure, by means of cooperation and in accordance with the UN Charter, that such “no-law” zones do not come into existence.

Once the State has started to crumble and the armed conflict has broken out, it is the States’ duty to fulfil their obligation to “respect and ensure respect for” international humanitarian law in all circumstances, by not acting in a way that could lead to a further deterioration in the situation and potential breaches of humanitarian law.

4. The United Nations Charter

As the Security Council’s resolutions tend to show, “anarchic” conflicts may give rise to humanitarian crises which can be considered to pose a threat to international peace and security. In such cases, political-military intervention within the framework defined in the UN Charter must remain a possibility so that activities to provide humanitarian assistance and protection for the groups of people in peril can be resumed. Indeed,

political problems cannot be solved by humanitarian actions alone, and the members of the international community are not only bound to fulfil their obligations under humanitarian law but also to shoulder the responsibilities conferred on them in the UN Charter. [...]

IV. Proposals

[T]he weakening or the disintegration of the State impairs acceptance and even understanding of the rules and principles underpinning international humanitarian law and all humanitarian action.

The only way to avoid reaching this stage is to prevent State structures from collapsing. Yet there are many causes of disintegration, and the task of remedying them largely exceeds the competence of humanitarian agencies.

Humanitarian organizations, and the ICRC in particular, can help to ensure the survival, even in the most extreme situations, of respect for the principles governing humanitarian action and for the fundamental norms of international humanitarian law. [...]

1. Humanitarian action

(a) Identification of local structures or groups

For a better knowledge and understanding of the situations in which humanitarian agencies are called upon to act, local structures or groups which have survived the implosion of the State should be identified and supported as appropriate. In practically all conflict situations there are structures, traditional or not, that have continued to exist after the collapse of the State and that have taken over various of its functions. In Somalia, for example, the traditional clan system survived in spite of everything, and groups of women that had formed spontaneously and were greatly encouraged and supported made it easier for humanitarian organizations to provide food aid.

It is nevertheless important to realize that such alternative structures do not exist in every situation and that even where they do, they cannot really replace those of the State. [...]

(b) The role of local customs

Even more than the structures themselves, it is necessary to identify all the local reflexes, customs and “codes of honour” that are bound to exist and to survive, even in the societies most seriously affected by the breakdown of the State and by widespread conflict. These traditional rules are often bound up with religious beliefs and are generally safeguarded by the old people – the sages of the tribe or clan. It is the rules that are unwritten and uncodified but are nevertheless deeply rooted in the society, even one that has become highly disintegrated, which continue to be recognized and even respected, and which can facilitate humanitarian work.

(c) Dissemination of humanitarian law and principles

Spreading knowledge of the rules and fundamental principles of international humanitarian law presents a special challenge in “anarchic” conflicts because of the plethora of participants in the violence, who form small loosely-structured groups, and because of the difficulty of reaching them owing either to security problems or to the dim view they take of the presence of foreigners on their soil. Moreover, when there is a means of reaching these small groups, conveying to them a message centred on the principles of humanitarian law and persuading them to comply with the law, calls for an understanding of their environment and their motives and for a very great willingness to listen. [...]

(d) Reducing the risks of humanitarian assistance

Today, humanitarian organizations are de facto – by reason of the volume of assistance they inject into “anarchic” conflicts – first-rank players on the economic and social, and hence also on the political, scenes. Any humanitarian initiative has its inevitable corollary of a major outpouring of goods, which can alter the local economic and social fabric and can even fan the fighting among factions.

To counter these risks, recourse could be had to micro-projects – self-managed community kitchens, seed distributions, livestock vaccination campaigns or help to resume income-generating activities. Projects such as these lie midway between emergency operations and development programmes [...]. Micro-projects also make it possible to carry out very localized work, which not only provides support for the autarkic economy of countries in conflict where State structures have imploded, but also helps to combat the rise in banditry. When broad action is indispensable, humanitarian organizations must show even greater openness and lucidity in analysing the side-effects of their work. [...]

(e) Training humanitarian personnel

[...]

Emergency humanitarian work, in particular in the context of “anarchic” conflicts, requires faultless professionalism, itself based on thorough prior knowledge of the region, the local groups and cultures, the risks and ethics inherent to situations of this type. By the same token, humanitarian assistance for the people caught up in the conflict calls for close cooperation with local staff, on the basis of the same professional and ethical criteria.

2. The role and responsibilities of the international community [...]

(a) The obligation to “ensure respect” for international humanitarian law

[...] The collapse of civil society and the ungovernable outbreak of violence is a matter that concerns the entire international community. Indeed, Article 1 of the Geneva Conventions stipulates that the States must “ensure respect” for international humanitarian law. [...] There are nevertheless always a number of

measures [States] can adopt, such as an arms embargo, the freezing of foreign assets, or a threat to reduce military and financial aid.

(b) Taking account of new players in armed conflicts

Consideration must be given to the means of involving the new players in modern conflicts in the application and dissemination of international humanitarian law. In today's conflicts, in addition to the traditional participants in situations of armed violence, other types of protagonists have a direct or indirect role to play. They may be private militias in the service of commercial companies or paramilitary groups on orders from a government. They may be transnational companies or supranational economic players who could hold considerable sway over the parties to a conflict. They may be religious or political groups able to unite the masses around a message. [...]

(c) The need for an international jurisdiction

It should be constantly borne in mind that the message concerning respect for the principles and rules of international humanitarian law will have very little impact if it is not accompanied by the prospect of punishment in the event of violations. This is true both for combatants, who know full well that the weakness or collapse of the chain of command is a guarantee of impunity, and for the society as a whole, since the breakdown of the State and the implosion of its functions, in particular the judiciary, clearly render the State incapable of fulfilling its obligation of bringing to trial the perpetrators of grave breaches of the law. The result is the abandoning of responsibility at all levels, which is both a cause and an effect of the disintegration of State structures. In the case of "anarchic" conflicts, where the legal system has become ineffective or has disappeared entirely, the establishment of an international criminal tribunal is of primary importance for ensuring the future application of and respect for international humanitarian law.

(d) Military intervention

In the most serious cases, the Security Council may ask States to intervene militarily in accordance with Chapter VII of the UN Charter. Before engaging in such operations, however, it is essential to set precise objectives and to draw up a clear plan of action so as to avoid creating any confusion between the humanitarian and military spheres. While such operations cannot be considered humanitarian in and of themselves, they may make it possible to restore conditions in which international humanitarian law can be applied and humanitarian activities can be pursued.

(e) Prevention of armed conflicts

The most adequate and cost-effective international action would of course consist in preventing the very outbreak of armed conflict, through monitoring and effective response to early warning signals. [...] It is often the follow-up to this early warning that is absent. [...]

Discussion

1. a. What are the necessary conditions for application of Art. 3 common to the Geneva Conventions?
 - b. Can the acts which “are and shall remain prohibited at any time and in any place whatsoever”, according to common Art. 3, only be committed in an armed conflict? Can they only be prohibited in an armed conflict? Can they only be prohibited for “parties to the conflict”? Which of these prohibitions need a minimum of structure to realistically be respected? Which can be respected by each individual?
 - c. Does the wording of common Art. 3 clarify that it only prohibits acts which can be attributed to “parties to the conflict”?
 - d. In “anarchic” conflicts do factions constitute “parties to the conflict” in such a way that common Art. 3 applies? Every faction or only some? Is the status of a faction as a “party to the conflict” generally more easily determined if the government uses armed forces to combat a rebel faction than if rival factions fight each other? Particularly if such inter-faction hostilities involve numerous disorganized factions? Why is a minimum degree of organization and discipline within a faction relevant to its recognition as a “party to the conflict”?
 - e. What constitutes “armed conflict” for purposes of applying common Art. 3? Does common Art. 3 provide a definition? What level of intensity must hostilities reach to constitute an “armed conflict” sufficient for the article’s application? Is sporadic violence sufficient for its application? An internal disturbance? What form must the hostilities take? Are hostilities between different, non-governmental factions in a country sufficient?
 - f. Does common Art. 3 perhaps apply in all situations? Does the ICJ in the case Nicaragua v. US, referred to in the document, actually state that common Art. 3 applies outside armed conflicts? [See ICJ, Nicaragua v. United States, para. 218]? At least those rules in common Art. 3 which constitute “elementary considerations of humanity”?
 - g. Do you agree that internal tensions and disturbances, such as riots and isolated and sporadic acts of violence, are not covered by common Art. 3? Why? Because Art. 1(2) of Protocol II states that they are not armed conflicts? (P II, Art. 1(1))
2. What are the necessary conditions for application of Protocol II? (P II, Art. 1) Is the threshold for application of Protocol II different than for common Art. 3? If so, is it higher or lower than for application of common Art. 3?
3. If IHL does not apply, is e.g. violence against civilians prohibited by international law? Are there customary norms that are binding for the various parties and individually for each person? Is it customary to respect those rules?

4. What law protecting individuals caught up in “anarchic” conflicts applies if IHL instruments do not? Is international human rights law applicable in “anarchic” conflicts fought not by the State but by private factions? Are its rules adequate? Does the implementation of international human rights law depend more on the existence of effective State structures than does the implementation of IHL? Which mechanisms for the implementation of international human rights law can still function in “anarchic” conflicts?
5. a. What problems do you see for the implementation of IHL in “anarchic” conflicts? Which mechanisms for the implementation of IHL can still function in such conflicts? Which cannot?
- b. What is the responsibility of the international community in “anarchic” conflicts? Are “anarchic” conflicts a threat to international peace and security? What can the UN Security Council do? What can States party to the Conventions do? What must they do? (GC I-IV, common Art. 1)
- c. What measures can be taken by the ICRC or other humanitarian organizations to prevent such “anarchic” conflicts? What measures should be taken after hostilities have broken out? What do you think of the proposals mentioned here? Can you add to them?
- d. What specific difficulties does a humanitarian organization encounter in such “anarchic” conflicts? With regard to its principles such as neutrality and impartiality? To its working methods in providing protection and assistance?