Helpdesk Research Report

International humanitarian law and peace processes

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Question

Is there evidence that the degree of respect for international humanitarian law (IHL) during an armed conflict affects peace processes (improves the prospects for peace-making)?

Contents

1. Overview

International humanitarian law (IHL) is inspired by considerations of humanity and the mitigation of human suffering. It comprises a set of rules, established by treaty or custom, that seeks to protect persons and property/objects that are (or may be) affected by armed conflict and limits the rights of parties to a conflict to use methods and means of warfare of their choice. A survey of IHL and peace and conflict literature, and extensive outreach to experts in the fields reveals that there is limited research and no empirical evidence exploring links between the degree to which IHL is respected (or ignored) and the success (or failure) of peace processes. The literature focuses on various related issues, including negotiating with non-state armed groups, the question of why conflict groups may comply with international humanitarian norms, and the need to address violations of IHL and human rights (e.g. through accountability initiatives). This report looks at issues of compliance and engagement with humanitarian norms - and any general links, cited in the literature and by experts, to peace processes.

Literature on compliance finds that armed actors are more likely to adhere to international humanitarian norms if it aligns with their self-interest and political aims. Groups seeking to gain legitimacy and to improve their reputation domestically and internationally are likely to be more motivated to demonstrate respect for IHL. In addition, they may expect that this will prompt reciprocity on the part of other conflict actors. It is unclear, however, whether commitment to respect of IHL actually amounts to changes in behaviour. Current research does not extend beyond the focus on motivations to explore whether

compliance and reciprocal commitments, and potential improvements in legitimacy, improve prospects for peace-making. There is mention that, in some cases, armed actors may be motivated to comply with IHL in order to gain access to peace processes.

There are some general statements in the literature that adherence to IHL could help to facilitate peace efforts and the chance of lasting peace, but there is a lack of empirical evidence to back it up. There is also the belief that indiscriminate violence and severe violations of IHL and human rights destroys trust between conflict groups, undermining prospects for peace.

Trust between conflict groups could potentially be restored to some extent through confidence-building measures. Engagement on humanitarian issues is important not only as an end in itself, but also as a possible entry point that can help to open up dialogue and to engage all conflict groups in a joint effort (e.g. agreements on de-mining and release of prisoners). There are various examples where agreement on humanitarian provisions and action has served as an entry point to subsequent peace talks between the government and rebel groups, for example, discussions on land mine bans in Colombia. The release of political prisoners can also be a critical positive development in peace processes, such as in South Africa, where the release of Nelson Mandela and other political prisoners laid the foundation for negotiations and a meaningful peace process.

2. IHL compliance

Much of the literature on adherence to international humanitarian law focuses on compliance theory: what compels armed actors to respect IHL. From a realist and rational choice perspective, the legal nature of an international obligation is not the driving force behind compliance. Rather, adherence, or lack of, to IHL stems from an actor's self-interest (Krieger, 2013; Bangerter, 2011; Geneva Academy, 2011). In Eastern Libya, for example, self-interest was considered to be a key incentive for the genuine commitment of the rebel forces to respecting international norms (Geneva Academy, 2011). What is often of interest to conflict actors are: (1) expectations of reciprocal behaviour and (2) legitimacy and reputation.

Expectations of reciprocal behaviour

The application of international humanitarian law rests not on legal reciprocity but on social aspects of reciprocity, in terms of expectations of in-kind responses, or reciprocated behaviour (Krieger, 2013). The argument that members of armed groups will be treated well by the other side if they treat their own prisoners in a similar manner may persuade armed actors to comply with IHL (Hofmann, 2012). In addition to treatment of prisoners, efforts to ban landmines are another area where conflict groups often have common interests (Krieger, 2013). The view that no party to a conflict can expect the adversary to respect IHL if the party itself violates those rules drives actor's motivations and compliance (Ibid). Incentives for armed groups to comply with IHL thus include greater likelihood of reciprocal respect for the law by opposing conflict groups (Krieger, 2013).

Empirical research in social science and practical experience suggests that expectations of reciprocal behaviour are important (Krieger, 2013). In Chad, for example, the expectation of reciprocal behaviour is considered to have affected the decisions of armed groups. Fighters were ordered not to harm civilians as rebels feared retaliation from families and clans (Bangerter, cited in Krieger, 2013).

Legitimacy & reputation

Self-image is considered to be a powerful incentive for respect of IHL (Bangerter, 2011). Much of the literature argues that armed groups may adhere to international humanitarian norms in large part for political aims: to gain respect, and to improve their reputation and the perceived legitimacy of their cause and themselves as a political actor among local and international actors (see Krieger, 2013; Hofmann, 2012; Geneva Academy, 2011). The International Committee of the Red Cross (ICRC) finds that reputation and potential political gains from adopting a 'moral high ground' are important motivating factors and key reasons that armed groups are usually open to engaging with humanitarian organisations (Krieger, 2013; Hofmann, 2012). In an extensive study of factors involved in rebel groups adopting international humanitarian norms (focusing on civilian killing, child soldiering and granting visits to rebel detention centres), Jo (2015) finds that legitimacy considerations are likely to shape the decisions of conflict groups to exercise compliance with IHL in what otherwise could have been fiercer conflicts.

The importance of reputation and legitimacy will vary, however, based on the political aims of armed groups. If an armed group has the potential to become a political actor and to replace the government, reputation could be critical to its political survival (Krieger, 2013). If domestic and international constituencies have leverage and influence over rebel groups, and humanitarian concerns are an issue, legitimacy-seeking rebel groups are more likely to comply with international norms; whereas, groups without motivation for political legitimacy will be less likely to adhere to such norms (Jo, 2015). In the case of treatment of detainees, for example, research shows that conflict groups differ in their political motivations and thus in whether they allow international organisations, such as the ICRC, access to their facilities during civil war (Jo & Thomson, 2013). Governments that rely heavily on foreign aid and rebel groups that aim to appear as legitimate political entities domestically and internationally are more likely to grant access to the ICRC in order to enhance their reputation. Granting access to the ICRC opens the door for further types of international engagement (Ibid).

An armed group's commitment to IHL may be driven solely by the desire to improve image and legitimacy, rather than stemming from a genuine belief and desire to adhere to such norms (Expert comments). A case study on the Kosovo Liberation Army (KLA)'s use of international humanitarian norms finds that the incorporation of such norms in their discourse, particularly with regards to treatment of prisoners, appears to have been motivated by a desire to appear legitimate as a group with a political vision, and to outside actors. Increases in IHL discourse and corresponding positive changes in behaviour (a drop in number of abuses) were most prominent when the KLA first emerged into public view and during ceasefire and peace negotiations. However, IHL discourse was mis-matched with increases in IHL and human rights abuses (including outright open attacks on civilians and clandestine activities in detention camps) in subsequent periods (Mueller, 2015).

3. Links to peace and peace processes

The ICRC and other organisations, as well as scholars have argued that adherence to international humanitarian norms may help facilitate peace efforts and strengthen the chance of lasting peace and reconciliation – and that conflict actors may be sensitive to this (Hofmann, 2012; Geneva Academy, 2011). The Libyan National Transitional Council (the *de facto* government of Libya during and after the Libyan Civil War), for example, has made statements that adherence to international humanitarian law

during fighting, which minimises harm to the Libyan people, would facilitate post-conflict reconciliation and reconstruction (see Bangerter, 2011).

In contrast, it can be much more challenging to terminate conflicts and maintain peace if there is a memory of atrocities carried out by the parties. The more heavily the atrocities and violations of IHL and human rights were, the more they will undermine the conclusion of peace (Bangerter, 2011). In the case of Darfur, for example, it is argued that the vast scale of indiscriminate violence and atrocities (including civilian killings, destruction of villages, rape and other forms of sexual violence etc.) committed by the Sudanese army and its proxy Arab militias has severely undermined trust and confidence between the Government of Sudan and rebel parties. This in turn has hampered peace efforts (Netaby, 2009). A study on mediation finds that where there is indiscriminate rebel violence against civilians, it is less likely that disputants can negotiate between themselves, increasing the likelihood of mediation from outside actors (Pospieszna & DeRouen, 2016). In addition, attacks of violence during negotiations have a negative effect on the number of treaties implemented (Kydd and Walter, 2006; cited in Pospieszna & DeRouen, 2016).

Involvement in peace processes

Self-interest of armed groups that promotes compliance with IHL may include the desire to be involved in peace processes, alongside political motivations discussed above (Bangerter, 2011; Geneva Academy, 2011). Armed non-state actors, who may otherwise not be included in peace processes, may try to develop a cleaner record among their fighters in order to improve the chances that they are involved in such processes. This may include measures designed to improve respect for IHL and/or purging fighters whose past acts of violence could be a problem (Bangerter, 2011). Being involved in peace processes and the formulation of peace treaties themselves may also be valuable for rebel groups seeking recognition and legitimacy (Fazal, 2013). Such groups may wish to publicise their adherence to IHL in their declarations of independence to convey the impression that they will be good citizens of the international community (Ibid).

In the case of the conflict in El Salvador (1981-1991), the Farabundo Martí National Liberation Front (FMLN) complied with IHL (Jo, 2015). The rebel group maintained good relations with civilians, and also refrained from using child soldiers and mistreating enemy government soldiers. These behaviours corresponded with their manifesto, which described their methods of warfare against the government as being consistent with international humanitarian norms. In 1990, the group signed the San José Agreement with the government, which reiterated their commitment to human rights and and lay the groundwork for the peace agreement in 1992. The FMLN subsequently developed into a viable political party (Ibid).

IHL as an entry point

Engagement on humanitarian issues, such as developing IHL-inspired Memorandums of Understandings (MoUs) and working on de-mining, can help to open up dialogue and to engage all conflict groups in a joint effort (Hofmann, 2012; Expert comments). Such issues may be less sensitive and easier for parties to agree upon in the early stages (Geneva Academy, 2011). Some humanitarian issues, such as securing medicine for children, will likely be easier to discuss and resolve than others (e.g. prisoner exchanges) (Ibid).

Such confidence-building measures (CBMs) can help to establish 'a working trust' among the parties, such as in the case of Colombia (Expert comments). This could in turn positively affect a beginning or ongoing

peace process (Hofmann, 2012). Efforts to enhance respect for norms may be formally integrated within a peace process, rather than being an entry point (Geneva Academy, 2011). It is unclear, however, whether these MOUs are complied with and/or whether such initiatives improve respect between parties (Expert comments). In addition, some argue that it is important that respect for humanitarian norms are not treated as a means to facilitate a peace process but as an essential requirement itself (Petrasek, 2005).

Examples of situations where agreement on humanitarian provisions and action has served as an entry point to subsequent discussion of ceasefires, security and political issues, and peace talks between the government and rebel groups include:

- El Salvador (1991), where initial agreement on human rights is widely credited with creating confidence required for political talks (Petrasek, 2005).

- Aceh, Indonesia (2001-2002), where an agreement on a 'humanitarian pause' helped to create the foundation for a ceasefire (though it did not hold) (Petrasek, 2005). Despite a return to violence after the pause, dialogue and joint committees with representatives of the conflict parties were maintained (Hofmann, 2012).

- Darfur, Sudan (2003), where formal agreements on humanitarian issues paved the way for talks on security or political issues (Petrasek, 2005).

- Philippines (2009), where a formal agreement to improve the protection of civilians in armed conflict was believed to support peace talks between the Government and the Moro Islamic Liberation Front (Geneva Acadamy, 2011).

In some situations, armed groups may use agreements on humanitarian issues to gain legitimacy while they stall on political talks (Petrasek, 2005). In other cases, efforts to seek compromise over the use of force could start a peace process on the wrong end for rebel movements if there are no attempts to address root causes of conflict and political needs for change (Dudouet, Giessman & Planta, 2012).

De-mining

The recognition of landmines as a critical humanitarian problem can comprise a shared focus for conflict parties to engage with the international community and each other. In some cases, initiatives to address landmines form key components of ceasefire agreements and peace agreements. Emerging mine action initiatives can help to foster confidence between conflict actors, as in Sri Lanka and Sudan, and in some cases, reconciliation processes at various levels, such as with improved relationships between former fighters working together in Afghanistan's Mine Action for Peace programme (Harpviken & Roberts, 2004).

In Colombia, humanitarian de-mining projects have served as confidence-building measures between the two armed groups: the National Liberation Army (ELN) and the Revolutionary Armed Forces of Colombia (FARC), and the government (Expert comments). In 2004, for example, discussions on the landmine ban brought together government officials, NGOs, international organisations, indigenous peoples, and representatives of the Colombian military, among others. Francisco Galán, a senior jailed ELN commander was released from prison for a few hours to make a declaration in front of participants. His statement proposed the re-opening of peace negotiations based on three themes, including a humanitarian agreement that included a commitment to limiting the use of anti-personnel landlines. The Colombian authorities responded positively, echoing a willingness to re-open negotiations with the ELN (Reusse-Decrey, 2005).

Treatment of prisoners

The ICRC has argued that if armed groups develop a reputation for treating prisoners of war well, opposing forces might surrender more readily (Hofmann, 2012). A review of peace processes in South Africa and Northern Ireland indicates that the release of political prisoners can be a critical positive development in peace processes (Addameer, 2009). The release of Nelson Mandela and other political prisoners laid the foundation for negotiations between the South African government and African National Congress, and propelled a meaningful peace process that resulted in the end of the apartheid regime (Ibid). For families and communities, the release of prisoners can be a key practical and symbolic indicator that they are involved in a genuine peace process. In Northern Ireland, stalled peace talks required the support of prisoners in order to continue and progress to a settlement (Ibid).

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