



INTERNATIONAL HUMANITARIAN LAW IN A SHARIA DOMINATED ISLAMIC CONTEXT: ARMED CONFLICT IN PAKISTAN

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ABSTRACT:

The applicability of International Humanitarian Law (IHL) to the non-international armed conflicts is questioned due to various reasons, mainly the complex nature of such conflicts fulfilling the criteria set under IHL. Firstly, states hesitate to acknowledge the existence of non-international armed conflicts by considering them as internal disturbances. Secondly, the complex nature and varying circumstances of such conflicts make their assessment very hard due to the multiplicity of the factors involved in the fighting. The armed conflict in Pakistan provides even more complex situations of such type of armed conflict where Sharia plays a vital role in the domestic legal structure of the state as well as other group fighting against claims being a true follower of Sharia, the application of IHL becomes even more critical in such a situation. The conflict in the former Federally Administered Tribal Areas (FATA) and surrounding areas of Pakistan between the state forces and Tehrik-e-Taliban Pakistan (TTP) led armed groups have been acknowledged as a non-international armed conflict after a long period by the government of Pakistan. This paper investigates the applicability of IHL to this conflict mainly on the doctrinal aspects of the study by interpreting and applying the relevant rules of IHL relating non-international armed conflicts through analysing the conflict in Pakistan under the said criteria and also looks at the social context of the study by looking at the obligation of the

rules of IHL by both the parties belonging to a Sharia dominated social context. The doctrinal analyses of rules of IHL and the assessment of the conflict in Pakistan against the criteria set by IHL leads to a point where conflict in Pakistan is considered a non-international armed conflict, whereas the obligation of the rules of IHL has been observed on the lower side not due to the presence of Sharia dominated social context but due to various other reasons that occur during such type of conflicts all over the world.

KEYWORDS: Religious Orientation, Mental Health, Academic Performance

1. INTRODUCTION

International Humanitarian Law (IHL) mainly applies to the armed conflicts of International character whereas the applicability of IHL to the conflicts of non-international character depends on the assessment of a conflict categorised as an armed conflict of non-international character. Often states remain hesitant in acknowledging such conflicts and deal them as internal disturbances, revolts and violence etc. IHL provides specific criteria for the categorization of conflicts as armed conflicts of non-international character mainly on the basis of the organization of parties, taking part in conflict, and intensity of the fighting. The conflict in Pakistan occurring in the northwestern areas of Pakistan needs to be assessed on the basis of the said criteria to be categorized as an armed conflict of non-international character for the application of IHL.

The armed conflict in Pakistan occurring in the former Federally Administered Tribal Areas of Pakistan as a result of the participation of

Pakistan in the war against terrorism as ally of the USA led NATO armed forces after 2001, between state armed forces of Pakistan and Tehrik-e-Taliban Pakistan (TTP) led armed groups involves multiple complex phenomenon. At on hand it needs to be looked for the assessment of the conflict falling in the category of non-international armed conflict for the application of IHL on this conflict. On the other hand, the social context of the conflict needs to be seen for the application of IHL in the Sharia dominated social context due to the involvement of both the parties that consider Sharia as a main source of their legal and social structure of the state and society.

Firstly, this paper discusses the conflict in Pakistan in light of the criteria of non-international armed conflicts provided under IHL. It investigates the doctrinal aspects of the armed conflict in Pakistan in the context of the applicability of International Humanitarian Law (IHL) to non-international armed conflicts and the conflict in Pakistan against the criteria of IHL. An overview of the armed conflict is provided in the previously called Federally Administered Tribal Areas (FATA) and surrounding areas of Pakistan in the light of the criteria of the applicability of International Humanitarian Law (IHL), specifically focusing on the conflict in Pakistan as non-international armed conflict, along with the applicability of IHL on the conflict in Pakistan, considering as non-international armed conflict under the threshold of IHL. Secondly, the views of the legal scholars in Pakistan have been included as to assess the acceptance of IHL in the social context of Pakistan and its applicability on the armed conflict.

2. NON-INTERNATIONAL ARMED CONFLICTS UNDER IHL

The concept of the sovereignty of states under international law allows states to deal with the internal matters of states without intervention of other states and world community agrees on respecting the sovereignty of states. Generally, IHL does not apply to the conflicts of internal nature. Traditionally, non-international armed conflicts do not fall in the scope of IHL but with the passage of time, and due to the gravity of situations the states have allowed the interference of IHL in their internal matters for avoiding the situations of extreme violence and cruelty. Sometimes, states are left with no other option but to call for help of the international community to deal some of their internal situations beyond their control and to save the international community from their effects. Non-international armed conflicts are among such situations where states need the interference of IHL, so states have accepted the rules of IHL that regulate the matters of non-international armed conflicts.¹

The four Geneva Conventions in 1949 that regulate the matters of wars and armed conflicts have been adopted by the states. These Geneva Conventions provide rules for the protection of humanity from the grave effects of the armed conflicts and minimize the effects of armed conflicts through binding the parties to a conflict to apply minimum use of force and stop them from using the weapons of massive destruction. These Conventions binds the parties to show their commitments to observe the minimum standards of humanity, especially civilians not taking part in

¹ Terry D. Gill and Dieter Fleck, *The Handbook of the International Law of Military Operations* (2nd Edition Oxford university press 2016)

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the fighting, in situations of non-international armed conflicts. These standards have been further developed and supplemented in the later adopted Protocol II Additional to the Geneva Conventions in 1977.

The hesitation of the states and the complex nature of the conflicts make it difficult to categorize a conflict as a conflict of non-international character. So, the applicability of IHL in non-international conflicts becomes more complexed due to the undefined and unannounced nature of these conflicts due to their varying circumstances.² IHL extends its applicability to the armed conflicts of non-international nature between state and non-state armed groups or between non-state armed groups.³

The recent times have given vent to the occurrence of non-international armed conflicts much frequently and often they remain a matter of assessment and states do not acknowledge the presence of non-international armed conflicts by giving the name of internal disturbances, revolts and acts of violence etc.⁴ The states are often seen reluctant to accept international legal oversight into their internal matters and this phenomenon of violence often need to be identified and defined. The criteria of such type of conflicts provided under IHL often needs to be applied to assess the prevailing of non- international armed conflict in the present era.

² Jelena Pejic, J (2011) 'The protective scope of Common Article 3: more than meets the eye' (2011) 93 IRRC 189

³ Geneva Conventions I, Art. 3; Geneva Conventions II, Art. 3; Geneva Conventions III, Art. 3; Geneva Conventions IV, Art. 3

⁴ Jahid Hossain Bhuiyan and Louise Doswald Beck, *IHL- An Anthology* (Lexis Nexis 2009)

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The situations of internal disturbances generally convert into non-international armed conflicts when these disturbances reach a certain level. Merely the occurrence of violent acts does not convert an internal disturbance into a non-international armed conflict.⁵

2.1 COMMON ARTICLE 3 AND NON-INTERNATIONAL ARMED CONFLICTS

Common Article 3 provides basic rules of all the Geneva Conventions in a condensed form and makes all the Geneva Conventions applicable to non-international armed conflicts in a way or other.⁶ It requires the parties to apply basic and fundamental rules of humanity, automatically without any condition of reciprocity, irrespective of the recognition of the nature of the conflict.⁷ All those conflicts that have of non-international character and occur within the territory of a state considered as a high contracting party, fall under the scope of common article 3. The deliberate omission of defining the armed conflict provided by common article 3, keeps its canvas broad, in the context of the states that remain hesitant in adopting any resolution extending effective outer legal regulation into their domestic affairs. The provisions of the common article 3 have become legally binding on all state due to its status of customary international law.⁸

⁵ International Committee of the Red Cross (ICRC) Opinion Paper, 'How is the Term "Armed Conflict" Defined in IHL?' (ICRC March 2008)
<<https://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf>>
accessed 12 April 2016

⁶ Jonathan Crowe and Kylie Weston-Scheuber, *Principles of IHL* (Edward Elgar Publishing 2013)

⁷ Jean S Pictet, *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (International Committee of the Red Cross 1952)

⁸ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986

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The conflicts occurring within the territory a high contracting party, considered as non-international armed conflicts, are regulated under common article 3. In these types of conflicts, an armed group, that is not the government, is involved in fighting against government forces or against other armed groups. The intensity of violence needs to reach a certain level for meeting the criteria for non-international armed conflict under Article 3. The intensity of violence distinguishes an armed conflict from other forms of violence for the application of IHL. IHL applies to internal disturbances and tensions that include riot, sporadic and isolated violent etc.⁹

The non-state armed groups are assessed based on some factors of organized groups, that include an organized command structure, capacity to conduct military operations and access to weapons, the capacity to recruit new members and training them, having control over a territory, and having internal communication and organisational mechanism.

The conflicts, in which any of the two conditions are met, are considered as internal disturbances or internal tensions. The situations of internal disturbances and internal tensions, not being considered as armed conflicts, are not defined under international law but are referred to explicitly in Additional Protocol II.¹⁰

⁹ International Committee of the Red Cross (ICRC) Opinion Paper, 'How is the Term "Armed Conflict" Defined in IHL?' (March 2008)
<<https://www.icrc.org/eng/resources/documents/article/other/armed-conflict-article-170308.htm>> accessed 12 April 2016

¹⁰ Additional Protocol II, Art. 1(2)

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The states have the responsibility to tackle this situation by calling upon extensive police forces or armed forces.¹¹ These situations involve less violent circumstances like mass arrests, political detainees, torture, ill-treatment, forced displacements and suspension of judicial guarantees.¹² The parties to a conflict are bound to oblige the rules of IHL during an armed conflict. Common article.3 as a treaty law not only binds the states by being a party to the Geneva Conventions but also binds the non-state parties as well. There are different theories about the logic behind making non-state parties bound to oblige IHL.¹³

The customary rules of International Law bind non-state armed groups to oblige the rules of IHL based on the territory of the state where they use to fight. Common article.3 in this regard acts as customary law because all the substantive provisions of Common Article 3 bind all parties to an armed conflict to oblige the rules of IHL beyond any formal classification or geographical reach.¹⁴ In these types of situations, common article.3 operates as customary law and it affirmed by International Criminal Tribunal for Rwanda as well.

Basically, Common Article 3 applies to armed conflicts in terms of customary law and extends its applicability to all the parties to such conflicts, without any formal classification and geographical limitations.

¹¹ Yves Sandoz *et al*, (eds) *Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (International Committee of the Red Cross 1987)

¹² Hans-Peter Gasser, 'Humanitarian Standards for Internal Strife – A Brief Review of New Developments' (1993) 294 *International Review of the Red Cross* 221

¹³ ICRC, 'State Parties to the Main Treaties of IHL' (August 2016) <<https://ihl-databases.icrc.org/ihl>> accessed 10 August 2017

¹⁴ Marco Sassoli, 'Transnational armed groups and IHL' (2006) 6 (1) *HPCR Occasional Paper Series* 12

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If a state is bound to oblige some rules of International Law, it ultimately puts non-state parties to oblige the same rules because of being on the territory of that state.¹⁵

2.2 ADDITIONAL PROTOCOL II AND NON-INTERNATIONAL ARMED CONFLICTS

A non-international armed conflict falls under the scope of Additional Protocol II when the intensity of violence reaches a situation that makes it distinct from cases of internal tensions or disturbances.¹⁶ Additional Protocol II provides a more limited definition of the field of application as compared to common Article 3. A conflict requires the involvement of non-governmental forces with a high level of organization and having a responsible command.

Additional Protocol II provides the stricter criteria for the existence of non-international armed conflicts than common article 3. It has been framed with the intention of extending the essential rules of the law of armed conflict to internal wars.¹⁷ Additional Protocol II attempts to set out several material concrete elements that need to be present for establishing the existence of armed conflict. All the necessary elements must be met for the recognition of an armed conflict under Additional Protocol II.¹⁸

¹⁵ Jean S. Pictet (ed.), *Commentary to the Fourth Geneva Convention relative to the Protection of*

Civilian Persons in Time of War (ICRC, Geneva 1958)

¹⁶ Additional Protocol II, Art. 1(2)

¹⁷ Yves Sandoz *et al*, (eds) *Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (International Committee of the Red Cross 1987)

¹⁸ Ray Barquero, 'The New Thresholds of Non-International Armed Conflict — A product of Jurisprudential Provenance?'

http://www.academia.edu/4663155/The_New_Thresholds_of_Non-

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These elements include: international character of the conflict; occurrence within the territory of a high contracting party; one of the parties must be the forces of the state; one of the other parties must be an armed group demonstrating some level of organization; and that group being operated by a responsible command exercising control over some part of the State's territory.¹⁹

3. ARMED CONFLICT IN PAKISTAN

The expansion of the magnitude of the war against terrorism and its effects on Pakistan has given rise to a huge armed conflict between Pakistani military forces and some Taliban supporting militant groups within Pakistan. This conflict has further resulted in internal displacement, and millions of civilians have been internally displaced from northern areas of Pakistan. International Humanitarian Law applies in situations of non-international armed conflicts to help and assist the victims, mainly civilians, of these armed conflicts. The conflict in Pakistan, however, needs to be assessed under the criteria of the existence of an armed conflict of non-international character for the purpose of the applicability of IHL. The conflict in Pakistan if assessed under the criteria of Common Article 3 of the 1949 Geneva Conventions, it must be of a non-international character, occurring in the territory of one of the High Contracting Parties. IHL provides two basic criteria of the recognition of a non-international armed conflict which are based on the

[International Armed Conflict-- A Product of Jurisprudential Provenance](#) accessed 16 June 2016

¹⁹ Yves Sandoz *et al*, (eds) *Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (International Committee of the Red Cross 1987)

case-law of the International Criminal Tribunal for the Former Yugoslavia (ICTY) as follows.²⁰

3.1 INTENSITY OF FIGHTING

Firstly, the intensity of the conflict in north western regions of Pakistan, formally called FATA needs to be identified as per requirements of the criteria under IHL, that reaches the required level of intensity to constitute an armed conflict. Secondly, the organisation of the parties to the conflict, including the security forces of Pakistan and the TTP led umbrella organizations fighting against the security forces, need to fulfil the criteria of the existence of an armed conflict, and the organization of the TTP along with its umbrella group also fulfil the criteria of a party to the armed conflict.

The intensity of fight in FATA, beyond any doubt, reaches a level that fulfils the criteria of the armed conflict. Moreover, there is no doubt about the capacity of the security forces of Pakistan, and the capacity of the non-state actors in the conflict in FATA is identifiable. The capacity of the TTP as a party to the armed conflict can be discussed in the light of the criteria of the capacity of the parties under common article 3 to the Geneva Conventions.

3.2 ORGANIZATION OF PARTIES

The second criteria for the qualification of an armed group as a party to a non-international armed conflict include the organization of parties. The

²⁰ Antonio Cassese, *International Law* (2nd Edition, Oxford University Press 2005) 125

recognition of non-state actors as armed groups can be assessed under a specific criterion. These groups need to fulfil the requirements of being recognized as an armed group as High Contracting Party under IH.²¹ These requirements include their structure as an organized body, leadership control, military training, access to weapons and supplies, new recruitments, identified group, and having control over a territory.²²

A command structure controls the organisational structure of the non-state parties armed groups at various levels from top to lower hierarchy. These groups normally use a headquarter where their high command looks after their internal regulations and issue political statements through their spokesperson. They use identifiable ranks and positions in their organisational structure.²³ These groups have the operational capacity that enables them to define a unified military strategy and using military tactics. They have used to carry out and coordinate military operations at large scale. They have control over a certain territory and divide that territory into different zones in terms of responsibility. They have the logistic capacity and different supply chains to gain access to

²¹ Sandesh Sivakumaran, 'Binding Armed Opposition Groups' (2006) 55 (2) *International and Comparative Law Quarterly* 369

²² Jean S. Pictet (ed), *The Geneva Conventions of 12 August 1949: Commentary: First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (ICRC Geneva 1952) 49

²³ Marco Sassoli, 'Taking Armed Groups Seriously: Ways to Improve Their Compliance with International Humanitarian Law' (2010) *Journal of International Humanitarian Legal Studies* 5

weapons and other military equipment. They can move their troops and recruit people and provide the training.²⁴

It is, however, necessary to assess the situation of conflict in Pakistan that qualify to be a non-international armed conflict. The factual conditions of a certain conflict are necessary to be examined for considering a conflict as non-international armed conflict.²⁵ The factual conditions of the conflict in Pakistan, on the ground, provide a strong indication of the existence of an armed conflict of a non-international character.²⁶

The TTP has affiliated armed groups, however, TTP is considered as the main armed group fighting against the security forces of Pakistan in this conflict.²⁷ The roots of the TTP are traced in 2002 during the search operation of the security forces of Pakistan in the tribal areas, in combat with the militants fleeing from Afghanistan.²⁸ A large number of the TTP leaders are believed to be the veterans of the fighting in Afghanistan.²⁹

²⁴ Jean S. Pictet (ed), *The Geneva Conventions of 12 August 1949: Commentary: First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (ICRC Geneva 1952) 49

²⁵ Sylvain Vite, 'Typology of Armed Conflicts in International Law: Legal Concepts and Actual Situations' (2009) 91 (873) *International Review of the Red Cross* 69

²⁶ Ariane Rummary, 'Some displaced people visit homes in north-west Pakistan, but no large-scale return yet' (UNHCR 2009) <<http://www.unhcr.org/4a44eb2a9.html>> accessed 30 June 2016

²⁷ Hassan Abbas, 'Defining the Punjabi Taliban network' (2009) 2 (4) *CTC Sentinel* 1

²⁸ Zaffar Abbas, 'Pakistan's undeclared war' (BBC News September 2004) <http://news.bbc.co.uk/2/hi/south_asia/3645114.stm> accessed 15 September 2016

²⁹ Carlotta Gall et al, 'Pakistani and Afghan Taliban Close Ranks' (*New York Times* March 2009) <<https://www.nytimes.com/2009/03/27/world/asia/27taliban.html>> accessed 15 September 2016

The analysts consider TTP as an organization with a loose network of dispersed constituent groups of various sizes and coordination levels.³⁰ The structure of the TTP differs to the Afghan Taliban in fighting against Pakistan.³¹ The analysts consider TTP as an organization, having various umbrella groups, with limited influence and ability to expand their operations beyond their local territories.³²

The TTP was established around 2001.³³ There was a proper appointment of the chief (head of the organization), along with the appointment of the deputy chief (deputy head of the organization) of TTP.³⁴ The council used to control the matters of the various agencies, through appointing heads in the agencies.³⁵ Furthermore, the council had representation from settled districts of Khyber Pakhtunkhwa. According to estimates, TTP had a total number of around 30–35,000 operatives.³⁶

³⁰ Carol Christine Fair, 'The Militant Challenge in Pakistan' (2011) 11 (1) Asia Policy 105

³¹ Ayesha Siddiqi, 'Pakistan's Counterterrorism Strategy: Separating Friends from Enemies' (2011) 34 (1) The Washington Quarterly 149

³² Carlotta Gall And Sabrina Tavernise, 'Pakistani Taliban Are Said to Expand Alliances' (The New York Times May 2010)

<https://www.nytimes.com/2010/05/07/world/asia/07pstan.html> accessed 15 September 2016

³³ Niaz A. Shah, 'War Crimes in the Armed Conflict in Pakistan' (2010) 33 (4) Studies in Conflict & Terrorism 283

³⁴ Mushtaq Yusufzai, 'Militants seek end to military operations' (The News International December 2007) <<https://www.thenews.com.pk/archive/print/654156>> accessed 15 September 2016

³⁵ Anwarullah Khan, 'TTP threatens to launch suicide attacks across country' (The Dawn. August 2008) <http://www.dawn.com/2008/08/06/top2.htm> accessed 15 September 2016

³⁶ Jayshree Bajoria and Jonathan Masters, 'Pakistan's New Generation of Terrorists' (Council on Foreign Relations September 2012) <http://www.cfr.org/pakistan/pakistans-new-generation->

TTP has been considering the Pakistani army as a national institution and claiming of being abstaining from fighting against Pakistan unless the army attacks the TTP fighters.³⁷ There has been a short-lived deal from TTP in 2005, broken in 2006, for not fighting against the Pakistan army.³⁸ TTP has gradually been expanding its additional resources and geographic reach by conducting violent activities against the security forces in various parts of the country. The TTP, banned by the Government of Pakistan in 2008, has refused to obey the order of the government by calling the ban as ineffective.³⁹

In 2009, with the killings of the head of the TTP and other leading, the organizational structure and operational abilities of TTP were severely affected and leadership due to the leadership crisis.⁴⁰ In 2011, the head of the TTP started losing his grip, due to the defection of its umbrella militant groups and was reported missing from the scene.⁴¹ In 2012, the Pakistani military claimed the loss of the control of the TTP head over

terrorists/p15422?breadcrumb=%2Fbios%2F13611%2Fjayshree_bajoria%3Fgroupby%3D1%26hide%3D1%26id%3D13611%26filter%3D456. Accessed 12 June 2016

³⁷ Haroon Rashid, 'Baitullah demands military withdrawal' (BBC April 2006) http://news.bbc.co.uk/2/hi/south_asia/4887500.stm accessed 16 May 2015

³⁸ BBC, 'Profile: Baitullah Mehsud' (December 2008) http://news.bbc.co.uk/1/hi/world/south_asia/7163626.stm accessed 9 July 2016

³⁹ Dawn, 'Tehrik-i-Taliban Banned' (DAWN August 2008) <http://www.dawn.com/2008/08/26/top12.htm> accessed 16 June 2015

⁴⁰ Nasir Dawar, 'Sources: Pakistani Taliban leader is dead' (CNN February 2010) <http://edition.cnn.com/2010/WORLD/asiapcf/02/09/pakistan.meshud.dead/> accessed 16 July 2016

⁴¹ Rebecca Conway, 'Pakistan Taliban leader "isolated," facing splits: report' (Reuters July 2012) <https://www.reuters.com/article/us-pakistan-taliban/pakistan-taliban-leader-isolated-facing-splits-report-idUSTRE76419E20110705> accessed 16 July 2016

various umbrella groups.⁴² Soon after, the head of the TTP appeared in the media and called the reports of a split with the umbrella organizations as propaganda.⁴³

Despite, going through various leadership crisis and splits among the umbrella groups; TTP still consists of an organized structure with operational abilities, necessary for an armed group, to indulge in an armed conflict. It has effective control of the tribal areas near the border between Pakistan and Afghanistan. TTP has a well-established command structure and abilities to conduct operations against the security forces of Pakistan. There have been several pacts between TTP and security forces of Pakistan but not been followed by TTP. The conflict in Pakistan, if seen from the perspective of Pakistan, provides a situation of armed conflict between Pakistani military forces and several militant groups.

4. IHL IN THE CONTEXT OF PAKISTAN

The legal experts, including judges and lawyers in Pakistan favour the applicability of International Humanitarian Law in an Islamic context. They comment on the nature, purpose, and rules of both the legal streams that aim to help and assist civilians in times of armed conflict. They

⁴² Mehreen Zahra-Malik, 'Exclusive: Emerging Pakistan Taliban chief to focus on Afghan war' (Reuters December 2012) <<https://www.reuters.com/article/us-pakistan-taliban/exclusive-emerging-pakistan-taliban-chief-to-focus-on-afghan-war-idUSBRE8B50G920121206>> accessed 16 July 2016

⁴³ Saud Mehsud, 'Pakistan Taliban chief says group will negotiate, but not disarm' (Retrieved December 2012) <https://www.reuters.com/article/us-pakistan-taliban/pakistan-taliban-chief-says-group-will-negotiate-but-not-disarm-idUSBRE8BR06F20121228> accessed 16 July 2016

favour the compatibility of International Humanitarian Law and Islam and reject the existence of a fundamental conflict between International Humanitarian Law and Islam that stops International Humanitarian Law from working in an Islamic context. Most of them just tend to mention the version of International Humanitarian Law on the matter of displaced persons. They, instead of commenting and giving their views on the situation of displaced persons in Pakistan, propose and suggest the government of Pakistan make sure the applicability of International Humanitarian Law on displaced persons in Pakistan.

The legal structure, public narrative and acceptability of the help and assistance provided to displaced persons under the umbrella of International Humanitarian Law confirms the applicability of International Law in Pakistan. The matter of implementation or the lack of implementation is another debatable point. The non-implementation of a rule or law does not provide a ground for the non-applicability of that rule in a system. International Law is often criticised on the matter of non-implementation, and sometimes it is not considered as law by the critics, but it does not give rise to the question of the uselessness of International Law. Therefore, the lack of implementation or following of International Humanitarian Law in Pakistan does not deny the applicability of International Humanitarian Law in Pakistan.

International Humanitarian Law is applicable in Pakistan and plays an important role in the context of Pakistan that not only welcome the International Humanitarian Law but also can work along with International Humanitarian Law and both the laws can be applied to one

and same situation. There are several organisations, institutions and NGOs working in Pakistan in the context of International Humanitarian Law. They have never been stopped by any renowned Islamic organisation, institution, or group. Islam never stops the works of human well-being; rather it supports every step taken for the betterment of human and humanity.

5. CONCLUSION

The conflict in Pakistan fulfils the most stringent requirements of being considered as an armed conflict. It possesses all three elements of the recognition of conflict as an armed conflict. The ICRC has recognized the conflict in Pakistan as an armed conflict. The parties to the conflict include the security forces of Pakistan and the TTP and the conflict is taking place within the territory of Pakistan. The situation in Pakistan fulfils the criteria of non-international armed conflict under International Humanitarian Law, acknowledged by the spokesperson for the International Committee of the Red Cross (ICRC) after the launching of operation by Pakistani military forces in South Waziristan (FATA). The recognition of armed conflict by ICRC has provided a legal mandate under International Humanitarian Law to protect victims. The conflict meets the threshold criteria set by common article 3.

There exist both similarities and differences in both IHL and Islam but while protecting civilians in times of armed conflict both the systems observe the humanitarian values and bind the parties to protect civilians. Both IHL and Sharia laws related armed conflicts come to play their roles

in the time of armed conflict. International Humanitarian Law has a wider scope as being applied globally, Sharia rules relating armed conflicts are applied in the areas of the world where Islam is practiced as a religion.



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