CHAPTER -X

CONCLUSION

The complexity of violence threatening national security ranges from acts of terror to a full blown internal armed conflict defined within the meaning of Geneva Conventions. Unlike the 1990s which witnessed a total collapse of the rule of law and the international community intervened under Chapter VII of the UN Charter, the present situations are mostly localized and represent problems very different from those in failed states. The scenario is particularly prevalent in third world States where the affected State is witnessing localized but protracted armed violence. The aggrieved communities justify violence against the State as a fight for their legitimate right to national self determination being ethnically/culturally different from the parent State. The protracted nature of armed violence has led to internationalization of such situations with the international community referring to such situations as internal armed conflicts within meaning of the Geneva Conventions.

The affected State formed out of the loose conglomeration diverse ethnic groups is unwilling to accede to the demands of the communities since the idea threatens her sovereignty and risks international accountability. The State has domesticated the nature of violence by enacting stringent special legislations within the constitutional framework arguing that such matter are internal law and order problem or at best a public order issue and falls within the margin of appreciation of the State. However, armed intervention by the affected State through special legislations over a protracted period of time and the de facto moral legitimacy accorded by the aggrieved communities to the armed groups allegedly fighting for self determination poses unique challenges to the State. On the other hand, Kosovo's unilateral independence, Scotland's option to exercise the independence referendum are a few emerging examples which has raised questions on the legitimacy of violence by the aggrieved communities demanding secession from the parent State on grounds of ethnicity, culture and tribal identity in the third world States.

\[841\]For example, Rwanda, the Democratic Republic of Congo, Côte d’Ivoire, Colombia, Myanmar, Mozambique Angola, Burundi, Somalia, Liberia, Ethiopia, Kenya, Uganda, etc
These situations define the roadmap of future confrontations and children will continue to suffer if the affected State is not willing to intervene and the international community not recognizing the challenges witnessed by the affected State. The Machel Report has established a *de facto* precedent over the years linking children to internal armed conflict within the meaning of the Geneva Convention and has raised threshold of international accountability for the affected State. Community based interventions too are extremely challenging. Towards this end, the Bal Bandhu Scheme has made headway into certain fundamental debates surrounding the protection of children in such unrest situation. The programme has de-linked vulnerability of children with escalating violence or the security situation through strong community mobilization, generated primary data on children to strengthen Government’s flagship programme, provided a seamless transition for children who otherwise would have been categorized as children in conflict with the law or those in need of care and protection and thereafter risk institutionalization. The programme has also strengthened community’s interface with the Government bodies in decisions affecting their lives and have made inroads into remote areas where there is little/no government penetration.

The way forward is to de link the nature of violence with the protection of children and create a common platform of intervention well defined within local customs and socio-economic situations. Conceptually, delinking the two subjects of children and conflict/unrest is extremely important given its national and international manifestations. Nationally, the situation is perceived differently. These movements are interwoven with the history of decolonization, itself a complex internal struggle of accession and secession between newly independent sovereign states and their internal communities. These communities felt threatened by what they viewed as an oppressive, dominant regime occupying their territory, infringing on their ethnic and tribal identity, and hindering their progress toward self-determination. The communities’ collective grievances formed the basis of internal struggles, which in turn became protracted armed confrontations with the newly established dominant states. These state governments, established as a result of external decolonization and the internal choice of the people, do not recognize secession as a viable means for

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communities to establish legitimate, democratic states. The established states believed democratic legitimization of a government contained both the external component of decolonization and the internal component of citizens’ right to choose their own form of government. The right to secede did not fit within this rubric. The established states regarded the movements as issues either of law and order or public order, and sought to exercise sovereign discretion to eliminate the movements. The international community, on the other hand, saw the secessionist activities as internal armed conflicts.

This international characterization raises the possibility that the conflicts constituted humanitarian crises warranting international intervention. The classification of the secessionist movements also affected regulations regarding child protection. After the

http://www.unhchr.ch/tbs/doc.nsf%28Symbol%29/83d5a36cc444d1d3c125640400501464?Opendocument [hereinafter State Party Report: India] (“[T]he right to self-determination is said to have both internal and external aspects.”). It does appear that so far as external aspects are concerned, the context, background, and drafting history, support the view that colonies (and trust territories) were seen as the groups seeking autonomy. The international community continues to affirm that the right of external self-determination does not extend to component parts or groups within independent sovereign States. If attempts are made to promote a thesis favoring the break-up of States on grounds of ethnicity or religion, there would be, as cautioned by the United Nations Secretary General in the Agenda for Peace, "No limit to fragmentation and peace, security and economic well-being for all would become even more difficult to achieve." U.S. Secretary-General, An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping: Rep of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, U.N. Doc. A/47/277-S/24111 (June 17, 1992). This was reiterated conclusively and unambiguously in the Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights in 1993, which states that the right of self-determination "shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and the self-determination of peoples.” World Conference on Human Rights, June 14-25, 1993, Vienna Declaration and Programme of Action, ch. 3, U.N. Doc. A/CONF.157/24 (Part I) (Oct. 13, 1993).


See State Party Report: India, supra note 4, ¶ 32.

See State Party Report: India, supra note 4, ¶ 32.

William Pfaff, A New Colonialism? Europe Must Go Back into Africa, 74 FOREIGN AFF. 2, 2-6 (1995) discussing humanitarian intervention by India in Bangladesh as a classical example of unilateral intervention on grounds of necessity of preventing Pakistan from engaging in human rights abuses against Bengalis (West Pakistan then) in south Asia).
1996 publication of the Grac’a Machel Report (Machel Report), which examined child participation in internal armed conflicts in failed states (namely, states lacking any democratic governance or rule of law), the U.N. and various international non-governmental organizations (NGOs) introduced accountability mechanisms to stop the recruitment of children for participation in those armed conflicts. These mechanisms included the option to permit international intervention when peace and security are at risk, under Chapter VII of the U.N. Charter, and the ability to declare child recruitment a war crime under the Rome Statute of the ICC. However, if conflicts stemming from secessionist movements are only regarded as internal struggles to maintain public order, as the established states suggest, then international accountability mechanisms are not available to address child vulnerability. A state’s recognition of either self-determination or armed conflict is extremely risky. Acceptance of an intrastate-armed conflict invokes the application of Common Article 3, signaling that the state is no longer capable of maintaining order and that the armed group has achieved a degree of international legal status akin to that of belligerents. Recognition of self-determination imposes a requirement on states to comply with Article 1 of the Additional Protocol I to the Geneva Convention, which refers to “armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-


850 See Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 3, Dec. 7, 1978, 1125 U.N.T.S. 3 [hereinafter Protocol I]; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), art. 1(1), Dec. 7, 1978, 1125 U.N.T.S. 609 [hereinafter Protocol II], available at http://www.icrc.org/ihl.nsf/FULL/475?OpenDocument. This Protocol, which develops and supplements the Geneva Conventions Common Article 3 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol. (Organization and territorial control refers to the issue of belligerency). See also Moir Lindsay, The Law if Internal Conflict (Cambridge University Press 2004).
determination." This uncertainty of labeling localized situations as armed conflicts has led many states facing secessionist movements to refuse to acknowledge the problem or ratify treaties that would label the violence as an armed conflict. The post-1990s era of internal conflict has introduced the challenge of labeling violent secessionist movements as armed conflicts in order to ensure the application of at least minimal humanitarian norms. Although the Geneva Conventions do not provide a definition of “armed conflict,” the International Criminal Tribunal for the former Yugoslavia (ICTY) decision in *Prosecutor v. Tadić*, the *Prosecutor v. Akayesu* decision out of the International Criminal Tribunal for Rwanda (ICTR), and the Rome Statute of the International Criminal Court, provide more detailed, comprehensive definitions of “armed conflict,” all recognizing the need to expand the reach of the accountability process under humanitarian law to cover internal conflicts.

The demands can only be met at the cost of sovereignty to which the affected State is unwilling to accede. Notwithstanding the ideological platform of confrontation ranging from national self determination to a mere civil unrest within the law and order mandate of the State, there are burning questions on the future of such societies and their children embroiled in violence for generations. The State has not been able to make substantial developmental inroads because of its security centric bias emphasizing on controlling violence and establishing the writ of the State. The State has pervasively increased the geographical reach of the legislations while maintaining her ability to restore the democratic order.

India is a classic example to understand the situation. The state has been involved in quelling civil unrest in the Northeastern States of Assam, Nagaland, Tripura and Manipur (intermittently since 1958) and Jammu and Kashmir (since 1990). There was also an intermittent period of civil unrest in Punjab since the 1980s spanning over

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more than a decade and the most recent problem of Left Wing Extremism. All these regions demand national self determination but the State has unequivocally rejected their demands. In response, the armed forces have been deployed in Jammu and Kashmir and the Northeastern region under the Armed Forces (Special Powers) Act 1991 and 1972 respectively.

India first recognized that the possible impact of the civil unrest situation on children in 1993 noting that the prevailing situations sometimes disrupts normal life and interferes with children’s access to education, health and other basic services often creating fear and psychological problems (UN. CRC/C/93/add.5 2003, Para 1085). The protection was couched within the ‘national disaster relief plan’ and the State but the State has not launched any special programmes for children in these affected areas except those which are ordinarily applicable across the country. The Bal Bandhu Scheme was a pilot project for three years. India has now been mentioned for the first time in the UN Security Council fifth Cross-Cutting Report on Children and Armed Conflict (2011)\(^{855}\) in States where children are being used by the armed groups. In response India has referred there is a need to check the tendency of “mandate creep.” Russia has extended support to India maintaining that there is no internal conflict.

The situation risks of a highly centralized core developed around administrative HQ(Block/District/State) or along lines of communication with weak peripheral control and the State in a disconnect with the people. State's claim of controlling the violence is limited to the reporting in these small pockets of State control. The consequential fallout is the reduction of democratic spaces, encroachment of development space by the State, limited/negligible government penetration and the increasing risks of further alienation due to the relocation of development institutions like schools, AWCs, etc.

The limited availability of security forces to effectively dominate the affected areas forces the State to employ its forces in/around key pockets/installations or along lines of communication (Sukma, Cherla, Kuchgoan). The national security rhetoric is so embalmed to the psyche of the common man residing outside the affected areas that State's attempt to infuse additional funds and forces to rein in violence easily fulfils

the criterion of legitimacy and necessity. This further leads to garrisoning pockets of State control, domestic intimidation by the security forces against the aggrieved communities which further alienates the population rather than to reach out.

The little/negligible domination by the security forces in the remote areas lends enough space to the armed groups to establish their writ against the State. The resultant risk is increasing power dual spaces wherein both parties claim control. The armed groups assert control by attempting to run a parallel administrative machinery to include tax collections, Jan Adalats for dispensing justice, etc.

The re-location of development projects poses the greatest risk of alienation. Remote areas which otherwise would have benefited from projects are in turn bereft of any such State benefits forcing only a few to travel to such re located institutions. GP Gondpalli, Sukma District (discussed earlier) is a classic example of negligible government penetration into these remote areas, poor PDS with little/no access to health and education. The destruction of the Kanya and Balak Ashram by the Maoists Ashram School in Gondpalli in 2008 was pre empted on information of their occupation by the CRPF. Later, the school was re located to Gadiraas, approximately 15 Km from Gondpalli. The earlier strength of approximately 150 children was reduced to 41 in the new school. Similarly PDS is severely affected since the contractor dump the rations and medicines meant for Gondpalli and four others villages at Matimpara which is approximately 15 Km away. The power duality is clearly visible. The Maoists control the areas in the absence of little or no Government even to provide basic access to health and education. The GP has a strong presence of the Maoist Sangam Sadsya.

Children are the invariable victims of this faux pas and the unwillingness of the State to focus on the needs of the children and protect their interest will have long term consequences (See Table 7.1). While they are most affected by the situation but the affected State's recognition of their victimization or participation thereof automatically triggers questions of State's inability/unwillingness to protect them and thereby categorizing such situations beyond the affected State's capacity to control the spiraling violence or the risk of descending into a civil war. On the other hand, non recognition/ non intervention by the State towards the protection of child has long term consequences for the society spiraling risks of unending violence, marginalization of society, abject poverty, widespread displacement and abuse. The absence of such sustainable child focused intervention strategies during the ongoing/transitional phases of conflict/unrest risks alienation of the local community. Even if peace was forthcoming, it is
just a buffer peace between two conflict time zones. The NGOs/community groups who volunteer to intervene fear the risk of intimidation by the security forces and/or the armed groups since each view such practices at the behest of the other party extending its authority. The intervention space therefore gets limited.

Targeting children for the purpose of recruitment or simply because of their increased vulnerabilities is a common denominator of the conflict. With the breakdown of family and community structures little are they able to foresee the consequences of the conflict. Because of their naivety and their limited capacity to comprehend, they suffer the most disparate treatment in the hands of the armed groups as well as the State. On the other hand even if international law is applies in letter and spirit, children still continue to suffer from trauma and physical and psychological damage. For example, studies undertaken by Raundalen and Melton in 1994 after the Gulf War crisis are particularly striking. “Iraqi children had no concept of the American and allied bombing as a limited “surgical” operation aiming at important technical installations. Instead, the Iraqi children experienced the war as a deadly door-to-door action, and they feared that the door to their house could be the next.”

More than that, the problem of child participation is country specific leaving it to each State to define and create a legal and political environment to address the issue. For example, in some countries like Sierra Lone, Uganda, Rwanda and Mozambique, there was a serious problem of child soldiers while in the Former Yugoslavia the magnitude of the problem was no much. Similarly, in the case of India where the problem cannot be compared as that of Sierra Lone, Uganda, Rwanda or Mozambique but it has certainly begun to manifest as a grim reality of the conflict in Northeast India and Kashmir. According to the report of the Coalition to Stop the Use of Child Soldiers, “Indian defence sources were quoted as saying that half the members of armed groups in Kashmir were aged between 14 and 18, and similarly the Police in the region has said that around a hundred cases of child abduction by armed groups were reported in 2002 and nearly 400 by mid-2003, and that hundreds of children were trained by Pakistan-based armed groups in the Kashmir valley.”

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The effects of conflict are not limited by their assessment on the application under international humanitarian law. Irrespective of the recognized threshold of the conflict, almost all children in such situations suffer from acute anxiety and depression if not psychosis in a considerable number. Dr Mushtaq A. Margoob from the post Graduate Department of Psychiatry, Government Medical College Srinagar, Jammu and Kashmir undertook a study to examine the effect of stress disorder in girl children in Kashmir. The study found that PTSD was the commonest psychiatric disorders (40.62%), easily attributable to the prevailing mass trauma state of almost two decades. Next commonest diagnoses were MDD (25%) and conversion disorder (12.5%). He concluded, ‘In the conflict torn developing countries, where adoption and foster care are little practiced, orphanages remain one of the few means of survival of innumerable orphans. Critical research, however, has portrayed orphanages as a breeding ground for psychopathology.’

As Christopher C. Joyner brings out, ‘The puzzle is how best to legally reconcile respect for the preeminent principle of state sovereignty with the critical human rights necessity of protecting municipal populations from their own governments. What is the solution to this legal incongruity?’ The answer lies in state’s recognition of the problem and their commitment to ensure their obligation to protect and to guarantee children in their best interest is the best recourse towards an era of child friendly advocacy. With limited guarantees under international law, children are most affected by the conflict surroundings. National juvenile justice mechanisms are most suited to address the situation of children caught up in conflict situation. Towards this end, the law, the judiciary and the national armed forces including the Police play a fundamental role. Unless national legislations are willing accept the presence of children under any their appreciated qualifying threshold of conflict, children would continue to suffer physically and mentally. International safeguards only come into play when states reflect a will to abide by them *inter alia* have co

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858 See McWhirter, “The Northern Ireland Conflict - Adjusting to Continuing Violence” in Kantert, Pitt and Taipale (eds.) Children and War: Proceedings of Symposium at Siuntio Baths, Finland.


opted them into their domestic legislations. Secondly, the political will to recognize the problem and enact suitable legislations by enacting new ones or reviewing the existing ones, or reflect a political will to implement policies taking note of the special status of children.