
СЕКЦИЯ 2

МЕЖДУНАРОДНОЕ ПРАВО: ТЕОРИЯ И ПРАКТИКА ПРИМЕНЕНИЯ В СОВРЕМЕННЫХ УСЛОВИЯХ

ACCESS TO HUMANITARIAN ASSISTANCE IN CONTEMPORARY COMPLEX POLITICAL EMERGENCIES: THE CASE OF UKRAINE

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The concept and characteristics of complex political emergencies has been considered. Contemporary humanitarian mechanisms have been studied in terms of obtaining and / or providing access to the affected population. The characteristic of the humanitarian situation in Ukraine is given, the issues of access for humanitarian organizations are considered. The main difficulties of access to humanitarian relief in complex political emergencies are identified, recommendations for their solution are proposed.

Key words: complex political disasters; humanitarian access; clusters; humanitarian assistance.

ДОСТУП К ГУМАНИТАРНОЙ ПОМОЩИ В КОМПЛЕКСНЫХ ПОЛИТИЧЕСКИХ КАТАСТРОФАХ: НА ПРИМЕРЕ УКРАИНЫ

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Рассмотрено понятие и признаки комплексных политических катастроф. Изучены современные гуманитарные механизмы с точки зрения получения и/или предоставления доступа к пострадавшему населению. Дана характеристика гуманитарной ситуации на территории Украины, в частности рассмотрены вопросы доступа гуманитарных организаций. Определены основные трудности доступа к гуманитарной помощи в комплексных политических катастрофах, предложены рекомендации по их решению.

Ключевые слова: комплексные политические катастрофы; гуманитарный доступ; кластеры; гуманитарная помощь.

“... gone are the days of the pristine emergency such as the famines in Ethiopia and Sudan in the mid 1980s: we’re now in what one could call second-generation emergencies that are complex in every sense”
(UN World Food Program, 2009)

Complex political emergencies could be described as a new social phenomenon with a very complicated nature affecting legal framework,

international relations and the well-being of huge groups of population. They are not isolated events but related to globalization, intergovernmental relations, macro economical events [11, p.311]. This means that such situations cannot be characterized in one definition (like international/ non-international armed conflict, state of emergency or internal disturbances), and it is difficult to trace the beginning of their occurrence and to understand when they will end.

For this reason, the legal framework for providing humanitarian assistance in such situations becomes very challenging. Moreover, the international community not always properly assess the risk and scale of such complex political emergencies, assuming the situation as internal disturbances or protracted armed conflict. Such kind of dangerous underestimating usually leads to untimely and insufficient involvement of the international community in humanitarian relief, as it was in Congo and Uganda. It also leads to late access to humanitarian assistance for the affected population, especially in situations of armed conflict, when this access must be coordinated with all parties to the conflict.

Additionally, the expression “humanitarian responses” suggests a range of good intentions, but motivations may not be as altruistic as they seem. As we can see from the range of armed conflicts, referring to ‘humanitarian responses’ can be a cover for something else, such as the national interests of powerful states.

Contemporary humanitarian mechanisms

Access to humanitarian assistance in complex emergency situations is as a rule regulated by the norms of international law, in particular, international humanitarian law (IHL) - in case of an armed conflict situation, and human rights law - in case of internal disturbances and disasters. While during natural or man-made states are eager to provide access to various humanitarian actors, the situation seems completely different during armed conflicts, where a lot of constraints imposed on humanitarian access exist.

It is important to note, that the primary responsibility for ensuring the basic needs of civilian populations under their control is beard by the states. This implies that when addressing humanitarian situation within the state or several states, any humanitarian cluster or separate actors should consider state sovereignty, meaning avoiding interfering directly or indirectly in the internal or external affairs of any state.

Accordingly, for the need to involve humanitarian actors and provide them with access, the state must fail to cope or do not want to cope with the humanitarian situation within its country. In this case, there are two possible scenarios: the state asks for help or accepts the already offered assistance; or under certain conditions this assistance could be provided to the population without the direct consent of the state.

1. *The state allows access to humanitarian relief for humanitarian actors*

In 2005 after a major reform of humanitarian coordination, that was set 15 years before that by the General Assembly resolution 46/182, the international community met the “cluster approach” as a mechanism that can help to address identified gaps in response and enhance the quality of humanitarian action [4]. Clusters work as groups of different international and sometimes local organizations are groups of humanitarian organizations in each of the main sectors of humanitarian action, e.g. water, health, and logistics. Clusters enable to mobilize all the potential humanitarian actors within one humanitarian emergency to provide help more effectively. Cluster approach was used more than 30 times, showing in some cases successful results (nutrition cluster in Somalia example), and in some – failure (Haiti case example). Some states prefer to enable humanitarian operations to trusted actors. For instance, ICRC is the main humanitarian actor during most armed conflicts, including the protracted ones, like Afghanistan, Iraq, etc.

2. *Humanitarian assistance is provided without the consent of the affected state*

In accordance with Chapter 7 of the UN Charter, the Security Council may undertake necessary measures to maintain or restore international peace and security. In other words, if a state allows a humanitarian catastrophe in its territory, the Security Council can intervene in this situation, involving other states and international organizations. Some instruments include: early interventions, use of peacekeeping and peacebuilding missions, forced measures [5, p.89]. Thus, in 2011 the United Nations Security Council adopted Resolution 1973, authorizing states, acting nationally or through regional organizations to take all necessary measures to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya [9]. In 2014 the United Nations Security Council adopted Resolution 2165, authorizing UN agencies and their humanitarian partners to use routes across conflict lines and four specific border crossings without President Bashar al-Assad’s permission to ensure that humanitarian assistance, including medical and surgical supplies, reaches people in need throughout Syria through the most direct routes [1]. These and other relevant UN Security Council resolutions and subsequent operations are criticized by some countries, which believe that the Security Council thereby violates the sovereignty of states and favors humanitarian interventions.

The case of Ukraine: humanitarian access and operation

During the entire conflict period, from 14 April 2014 to 15 November 2019, Office of the United Nations High Commissioner for Human Rights recorded in total 3,046 conflict-related civilian deaths and more than 7,000 of

injured civilians; over 50,000 civilian homes have been damaged or destroyed due to hostilities on both sides [7]. The United Nations High Commissioner for Refugees reported about 1.4 million internally displaced persons [6] and the United Nations Office for the Coordination of Humanitarian Affairs declared that 3.5 million people are still in need of humanitarian assistance [13].

The humanitarian situation in Ukraine was defined many times as “catastrophic” calling for “sustained and unimpeded access to the vulnerable communities” [14]. The impact of this conflict extended beyond Ukraine making it the most serious European crisis since the end of the Cold War [10, p.446]. Despite the numerous requests of different states and humanitarian actors to facilitate the work of humanitarian organizations and to ensure the unhindered delivery of humanitarian assistance to the territory temporarily uncontrolled by the Ukrainian government in eastern Ukraine and create a coordination agency to rebuild Donbas, only the ICRC was granted a full access to Donbas and operating in both Donetsk and Luhansk People’s Republics [3].

Consequently, Ukrainian non-governmental organizations have many times raised concerns over lack of access to people in need in Ukraine, as well as highlighting the challenges people affected by the crisis have faced in accessing the support they need within non-government-controlled areas. Moreover, at the start of the response legal system and governmental institutions were not ready for new challenges and humanitarian organizations faced multiple bureaucratic, logistical and legal barriers to setting up operations [2]. Until 2018 Ukrainian government had a general perception that international humanitarian assistance was going only to separatists or was supporting “terrorists”, therefore denying accreditation to many international organizations, like Médecins Sans Frontières and others; or permitting to implement a very limited range of services - like UN agencies, that could not conduct monitoring and needs assessment [15]. Even so, since August 2014 a huge number of Russian humanitarian convoys have crossed the border with Ukraine, while neither the Ukrainian authorities nor international organizations such as OSCE or UN had access to the content of the humanitarian aid [8, p.83].

After 2018 the situation has improved, and most humanitarian organizations have finally received accreditation [2]. Yet, nowadays more than 90 humanitarian actors, united in clusters, are operating in Ukraine, but many of them are situated in Kyiv and on the “contact line” border [13].

United Nations adopted a humanitarian response plan for 2019-2020 for Ukraine. The plan, apart from prioritized directions of activities for clusters, also describes the complexities that humanitarian organizations in Ukraine still face, regarding humanitarian access: undeveloped infrastructure

along the contact line, violation of agreements on humanitarian corridors and disruptions to humanitarian delivery [12].

Challenges in humanitarian assistance in complex political emergencies

As can be noted, the gap between the scale of humanitarian need and the global capacity to respond is unfortunate and growing, and modern humanitarianism faces certain difficulties. First, due to the unclear status of modern conflicts, the complex political environment, multi-actor activities and various interests of all parties, it is difficult for humanitarian organizations to keep pace with the changing environment. Thus, there is a need for deeper forecasting and training of qualified personnel. Second, the modern international arena is represented either by global disasters affecting entire regions, or by protracting conflicts that "everyone has forgotten" about. This leads to inadequate distribution of finances, material and human resources. Third, crises "hide" people "who further left behind", such as the elderly, internally displaced persons, refugees. A separate strategy is needed to work with these groups. Fourth, bureaucratic constraints also cause many problems for access to humanitarian operations. Often, they arise due to distrust of humanitarian organizations, as there are facts of their use for political gain and military advantage. As a result, a population that does not receive timely and regular assistance suffers. Fifth, in recent years, the security problem of humanitarian personnel has also become acute. The deaths and injuries of mission workers lead to the closure of entire offices and, accordingly, the worsening humanitarian situation in the affected regions.

To overcome the above-mentioned challenges, it is important to use a step-by-step approach and to keep using the global cooperation approach. In particular,

1. Develop international guidance on delivering humanitarian aid in complex political emergencies, that could include the following sections: definition and characteristics of complex political emergencies, description of humanitarian principles for providing assistance, issues of access to the affected territories, etc.
2. Create a comprehensible and transparent system of accreditation and registration of humanitarian actors, especially in case of escalation of a conflict or a serious humanitarian catastrophe (fast-track procedure).
3. Provide more support to local NGOs, as they have instant access to the affected population, but often lack the necessary knowledge, equipment, and other resources.

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