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International humanitarian law and its relationship with public health actions and dilemmas in armed conflict scenarios

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Introduction

In times when global geopolitical stability is hindered by warlike actions between countries, numerous internal conflicts, and the overwhelming number of terrorist acts and criminal actions, international humanitarian law (IHL) becomes a mandatory model that must be recognized, adopted, and accepted in order to minimize, as much as possible, the devastating effects of warlike actions. This should be done by allocating as many resources as possible to humanize conflict.

All these issues, which are of essential interest to public health, must be permanently reviewed to guide decision-making processes, to carry out timely, relevant, and sufficient interventions and actions striving for the observance and respect of IHL—even with the possible ethical and political criticisms against it—in the international order, or to denounce, publicly and globally, its constant violation, as it has been systematically done in the armed conflicts of Russia-Ukraine and Israel-Palestine.

The Evolution of International Humanitarian Law

Along with human rights (HR), granted to keep peace—*jus in pace*— [1,2], the IHL constitutes what is called ‘public international law’ or ‘law of nations’—*jus gentium*—, which has as *telos* the sustainability of peace, security, and the modelling of international social order [3].

The IHL, or *jus in bello*, with its customary progressive development, has constituted a regulatory framework that mainly intends to protect non-belligerent wounded combatants (or those who have laid down arms) and the non-combatant civilian population from the devastating effects of war.

This regulatory framework is old and has changed over time. The relics of war regulation go back to their earliest forms, dating from the year 1000 BC. The method of conflict regulation that we call today IHL had the initial aspiration of regulating the right to war—an aspiration that is now obsolete, since the right to war is relatively forbidden by the United Nations— [4,5] and of restricting the means and the methods of war and armed conflict of the groups of power that existed in pre-State organization structures, of the rulers and armies of ancient city-states, of empires, modern states, and, nowadays, of the nation-states members of the United Nations. In sum, of the groups of power, rulers, and armies—regular and irregular—that were, have been, or are immersed in non-international or international armed conflicts [5,6].

The IHL has a significant historical precedent in the Battle of Solferino in 1859 and in the diplomatic effects of it derived from the autobiographic memoir and the intellectual and political leadership of Henri Dunant. He acted with conviction and determination in favor of designing and adopting measures to humanize war. The Swiss Federal Council joined Dunant's initiative and organized an international conference with the participation of twelve European States. The conference's outcome was the creation of the International Committee of the Red Cross and Red Crescent and the subscription of the First Geneva Convention. This convention recognized and declared that people, transports, and hospitals have "the utmost immunity" as long as they take care of the wounded and the sick, regardless of the side they are aligned with [7].

Regulatory Configuration of International Humanitarian Law

This starting point of contemporary IHL was the base for the current configuration of its complex regulatory corpus. It is currently composed of four conventions: the First Geneva Convention, which compiles the texts from 1864, 1906, and 1929 and focuses on the protection of wounded and sick combatants [8]; the Second Geneva Convention, which ratifies the previous convention and widens the protection scope to include shipwrecked members of armed forces at sea [9]; the Third Geneva Convention, which highlights the obligation of offering proper treatment to prisoners of war [10]; and, finally, the Fourth Geneva Convention, which elaborates on the protection of civilians [11]. The four conventions have been supplemented by two amendment protocols: Protocol I, regarding the protection of victims of international armed conflicts [12], and Protocol II, related to the protection of victims of non-international armed conflicts [13].

The Geneva Conventions and their amendment protocols are in line with the Hague Regulations of 1907 concerning the Laws and Customs of War on Land [14] and the Hague Convention [15] and its amendment Protocols I [16] and II [17], aimed to the protection of cultural property—both chattel and real estate—.

Additionally, the international conventions concerning conventional and nonconventional weapons are integral to this complex regulatory configuration. These conventions regulate the use of certain weapons according to their proven harmfulness, the suffering they inflict (individually or collectively) on human beings, and the severe effects they cause on the environment. These regulations establish prohibitions for the Member States regarding the use, stockpiling, production, and transfer

of anti-personnel mines, cluster munitions, biological and chemical weapons, and nuclear weapons [18].

Protective scope of international humanitarian law

The IHL, besides addressing the protection of people, also takes into consideration protection measurements of chattel and real estate with different uses and assignments. For instance, hospitals; civil or health care transportation means (ground, aerial, or maritime); medicine, food and clothing warehouses; farming areas that produce foodstuffs; and the facilities and reservoirs for drinking water and farming irrigation, since these places are essential to guarantee both the civil population and the wounded combatants the minimum subsistence conditions in the middle of an armed conflict [13].

Therefore, the Hague Regulations prescribe that it is "prohibited to attack or bombard, by whatever means, cities, towns, dwellings or buildings which are undefended" [14]. This prohibition is extensible to works and installations containing dangerous forces—dams, dykes, and nuclear power plants—, if the assailants must attack such facilities, they should warn the authorities of the territory so they can take the proper protection measures [14]. Moreover, all the necessary steps should be taken to spare—since they are not being used for military purposes— cultural property devoted to religion, art, science, and charity; historical monuments, works of art, hospitals, and places where the sick and the wounded are sheltered [13,14]. These places—even if they are State property— shall be treated as private property. It is prohibited then, and object of proceedings, "all seizure of, and destruction, or intentional damage to such institutions, to historical monuments, works of art or science" [14].

It is necessary to highlight, within the protective scope of the IHL, the considerations regarding health care zones and places "organized to protect, the wounded, the sick and the people in charge of the organization and managing of those zones and places, as well as to assist the people occupying them" [8]. Health care zones and places may in no circumstances "be the object of attack but shall at all times be respected and protected by the Parties to the conflict" [8,11]. Additionally, the IHL exhorts "the Occupying Power" to fulfill this obligation:

[...] ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics.

Medical personnel of all categories shall be allowed to carry out their duties [...]. The Occupying Power shall consider the moral and ethical susceptibilities of the population of the occupied territory [9].

The previously described locations should be identified by the distinctive sign that, according to the territory and the tradition, could be the Red Cross, the Red Crescent, or the Red Lion and Sun on a white background [8, article 38]; the buildings “shall be marked by means of oblique red bands on a white ground, placed on the buildings and outer precincts [...]. They may be similarly marked at night by means of appropriate illumination” [11], and works containing dangerous forces will be marked with the ‘special sign,’ which is composed of three orange circles, horizontally aligned one next to the other [16,17].

Armed conflicts and the violation of international humanitarian law

At the international level, two high-intensity armed conflicts are taking place, in which severe violations of IHL have been identified and, therefore, of HR: 1) The invasion of Ukraine by Russia, since January 22nd, 2022, which has been justified by the Russian president Vladimir Putin due to the expansionist threat that would represent the membership of Ukraine in the North Atlantic Treaty Organization to Eastern Europe, which would put at risk the security of Russia and create the need to offer protection to the pro-Russian population settled in the region of the Donbas, where, supposedly, a genocide was committed by Neo-Nazi groups supported by the government in Kyiv, represented by President Volodimir Zelenski [19]. The UN has described the Russian armed incursion as an act of aggression, a full-scale invasion [20,21]. Furthermore, 2) the armed incursion of Israel into the Gaza Strip, ordered by Prime Minister Benjamin Netanyahu —in order to get rid of the Islamic Resistance Movement Hamas and release the hostages captured by said political-military organization—as a response to the terrorist attack carried out in Israeli territory on October 7th, 2023, which caused the death of 1,200 people and the capture of 240 hostages [22]. This armed incursion has claimed the lives of more than 30,000 Palestinian civilians, most of them women and children [23,24]. Within the UN, Israel has been accused of responding disproportionately to the aggression [25], and, despite a resolution calling for an immediate humanitarian ceasefire [26], the siege and bombings continue. All this while the members of the United Nations Security Council have been extremely indulgent in the face of this outrage and genocide [27].

Since the aforementioned conflict began in Ukraine, and up to March 2024, 1,500 medical facilities had been

attacked and partially damaged, and 200 had been completely destroyed [28]. Likewise, 345 places of special protection under IHL had been destroyed either totally or partially: 127 places of worship, 153 buildings of historical or artistic interest, 31 museums, 19 monuments, 14 libraries, 1 archive [29,30], as well as 1 dam [31] and 3,790 educational facilities. Moreover, there have been countless attacks on the electrical infrastructure [32,33].

In the Gaza Strip, the high population density in such a small territory and the presumption that Hamas militants are hiding in tunnels throughout the area (in hospitals, educational centers, and buildings considered historical and cultural heritage sites) has served as a forced self-legitimization, both in discourse and action, for Israeli attacks on health care and safe zones. The intense military siege by land, sea, and air, the military incursions, and the bombardments have partially or completely destroyed more than 60% of the houses, 342 schools, 12 higher education institutions, and 24 hospitals. Schools that were used to accommodate displaced people have been attacked, resulting in significant human losses. Currently, most hospitals have ceased to function. There are severe restrictions on access to drinking water, food, health technologies, electricity, and fuel [34,35]. In summary, there is no healthy or safe place. The civilian population of Gaza is “suffering extreme deprivation due to the lack of essential supplies for their survival” [13, article 18], making it one of the biggest humanitarian crises of contemporary times.

State leaders, human rights advocacy organizations, and groups of people in various countries around the world (including within the territories of the aggressor countries, such as Russia and Israel) have raised their voices demanding an immediate ceasefire to end the barbarity of war. Unfortunately, these voices are being attacked with multimedia strategies aimed at undermining the validity of their speeches, and, in the worst cases, they have been censored, harassed, persecuted, imprisoned, and even murdered [36-41].

Humanitarian actions in public health and international humanitarian law

In this scenario of evolving armed conflicts, health systems are challenged to respond to the disasters of war and even those originated by natural phenomena. It is often requested and sought that their actors (based on humanitarian action coordinated by multilateral bodies, such as the United Nations and the World Health Organization [42]) develop resilience capacities amidst the adversity of destruction, death, shortages, and incessant attacks on medical missions [43,44]. The main humanitarian actions in public health should focus on taking

preventive and curative measures, as well as on intervening in health determinants such as food provision, access to drinking water, and the provision of adequate and sufficient sanitation and hygiene measures. Likewise, deploying environmental health actions, ensuring access to essential health services to treat the sick and the wounded, controlling communicable diseases, and addressing mental health needs [43].

Governmental and non-governmental organizations, as well as individuals involved in conflict situations who deploy humanitarian actions *in-situ*, face daily “complex emergencies” that generate ethical challenges to their work and to their own safety. Examples of these challenges include: 1) Incorporating health care personnel into combat units leading to confusion on the ground because it is impossible to distinguish medical personnel as combatants or non-combatants under IHL. 2) Receiving orders not to provide medical treatment to prisoners of war accused of terrorism who require medical assistance. 3) The difficulty for medical personnel to maintain medical neutrality, refrain from combat, and adhere to the mandate of IHL to treat the sick and the wounded regardless of their affiliation. 4) Using medical aid for non-medical purposes, such as espionage. [45].

Conclusion

The normative framework of International Humanitarian Law (IHL) has evolved to establish a regulatory framework aimed at humanizing international or non-international armed conflicts of states, with the intention of protecting individuals, chattel and real estate, and the environment. Despite the obligation of the Member States of the United Nations to comply with IHL, the war between Russia and Ukraine and the siege of Israel on the Palestinian people settled in Gaza are currently an explicit demonstration that HR and IHL become ineffective ethical, political, and legal frameworks.

The violation of IHL has resulted in hundreds of thousands of dead and wounded people (the majority of whom are women and children), millions of displaced and refugee individuals, and severe damage through total or partial destruction of health care zones and locations, hospitals, schools, universities, buildings dedicated to science, culture, and art, as well as facilities containing dangerous forces, energy infrastructure, drinking water sources, and food warehouses. This violation unfairly creates conditions of severe impact on the lives and health of civilians and non-combatant casualties, loss of opportunities for future generations, significant economic losses, and environmental damage effects that are difficult to reverse.

The aforementioned panorama (painful, complex, frustrating, and deeply concerning) once again highlights

the institutional weakness of the United Nations and the lack of ethical, legal, and political efficacy of IHL norms, organization, and regulations, which ultimately prove to be ineffective against the discursive and factual power of historically war-friendly global powers.

This is why, from the field of ‘irenology’ within public health, we cannot stop advocating for peace and global, social, and environmental justice in all decision-making scenarios (both national and international). We must educate and promote a culture that upholds HR, including, despite its imperfections, IHL. We must plan, program, and intervene ethically and with all available means to improve the living conditions of the victims of such arbitrary attacks against humanity.

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