THE INTERNATIONAL LAW OF ARMED CONFLICT: A VITAL COMPONENT IN THE CONTEXT OF CHANGING WORLD ORDER

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ABSTRACT

Armed conflicts pose significant challenges to law principles, often leading to irrational behaviours that undermine strategic objectives. In today's world, these conflicts' visibility and selective legitimisation skew our understanding of the fundamental realities of space, time, and warfare. This article examines and reflects on the relationship between these conflicts and international law, employing a critical analysis and polemologic reflection, particularly considering the transformation of international relations influenced by a diverse array of actors and domains. The goal is to analyse the actions of the involved parties within the context of armed conflict, focusing on their accountability to the human community in what is often regarded as an exceptional circumstance. This scenario necessitates adherence to International Humanitarian Law, particularly considering unregulated interventions driven by strategic and political agendas. Consequently, the inherent humanism of cosmopolitan identification, tailored to the specific realities of those in conflict and other stakeholders, serves as a foundation for more substantial binding agreements for all parties involved.

Keywords: Armed conflicts, international humanitarian law, multipolarity, international actors.

1. INTRODUCTION

In the context of a changing world order, this article aims to explain the importance of promoting respect for International Humanitarian Law (IHL) by all parties in conflict situations, ensuring the coherence of humanitarian values that objectively protect non-combatants and limit the use of military means. Non-combatants are often the most affected by conflicts. In these situations, women, children, people with disabilities, and the elderly suffer the most and are the most vulnerable. The exercise of violence, or use of force, is governed by the United Nations Charter, with two exceptions: in cases of self-defence against an armed attack and in situations where the United Nations Security Council authorises it. However, IHL does not address the legitimacy of armed conflict but seeks to regulate the conduct of the parties involved. Thus, in conflict situations, in a dichotomy between reason and irrational violence, reason must prevail, even if it consists of the use of force.

International and national organisations, as well as other civil society organisations, play a fundamental role in identifying and implementing strategies to promote humanist values in situations of armed conflict. Society and organisations are people, each of whom contributes to the ethical construction of a just society that respects the dignity of the human person. It is up to leaders to make the internal and external arguments, to be the rational and fair conciliator, and to build a humanist society. Leadership is central to changing stereotypes that condition respect for others as human beings, diversity, and the importance of protecting those most affected in conflict situations. This work aims to conduct an empirical analysis through documentary analysis to find ways of guiding possible reasons in the context of conflict in the face of growing multipolarity.

In the first chapter, we discuss theology and perspectives of the sociology of war as a basis for understanding this work. In the second chapter, we study the importance of

regulating war, describing elements of its historical course and its coincidences with humanism in war, the just war; we address the origins and development of humanism in war presented as IHL. In the third chapter, we reflect on the subjectivity of international relations, which conceives a concept of multilateralism and diversity of actors in a changing global context. The fourth chapter questions the effective accountability of IHL and the practical challenges of protection under IHL in current conflicts. We conclude the discussion in the fifth chapter by briefly reflecting on the context of the challenges of armed conflicts today and prospective considerations regarding the law of armed conflicts.

2. METHODOLOGY

This article aims to take a critical and constructivist approach, recognise the norms established in the conduct of international and non-international armed conflicts, and challenge the state-centric conception in the context of a new world order, using international law as a regulator in interstate and intrastate affairs relations. The study uses the qualitative method based on an analysis of the literature, supported by Gaston Bouthoul's polemological reflection and Bertrand Badie's critical analysis. The analysis occurs in the context of the transformation of international relations, where states and non-state actors interact in the construction of the present, and the future and the dynamics of subordination and domination particularised in political and strategic intervention.

This study primarily seeks to reflect on the respect for IHL by all parties involved in a conflict. To this end, the sources of international law regulation in conflict situations seek to bind and hold accountable the actors involved in the armed conflict in a changing global context that necessarily adapts according to secular civilisational principles. In this context, the actors must adjust to the different realities and find

consensual and will-generating forms of international regulation, ultimately in the expectation of reciprocity. Violent imitation implies reciprocal action and the mimetic principle in conflicts, which causes adversaries to become increasingly similar (Girard, 2007, p. 20). On the other hand, reciprocity expectations exist concerning respect for IHL and a fundamental regard for humanitarian principles. This hinders the unregulated use of force by the various parties in conflict, despite their power dynamics.

It is considered that the applicability of IHL results from the commitment of states, international organisations, and other actors to a relationship of interdependence, seeking the protection of non-combatants and the limited use of military means. Thus, the necessity of adopting and adapting IHL for a globalising normative purpose for effective accountability is questioned. The assumptions of cultural domination based on social, cultural and economic values that condition equality are examined in contrast to the indispensable change in objectives and discourses. Finally, the aim is to highlight the individual as the centre of constructing structures and society in a historical change context. The objective is also to find ways of facilitating the practical commitment of the actors in an alternative to the state-centred approach in transforming social and power relations that embrace common values in a project adapted to a new reality.

3. THE POLEMOLOGY APPROACH: PERSPECTIVES FROM THE SOCIOLOGY OF WAR

As we progress through history, from the dawn of humanity, we encounter war as a constant of human existence, which can be categorised into four phases: the animal phase, primitive man, civilised man, and man utilising modern technology (Brito, 2024, p. 34).

It is recognised that war is part of human history and profoundly alters society's socio-political environment (Brito, 2024, p. 8). Despite the cruel nature and brutality of armed conflicts and the transformations this phenomenon entails, the approach to peace studies deserves primacy. From another perspective, the reasons for war's irrationality, as the antithesis of peace, should be studied as a utopian pursuit of its end or as a way of promoting the possible rationalisation of armed conflict.

The psychoanalytical study of the drive for life and death - Eros and Thanatos - and the intersubjective effects related to the behaviour of the individual, the organised group or a community relates to the perspective of each human being, whether civilian or military. In the history of humanity, the theological doctrines of monotheism stand out for legitimising war against non-believers (Bouthoul, 1971, p. 12). In this way, war has been the vehicle through which hegemonies, during a specific period, have imposed a model of society that prevails over humanity (Bouthoul, 1971, p. 5).

Gaston Bouthoul discusses wars as a recurring periodic biological phenomenon and a biographical milestone in people's history (Cano, 2019, p. 265). Politics, border changes and battles are thus periodic events, as are many others (Cano, 2019, p. 393). War is characterised by its power of contagion, including its preparation. Bouthoul, drawing on Gabriel Tarde, says that if one tribe arms itself, the others will follow suit for fear of being exterminated or sacrificed (Brito, 2024, p. 11). When a violent confrontation takes place, the means at their disposal are used to impose their will on the adversary.

Bouthoul relates the sociological, political, and psychological dimensions of war, as well as the sociological impact on different societies, specifically in terms of the consolidation of power, the resolution of political disputes, and the preservation of the status quo. It explores how various social contexts and political structures lead to conflicts. It analyses wars as the result of social paradoxes, including economics,

politics and ideology, which are motivated by the interests of states. Thus, he argues that war must be studied scientifically so that it can be regulated by international law (Bouthoul, 1971, p. 8).

Throughout history, war has had a tremendous global influence. Rome's successes, in addition to its politics, were mainly due to its military organisation. Rome granted citizenship to a large proportion of the inhabitants of the conquered nations. Thus, despite heavy casualties, they continued to maintain recruitment (Mosca & Bouthoul, 1968, p. 45). Athens differs from Rome in the exclusivity of citizenship granted in exceptional cases, which conferred political rights upon citizens. With its origins in the 15th century, mercenaries, whether in the service of one state or another, proved to be a dangerous instrument for the contracting governments. In addition to being unreliable, it artificially prolonged wars for its benefit (Mosca & Bouthoul, 1968, p. 74). Machiavelli develops the concept of militias in his Art of War (Mosca & Bouthoul, 1968, p. 89). Hobbes writes about the intellectual origins of the English Civil War, in which education was based on the idea of political freedom (Mosca & Bouthoul, 1968, p. 140). Politicians are aware of the conditions of human corruption of the natural passion of human beings: "In the state of nature, right extends as far as force, and everyone has the right to everything, without limitations" (Mosca & Bouthoul, 1968, p. 142). On the other hand, Spinoza, seeming to follow Hobbes, comes to different conclusions and argues that reason shows humanity the usefulness of society and that peace should prevail over war and love over hatred (Mosca & Bouthoul, 1968, p. 142). The development of weapons, tactics and recruitment methods strongly influenced the political structure of states. For example, in the 6th century BC, the democratic transformation of the Greek polis was influenced by the military capacity of the infantry associated with the hoplites, who were recruited from the middle classes, as opposed to the aristocratic cavalry par excellence. The recruitment of the legions by

Rome, the hegemony of the monarchy over feudalism, the perfecting of firearms at the end of the Middle Ages and compulsory military service by male citizens in the 19th and 20th centuries defined the evolution of warfare (Mosca & Bouthoul, 1968, p. 206). War, threat and preparation become reactive elements in imitation of states (Mosca & Bouthoul, 1968, p. 238). From a psychological perspective, there is a general tendency towards violence, demonstrated in the two World Wars, the Russian, Chinese and Spanish civil wars. Executions, justified by political differences, which were banned from legislation at the end of the 19th century, are once again seen as practices materialised in murder and political genocide (Mosca & Bouthoul, 1968, pp. 241-242). The outbreak of the First World War marked the end of 19th-century humanitarianism. The Covenant of the League of Nations, signed in 1920, was also based on generous and liberal humanitarian ideas. However, it ended in the following decade with the rise of nationalism that led to the Second World War. We could have believed that wars had already calloused humanity, yet the chain cycle of endless revenge and atonement continued to worsen.

We could also think of the justification of irrational impulses resulting from thoughtful politics, where victory remains the irreducible criterion of truth. Religious fanaticism coexists with political fanaticism and nationalism (Mosca & Bouthoul, 1968, p. 244). Even so, war remains unexplainable by historians because, as well as being a historical fact, it is a sociological one that is repeated for reasons that differ from the apparent motives (Mosca & Bouthoul, 1968, p. 249). Take the example of the American states, which were the principal authors of the Covenant of the League of Nations but were also the ones that erected barriers to European emigration and severe protectionist customs tariffs (Mosca & Bouthoul, 1968, p. 254). In this context, relations between nations are always thought of from the perspective of war, past, present or future, and

nationalism seems to represent the instinct of modern state politics (Mosca & Bouthoul, 1968, p. 255).

Additionally, from a feminist perspective, we could argue that the cruelty of a society is linked to the lesser importance placed on women within that society. This represents social regression, referencing Michelle Obama's speech on 13 October 2016 at Southern New Hampshire University: "the measure of any society is how it treats its women and girls." Nevertheless, other perspectives suggest that women, as the Nazis put it, choose "cannons over butter" and that the time for hecatomb and destruction is near. "Because women do not love war or austerity. They need to be silenced to unleash the forces of destruction." (Bouthoul, 1971, p. 297). On the other hand, we can refer to Viking women as exemplars of equal societal roles, even as wartime leaders (Bergqvist, 2024).

From the perspective of considering war, we find various references throughout history. Confucius says that a great general does not love war, is not vengeful, or passionate (Bouthoul, 1971, p. 14). From Sun Tsu's perspective, in the 5th century BC, war is a vital instrument of the state. However, he subordinates the idea of war to the art of subjugating the adversary without combat. Plato refers to war as a relationship of enmity by nature in his reference to barbarians and Greeks, and Aristotle as a condition of normal life in the defence of the polis. Thucydides refers to the imbalance of power as the cause of wars. In the Middle Ages, St Augustine defended the conduct of wars with a view to peace. St Thomas Aquinas understood the illegitimacy of war except in defence of the weakest and of the Republic against its enemies. For his part, Machiavelli advocates the purpose of war in realising political objectives such as the expansion of territory and culture or the security and stability of the state (Brito, 2024, p. 39). In the same vein, Clausewitz argued that war is not an end but a way of achieving a strategic objective outlined by political objectives. He argued that war

corresponds to politics' purposes and that politics adapts to the means available (Brito, 2024, pp. 40-50).

In short, throughout history, war has consistently taken different approaches adapted to the time and context. Today's conflicts are characterised by totality and asymmetry. However, the regulation of war has evolved over the last few centuries, particularly since the mid-19th century. Concerning the protection and regulation of the means and methods used in conflict, the law of The Hague and the law of Geneva, areas of International Humanitarian Law, aim to regulate behaviour in conflict. They are based on the Rousseauian model of the conception of war. According to Rousseau, civilians must be protected at all costs. The Social Contract describes war as a relationship between states in which the enemies are the soldiers, not the individuals (Clapham & Gaeta, 2014, p. 90). However, we are witnessing the total wars Clausewitz theorised, in which the distinction between military and civilian is blurred, demanding commitment to humanitarian law.

4. ORIGINS AND DEVELOPMENT OF HUMANISM IN WAR: INTERNATIONAL HUMANITARIAN LAW

In 1859, three centuries later, a Swiss banker, Henry Dunant, encountered the dead and wounded in the Battle of Solferino on 24 June 1859, during the Second Italian War of Independence, and tended to the injured and dying. Three years later, in 1862, Dunant wrote a small book, "Un Souvenir de Solferino," published by Henry Dunant at his own expense 1862. The book originated at the first Geneva Convention in 1864, and with the establishment of the International Committee of the Red Cross, along with the National Red Cross Societies, and later the Red Cross Crescent. With only 1600 copies, it described the terrible suffering of the battle survivors. He proposed the idea of an international convention to care for the wounded in combat in all European states. In

this way, a permanent voluntary organisation was created to care for the victims of war. The National Red Cross Societies were created in 1863, and the International Committee of the Red Cross (ICRC) the following year. In the same year, 1864, the first Geneva Convention on the Amelioration of the Condition of the Military Wounded and Sick on the Field of Battle was signed.

Significant advances were made in the field of IHL in the 19th century, but the justifications for the call for IHL, both now and then, were subject to the interests of states. Thus, large states aim to fulfil their specific interests and use IHL as a justification, conditional on the interests of their objectives, which contradict the spirit of the law. Examples can include the US invasion of Iraq in 2003 and the Russian invasion of Ukraine in 2022. Small states, worried about being defeated and occupied, seek to protect their population and territory (Andrew & Gaeta, 2014, p. 89). IHL is a legal framework that covers the humanitarian aspects of protection in the context of armed conflict and the rules of armed conflict. The Law of Armed Conflict is centred on the conduct of war.

From a normative perspective, IHL was established by Conventions that historically set legal-normative foundations. The Code of Hammurabi, as noted by Robert Francis Harper (1904), about 2250 B.C., "to cause justice to prevail in the land, to destroy the wicked and evil, to prevent the strong from oppressing the weak." Referring to the Lieber Code, many authors regard 1863 as the first attempt to codify the law of war. Although it is only binding in the United States, it aligns with the laws and customs of war of the time. According to the International Committee of the Red Cross, the Geneva Convention was prepared during the American Civil War by Francis Lieber, a professor in New York, revised by a council of officers, and promulgated by President Lincoln. The "Lieber Instructions" influenced the codification of the laws of war and the adoption of similar regulations by other states. They originated the project for an

international convention on the laws of war at the Brussels Conference in 1874 and inspired the adoption of the Hague Conventions.

Additionally, the Lieber Code enshrined the principles of necessity and proportionality, two fundamental principles of IHL (Brito, 2023, p. 483). While not legally binding, the Declaration of St. Petersburg of 1868 was acknowledged by the fifteen signatory countries. The Declaration was Tsar Alexander's initiative and was never ratified. However, it was decisive for the approval of the Hague Conventions that followed in this area (Vale Pereira, 2014, p. 33). It is crucial to note that the Declaration of St. Petersburg restricts the use of weapons of war that may cause unnecessary suffering, and the Declaration of Brussels of 1874 enshrines the customs of war in the first modern codification (Brito, 2023, pp. 480-481).

IHL is divided into Hague Law and Geneva Law. The former refers to the rules concerning the conduct of war, including the means and methods of warfare, the conduct of hostilities, and occupation. The latter aspects are primarily related to protection. In addition, the New York Law is so-called because it refers to actions aimed at protecting human rights during armed conflict, developed under the auspices of the United Nations (UN) and within the framework of Humanitarian Law. Regarding Hague law, the First Hague Peace Conference of 1899 sought to revise the Declaration on the Laws and Customs of War at the Brussels Conference, adopting the so-called II Convention on the Laws and Customs of War on Land and the annexed regulations. The first Hague Declaration took place on 29 July 1899: "Declaration (IV, 1), to Prohibit, for the Term of Five Years, the Launching of Projectiles and Explosives from Balloons, and Other Methods of Similar Nature. The Hague, 29 July 1899." (Brito, 2023, p. 480). New conventions were adopted at the Second Hague Peace Conference in 1907[i], including the Third Convention on the Opening of Hostilities, which forces a declaration of war, the Fourth Convention on the Laws and Customs of

War on Land and its Annexe and the Fifth Hague Convention on the Rights and Duties of Neutral Powers and Persons in Case of War on Land. In 1925, the Geneva Protocol on the Prohibition of the Use in War of Asphyxiating Gases, Poison and Other Gases and Bacteriological Methods of Warfare was adopted[ii].

Regarding Geneva Law, the first Geneva Convention on the Amelioration of the Condition of the Military Wounded and Sick on the Field of Battle was signed in 1864. In 1906, the Geneva Convention updated the 1864 Convention for the same purpose, providing more detail and employing more precise terminology. New provisions regarding the burial of the dead and the transmission of information were included, voluntary aid societies were recognised, unworkable provisions were discarded, and the obligation to repatriate unfit wounded was revised to a recommendation. It was later replaced by the 1929 Convention, which relates to the Treatment of Prisoners of War, and updated the first Convention relative to the Wounded and Sick on the Field of Battle, representing the third version of the Geneva Convention, following those of 1864 and 1906. It was replaced by the 1949 Geneva Convention (I). In 1949, the four Geneva Conventions were signed[iii] and are in place. The two Additional Protocols of 1977, signed on 12 December, for the Protection of Victims of International and Non-International Armed Conflicts, update and clarify the four Geneva Conventions of 1949 (Andrew & Gaeta, 2014, p. 88).

The Martens clause, an essential instrument of IHL, was first introduced in the preamble to the 1899 Hague Convention to emphasise the importance of protecting people affected by conflict. Consequently, the parties' conduct in conflict continues to be regulated by legal principles. The clause is now a customary rule adopted by other IHL legal instruments, namely the Geneva Conventions I-IV and the Additional Protocols I and II. Concerning the normative structure and positive and negative obligations, the Hague law is built on prohibitions, while the Geneva law is mainly

based on obligations. He considers that the degree of openness of Hague law to Jus Ad Bellum considerations is greater than that of Geneva law, which contains the main humanitarian rules.

Hague law is part of the law of principles, while Geneva law is a law of rules. It explains the tendency to prosecute war crimes using the Geneva Law rather than the Hague Law. With the Additional Protocols to the Geneva Conventions of 1949, which codified conduct in international and non-international armed conflicts, the dichotomy between Hague and Geneva law lost significance, uniting them (ICRC, 2025). On the other hand, Robert Kolb (2023) argues that, although distinct, the two branches of law have never been entirely separate, adopting different and subjective approaches in a changing context. Concerning the normative structure and positive and negative obligations, Hague law is built on prohibitions, while Geneva law is primarily based on obligations. Considering that the degree of openness of Hague law to Jus Ad Bellum considerations is greater than that of Geneva law, which contains the main humanitarian rules (Kolb, 2023).

5. CURRENT AFFAIRS AND THE SUBJECTIVITY OF INTERNATIONAL RELATIONS: CHALLENGING TIMES

We live in times of transformation, in which understanding different perspectives allows us to distance ourselves from the subjectivity and misunderstandings that catalyse belligerence. "Knowing and recognising the Other" makes it possible to achieve humanity (Badie, 2023, p. 9).

The present prejudice of the past and the tendency to be comfortable in the future haunt the essence of true humanism. The biased and modulating sources of interest networks shape objectivity and condition, for better or worse, the perception of reality. We live in complex times. Conflicts such as the one in Eastern Europe have different readings,

which are subjective and interconnected with the reality of the past, the present, and the interests of what is to come. Decisive and random arbitrariness is conditioned by the individual's decision, the more or less informed collective conscience, and the interested interpretation of each individual (Badie, 2023, p.12).

The European hegemon experienced a community of religion and culture; the princes were cousins, and the quarrels were conducted with mutual respect, perhaps because they were identical; the strategy shared the same rules. Today, international relations require excellent knowledge and understanding to decode the players in a complex multipolar world. Models are adopted according to political contextual interests. Political-military rationality is replaced by the overlapping of economic, social, technological, and religious rationality, which are used interchangeably and are more difficult to understand (Badie, 2023, pp. 16-17).

In this context, faced with the most complex situations in human life, life and death seem to oscillate between dependence on organised random irrationality and regulation towards possible rationalisation. This rationalisation depends on the principles of distinction, proportionality and precaution in the conduct of hostilities. In this sense, IHL is an essential and complex part of public international law and international relations. In this context, war aggregates the humanitarian, social, political, and legal crises that the international community faces in today's conflicts (Garcia, 2023, pp. 16-19).

The search for respect in the individual, community, national, and regional dimensions of identity has gained relevance in the face of the need for understanding in international relations in an interdependent world, and simultaneously, in a competitive context from a multipolar perspective. Thus, social interaction gains importance and symbolism in globalisation when it seeks a common denominator in the codification of humanity (Badie, 2023, p. 26). It builds and influences the various

domains under the possibility of antagonisms and pursues alternative models. The fragility of new international relations highlights the four most essential tensions that jeopardise the international order: the lack of recognition of the perspective of the other, resulting from the distinct perception of contexts; diplomacies carried out according to codes that tend to be more diverse; and the "crisis of power" that randomly creates unexpected and specific meanings (Badie, 2023, p. 30). Thus, understanding the subjectivity of the actors' rational, cultural, and sentimental dynamics is key to comprehending the particularities and diversity of human activity, which transcends traditional international politics and requires openness to different views and approaches.

An example Bertrand Badie raises highlights dissonances in the perception of the same events, creating different representations of the contexts. Regarding colonial history, the Global South reconstructs the Russian-Ukrainian context differently from the West. For the West, this conflict was a series of events that jeopardised the territorial integrity of a European state. For the Global South, it was a conflict that, once again, aggravated the human security of the poorest and maintained the status of "double standards" in analogy to Israel's annexation of the Palestinian territories, as well as other similar situations that have occurred throughout history (Badie, 2023, pp. 90-91).

5.1 MULTILATERALISM AND DIVERSITY OF PLAYERS: THE GLOBALISING CONTEXT

In today's globalised world, reality is characterised by asymmetrical power relations, as evidenced by armed conflicts. In this reality, state forces, irregular forces, mercenaries, warlords, private security companies, terrorists, and criminal groups, among others, share space. The dimension of cyberspace and considerations of the human, cultural, ethnic, and religious dimensions add to the complexity (Garcia, 2023,

pp. 52-53). Added to this is the influence of industrial and financial groups and private companies seeking market control, implying a significant proportional reduction in public actors. The social, political, geographical and cultural context determines conflict development and takes precedence over using more sophisticated weaponry (Garcia, 2023, p. 54), under the principle of the responsibility to protect (R2P).

Using terrorism as an example, we cannot help but distance ourselves from the classic approaches, which state that state and national solutions are ill-suited. Instead, we propose a global language based on customs and shared values that considers the overlap between human and social insecurity, the dismantling of institutions, multiple actors of violence and their privatisation, criminal groups, and community movements (Badie, 2023, p.68). Time and again, there is a lack of institutions that can guarantee, within the complexities, both neutrality and the defence of humanist values and that can decisively influence the course of history. We are therefore looking for the ability to foster consensus based on the "common denominator", reaffirming humanism in a world that, whether we like it or not, is globalised in the most diverse social, economic and political fields. The "subjective reconstruction of concepts" is essential, considering each actor's reading of the contexts and fundamentally a critical perspective of conceptions (Badie, 2023, p.109).

We live in a world characterised by diverse actors, which can be counted by the number of living humans, each with a perspective. Consequently, the rationalisation of subjectivity is a factor that enhances globalisation and human coexistence. In this way, information, which is now easier to access, must be brought to individuals and communities to adapt it to different contexts. The broadening of the players involved in the conflict management process in the face of complexity is necessary, but the question of whom to include and exclude remains. While broad inclusion is more representative, consensus is more complicated.

Multilateralism has accentuated complexity but has not been free of national interests. International social interaction seeks people beyond structures. According to Bertrand Badie, it looks for "subjective parameters" in the battle of the senses, such as humiliation, fear, resentment, and the inversion of values (Badie, 2023, p.124). On the contrary, it can look for a path to positive peace through the fundamentally impartial perception of humanist values.

Similarly, in the international game, different time parameters and genetic mechanisms limit the action of structures and individuals (Badie, 2023, p.124). Conflicts will not disappear but rely on globalisation, which coexists with economic, social, climate, and health challenges. Reconciling this complexity, which adds different speeds, and directing it towards the valorisation of humanism increases the chances of success for the appropriation and consequent binding of IHL.

5.2   INTERNATIONAL   HUMANITARIAN   LAW: EFFECTIVE ACCOUNTABILITY

Kant defended legal globalism as the idea of "cosmopolitan law", the foundation of the perennial universality of peace. These ideas are well presented in Norberto Bobbio and Habermas's thinking. Since armed conflicts are situations regulated by IHL, the concept of sovereignty as opposed to cosmopolitanism must be blurred with the strengthening of international institutions and the globalising legal order (Zolo, 2011, p. 24). Hans Kelsen advocates world federalism, and Norberto Bobbio a World State, situations in which the legal unification of peoples would be the foundation of pacifism (Zolo, 2011, p. 24). We are still far from this goal, but as Habermas advocates, one way forward is to give the United Nations greater power to guarantee adequate protection of human rights (Zolo, 2011, p. 28). To establish a cosmopolitan and peaceful order, it appears necessary to equip the United Nations with military and

police capabilities as well as shared institutions. This would enable it to legally regulate relations within the "fragile Westphalian system of equilibrium between states" and enforce the rules defined by force (Zolo, 2011, p. 28), thereby constituting it as the supreme supranational entity, with adequate reforms to ensure it remains aligned with the current global context. On the evolutionary path towards this goal, which is characterised by winding and zigzagging, with advances and setbacks, it is necessary to commit those involved in conflicts to complying with the rules of IHL as minimum standards applicable to all armed conflicts in all circumstances.

According to the 1969 Vienna Convention on the Law of Treaties, an ius cogens norm is accepted and recognised by the international community of states as a norm that does not admit its opposite. It can only be modified by a subsequent norm of general international law with the same character. IHL and IHRL are based on humanity and respect for human dignity in all circumstances and have in common rights that cannot be suspended, including the right to life, freedom of thought, the prohibition of torture, cruel, inhuman and degrading treatment, the prohibition of slavery and forced labour and the principle of criminal legality Jiménez García, 2023, pp. 128–130).

IHL thus applies in situations of exception within a period limited to the beginning and end of an armed conflict. In between, death, damage to persons and property, and criminally punishable restrictions on freedom are legalised in peace. Collateral damage and the deprivation of rights for individuals and civilian populations exposed to the violence of armed conflict are accepted (Farley & Pradhan, 2024). While the definition of the beginning of an armed conflict, which implies the exceptionality and applicability of IHL, seems more straightforward, the end of this state presents different perspectives due to the permission to use violence, which varies between IHL and a state's domestic law. Thus, the definition and clarification of the end of a conflict relate to the cessation of hostilities concerning the intensity of violence or the

organisation of a party to the conflict, the termination of armed conflict, the peaceful resolution between the parties, or the likelihood of confrontations not resuming. Moreover, the definition of the end of hostilities should consider the reduction of hostilities below the threshold for the existence of armed conflict as defined by the Reverse Tadic test, the quality of peacemaking—including objectives consistent with IHL—and the interval between the cessation of violence and the commencement of peacemaking (Farley & Pradhan, 2024). Furthermore, the increase in non-state armed conflicts and the growing capacity of non-state actors necessitate a clear definition of the end of hostilities. This definition is critical when states regard non-state actors as terrorists. Eternal wars can be limited by adopting mechanisms that restrict the state's discretionary power, legitimise the parties involved, and bring international human rights law closer to domestic law, thereby alleviating the suffering of populations residing in the same space (Farley & Pradhan, 2024). We cannot fail to mention the United Nations' role in multidimensional and multilevel missions (Farley & Pradhan, 2024). These missions consist of intervention operations in ongoing, temporary armed conflicts, in defence of government entities or transitional situations. These missions are mainly focused on disarmament, demobilisation, reintegration and reconstruction of the armed forces, strengthening the rule of law and justice, the women, peace and security and equality agenda, supporting the implementation of complex peace agreements, collaborating with the functioning of international criminal courts, military and police reorganisation, stabilisation, protection of heritage and cultural diversity, protection of natural resources and environmental considerations, as well as sanctions against terrorist groups (Garcia, 2023, p.46). It is an international humanist mission to ensure a secure and stable environment that fosters peace and development in the intervening state. This mission must be exemplary, going beyond state interests and promoting international IHL.

6. THE UNFULFILLED PRESENT AND PROSPECTS OF ARMED CONFLICT LAW

The evolution of the nature and technology of war almost always involves speculation about the future. Generalisations represent a problematic approach to thinking about the future of any social phenomenon. In addition, when making war predictions, we risk focusing on certain phenomena and neglecting others that could become more important. Thus, the approach to the future of war requires multidisciplinarity.

Reviewing history and taking the example of the 1925 Geneva Protocol on the use of chemical weapons as a starting point, we see that, despite the efforts made, chemical weapons have been used in various conflicts: between 1935 and 1936, Italy used chemical weapons in Ethiopia; in the period 1937-1945 Japan used chemical weapons in China; and in the Iran-Iraq war in the period 1980-1988. In 1993, the Chemical Weapons Convention was signed, yet Syria used chemical weapons from 2012 onwards as indiscriminate punishment for civilians and rebel forces in the areas it controlled. In 2018, the United States, France and the United Kingdom attacked chemical weapons facilities. This example demonstrates that, despite the agreements made, there have continued to be gaps in chemical and biological disarmament, and the agreements are still not respected (Waxman & Oakley, 2022, pp. 17–18).

Relations between the world's major powers are causing concern. In this context, it is difficult to apply the current Conventions and Protocols on the means and methods of the use of force. As such, new rules add difficulties to their application. However, the importance of regulating war continues, and old questions arise in new ways. Technological development can also contribute to monitoring compliance with IHL. Advances in intelligence gathering and precision weaponry make it possible to limit collateral effects (Waxman & Oakley, 2022, p.17–18). Current conflicts often lead to stalemates, resulting in prolonged and discouraging campaigns. The issue of

eliminating leaders of hostile forces in distant territories has become feasible due to technological advances; however, it presents moral and political dilemmas, and international consensus or an update to the ban on assassination is improbable (Waxman & Oakley, 2022, p.19).

Other questions concern the rights and duties of neutral states or states not part of the conflict. In a globalised world, where webs of dependency are established in various fields such as the economy, security and energy, effective neutrality presents many challenges under international law. The use of drugs that allow soldiers to improve their resistance capacities also appears to be challenging to regulate. The Treaty on the Prohibition of Nuclear Weapons, signed in 2017, entered into force on 21 January 2020 for 90 state parties but has not been signed or ratified by any nuclear power. The question, therefore, remains: if, on the one hand, the globalisation of the treaty could prevent a nuclear conflict, on the other, the deterrent effect of nuclear weapons could lead the major powers to confrontation (Waxman & Oakley, 2022, p.19).

As mentioned above, the consolidation and application of existing conventions are complex in the current context and condition new developments in IHL. However, there is scope for possible treaties, primarily in the following areas: the prohibition of participation in offensive combat operations by external private companies; protection of the environment during armed conflicts; management of cyberspace; regulation of weapons incorporating artificial intelligence, including autonomous weapons systems; and the placement of weapons in space (Waxman & Oakley, 2022, p.20).

7. CONCLUSION

War has been a constant in human history and is a biographical milestone in people's history. It has presented itself as a sociological and powerful phenomenon that infects people, finding reasons in defence against threats, in the pursuit of political objectives

or, on the other hand, for moral reasons. In the scourge of war, it is essential to find regulatory solutions that guarantee humanitarian principles in the conduct of hostilities, including minimum standards, the principle of humanity, the principle of distinction, the principle of necessity and the principle of proportionality.

Throughout history, the justification for war, or just war, has been based on moral principles and the supranational interests of individuals' dignity. Linked to these principles is the legitimisation of war, in defence of rights and dignity as a last resort, the question of the rationalisation of war and the protection of non-combatants as the genesis of IHL. However, issues arise with the instrumentalisation of war. International organisations such as the League of Nations and the United Nations have attempted to prohibit the use of force, but armed conflicts persist. Internal or non-international conflicts raise the question of the right to interfere from an ethical and human rights point of view. IHL thus arises from the need for minimal rationalisation in conflicts.

In the middle of the 19th century, IHL became more meaningful and normative, based on the First Geneva Convention and the Lieber Code, intending to make conflicts as rational as possible. IHL has been used utilitarianly by both larger and smaller countries. IHL was divided into two branches: Hague law and Geneva law. However, this division has lost its significance with the Additional Protocols providing humanitarian regulation in international and non-international conflicts. Despite the developments in IHL, we often continue to see non-compliance with the rules, including by those who are signatories.

Additionally, we live in a time of transformation in which recognition is questioned. Systems favour the concentration of power and shape the collective to achieve political goals. Globalisation, the multiplicity of actors, and the multiple economic, social, technological, and religious domains add complexity to politics and international

relations. Rationality and irrationality coexist, with war being a crisis due to a lack of recognition and a power crisis.

The international environment is characterised by complexity in which new domains emerge. The rationalisation of subjectivity, through education, leads to the control of fear and the inversion of values and resentment, ultimately leading to peaceful human coexistence in a complex context. Global challenges of various kinds require a concerted response, also global, even if time and space are different. In this respect, preserving humanitarian norms requires the effective subsidiary responsibility of national, regional and global legal systems. The idea of legal globalism, of a world entity and legal unification, can be the foundation of pacifism. The United Nations embodies a humanist and globalising project based on human rights and a supranational legal system, relying on a post-World War order that has changed.

IHL is applied in exceptional situations, such as war, where harm and death are "legalised", and rights are deprived in the expectation of a peace agreement. Exceptions to the illegal conflicts where we can find double non-compliance with the law. Agreements and treaties imply the commitment of the parties involved. The framework of national and international political objectives aims, in good faith, for peace and stability. The interpretation of IHL depends on the perspective of the state. Ongoing issues include attempts to exclude groups under IHL, precarious detention, inadequate staff and infrastructure for detention, and inhumane treatment. It is essential to incorporate laws that protect the people most affected by the conflict. The prejudices associated with artificial intelligence, arbitrary detentions, family separations, the disappearance of individuals, and crucial information sharing are defined in special agreements between parties. The specific needs of women, children, people with disabilities, and the elderly highlight the necessity for a dedicated perspective. Therefore, the parties to the conflict must integrate these considerations into the

planning and conduct of operations. Urban areas where civilians are concentrated require that the classification of military objectives by the parties to the conflict aligns with the concept itself. Medical support infrastructures, schools, and camps for displaced persons or refugees should not be classified as military objectives. The suffering of the population is compounded in urban areas through the use of weapons and ammunition with high explosive capacity, necessitating adaptation of means and methods to align with military objectives. The proliferation of warfare tactics, such as sexual violence and hunger, continues to pose significant challenges that require our attention, alongside the need to strengthen humanitarian assistance to civilian populations.

IHL presents challenges to its enforcement. Despite many conventions and protocols, we have seen that the issue is implementation. Currently, more than a hundred and ten conflicts are developing simultaneously. The consolidation of existing norms must be a priority; however, with technological advances, there is room for the development of IHL in the prohibition of participation in offensive combat operations by external private companies, protection of the environment during armed conflicts, management of cyberspace; regulation of weapons incorporating artificial intelligence, including autonomous weapons systems; and the placement of weapons in space. The opportunity of technological progress, particularly artificial intelligence, must serve the interests of IHL as opposed to, for example, disinformation.

War does not make sense if we do not think about the legitimacy of respect for fellow human beings and the preservation of human rights. Nevertheless, we see these assumptions jeopardised by the utilitarianism associated with economic policies under the justification of freedom, devoid of any link to IHL and human rights. Policies centred on individual authority over the collective dangerously threaten to roll back the humanist values won over generations. It is, therefore, up to each individual to

recognise their role in society, and consequently, to the organisations and various institutional levels to ensure the construction of a better world in the present and future. We must find persuasive ways to generate consensus on IHL in different spaces and times, considering universal humanist principles, whatever the situation.

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[i] According to the International Committee of the Red Cross, the following Conventions have been adopted under Hague law: *Hague Convention (II) on the Laws and Customs of War on Land, 1899; Hague Convention on Hospital Ships, 1904; Hague Convention (III) on the Opening of Hostilities, 1907; Hague Convention (IV) on War on Land and its Annexed Regulations, 1907; Hague Convention (V) on Neutral Powers in case of War on Land, 1907; Hague Convention (VI) on Enemy Merchant Ships, 1907; Hague Convention (VII) on Conversion of Merchant Ships, 1907; Hague Convention (VIII) on Submarine Mines, 1907; Hague Convention (IX) on Bombardment by Naval Forces, 1907; Hague Convention (XI) on Restrictions of the Right of Capture, 1907; Hague Convention (XIII) on Neutral Powers in Naval War, 1907; Hague Convention for the Protection of Cultural Property, 1954*. Available at: https://casebook.icrc.org/a_to_z/glossary/hague-conventions.

[ii] According to the International Committee of the Red Cross, the Geneva Protocol of 1925 was adopted at the Conference for the Supervision of the International Trade in Arms and Ammunition, held in Geneva under the auspices of the League of Nations. According to Waxman, M. & Oakley, T. (2022, p. 16), the protocol prohibits "the use in war of asphyxiating, poisonous or other gases, and of all liquid materials or similar devices". It extends this prohibition to "the use of bacteriological methods of warfare". This agreement reflects the sentiment against the use of this type of weaponry. This type of weaponry had already been mentioned in the Hague Declaration II of 1899 on asphyxiating gases and in the Hague Land Warfare Regulations of 1907. After their use in the First World War, several other treaties, including the Treaty of Versailles of 1919, reiterated the ban. It should be noted that 146 countries have ratified the protocol—more information is available at https://ihl-databases.icrc.org/en/ihl-treaties/geneva-gas-prot-1925/state-parties. See more at: https://ihl-databases.icrc.org/en/ihl-treaties/geneva-gas-prot-1925/state-parties.

[iii] Geneva Convention for the Amelioration of the Condition of the Wounded and of the Armed Forces in Campaign; II Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea; III Geneva Convention relative to the Treatment of Prisoners of War; IV Geneva Convention relative to Civilians in Time of War. The four conventions were signed on 12 August 1949.

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