

## **Analysis of the incursion of international law of catastrophes to the normative territory of armed conflicts: when catastrophe and war collide**

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**Summary:** 1. Introduction. 2. The incursion of International Law of Catastrophes to the normative territory of armed conflicts. 2.1. Cross-cutting factors determining the formation of humanitarian catastrophes arising from armed conflicts. 3. The humanitarian catastrophe arising from armed conflict: a modality of catastrophe. 3.1. The cross-cutting factors applied and derived from concrete cases. 3.2 Intercurrent catastrophes. 4. Conclusions. 5. Bibliographic references.

**Abstract:** This reflection will deal particularly with the convergences between catastrophes and armed conflicts, which united form a new level of emergency, and must be studied in all its anarchic complexity. Accordingly, it seeks to understand the interference of the new International Law of Catastrophes in the classic International Humanitarian Law. This brand-new area of International Law, therefore, will form a new legal framework to be standardized in the future in order to accelerate the emergency response cycle accepted and shared worldwide by international humanitarian organizations as minimum parameters for procedures and response flows. Therefore, this investigation will focus on presenting firstly the incursion of the International Law of Catastrophes to the normative territory of armed conflicts, and then the related cross-cutting factors determining the formation of humanitarian catastrophes arising from armed conflicts, as well as the new modality of catastrophe itself.

**Keywords:** International Humanitarian Law; humanitarian aid; armed conflicts; catastrophes; disasters.

### **1. Introduction**

Suffering puts everything in perspective, seems to be the one link that forces the individuals to return to reality from all the fictions humanity have created to better live with the awareness of the intensity with which the world grieves, including legal fictions and, particularly regarding the humanitarian crisis, international legal fictions. In this respect, humanitarian professionals recognize their vocation to share the burden of sorrow<sup>3</sup>.

They are the ones who start their working hours when everything else fell apart when all the social, economic, political and legal fictions constructed by humanity to manage itself crumbled, and are no longer sufficient to calm the

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<sup>3</sup> WALTHER, C. C. *Humanitarian work, social change, and human behaviour: Compassion for change*, Ed. Palgrave Macmillan, Tübingen, 2020.

anguished hearts and minds that cry out for unmet human needs, of belonging, purpose, acceptance, power. And then, all that is left is hatred, emptiness, violence and resentment. If their voices are never heard or understood, there is no other way than to resort to violence. The deep-rooted psychological bases are precisely related to cultural, religious, ethnic aspects; civilizations that have been ignored<sup>4</sup>.

The concept of "humanitarianism" or the definition of what is "humanitarian" derives from an intrinsic dedication to alleviating human suffering and protecting the well-being, dignity and lives of other human beings, particularly those who meet in a state of vulnerability. Any other principle aligned with the idea of humanitarianism stems from this one<sup>5</sup>.

Moreover, vulnerability can be understood both as a temporary element of the human condition and as a permanent element. When temporary, vulnerability becomes situational and directly dependent on the danger, crisis or conflict that caused it, as it is not part of the individual; since its existence is not linked to determinant characteristics of identity. An example of this first variant is the vulnerability caused by difficulties in accessing protection or goods and services aimed at protecting life and dignity.

On the other hand, as a permanent element, there is vulnerability arising from characteristics of an identity that is discriminated against, marginalized, condemned by its simple existence. Humanitarian crises in their essence are not produced only by armed conflicts, as they necessarily result from the interconnection with the transversal factors that will provide favourable conditions for the development of the catastrophe. Humanitarian catastrophes caused by armed conflicts will therefore have both types of vulnerability, accentuated by the transversal factors involved, as will be shown.

To better explain and characterize what has been said, this research will contemplate three main axes: (I) a brief survey of vulnerabilities in the normative and principled constitution of International Law to be remedied by the foundations of International Law of Catastrophes<sup>6</sup> in the perspective of humanitarian catastrophes arising from armed conflicts; (II) the enumeration and description of the transversal (indirect) elements or factors to humanitarian catastrophes resulting from armed conflicts via case analysis; and, finally, (III) the description of internal catastrophes - here called intercurrent catastrophes - directly connected to the conformation of the modality "Humanitarian Catastrophe Arising from Armed Conflict", characteristic of the challenges that year after year, conflict after conflict, undermine the responsive legal capacity of IHL.

Otherwise, this research will utilize reports from the Humanitarian Sector and former IHL doctrine, establishing an attempt to connect the two worlds, the professional humanitarian sector and scientific research in International Law. The ties built between the two areas will still do wonders in the search for solutions that are not only legal, but also humanitarian for the future of humanity, and the International Review of the Red Cross will continue to be one of the great stages for the world to witness this connection.

## **2. The incursion of International Law of Catastrophes to the normative territory of armed conflicts**

Armed conflicts are undoubtedly and in themselves the scourge of humanity, because they stem from human nature and at the end of the cycle, they end up

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<sup>4</sup> PAYNE, K. *The Psychology of Modern Conflict: evolutionary theory, human nature and a liberal approach to war*, Ed. Palgrave Macmillan, Basingstoke, 2015.

<sup>5</sup> COOPER, C. G. G. LARSEN, K. M. NYSTUEN, G. *Searching for a 'principle of humanity' in International Humanitarian Law*, Ed. Cambridge University Press, Cambridge, 2013.

<sup>6</sup> GUERRA, S. *International Law of Catastrophes*, Ed. Instituto Memória, Curitiba, 2021.

exterminating any trace of humanity<sup>7</sup>. The law is born from the individual and, thus, the individual is reborn through the law, through a process that is entirely natural and spontaneous. As paradoxical as International Humanitarian Law is, when predicting the restriction of war, without it, it cannot be sustained, it does not exist.

Throughout history, the outbreak of armed conflicts has produced severe consequences for humanity. Deaths, loss of dignity and identity are some of the indicators observed in these scenarios<sup>8</sup>. The 20th century also marks the transition from an International Law of War to an International Law of Peace. Even so, this Law of Peace is designed exclusively for war, since two distinct legal regimes that focus on the exclusive issue still compete in the international sphere of war, the extinct *jus ad bellum* and the current *jus contra bellum* and its reserve of exception, the *jus in bello*<sup>9</sup>.

From catastrophic scenarios of loss and suffering, there is an escalation of continuous challenges imposed on the international system to establish the limits of war, since the Geneva Conventions of 1949<sup>10</sup>. International Humanitarian Law plays a central role in the debate, as witnessing the greatest atrocities committed under armed conflicts Rule of Law in the international system and not effectively exercising the imposition of restraint, armed conflicts become catastrophes with immeasurable consequences.

In their mere existence, wars represent the most serious status of brutality ever seen in human history and commonly still form triggers for the other concurrent consequences of their existence, such as economic crises, environmental crises and humanitarian crises, in true catastrophic scenarios. The Law, when used for the protection of the individual, takes on its most legitimate form of action, as it constitutes a powerful tool in the search for safeguarding human vulnerability. However, its misleading use ruled by inefficient mechanisms can bring as much adversity as International Law was created to cease.

In this regard, the International Law of Catastrophes<sup>11</sup> proposes, to some extent, also to compose the newest area of the International Protection of the Human Person by revealing a close affinity with the International Humanitarian Law. Both converge, therefore, towards the construction of exquisite legal tools for the protection of human beings in extreme situations, such as during armed conflicts and other settings resulting from humanitarian crises.

Indeed, the establishment of regulations, the composition of mechanisms, protocols and emergency procedures designed to offer legal protection in scenarios of catastrophes arising from armed conflicts is an urgent demand, since precarious resolutions and agreements that currently regulate the surrounding humanitarian catastrophes of the world need to be strengthened to be widely accepted and respected; it is necessary, therefore, for the law to establish it per se.

If armed conflicts by nature already constitute humanitarian catastrophes due to their sequels for other aspects of the International Protection of the Human Person – violations of International Human Rights Law arising from the action or omission of a violating or Failed State; forced displacements under International Refugee Law<sup>12</sup>; immeasurable damage to the natural environment for International Environmental

<sup>7</sup> DOSWALD-BECK, L. HENCKAERTS, J. M. *Customary International Humanitarian Law*, Ed. ICRC, Geneva, 2005.

<sup>8</sup> FASSBENDER, B. PETERS, A. *The Oxford Handbook of the History of International Law*, Ed. Oxford University Press, Oxford, 2012.

<sup>9</sup> GUERRA, S. *Public International Law Course*, Ed. Saraiva, São Paulo, 2021.

<sup>10</sup> HEINTZE, H. J. THIELBORGER P. *From cold war to cyber war: The evolution of the international law of peace and armed conflict over the last 25 years*, Ed. Springer, Cham, 2018.

<sup>11</sup> The theory of catastrophes and the very definition and theoretical construction of the International Law of Catastrophes have been conceived of by the Brazilian Professor Sidney Guerra aiming at developing some contributions to International Law worldwide.

<sup>12</sup> JACQUES, M. *Armed Conflict and Displacement: The Protection of Refugees and Displaced Persons under International Humanitarian Law*, Ed. Cambridge University Press, Cambridge, 2012.

Law –, the International Law of Catastrophes<sup>13</sup> presents itself as a superior protective system, in the sense of covering the stage following the existence of the armed conflict itself, when its transversal elements have already exceeded the capacity of incidence of International Humanitarian Law, as will be presented.

First, it is necessary to resume a brief constitutive basis for the scope of the legal protection of IHL<sup>14</sup>. International Humanitarian Law was established due to a lack of protection that stood out clearly amidst the multifaceted vulnerabilities that piled up on the battlefields. However, there are protective vulnerabilities in the normative and principled composition of International Humanitarian Law, which will be pointed out, without forgetting to guarantee the necessary gratifications to its fundamental existence for the mitigation of human suffering in armed conflicts. The objective is, therefore, to improve the referred legal system, mainly concerning the construction of a new doctrinal phase for the development of IHL through the foundations of the new International Law of Catastrophes<sup>15</sup>.

Basically, the vulnerabilities found in the groundwork theory of IHL are exacerbated by elements transversal to the occurrence of armed conflicts that touch the other aspects of the International Protection of Human Persons<sup>16</sup> and shape the various types of catastrophes, to be further deepened in future works. In any case, it can be said that armed conflicts become humanitarian catastrophes as a result of the accumulation of cross-cutting elements directly connected to the aggravation of their catastrophic capacity.

This research does not aim to point out the flawless of International Humanitarian Law, neither the gaps in its efficacy and efficiency or solutions for its enforcement or compliance measures, all essential areas of study that are already being analysed with depth and grace by leading researchers, humanitarian professionals and scholars from around the world whose works can be found neatly in the other volumes of the esteemed International Review of the Red Cross over the century.

Besides, this research aims to expose with greater respect how the International Law of Catastrophes can complement the International Humanitarian Law with a movement of international regulation for humanitarian catastrophes. Since IHL does not pursue a track on this direction, by nature, and cannot be somehow fixed for this purpose, for the sake of its effectiveness and strength, another dimension of International Law must.

Given the evolution seen so far, it is understood that International Humanitarian Law presupposes a series of premises, which are very dependent, as to their concreteness, on the intentions, strategies, means and methods of a multitude of state actors and non-state actors amidst humanity's most chaotic circumstance<sup>17</sup>. IHL seeks to alleviate suffering amidst the chaos, however, it cannot extinguish it. The question of how, then, to enforce IHL so that, despite armed violence and regardless of the reasons for which it was resorted to, there may be fewer suffering, figures as the central debate in the modern state of humanitarianism.

## **2.1 Cross-cutting factors determining the formation of humanitarian catastrophes arising from armed conflicts**

Indeed, when the term catastrophe" is taken to mean an event of great proportions, far beyond what is convenient to call a "disaster", it implies a level of

<sup>13</sup> GUERRA, S. *International Law of Catastrophes*, Ed. Instituto Memória, Curitiba, 2021.

<sup>14</sup> GUERRA, S. *Public International Law Course*, Ed. Saraiva, São Paulo, 2021.

<sup>15</sup> GUERRA, S. *International Law of Catastrophes*, Ed. Instituto Memória, Curitiba, 2021.

<sup>16</sup> CUBIE, D. *The International Legal Protection of Persons in Humanitarian Crisis: Exploring the Acquis Humanitaire*, Ed. Hart Publishing, Oxford, 2017.

<sup>17</sup> HAER, R. *Armed Group Structure and Violence in Civil Wars: The Organizational Dynamics of Civilian Killing*, Ed. Routledge, London, New York, 2015.

generalized public disgrace, in which the interruption of all activities of a normal nature, without even the possibility of immediate help, one can glimpse a broad horizon of possibilities in the study of themes such as episodes of armed conflicts with their civilization scale consequences.

The system of measures and sequence of collapses that result in a breakdown to an entirely legally conformed and classified armed conflict and the very act of resorting to armed violence as the only method understood as possible in the search for a solution to the human demands at stake are composed of a series of complex processes, when it is, in terms of the theory of catastrophes, impossible to define a start, as the analysis could pointlessly forward ancient times. It is, however, possible to determine political, social and legal triggers, as well as historic moments to mark, for instance, how humanity will explain the reasons why an armed conflict broke out for future generations.

In this respect, it is essential to settle, nonetheless, that for legal means, in terms of classification and application of the International Law of Catastrophes<sup>18</sup>, it is necessary to ground thresholds and the criteria surrounding the conformation of the modality of catastrophe arising from armed conflict, which, once characterized, can open a new Rule of Law to the humanitarian crisis above.

These emergencies can be classified as such through the conjunction of the following criteria: (I) the threatened human values are fundamental and involve, mainly, the right to life and dignity; (II) the situation of extreme deprivation must shock humanity's conscience, in other words, must be publicly recognized as collective suffering; (III) the immediate or mediate loss of human lives occurs on a large scale; and (IV) the responsible state must prove incapable of protecting its nationals either because the extent of the situation exceeds its capacity to respond or because it is itself the executioner of the violations.

Once the catastrophe is identified as such, a new legal framework must rule over the situation, immediately generating the following measures: state consent is no longer necessary for national and international humanitarian assistance (humanitarian assistance from foreign intervention or intervention differs<sup>19</sup>; humanitarian organizations must act impartially, selflessly and in good faith; action in terms of humanitarian assistance must be disconnected from any political action or that interferes with the structure of the state (actions related to interference are thus divided into actions strictly related to humanitarian assistance); only the measures necessary for the realization of humanitarian assistance should be taken based on the principles that also serve International Humanitarian Law (humanity, proportionality, distinction and military necessity)<sup>20</sup> adapted to the convergences of International Law of Catastrophes<sup>21</sup>.

In the international legal system, under this perspective, there is no normative provision for the relief of nations in a situation of catastrophe. On the contrary, in the majority of cases, the nation continues to suffer sanctions perpetrated by nations interested in the dismantling of governments, in other words, the same Western powers interested in the fall of the government seem oblivious to the suffering of the people and the devastation that is befalling over the countries with the programmed perpetuation of the conflict.

Hence, there are still some questions for future reflections: What measures can be taken within the scope of the international system to provide humanitarian aid to the countless peoples sheltered under the defeated structures of an unruly territory overcrowded with attempts of usurping power? What theoretical support can be referred to in the construction of a Law that meets the needs of these peoples affected by states of catastrophe as a result of armed conflicts and other acute crisis scenarios due to widespread armed violence? Wouldn't it be a case of establishing

<sup>18</sup> GUERRA, S. *International Law of Catastrophes*, Ed. Instituto Memória, Curitiba, 2021.

<sup>19</sup> FOX, G. H., *Humanitarian Occupation*, Ed. Cambridge University Press, Cambridge, 2008.

<sup>20</sup> SASSOLI, M. *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Ed. Edward Elgar Publishing, Cheltenham, Northampton, 2019.

<sup>21</sup> GUERRA, S. *International Law of Catastrophes*, Ed. Instituto Memória, Curitiba, 2021.

rules at the international level that could encompass effective measures to assist the civilian population in scenarios of catastrophes resulting from armed conflicts?

When the transformation scenario of a country with reasonable social and economic stability, even if far from the ideal global standards of human development, which houses a huge variety of cultures, ethnic and religious groups, from a wide range of different peoples, in a scenario of widespread destruction, with hundreds of thousands of dead, millions of refugees and displaced people, a devastated economy and dilapidated historical and cultural heritage, plus the fact that the conflict has not yet known an end, with such a situation remaining, there is no doubt in classifying the cases on focus as catastrophe phenomenon.

Cross-cutting factors can be of a historical, geographic, political, economic, socioeconomic, ethnic, religious, cultural and/or ideological nature, and their occurrence concurrently with the conflict will generate catastrophic consequences and the resulting inherent humanitarian crisis. This is because the existence of such elements will install vulnerabilities considered temporary and derived and will aggravate those that already exist and are permanent. The most common is that these factors are already present from the beginning of the conflict or are prior to it, even connected to the cause of the conflict. It is worth noting that the absence of the State and/or inexistence of reliable and structured institutions is a particularly insuflating element of temporary and permanent vulnerabilities.

In addition, it is possible to verify, in current humanitarian crises, what can be described as a *contemporary complex humanitarian environment*, characterized by a variety of risks caused by chained or combined effects described by the International Committee of the Red Cross as "A weak State, a debilitated economy, collapsing infrastructure and armed hostilities carried out by a variety of politically driven actors and criminal groups, as well as environmental degradation, drought, floods or pandemics".<sup>22</sup>

Such a state of the complexity of the humanitarian context occasioned by the humanitarian catastrophes caused by armed conflict can be exemplified by the following specific cases in which it is possible to indicate some transversal factors described as cross-cutting problems, as, for instance: food security crisis (hunger), drought, lack of structure for the production of livelihoods, decades of armed conflict, widespread violence, unsafe environment, absent State and institutional structures, and the role of various military and political actors – which develop their confrontations and disputes.

Indeed, the so-called complex humanitarian environments are presented as scenarios in which humanitarian catastrophes originated by armed conflicts develop, so that, with the prolongation of belligerence, the conflict itself becomes a cross-cutting problem, transforming the humanitarian crisis in a generalized juncture. Worthy of note is the fact that humanitarian crises have worsened due to the multiplication of non-international conflicts and non-state actors since the internal demands of a ruined state establish grounding for movements of insurgence that resort to violence for a range of reasons.

The disintegration of the state in a humanitarian catastrophe resulting from an armed conflict happens gradually, barely noticeable, over time. On the contrary, a national state can remain devastated by terrible wars without ever approaching a state of catastrophe arising from armed conflict, precisely because it does not accumulate cross-cutting factors.

Furthermore, only in recent decades has there been an increase in international attention to environmental catastrophes<sup>23</sup>, particularly due to their transboundary nature and the globalized effects of environmental degradation and

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<sup>22</sup> ICRC. *Strengthening of the coordination of emergency humanitarian assistance of the United Nations*, Ed. ICRC, Geneva, 2009.

<sup>23</sup> HILHORST, D. *Disaster, conflict and society: Everyday politics of crisis response*, Ed. Routledge, London, New York, 2013.

climate change. Despite being late, this reaction must be understood through a multifactorial approach, considering the interrelationship of this type of catastrophe with the catastrophes caused by armed conflicts.

Humanitarian intervention became an especially prominent topic in the 1990s in complex situations where crises combined several interrelated problems, often including the context of failed states. The discussion on the international agenda moved from the principles of sovereignty and the right to intervene to the need to create and improve international mechanisms capable of dealing with complex humanitarian emergencies that require a diligent positioning by States.

### **3. The humanitarian catastrophe arising from armed conflict: a modality of catastrophe**

In this regard, it is reaffirmed that the existence of 'humanitarian catastrophes originated by armed conflicts' will necessarily have transversal elements involved, which will aggravate the typical sequels of wars to unimaginable and sometimes permanent extensions. Otherwise, one would be facing the typical consequences of armed conflicts, which is called, in this study, of a 'simple' nature, considering that its results attack international humanitarian law and other aspects of the International Protection of Human Person will be produced solely or mostly by the conflict itself. This premise means that such violations are expected only during the conflict, until the territorial State can return to its typical peaceful environment, to its normality.

The humanitarian catastrophe caused by armed conflict will cause catastrophic effects considered permanent, not literally, but effects that will determine the collapse of the nation at a level at which the reconstruction of institutions and structures, as well as the recovery of the population itself, will remain highly improbable. Some of the permanent effects of a catastrophe of this modality will be, for example, the forced displacement beyond territorial borders, that is, the establishment of refugee flows, the genocide of ethnic groups, the annihilation of religious aspects and minority cultures and the destruction of cultural heritage.

In a classic scenario of humanitarian catastrophe resulting from armed conflict, it is observed elements that shape widespread institutional fragility and permanent vulnerability of the population as, for instance, poverty, weak institutions, perpetual violence, lack of rule of law, environment damage, destruction of socioeconomic resources, dissolution of the economy etc.

As the armed conflict continues to expand and protract over time<sup>24</sup>, more damage to the country's infrastructure and displacement of people is expected to take place. It cannot be forgotten that despite the harmful effects produced by the conflicts to the population, especially for the civilians forced to flee, a true economic catastrophe also occurs.

What is observed in the contemporary cases is what can truly be identified as a State of relative sovereignty, formed by merely formal institutions and devoid of any practical effects. A nation divided between irreducible sectarian groups and inconstant and violent struggle for power, perpetuating a cycle of social and economic ills. All this is a result of a recent history of armed conflicts. Undoubtedly, from the points indicated above, the chosen cases present themselves as interesting examples for this study since several aspects corresponding to the catastrophic effects resulting from armed conflicts are highlighted.

The economic catastrophe scenario, which concerns the increase of poverty and other social ailments, would be enough to indicate the humanitarian crisis that befalls some of the conflict-affected nations nowadays. However, there are other distressing elements, especially when some numerical data are taken. Not least, the damages to cultural and immaterial issues. Historic cities and entire archaeological

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<sup>24</sup> DOLGOPOL, U. GARDAM, J. *The Challenge of Conflict: International Law Responds*, Ed. Martinus Nijhoff Publishers, Leiden, Boston, 2009.

sites that have survived the force of time over the millennia fall before the barbarism of terrorism and the backdrop of devastation and catastrophe caused by the outbreak of armed conflict.

For some humanitarian emergencies worldwide, there is such a catastrophic content of the armed conflict taking place that not even the country's historical and cultural heritage, identity or traditions remain preserved. The question of the country's scientific production can also be considered. In the context of armed conflict and social, economic and humanitarian catastrophe, science, education and development, as expected, also suffer severe interruption.

### **3.1 The cross-cutting factors applied and derived from the concrete cases**

The denominated 'humanitarian hotspots' are considered the acute crisis for the world to monitor around the globe in terms of humanitarian emergencies that can or cannot be properly addressed. It is underlined particularly the under-reported crises since the lack of attention of the International Community will lead to negligence under International Law<sup>25</sup>. Other interesting terms utilized by the humanitarian journalism to what is called, for the objectives of this research, humanitarian catastrophes arising from armed conflicts are long-running or protracted conflicts, extremism and terrorism, sudden disasters, slow-burning emergencies, and forced displacement.

The humanitarian sector reports utilised in this analysis were: '2021 Events of 2020'<sup>26</sup>, from Human Rights Watch; 'Ten conflicts to worry about in 2021'<sup>27</sup>, from the Armed Conflict Location & Event Data Project (ACLED); the 'Ecological Threat Register 2020: understanding ecological threats, resilience and peace'<sup>28</sup>, from the Institute for Economics and Peace (IEP); the 'Economic Value of Peace 2021: measuring the global economic impact of violence and conflict'<sup>29</sup>, from the Institute for Economics and Peace (IEP); 'Positive Peace Report 2020: analysing the factors that sustain peace'<sup>30</sup>, from the Institute for Economics and Peace (IEP); the 'Global Peace Index'<sup>31</sup>, from the Institute for Economics and Peace (IEP); the 'Global Terrorism Index'<sup>32</sup>, from the Institute for Economics and Peace (IEP); the 'Global Humanitarian Overview 2021'<sup>33</sup>, from the United Nations Office for the Coordination of Humanitarian Affairs (OCHA); the 'GLOBAL APPEAL 2021 update'<sup>34</sup>, from the UNHCR; the 'Global Humanitarian Assistance Report 2020'<sup>35</sup>, from Development Initiatives;

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<sup>25</sup> ULRICH, G. ZIEMELE, I. *How International Law Works in Times of Crisis*, Ed. Oxford University Press, Oxford, 2019.

<sup>26</sup> HUMAN RIGHTS WATCH. *World Report 2021: events of 2020*, Ed. HRW, New York, 2021.

<sup>27</sup> ARMED CONFLICT LOCATION & EVENT DATA PROJECT (ACLED). *10 Conflicts to Worry About in 2021*, Ed. ACLED ANALYSIS, 2021.

<sup>28</sup> INSTITUTE FOR ECONOMICS & PEACE. *Ecological Threat Register 2020: Understanding Ecological Threats, Resilience and Peace*, Ed. IEP, Sydney, 2020.

<sup>29</sup> INSTITUTE FOR ECONOMICS & PEACE. *Economic value of peace 2021: Measuring the Global Economic Impact of Violence and Conflict*, Ed. IEP, Sydney, 2021.

<sup>30</sup> INSTITUTE FOR ECONOMICS & PEACE. *Positive peace report 2020: analysing the factors that Sustain Peace*, Ed. IEP, Sydney, 2020.

<sup>31</sup> INSTITUTE FOR ECONOMICS & PEACE. *Global Peace Index 2020: Measuring peace in a complex world*, Ed. IEP, Sydney, 2020.

<sup>32</sup> INSTITUTE FOR ECONOMICS & PEACE. *Global Peace Index: Measuring the Impact of Terrorism*, Ed. IEP, Sydney, 2020.

<sup>33</sup> OCHA. *Global Humanitarian Overview 2021*, Ed. OCHA Geneva, Geneva, 2021.

<sup>34</sup> UNHCR. *Global appeal: 2021 update*, Ed. UNHCR, Geneva, 2021.

<sup>35</sup> DEVELOPMENT INITIATIVES, *Global humanitarian assistance report 2020*, Ed. Development Initiatives, Bristol, 2020.



the 'Human Development Report 2020'<sup>36</sup> from the UNDP; the 'Annual Report 2020'<sup>37</sup>, volume 1 and 2, from the ICRC; the 'Amnesty International Report 2020/21: the state of the world's human rights'<sup>38</sup>, from the Amnesty International; and the 'Global Report on Food Crises 2021'<sup>39</sup>, from the Food Security Information Network and the Global Network against Food Crises.

Despite behaving like an intercurrent catastrophe, as we will see below, terrorism can still be characterized as a cross-cutting element that will contribute to the humanitarian catastrophe resulting from an armed conflict<sup>40</sup>. The 10 (ten) countries most affected by terrorism in the world are Afghanistan, Iraq, Nigeria, Syria, Somalia, Yemen, Pakistan, India, the Democratic Republic of Congo and the Philippines, respectively. Armed conflict in these cases remains the main cause of terrorism so that 05 (five) out of the 10 (ten) countries are considered to be experiencing an armed conflict (Afghanistan, Nigeria, Syria, Somalia and Yemen), while the others experience internal disturbances and tensions, as per threshold classification for International Humanitarian Law.

Other cross-cutting factors directly related to the occurrence of terrorism are prolonged insurgencies, exacerbated tensions between non-state armed groups and national governments, and the international and globalized action of terrorist groups – which particularly classifies terrorism as an intercurrent catastrophe when it occurs.

Important cross-cutting factors directly related to armed conflicts are widespread sexual violence against women and girls, forced migration flows both internally and beyond the borders of the national territory – in this respect, urban internal displacement stands out, a factor that has been emerging in humanitarian crises worsened by non-international armed conflicts that are characterized by military movements typical of irregular wars carried out by non-state armed groups – violations of International Human Rights Law related to lack of access to political representation and corrupt judicial and administrative institutions, etc.

Otherwise, it is noteworthy that in some reports this research have found cross-cutting factors composing fundamentally the resumption of violence or escalation of violence regarding the nations in question: Ethiopia (at risk of multiplying conflicts stretching the capacity of the state), Myanmar (at risk of dormant conflicts reigniting), Colombia (high risk of rising violence targeting social leaders and vulnerable groups), Armenia-Azerbaijan (high risk of cross-border violence in Nagorno-Karabakh despite ceasefire), Yemen (high risk of humanitarian fallout amidst the offensive on Marib) and the Sahel region (insurgency and fragile politics at the centre of an unabated crisis)<sup>41</sup>.

When analysing per region, the cross-cutting elements regarding International Human Rights Law violations in armed conflicts can be classified as: Africa (attacks on civilians, impunity, repression, excessive use of force, affected livelihoods, failed health, legal and educational system, violence against women and girls); Americas (gang violence, violations to the freedom of expression, to the right to health, to workers' rights, precarious prison conditions, arbitrary detention, excessive use of force, impunity and difficulties to access justice, violence against woman and girls, violations to the rights of indigenous peoples and to the rights of refugees, asylum-seekers and migrants and climate-crisis); Asia-Pacific (violations to the freedom of expression and to the right to health, discrimination, attacks on ethnic and religious minorities, failure to prevent climate change); Europe and Central Asia (violations to the right to health, to the right to social security, state overreach, violations to the

<sup>36</sup> UNDP. *Human Development Report 2020*, Ed. UNDP, New York, 2020.

<sup>37</sup> ICRC. *ICRC Annual Report 2020: Facts and figures*, Ed. ICRC, Geneva, 2020.

<sup>38</sup> AMNESTY INTERNATIONAL. *Amnesty International Report 2020/21: the state of the world's human rights*, Ed. Amnesty International, London, 2020.

<sup>39</sup> FSIN. GNAFC. *Global Report on Food Crises 2021*, Ed. FAO and WFP, 2021.

<sup>40</sup> INSTITUTE FOR ECONOMICS & PEACE. *Global Peace Index: Measuring the Impact of Terrorism*, Ed. IEP, Sydney, 2020.

<sup>41</sup> ARMED CONFLICT LOCATION & EVENT DATA PROJECT (ACLED). *10 Conflicts to Worry About in 2021*, Ed. ACLED ANALYSIS, 2021.

rights of refugees and migrants, failure to prevent climate change); Middle East and North Africa (violations to the right to health and to the freedom of expression, unlawful use of force, precarious detention conditions, torture, impunity, difficulties to access justice, violations to the rights of refugees, asylum-seekers, migrants and internally displaced people)<sup>42</sup>.

Regarding ecological catastrophes directly connected to armed conflicts and the related humanitarian costs, it is possible to cite the following cross-cutting factors: resource scarcity, food insecurity, water stress, natural disasters, lack of community resilience and community development<sup>43</sup>. In respect to the economic impacts of the armed conflict, it is possible to verify the following cross-cutting factors: internal and external conflict deaths, GDP losses from conflict, country contributions to peacebuilding and peacekeeping, refugees and IDPs, deaths and injuries from terrorism.

Considering the food crisis as a cross-cutting factor, it is essential to particularly highlight the cases of protracted conflict, since this inter-relation composed the main driver of six of the 10 (ten) worst food crises of the world in 2020 (the Democratic Republic of the Congo, Yemen, Afghanistan, Syria, Nigeria and South Sudan). Besides, all countries that had populations in catastrophe in 2020 were affected by conflict and insecurity (Burkina Faso, South Sudan and Yemen).

Having established important examples of cross-cutting elements that directly affect the composition of humanitarian catastrophes arising from armed conflict, the next topic will deal with intercurrent catastrophes and their consequences.

### 3.2 Intercurrent Catastrophes

Amidst the chain of transversal factors that aggravate armed conflicts – turning them into humanitarian catastrophes arising from armed conflicts – intercurrent catastrophes develop, which were initially considered only aggravating elements, as they reach challenging proportions to the capacity to confront the international order and the international law, generating their catastrophes.

In this respect, we observe a series of possibilities, from the phenomenon of protracted conflicts, urbanization of war, cyber-warfare<sup>44</sup> and as autonomous weapons, such as drones and killer robots commanded by artificial intelligence. Particularly the phenomenon of protracted conflicts should receive special attention in this study, because of the catastrophic consequences derived from its existence.

Its apparent impossibility of solution and its longevity or permanence can be cited as the main characteristics of the prolonged conflicts, according to the International Committee of the Red Cross referring to the considerations made by the Lebanese professor, Edward Azar. Since 1945, the ICRC has experienced the following protracted conflicts: Ethiopia, Mozambique, Angola, Guatemala, Colombia, Cambodia, Sudan, South Sudan, Liberia, Sierra Leone, Former Yugoslavia, Democratic Republic of Congo (DRC), Lebanon, Iran- Iraq, Israel-Palestine, Afghanistan and Somalia<sup>45</sup>.

The new arrangements that compose contemporary armed conflicts are, therefore, in countless ways far beyond any prediction, considering the classical view of wars. In this respect, asymmetrical conflicts combined with failed states and other emergencies generate new challenges more frequently, while the conventional rules

<sup>42</sup> AMNESTY INTERNATIONAL. *Amnesty International Report 2020/21: the state of the world's human rights*, Ed. Amnesty International, London, 2020.

<sup>43</sup> INSTITUTE FOR ECONOMICS & PEACE. *Economic value of peace 2021: Measuring the Global Economic Impact of Violence and Conflict*, Ed. IEP, Sydney, 2021.

<sup>44</sup> BOUVIER, A. QUINTIN, A. SASSÒLI, M. "How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law", *Revue Internationale de la Croix-Rouge/International Review of the Red Cross*, Vol. III, 1999.

<sup>45</sup> ICRC. *Protracted conflict and humanitarian action: some recent ICRC experiences*, Ed. ICRC, Geneva, 2016.

of wars become outdated and armed non-state actors undertake control amid vacuums of power. During the 1990s, with the decline of state power, private military corporations began to rise, permanently transforming armed conflicts around the globe.

The involvement of several other countries in ongoing conflicts around the world for various political, religious, ethnic, cultural, ideological and economic reasons, added to the fragmentation and spread of non-state armed groups as part-players, generates an exponential increase complexity in the face of the dynamics of armed conflict, while at the same time aggravating the intensity of the resulting catastrophic humanitarian consequences<sup>46</sup>.

Therefore, some particularly interesting examples of Intercurrent Catastrophes will be shared to illustrate this phenomenon: the creation and development of terrorism as a political and social catastrophe; the creation and development of private mercenary military companies as a legal catastrophe; and, finally, the environmental degradation caused and/or aggravated by armed conflicts as an environmental catastrophe; all interconnected with armed conflicts.

The dawn of modern terrorism occurs in the 19th century, taking place, to a large extent, through the mass circulation of information vehicles that efficiently spread information about acts of generalized violence, transmitting the terror manifesto. In this respect, the dissemination of information related to the violent act objectively generates terror as a method of conducting hostilities. The efficiency of the terrorist act can, therefore, be measured through the dissemination of news that informs about the act, since the resulting commotion and fear will depend on this.

Terrorism<sup>47</sup> as a political phenomenon with characteristics of a social phenomenon related to the commotion generated around fear and media coverage, produces not only direct victims (targeting) of terrorist activity, but mainly indirect victims, which can be described as derived from the generic frightening effect caused by the recurrence and devious presence of the threat of terror.

Certainly, it is possible to say that the war on terror and counterterrorism shaped the present, causing catastrophic consequences such as the intensification of securitization and militarization replacing diplomacy and international solidarity and cooperation; the closing of borders, violations of International Refugee Law and the aggravation of xenophobia; and, not least, human rights violations concerning the increased state of surveillance.

When referring to Private Military Companies<sup>48</sup> and their members, we can use terms as: "soldier for hire", "soldier for profit", "private contractors", "private military companies" or PMCs, "corporate warriors" and mercenaries, coming from "Privatized Military Industry". The purpose of these companies is to assume the role played by armed forces and intelligence agencies around the world.

Mercenaries can be defined basically as people who directly participate in hostilities motivated essentially by the desire for private gain. Private military corporations, on the other hand, can be defined as private entities that provide military and/or security services regardless of how they describe themselves.

Its functions can be divided into services ranging from activities in security, logistics, training and consulting, to the actual execution of a tactical role in the field. The PMCs market is characterized by a search for outsourcing, fragmentation of responsibility in the face of military confrontations and their consequences "plausible denial" (denial of involvement), cost savings and a softening of intrastate public opinion, considering the preservation of national armed forces. Many PMCs are

<sup>46</sup> APPLEBY, R. S. LITTLE, D. OMER, A. *The Oxford Handbook of Religion, Conflict, and Peacebuilding*, Ed. Oxford University Press, Oxford, 2015.

<sup>47</sup> LINNAN, D. K. *Enemy combatants, terrorism, and armed conflict law: a guide to the issues*, Ed. Praeger Security International, Westport, London, 2008.

<sup>48</sup> BOUVIER, A. QUINTIN, A. SASSOLI, M. "How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law", *Revue Internationale de la Croix-Rouge/International Review of the Red Cross*, Vol. III, 1999.

directly and for the most part involved – when compared to their number of state armed forces – in counterterrorism and counterpiracy operations.

It is interesting to note that mercenary activities are theoretically regulated by Private International Law, considering the contractual nature of the aforementioned “provision of services”. Such international contracts generally agreed upon by States that contract PMCs constitute a legal catastrophe given the proportions of their performance and the lack of legal accountability caused by the generalized legal antinomy, collision of norms or deregulation resulting from the spread of the use of mercenary armies as *modus operandi* of many states involved in proxy wars<sup>49</sup>.

The introduction of private military companies without proper legal regulation based on the International Protection of the Human Person has disastrous effects for the already sufficiently complex contexts of armed conflicts. By not having codes of conduct, obligations under the norms of International Humanitarian Law and, on the other hand, by being characterized by seeking only the profit resulting from the activity, mercenaries continue to be responsible for a sequence of violations of humanitarian norms, especially in relation to the protection of civilians.

The privatization of war has profoundly negative consequences for the effectiveness of International Humanitarian Law, such as casualties related to lack of signage, uniformity and identification; lack of transparency regarding operations; lack of chains of command and hierarchy, lack of fidelity and moral compliance mechanisms and the disastrous feeling of being beyond the law through a culture of illegality (moral disengagement).

In view of the growing dominance of the International Private Military Industry, it is necessary, more than ever, that the classic notions of war are updated so that it is possible to search for consistent improvement hypotheses. Accordingly, the updating of International Humanitarian Law necessarily involves the recognition of the International Law of Catastrophes as the new complementing area of the International Protection of the Human Person, in the same direction of the International Human Rights Law and the International Refugee Law.

In addition, it is essential to highlight the impacts caused by the combination between the occurrence of armed conflicts and the occurrence of the climate and environmental crisis, particularly to the lives of the most vulnerable populations, victims of intercurrent environmental catastrophes amid the disastrous context of wars. It is possible to verify, then, the situations when armed conflicts affect the natural environment and when the climate crisis aggravates the severity of armed conflicts. The natural environment for the purposes of this analysis has both the role of a neglected victim and, unfortunately, a weapon of war due to criminal handling.

The aggravation of the severity of armed conflicts due to the climate crisis<sup>50</sup> is largely due to the so-called double threat or *double affectation*, caused by the diminished capacity of vulnerable populations to adapt to the changes caused by the climate crisis. Serious climate changes can occur, generating occasional rains, intense droughts and floods – directly affecting the livelihoods of the population already made vulnerable by the armed conflict.

The effects caused by the Climate Crisis<sup>51</sup>, therefore, generate increased vulnerability to natural disasters. Examples of this catastrophic interrelationship are the countries: Mali, the Central African Republic and Iraq. Climate risks also cause development setbacks and contribute to the nation's systemic collapse in conflict-weakened states. Here, the observation of transversal factors or cross-cutting problems is highlighted.

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<sup>49</sup> BANDEIRA, L. A. M. *The World Disorder: US Hegemony, Proxy Wars, Terrorism and Humanitarian Catastrophes*, Ed. Springer, Cham, 2019.

<sup>50</sup> LEE, J.R. *Climate change and armed conflict: Hot and Cold Wars*, Ed. Routledge, London, New York, 2009.

<sup>51</sup> ICRC. *When Rain Turns to Dust*, Ed. ICRC, Geneva, 2020.

On the other hand, it is interesting to underline the "environmental attacks", described as air pollution, mining, deforestation and forest fires, degradation of protected areas and the contamination of water and soil resources, for instance in Ukraine, Democratic Republic of Congo, Colombia and Afghanistan. It is also important to point out that, according to the International Committee of the Red Cross<sup>52</sup>, 40% of armed conflicts in the last 65 years were due to disputes over natural resources. These conflicts are called "Environmental Conflicts".

#### **4. Conclusions**

The international protection of the human person characterized by the areas of international law aimed at safeguarding the human being in the face of global challenges to life and dignity, despite the efforts of internationalists, scholars, theorists and humanitarian professionals around the world has still proved incapable of responding adequately to the challenges presented by the complexity of humanitarian needs in armed conflicts and other acute crisis scenarios.

Even though there are several international standards on the subjects mentioned above that are related to the object of this study (catastrophes), it is evident that they are contemplated in a fragmented way, in other words, they do not present themselves as a harmonious body of laws capable of preventing or minimizing the catastrophe (guarantee of preventive mechanisms/instruments); for appropriate corresponding assistance for survivors of catastrophes; and, ultimately, assistance for the recovery of the affected State when the catastrophes erupt. In this respect, it was proposed to present some aspects that justify the new construction of the International Law of Catastrophes and its application to armed conflicts as a complement to International Humanitarian Law.

Humanitarian catastrophes are notoriously catastrophes for the recognition of shared suffering, for collective pain. Catastrophes have many original reasons, but precisely because of the human chaos that gives cause and at the same time suffers the consequence, what we find in the field are endless and interconnected catastrophes of multiple authors and multiple victims. As a rule, we are all-cause and consequence of horror, we are the ones who create and try, in vain, to pause chaos.

From this perspective, it is assumed that International Law is governed by conformation and dissolution of conflicts, antagonisms and shocks that, occasionally, shape new paths for the Theory of Law and the very history of humanity – the history of how we are going to deal with the catastrophes that have taken place daily by ourselves. International Humanitarian Law alone already deals with catastrophes of the type of armed conflicts, however, the concomitant occurrence of armed conflicts and other modalities of catastrophes, generate a new class of emergency covered by the aegis of International Law of Catastrophes.

The legal framework relative to the International Law of Catastrophes must be enlightened by concepts from the Humanitarian Sector, specially built from practices in the field, regarding integrative, people-centred, conflict-sensitive and do no harm approaches. The referred factors mutually aggravate themselves by playing massive roles in the route that drives the nation to collapse over the years until it is inevitable to classify the event as a catastrophe, as the people ends up trapped in the catastrophe reality irreversibly.

Another important point is the urgency for an integrated view of the legal perspective, which can and should have different functions. Law has a series of meanings and representations, it is a form of cultural expression, it is a source, it is a consequence, it is an element in important conformation processes, it is the beginning and end of paths. In addition, crossing borders also means crossing religious and ethnic barriers. People do not have to cross borders to face the

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<sup>52</sup> ICRC. *Guidelines on the protection of the natural environment in armed conflict*, Ed. ICRC, Geneva, 2020.

consequences of the fact that the law has crossed borders to them. There will be legal orders within states, between states and beyond states.

The approach International Law would use to deal with the aforementioned understandings could result in a minimally comprehensive strategy for improving the implementation and strengthening of human protection worldwide; a strategy that can be refined through the analysis of concrete cases models when crossed with categories of cross-cutting factors, as well as, the investigation of the related results to the daily dilemmas of conflicts. Even so, it would be sensible to affirm any simple answer to the complexities not only of war but of human experience as a whole, because, as already said, the trigger is part of the weapon and not of the individual.

However, this research concludes its thoughts hoping that the study and future regulation of the International Law of Catastrophes can contribute to the effectiveness of International Humanitarian Law in the measure of its complementarity between the theories of the International Protection of the Human Person. To be recognized as legitimate and to effectively exercise important functions in a diverse global society, international law must embrace humanity's perspectives in a much more pluralistic, egalitarian and nuanced way.

Finally, realistically assessing the unexplored journey to the strategic construction of what will be, in the future, dealing with humanitarian catastrophes arising from armed conflicts, it is possible to conclude that the answers, certainly, will not be contained in shallow thoughts derived from the simple theoretical analysis, nor in the edition of more norms that are unable to correspond to the factual reality.

More than ever, it is necessary to enter the field research in law and unite it with the essential interdisciplinarity concerning the philosophy of war, the sociology of war and emergency psychology. In this regard, the International Law of Catastrophes can consolidate one more foundational theory to be enhanced, revised and upgraded in the field by the consolidated practice of the humanitarian sector.

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