Conflicts and International Humanitarian Law (IHL)

Foreword

What if today a huge emergency required a reassessment of the state and role of international law while powerful political movements are already questioning economic globalisation, including its legal dimension (WTO, TTIP, TPP)?

Well, it is not a matter of blaming the international rule of law: we just need to pursue it, to face its possible challenges, to reflect upon the resilience of the international legal order, and to identify the possibilities for its progressive development and improvement.

Closely connected to the international law is the international humanitarian law (IHL), specifically intended to solve humanitarian problems arising directly from international or non international armed conflicts. For humanitarian reasons, its rules protect persons and property that are, or may be, affected by conflict by limiting conflicting parties' rights to choose their methods and means of warfare.

International Humanitarian Law (IHL)

The UN Charter sets out in the first article that one of its purposes is "to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character".

The Security Council has also reaffirmed in its resolution 1502 adopted in 2003, "its primary responsibility for the maintenance of international peace and security and, in this context, the need to promote and ensure respect for the principles and rules of international humanitarian law (IHL)".

The United Nations' contribution to IHL has extended to the strengthening of compliance with the existing rules of IHL. Security Council's contributions in this area are:
  – the establishment of and support to international criminal tribunals,

such as for Yugoslavia-ICTY and Rwanda-ICTR, and the Special Court for Sierra Leone;

– the monitoring of potential violations of IHL in ongoing conflicts, ranging from high-profile conflicts such as Syria to other protracted conflicts such as the Democratic Republic of the Congo and Afghanistan;

– the protection of civilians in armed conflict, children in armed conflict and conflict-related sexual violence.

In his latest report to the Security Council on the protection of civilians in armed conflict, the Secretary-General has reported that, at the end of 2015, more than 60 million people had been forced to flee their homes as a result of conflict, violence and persecution. As a matter of fact the number of internally displaced persons (IDPs), refugees and asylum seekers uprooted by ongoing armed conflicts and violence worldwide has dramatically soared in the past two years.

However, "protection of civilians" is also a notion that has increasingly been used in the context of United Nations peacekeeping activities, and not strictly within the context of IHL.

In 1999, the Security Council for the first time tasked a peacekeeping operation in Sierra Leone with protecting civilians under imminent threat of physical violence. Today, United Nations operations in the Central African Republic, Ivory Coast, Darfur, the DRC, Lebanon, Liberia, Mali, and South Sudan are all mandated to protect civilians in various ways, such as by monitoring compliance with IHL, conducting patrols, setting up safe areas, and, in exceptional cases, by offensive operations against armed groups.

Jus ad bellum, Jus in bello, Jus contra bellum

While "jus ad bellum" refers to the principle of fighting a war based on precise causes, "jus in bello" refers to the principle of fighting a war justly, and encompasses standards of proportionality and distinctions between civilians and combatants.

IHL developed at a time when the use of force was a lawful form of international relations, when states were not prohibited from waging war, when they, in fact, had the right to make war (i.e. when they had the "jus

ad bellum"). Today the use of force between states is opposed by a peremptory rule of international law: the "jus contra bellum" amounting to an attempt to apply the principles of "jus in bello" (discrimination and proportionality) in order to negate the "jus ad bellum".

Exceptions to this general prohibition are allowed in cases of individual and collective self-defence, Security Council enforcement measures, and to enforce peoples' right to self-determination (national liberation wars). But, despite the prohibition against armed conflicts, they continue to occur. Today states recognize that international law has to address this reality by ensuring a level of humanity in this critical situation.

The parties to a conflict must at all times distinguish between the civilian population and combatants in order to spare the civilian population and civilian property. Neither the civilian population as a whole, nor individual civilians, may be attacked. Attacks may be made solely against military objectives.

The use of weapons and means of warfare are inherently linked to fundamental principles of IHL - the principles of distinction, proportionality, precaution and humanity.

As to other means of warfare, special consideration must be given to the issues of compliance and prevention of violations with respect to the prohibition of other means of warfare, such as the use of sexual violence and the use of children in hostilities, which are increasingly brought to the public attention through the media.

Implementation of IHL

In situations of armed conflicts and violence across the world, recurring violations of international humanitarian law (IHL) still occur. Although recent improvements in accountability (notably through the criminal prosecution of individuals by national and international courts), existing compliance mechanisms face significant limitations. This shortcoming increases the need to generate respect for the law, both on the front-lines and in the international arena.

This is why if governments sometimes forget their commitments under international law, it is necessary to bring them back to their awareness.

It is important to be able to 'speak the language' of all the parties, in highlighting how respecting the rules of armed conflict serves their own interests.

States are only one type of actor in situations of armed conflict and engagement must be extended to all players, even if the number of armed groups is now far greater than it was between World War II and the Arab Spring .

While clear codes of conducts and modes of operation could be found prevalently among armed groups in the past, among today's non-state armed groups the chains of commands are seldom structured in vertical structures: authority is rather diffused horizontally among one group and between groups as they ally,

This is why disseminating' IHL is not enough. It is necessary an "integration approach" which provides not only for IHL to be included in military policies, taught to officers and to the rank and file, incorporated into exercises and training but also, and more importantly, for the rules to be incorporated into the orders passed down through the chain of command".

But it won't be an easy task, when the chain of command is informal, splintered or unknown, to understand and influence the behaviour of horizontally-organized armed groups to comply with the law of armed conflict.

In the meantime, being present wherever assistance and protection are mostly needed means increasing the efforts to make the law of armed conflict come alive.

Features of contemporary conflicts

Asymmetric warfare has become one of the defining features of modern armed conflicts – with serious consequences for the civilian populations living in the affected areas. As many of these conflicts are fought in urban areas, civilian populations in towns and cities have been particularly affected.

Conflicts today are greater in complexity and numbers of actors, longer in duration, wider in their regional impact, broader in tactics and

weapons used and, above all, more atrocious in the human suffering they cause. The ongoing conflict in Syria is a case in point if one considers its complexity, duration and the multiplicity of actors controlling the territory, making it difficult to respond to the enormous humanitarian needs.

Another notable feature in recent conflicts has been the presence of so-called 'foreign fighters' – nationals of one country who travel abroad to fight alongside a non-State armed group in the territory of another State. While further adding to the complexity, the phenomenon has also raised questions about the implications for the legal framework applicable to armed conflict.

Clearly, complex asymmetric conflicts seem to pose particular challenges for the implementation of IHL with opposition groups trying to avoid identification and defeat by moving underground, intermingling with the civilian population and engaging in various forms of guerilla warfare. As a result, military confrontations often take place in the midst of densely populated areas, which expose the civilian population to increased risks of incidental harm.

Is is therefore important to translate IHL into coherent operational guidance and rules of engagement that are not only legally accurate, but also relevant and effective in contemporary armed conflicts.

Conclusions

Armed conflict and violence are increasing in the world. Political, ethnic, national or religious grievances and the struggle for access to critical resources remain at the source of many armed conflicts characterized by growing complexity, fragmentation of armed groups, asymmetric warfare, regionalization and collapse of national systems.

The turmoil that escalated in parts of the Middle East during the so-called Arab Spring in 2011 – which degenerated into devastating armed conflicts in Syria, Iraq and Yemen in particular – was also felt far beyond the region by countries that began to support the many parties to those conflicts in various ways.

Basic means of survival are becoming increasingly limited for people

already struggling to cope with the effects of recurrent upheaval, drought and chronic impoverishment. Countries like Afghanistan, South Sudan, the Central African Republic, Somalia, Libya and the Democratic Republic of the Congo continue to be engaged in protracted armed conflicts, causing huge suffering for entire populations.

In eastern Ukraine, the armed conflict has already caused the death of thousands of people, many of whom are civilians, as well as massive destruction, and the displacement of over a million people.

In most armed conflicts, civilians continue to bear the brunt of the hostilities, especially when fighting takes place in densely populated areas or when civilians are deliberately targeted.

The devastation caused by violence has prompted increasing numbers of people to flee their communities, leaving their homes and livelihoods behind and facing the prospect of long-term displacement and exile.

The incapacity of the international system to maintain peace and security has, among other things, had the effect of shifting the focus of international engagement from conflict resolution to humanitarian activities. Thus, much energy has been spent on negotiations about humanitarian access, humanitarian pauses, local ceasefires, evacuations of civilians, humanitarian corridors or freezes, etc.

For the success of peace processes IHL must be respected through the negotiation with non-state armed groups, through conflict groups' compliance with international humanitarian norms, and by addressing violations of IHL and human rights through accountability initiatives.

Armed actors seeking to gain legitimacy and to improve their reputation domestically and internationally are likely to be more motivated to demonstrate respect for IHL. In addition, they may expect that this will prompt reciprocity on the part of other conflict actors.

Bottom line: engagement on humanitarian issues is both an important end in itself and a possible entry point that can help to open up dialogue between conflict groups so as to identify a viable solution.