

International humanitarian law at a crossroads

Clara Egger • Professor at Erasmus University Rotterdam and member of the editorial board of *Humanitarian Alternatives*,
Co-director of this issue's Focus, with Boris Martin, Editor-in-Chief.

At the end of the first World Humanitarian Summit in Istanbul in May 2016, diplomats and heads of state were agreed on the goal of “upholding the norms that safeguard humanity”. The United Nations (UN) Secretary-General’s report, published prior to the event, put the emphasis on the promotion of international humanitarian law (IHL). Six years later, the challenges to IHL are widespread. Symptomatically, it can be seen that these coincide with breaches of liberal international order based on the law. Above all and for many years now, researchers and analysts have concluded that IHL is not fit for purpose in contemporary humanitarian matters or with the changing nature of armed conflict.

Firstly, after seeing a decrease in the violence of armed conflict for five consecutive years, casualty numbers, notably of civilians, are once again on an upward trend. Hopes of a global truce during the Covid-19 pandemic were rapidly dashed by the escalation of several conflicts. The war in Ukraine is a painful reminder that conflicts between states are not a thing of the past and that they still fail to respect IHL. The “thawing” of the conflict in Nagorno-Karabakh or the revival of long-standing hostilities rumbling on the border between China and India also show that civilians are exposed to deliberate attacks and the targeting by warring parties of the infrastructure on which their survival depends. What would happen tomorrow if Chinese threats against Taiwan were carried out, with Xi Jinping claiming more defiantly than ever that the human rights corpus does not apply in China? What is particularly cynical, worthy of what could be called “Don’t Look Up” syndrome, is the fact that a rhetoric has developed which – in Russia, but also in Israel and in the United States – speaks of armies being “morally” exemplary and claims close compliance with IHL. And since this law is also supposed to apply to conflicts between states and organised groups, or between these groups themselves within a same state, it should be remembered that civilian populations often bear the brunt of the violence arising from internal and/or asymmetrical conflicts. In this respect, data from Uppsala University (Sweden) on organised violence reveal that this last decade has seen the highest number of casualties. But whatever the factual and legal context in which it is observed, this resurgence of violence in the context of a major polarisation of international politics makes the advocacy of humanitarian organisations particularly inaudible.

Secondly, many voices from the worlds of academia (Luis Rodriguez, Lauren Sukin), politics (France’s stance in the Security Council) and humanitarian action, seeking to take this reality into account, are calling for the drawing up of new standards that will give civilians better protection in conflict zones. Thus in response to the occupation by the Russian army of the Zaporizhzhia nuclear site, many researchers have condemned the patently insufficient protection afforded by IHL from the direct targeting of nuclear power plants or their dangerous proximity to combat operations. Technological developments – the use, for example, of drones or battle bots – while opening up new opportunities also create new challenges for IHL. Though these calls for changes in IHL aim to reinforce the protection of civilian populations, which can only be a good thing, they also bring with them a considerable risk of fragmenting and politicising legal standards. In fact, the demand for the creation of new norms also provides an opportunity for governments and armed groups to abandon their past commitments and

choose the least restrictive legal norms. The experience of debates about the “right to humanitarian intervention” reminds us that good intentions are not enough. By redrafting some standards already present in the UN Charter and IHL, France has opened the door for the presence of aid workers in crisis zones to become highly politicised.

More than ever, IHL seems therefore to have reached a critical juncture: while on a daily basis current events reiterate its relevance for the protection of populations beset by organised violence, IHL faces more or less well-meaning challenges from all sides. It is in this context that *Humanitarian Alternatives* decided to compile a critical overview of current compliance with humanitarian principles and law seven years after the World Humanitarian Summit. The contributions assembled in this *Focus* are as many starting points for reflecting on the future of IHL and are not limited to legal issues. Moreover, they underline the importance of combining political, sociological and historical approaches in order to understand its development and current debates.

By way of introduction to these reflections, Duncan McLean and Michiel Hofman give a long-term overview of the erosion of humanitarian consensus by underlining how State security agendas tend to drown out calls for the unconditional protection of civilian victims in humanitarian crises. It therefore seems essential not to abandon humanitarian principles and law but to defend them vigorously. This *Focus* then situates the analysis in contexts and on issues which are particularly significant in light of recent events. David Forsythe places special emphasis on the dynamics and blind spots of the ICRC’s “quiet” diplomacy in the Ukrainian conflict by linking it to the vocal stance taken by the organisation in other contexts. His article calls for the limits of this strategy to be analysed critically as regards breaches of IHL. On another topical issue, Patrice Bouveret questions the links between IHL, nuclear non-proliferation and, more generally, the challenges of disarmament. His historical perspective helps to shed light on the way current debates on the inability of IHL to protect from the nuclear bomb confirm a major backward step on these issues. Brenda Huaman’s legal analysis of the protection of schools, in law, leads her to advocate the tightening of current standards since they have to adapt constantly to the changing strategies of warring parties. Finally, Philippe Ryfman points out how still too often prisoners of war are invisibilised in debates on the promotion and tightening of IHL. His reflection, based on an analysis of the war in Ukraine, calls for them not to be relegated to IHL’s “forgotten continent”. Although the contributions to this *Focus* are a bleak acknowledgment of IHL’s role and place in current conflicts, they also open up prospects for concrete action by humanitarian organisations and stress that it is up to everyone to act in its defence.

Translated from the French by Fay Guerry

A final point...

This issue is published at a time when the International Committee of the Red Cross (ICRC) is going through a period of considerable turmoil which will be of great concern for the humanitarian sector as a whole.* We shall not be discussing the crisis here, mainly because we need to allow time for the full implications of the challenges faced by the Geneva-based institution to become clear, and not least because international humanitarian law – the subject of this issue – is not synonymous with the ICRC. The ICRC is traditionally regarded as the “guardian” of international humanitarian law, however, and anything that affects the ICRC can further undermine this law. We therefore hope that this issue will make its own contribution to the debate on how to reform and strengthen the role of this vital institution.

Clara Egger and Boris Martin

*See for example: Irwin Loy, “ICRC funding woes fuel internal debate, fears of operational cuts ahead”, *The New Humanitarian*, 17 March 2023, <https://www.thenewhumanitarian.org/news/2023/03/17/ICRC-funding-budget>

HUMANITARIAN ALTERNATIVES

Reproduction prohibited without the agreement of the review Humanitarian Alternatives. To quote this article:
Clara Egger, “International humanitarian law at a crossroads”, *Humanitarian Alternatives*, no. 23, July 2023, pp. 1–5,
<https://www.alternatives-humanitaires.org/en/2023/07/13/international-humanitarian-law-at-a-crossroads/>