

International humanitarian law: Dunant would be devastated again

It is already six months into the genocide in Gaza. International humanitarian law (IHL) and international human rights law (IHRL) have been referred to regularly during this time. Some have stated that the term genocide is not applicable to the catastrophic tragedy that has unfolded in Gaza. When considering the definition of genocide as described by the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (1948),^[1] and discussed in the editorial in the previous issue of *SAJBL*,^[2] it is without doubt that the relentless siege on Gaza is indeed genocide, despite the attack, which cannot be condoned, by Hamas on 7 October last year.

IHL and IHRL, while very different in formulation, have the same objectives: to protect the lives, health and dignity of people.^[3] They are therefore complementary. IHL refers to the principles and rules that limit the use of violence in times of armed conflict. The armed conflict could be international or non-international. The aim of IHL is to protect persons who are not or are no longer directly engaged in the hostilities. These include the wounded, prisoners of war and civilians. Property is also protected under IHL. IHL also aims to limit the effects of violence used to accomplish the objectives of the conflict^[4] and to regulate the conduct of hostilities.^[5] Basically, IHL serves to limit the suffering and damage caused by armed conflict. IHL calls for a realistic and pragmatic balance between military necessity on the one hand and principles of humanity on the other.^[5] The four Geneva Conventions of 1949 and their Additional Protocol I of 1977 are the main treaty sources applicable in international armed conflict. During non-international armed conflict, Article 3, common to the Geneva Conventions, and Additional Protocol II of 1977 apply.^[4]

The development of IHL is noteworthy and thought provoking, considering the current issues prevalent in Gaza and some other parts of the world. History takes us back to June 1859, as French and Austrian armies fought the Battle of Solferino in northern Italy. After the battle, Henri Dunant, a young Swiss citizen, together with other volunteers did all they could to try to relieve the pain and suffering of the thousands of French and Austrians who had been wounded. Devastated by what he had seen, Dunant wrote a book *Un souvenir de Solferino*, which was published in 1862. He suggested in his writings that national societies needed to be created to care for the sick and wounded, irrespective of their race, nationality or religion. In addition, he advised that a treaty be drawn up by states to recognise the work of these organisations and to guarantee better treatment for the wounded. Hence, as he took care of the injured, the idea of international action and solidarity to limit the suffering of the sick and wounded in wars was conceived in his mind. Together with four friends, he thereafter set up the International Committee for Aid to the Wounded. Shortly after that, the committee was renamed the International Committee of the Red Cross. There was huge support for Dunant's ideas, with several countries establishing national societies. Consequently, the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field was adopted by the delegates of 16 European nations at a diplomatic conference in Geneva in 1864.

According to the United Nations Fact Sheet No. 13, this document was the First Geneva Convention, and it enshrined the principles of universality and tolerance in matters of race, nationality and religion. A red cross on a white field was the emblem that was adopted as the distinguishing mark of military medical personnel. A red crescent on a white field was the emblem adopted in Islamic countries. From this time onwards, medical staff and facilities were to be considered as neutral. The foundations of international humanitarian law were formally set down by the Convention.^[4]

Human rights are an inherent set of entitlements belonging to every person because they are human.^[3] IHRL applies at all times and in all circumstances, including during armed conflicts. It concerns all persons subject to the jurisdiction of the state. The aim of IHRL is to protect individuals from arbitrary behaviour by the state.^[5] The main treaty sources for IHRL include the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966). These instruments affirm that everyone is entitled to the enjoyment of human rights, whether during wartime or peace.^[4] However, certain human rights, e.g. freedom of movement and freedom of association, may be restricted under certain circumstances, during wartime or when there is a public health emergency. The limitations are only to the extent strictly required by the exigencies of the situation.

There are core protections that are common to both IHL and IHRL, which cannot be suspended or derogated. These are the right to life; the right to dignity; protections against discrimination based on race, colour, sex or religion; protection against torture, or cruel, humiliating or degrading treatment; protection against slavery; and protection against retroactive application of the law. IHL and IHRL therefore set forth essential basic rights.^[5]

The current genocide in Gaza adds to the suffering inflicted by Israel's 18-year blockade of Gaza.^[6] While there are those with the power to stop the heinous bloodbath that continues in Gaza, their moral cowardice precludes them from doing so, and allows Israel to act with impunity and to go far beyond what is permitted by international law and its core protections. Whereas the intention of IHL is to preserve humanity in the face of the reality of armed conflict, the opposite prevails in Gaza, where the toll of human suffering, death and destruction continues to grow. What we are witnessing is a ruthless reality of this century. I submit that if Dunant was around, he would be devastated again.

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1. United Nations. Convention on the Prevention and Punishment of the Crime of Genocide. 1948. <https://www.refworld.org/legal/agreements/unga/1948/en/13495> (accessed 6 April 2024).

2. Dhai A. The situation in Gaza – will cruelty and hatred triumph? *S Afr J Bioethics Law* 2023;16(3):e1819. <https://doi.org/10.7196/SAJBL.2023.v16i3.1819>

3. International Committee of the Red Cross. International humanitarian law and international human rights law: Similarities and differences. https://www.icrc.org/en/doc/assets/files/other/ihl_and_ihrl.pdf (accessed 6 April 2024).
4. United Nations. Fact Sheet No. 13, International humanitarian law and human rights. July 1991. <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet13en.pdf> (accessed 6 April 2024).
5. American Red Cross. International humanitarian law and human rights. April 2011. https://www.redcross.org/content/dam/redcross/atg/PDF_s/Family___Holocaust_Tracing/IHL_HumanRights.pdf (accessed 6 April 2024).
6. Machel G. The world's moral failure in Gaza. Project Syndicate, 4 April 2024. <https://www.project-syndicate.org/commentary/gaza-israel-war-humanitarian-catastrophe-urgent-steps-international-community-can-take-by-graca-machel-2024-04> (accessed 6 April 2024).

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