

INTERNATIONAL CRIMINAL LAW IN THE TWENTY-FIRST CENTURY: A BRIEF EVOLUTION OF THE WARS IN THE CENTURIES AND THE CONFLICTS IN SYRIA AND IRAQ



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ABSTRACT

The work was developed within the theme of International Criminal Law in the XXI century. The research was based on several internationally renowned authors and articles in electronic media. The objective of the article is to show it within the current context, based on the battles of past centuries. The definitions of war were briefly addressed, based on Clausewitz. Elucidating the historical evolution of war through the centuries. The origin of the International Criminal Court (ICC), its relationship with Public International Law and International Criminal Law were explained. The ICC was related to the advent of terrorism and with a greater emphasis on the existing conflicts in Iraq and Syria, citing what generated this conflict and its main relations with the ICC.

Keywords: ICC. Right. International Penal. Clausewitz. Syria. Iraq.

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INTRODUCTION

Observing the large number of conflicts that have occurred in the world since the dawn of civilization, whether armed or not for reasons of beliefs, religions, ethnicities, among others, it has contributed in a primordial way to the creation of the identity of modern States. Countless times force was used to achieve the intended objective. The questioning of the work is made in the fact of the consequences (ICC) of this use of force for the world, whether they are drastic for humanity or not.

In this environment, International Law emerges, with the bias of regulating these conflicts, so that States can achieve their objectives in a peaceful manner, without the use of force, without generating consequences mainly for civilians. The article aims to study the existing conflicts in Iraq and Syria, based on Public International Law and the origin of the International Criminal Court (ICC).

As a theoretical basis, works by Valério de Oliveira Mazzuoli, Najla Nassif Palma, Francisco Rezek, Wiliander França Salomão, Roberto Luiz Silva, didactic material from the chair of Military Professional Ethics at the Agulhas Negras Military Academy, and among other no less important authors will be used.

The work is divided into three parts. The first part will define the concept of war according to *Clausewitz* and a brief evolution of wars within the centuries, from the ancient age, through the Middle Ages until reaching the contemporary age, with the advent of terrorism and the conflicts in Iraq and Syria, which will be the subject of our article. Also about the use of self-defense to wage wars and the prohibition of this type of conflict.

In the second part, international law, both private and public, will be dealt with, which will be more focused on the article. From the definitions of Public International Law and Private International Law, to the International Criminal Court.

The third part will focus more objectively on the existing conflicts in Iraq and Syria, the origins of the conflict as well as its relationship to the disrespect for existing rights in the region and its analysis from the ICC.

Knowledge of the subject in question is extremely important, especially for the military, in view of the growing participation of military personnel in peacekeeping missions abroad, in terms of distinguishing the actions that can be triggered or not.

DEFINITION OF INTERNATIONAL CRIMINAL LAW, WAR AND ITS MAIN CONCEPTS

DEFINITION OF INTERNATIONAL CRIMINAL LAW AND ITS JURISDICTION

International Criminal Law is an area of study developed from the phenomenon of fragmentation of International Law, which occurred throughout the twentieth century, which promoted the autonomy of several branches of Public International Law, which leads many experts to affirm the emptying of this province of Legal Science due to the profusion of branches that have strayed from it. It deals with crimes of an international nature, committed by Sovereign States through their representatives of the executive function (today, Heads of State or Heads of Government).

The competent court for the prosecution of crimes under international criminal law is the International Criminal Court (ICC), established by the Rome Statute (1998). In this sense, it is possible to affirm that it was only at the end of the twentieth century that the individual became the holder of rights and duties in the International Society, becoming the holder of full international legal personality. The crimes under the jurisdiction of the ICC are four, namely: Crimes against Humanity, War Crimes, Genocide and International Aggression. International Criminal Law, for a better understanding, must be combined with the International Law of Armed Conflict, whose sources are the Geneva and Hague Conventions on the restriction of the use of force and war in International Law.

DEFINITION ACCORDING TO CLAUSEWITZ

By general consensus, war is the dispute between two or more nations, in an armed way to defeat an adversary. *Clausewitz* (183-, p.75) mentions that "war is [...] an act of force to compel our enemy to do our will." From this, it can be concluded that wars exist to subject the sovereignty of friendly forces to those considered enemies, in order to promote the due consolidation of national objectives.

Within the context of a declared war, it is necessary to expose and correctly divide the operational capacity of the belligerents, in other words, the legal use of armed force is subdivided into the political levels, such as representative, the supreme chief of the Armed Forces, the President of the Republic, strategic; through the Ministry of Defense; Operating; by the activated Operational Commands; and tactical with the performance of the Component Forces. (BRASIL, 2014, p. 2-12).

It is emphasized that every military strategy created must be aligned with the national objectives outlined, which support the declaration of war and garner support from

the population, determining factors in modern conflicts, which justifies *Clausewitz's* phrase "war is merely the continuation of politics by other means" (CLAUSEWITZ, 183-, p. 91).

EVOLUTIONS OF WARFARE WITHIN THE CENTURIES

Early Age

In Greece and Macedonia, the formation of heavy infantry consisted of a phalanx, made up only of Greek citizens, with the objective of joint action to the detriment of the individual.

Training for combat consisted of marches and simulated attacks. The ideals that moved them to combat were honor and patriotism, since they were stimulated, in training, to develop esprit de corps, self-denial, obedience, courage, discipline and love for their homeland. (LACERDA AND SAVIAN, 2011, p. 23-34).

In Rome, specifically, in the Empire, around 45 BC, when Julius Caesar led the Roman legions, already duly developed with experiences gained in combat since their creation, according to tradition, by Romulus, the legions received troops of citizens willing to defend the ideal of homeland that the Roman Empire disseminated.

What differentiated the Roman combatant from the others was his ability to react (favoring victories), feeling of possession over his lands, willingness to sacrifice himself to defend them. (LACERDA AND SAVIAN, 2011, p. 35-50).

The Roman Empire began to experience a deep crisis from the third century onwards and this weakened its military power, a fact that led to the Roman inability to keep its territory safe from barbarian invasions, which intensified from 375 onwards, when the Huns arrived in Eastern Europe (LACERDA AND SAVIAN, 2011, p. 54)

Middle Ages

Feudalism was outlined in West-Central Europe as a new political, economic and social system, after the barbarian invasions that contributed to the fall of the Western Roman Empire. In this system, those who owned land held power and wealth, so the nobility and the high hierarchy of the clergy centralized a large part of the land.

In a state society without standing armies, feudalism polarized three social groups, composed of those who prayed (clerics), those who fought (nobles) and those who worked (serfs) and the relations between the fiefs were based on suzerainty (those who donated goods) and vassalage (those who received goods). (LACERDA AND SAVIAN, 2011, p. 84)

The effective mobilization of the fiefs subordinated to the king to increase or defend their domains gave rise to the adventurous spirit, the love of fighting and the motivation for combat in the people who volunteered for the fervor of battles.

And here is based the ideal of Chivalry at the time, which was governed by a behavioral code that guided the proper moral, ethical and spiritual precepts that a knight should have, such as courage, fidelity to the feudal lord, defense of the Church, protection of the weak, cult of honor, etc.) (LACERDA AND SAVIAN, 2011, p. 84).

I know that:

Knights continuously trained for war by participating in tournaments, ordinary games in which group or "jousting" (individual combat) took place. When together, they formed heavy, intrepid cavalry corps with great shock power, but undisciplined, due to the lack of collective training. (LACERDA AND SAVIAN, 2011, p. 85)

In these tournaments, the aim was to exercise personal honor, in order to promote fair and just combats so that the best knights could be selected to compose the contingent corps to begin their military campaigns in the autumn.

Wars took place in the vicinity of a castle. Pitched battles were rare, due to the unpredictability of such a way of fighting. When the lord had a large number of troops ready for combat, he went on an offensive campaign in order to conquer an enemy castle.

Otherwise, if the lord had small troops, he engendered resistance to the siege that the enemy imposed on him by providing subsistence to the residents of the castle and surrounding lands and in diminishing the enemy's willingness to remain under siege with the use of surprise attacks. (LACERDA AND SAVIAN, 2011, p. 86-88).

In the middle of the twelfth century, in the Crusades, armies began to become professionalized, which made the Infantry return as another means of combat. Its emergence is also explained by the Muslim way of fighting, which required a certain mobility on the battlefield, a characteristic that did not exist in medieval Cavalry, as it was heavy (LACERDA AND SAVIAN, 2011, p. 89).

In view of the above, it is possible to observe the increase in the prestige of the Infantry against the Cavalry as combat required greater mobility. The adaptation of the Europeans to the demands of the battlefield promoted the capture of Jerusalem after several incursions by crusaders.

The importance of the infant increased over time, especially after the discovery of gunpowder in the Late Middle Ages. He came to surpass the cavalymen in the following age. In addition to the introduction of a new form of combat, exposed below.

Modern Age

With the decline of the feudal period due to the social consequences of famine, plague and wars resulting from the Late Middle Ages, National States (Absolutism) emerged through the gradual commercial Renaissance that began to modify the rigid European state society, strengthening the bourgeoisie, the monarch and the State.

In this context, there was greater political centralization of power in the hands of the kings, with the support of the bourgeoisie emerging from the commercial opening with the East after the Crusades (LACERDA AND SAVIAN, 2011, p. 106).

A greater role of Artillery was introduced into war strategies, essential in sieges and pitched battles, because as already explained, gunpowder, a mixture of saltpeter, coal and sulfur, arrived in Europe in the thirteenth century, Late Middle Ages, having been discovered in China in the ninth century.

The discovery of gunpowder made it possible to combat at greater distances and concerned the commanders first with increasing the mobility of their troops and secondly, but no less important, with the weight and transport of the new cannons by a garrison. (LACERDA AND SAVIAN, 2011, p. 107).

The firepower of the Artillery made it possible to destroy the high walls of the Middle Ages and made military engineers start to design new models of star-shaped fortifications with obtuse angles, so that they could use them as shelter if they judged their combat power inferior to that of the besieging enemy, since direct combat was not considered advantageous. (LACERDA AND SAVIAN, 2011, p. 113).

As a consequence of the recurrence of the besieged to remain in their field fortifications, the alternative was to cut the enemy supply lines (looting), devastating agricultural fields that supplied the opponents, which forced them to fight unfavorably due to the lack of essential resources for subsistence.

In addition to the plunder and torture of the local inhabitants, the idea of a balance of power between European states emerged through coalitions that came together to annul a state that threatened to dominate the continent (LACERDA AND SAVIAN, 2011, p. 114).

Cavalry was used as a decisive fraction in combat, due to its great shock power. In the Infantry, at the end of the fourteenth century, the introduction of "firesticks", weapons that fired with the inflammation of gunpowder through a wick stands out.

Also noteworthy is the introduction of uniforms for the differentiation of troops in conflict, increasing their combat efficiency by reducing fratricide. (LACERDA AND SAVIAN, 2011, p. 110).

During this period, the Prussian Army trained its troops exhaustively, making its soldiers fast snipers in a jointly coordinated movement based on discipline and effectiveness of fire, with joint action with the Cavalry, which opened gaps in enemy defensive formations.

In addition, it was in this troop that the French officer Gribeauval stood out, creator of light field artillery pieces with an increased range to a depth of one thousand two hundred meters (LACERDA AND SAVIAN, 2011, p. 143-152).

The Prussians defended that armies should be formed by soldiers who love their homeland [...] capable of living off local resources, freeing themselves from the restrictions imposed by the warehouse system [...] advocating the use of mobile warfare and the annihilation of enemy armies with the search for the decisive battle. (LACERDA AND SAVIAN, 2011, p. 151).

New conquests produced spoils of war and this favored the accumulation of capital (currency) in a system that replaced feudalism It was Mercantilism, an economic policy that favored the rise of the bourgeoisie over the nobility and tended the States to accumulate gold and silver.

The mercantilist economic regime was criticized by the Enlightenment, supported by the rising mercantile bourgeoisie, which had money but no power in political matters. These ideals fostered the French Revolution in 1789, marking the end of the Modern Age (LACERDA AND SAVIAN, 2011, p. 147-155).

Contemporary Age

In the Contemporary Age, conflicts were marked by the defense of Nationalism, which has the following meaning:

Ideology in which the individual owed loyalty and devotion to his Nation, understood as the gathering of inhabitants of the same territory, who share language, culture, religion and interests and have the right to self-determination (LACERDA AND SAVIAN, 2011, p. 187).

The Industrial Revolution of the eighteenth century was characterized by the widespread use of the factory, the machine, and their motive power to the detriment of manufacturing, tools, and human energy.

Technological advances brought reflections to the art of war, such as rifles and rifled cannons, electric telegraphs, canned foods, anesthetics, and steamships. Wars began to be photographed and there was an increase in concern about maintaining physical hygiene with hygienic measures (LACERDA AND SAVIAN, 2011, p. 187-193).

The unification of Germany promoted the awareness of organizing the army in peacetime with correspondence to wartime, a fact that avoided improvisation on the battlefield.

Combat regulatory norms, officer instruction centers and the introduction of compulsory military service were created to stop a combat reserve capable of being mobilized quickly. (LACERDA AND SAVIAN, 2011, p. 207-217).

Over the years, the States entered into an arms race, which aimed to surpass each other and to be equal in military power, through the fierce tensions the First World War broke out, a trench warfare that employed the formula "the Artillery conquers, the Infantry occupies". (LACERDA AND SAVIAN, 2011, p. 240-251).

In this conflict, there was an improvement in communications systems, in the camouflage of uniforms according to the terrain, in the use of repeating rifles with greater range and machine guns, in addition to modernized artillery with its cannon shots reaching about 130km.

There is also the introduction of the airplane in reconnaissance and bombing missions, and of the combat vehicle, an armored vehicle to replace the hypomobile Cavalry, and the use of chemical warfare, with the launching of chlorine gas in the trenches (LACERDA AND SAVIAN, 2011, p. 240-251).

With the strengthening of exacerbated nationalism, Fascism and Communism spread throughout Europe, ideologies that guided the events related to World War II.

In this conflict, the use of modern fighters and bombers by the Luftwaffe, the German Air Force, was observed, with joint tactics marked by radio coordination, valuing surprise and speed in the lightning wars ("blitzkrieg"), which efficiently used the lethal combination of bombers, artillery, paratroopers and armored units.

Furthermore, Science joined the Art of War in making man prove his maximum destructive power with the dropping of nuclear bombs on Hiroshima and Nagasaki (LACERDA AND SAVIAN, 2011, p. 270-271).

With the end of World War II, the USA and the USSR bipolarized the dispute for the projection of world power in subsequent conflicts, such as the Wars in Indochina, in which the need for the support of public opinion for the success of military operations was observed.

In addition, there was a significant modernization of weapons, with the creation of the AK47 rifle and the M16, used to this day. In 1997, the use of airmobile tactics (use of helicopters) and the prohibition of the use of chemical weapons in combat were investigated, as they were inhumane to the principles of the International Law of Armed Conflict. (LACERDA AND SAVIAN, 2011, p. 307-321).

The end of World War II also generated tensions in other regions of the world. In the twentieth century, there was an intense migration of Jews fleeing Nazism to Palestine, a fact that promoted conflict between them and the Muslims who lived there.

Nevertheless, the UN's decision to create the State of Israel intensified the Arab revolt and promoted many fights in the Middle East, which had always been the scene of the most diverse disputes. (LACERDA AND SAVIAN, 2011, p. 323).

A more exacerbated alignment was observed between the political objectives of the State and the military objectives, outlined in the tactical and operational sphere, as Clausewitz already defended, since the belligerent States in the various conflicts that arose at that time always had in mind the achievement of some strategic objective. An example is the domination of the Suez Canal to control navigation to the Mediterranean Sea. (LACERDA AND SAVIAN, 2011, p. 324-325).

The use of high-tech weapons was also materialized, such as intercontinental missiles (*Tomahawk* missile), F-117 *Nighthawk Stealth fighters*, modern combat vehicles, use of state-of-the-art radio equipment, in the most diverse frequencies of the electromagnetic spectrum.

Nevertheless, there was the use of cyberspace to wage war and the effective emergence of Command and Control tools, Electronic Warfare and Cyber Warfare, as essential factors to provide situational awareness to commanders in the broad spectrum. (LACERDA AND SAVIAN, 2011, p. 348-355).

Terrorism has become a mode of combat characterized by the action of non-state actors conditioned by psychological actions, unconventional attacks and cultural clashes. This allowed its agents to act with minimal logistical dependence and great freedom of action (indiscriminate), with the objective of producing effects that would morally weaken the enemy, such as the attack on the *World Trade Center*, on September 11, 2001, attributed to Al-Qaeda. (LACERDA AND SAVIAN, 2011, p. 357-359)

Since 1948, in the Israeli War of Independence until the present day, with the assumption of terrorism in the Middle East as a practice of irregular warfare, with population support, no peace agreement has been found that would meet what each of the parties demands. In addition, the religious fundamentalism of some States hinders the implementation of effective democratic negotiations based on Human Rights.

PROHIBITION OF WAR AND SELF-DEFENSE

War is made like any conflict, dispute or fight of interests between groups seeking to defeat the adversary to achieve objectives. Weapons and as many individuals as possible are usually used.

According to Silva (2002; p. 406) "War can be defined as the armed conflict between States, where each party aims to protect its national interests" (Apud Barreto; 2007)

In this way, it is a way for the state to use sovereignty to impose its will and submit the other party to its aspirations. It is worth remembering the two expressions: Jus in Bello and Jus ad Bellum.

According to Rezek (2005, p. 368) Jus in Bello "refers to the law of war, to the set of norms, first customary, then conventional, that flourished in the domain of the peoples when war was a lawful option to resolve conflicts between States." (Apud BARRETO; 2007)

Jus ad Bellum, on the other hand, is the right to war, that is, it is the right to go to war when it is just. However, it is easily perceived throughout the history of humanity that this just war is rarely really fair and balanced. It is also noted that states usually enter into armed conflicts with generally economic and political intentions.

In this situation, international law emerges as a facilitator of understanding between nations. With the creation of the United Nations Charter, the idea of equal rights and duties among peoples occurred.

In the search for peace between nations, numerous meetings and agreements were held, highlighting the Treaty of Renunciation of War of 1929. According to Solomon:

[..]definitively prohibited war as a resource for States to resolve their conflicts and as a new aspect in international politics, and they should always use peaceful means to achieve peace, according to Article 2, paragraph 3 of the treaty. (2011)

In this way, the international interest in world peace and the end of armed conflicts is noticeable. Later this treaty served as the basis for the Charter of the United Nations, which used the term "use of force" instead of the word "war".

Thus, War is currently an international illicit act for countries that accept membership of the United Nations, and may suffer sanctions for not complying with such determinations. The only exception to the use of force is in the case of self-defense under Article 51. (SOLOMON, 2011)

Thus, the states would live in peace, and the use of force to achieve objectives and interests or even disagreements would no longer be allowed. States that used such methods would be imposed sanctions such as export restrictions, travel bans and asset freezes. Such restrictions, of course, affect the country's economy and thus make it more difficult for a nation to seek the use of force to resolve disputes.

For the legal use of self-defense, it is necessary that the state be attacked so that the use of force is fundamental to achieve self-protection. It also defines the way in which the state must use force. According to Solomon:

The right to self-defense follows a series of assumptions to give legitimacy to acts of repulsion promoted by the State: when the State is the victim of an *armed attack*, against a member of the UN and until the Security Council has taken the necessary measures to maintain international peace and security. Thus, the practice of self-defense denotes some requirements of an immediate and temporal nature: the use of force must be the minimum necessary in order to repress the act and until the Security Council takes the necessary measures to cease that disturbance. (2011)

Thus, the use of force is employed in a controlled manner with the objective of ensuring the survival of the nation and the fair use of violence, with the objective of reducing as much as possible the number of innocent victims and the impacts on the civilian population, which in most cases is the portion of society that suffers the most from these conflicts.

However, since the creation of the United Nations Charter, it has been realized that many times some world powers do not respect the sovereignty of states and use force in a disguised way.

[...]during the period of approximately four and a half decades - elapsed between the founding of the United Nations and the declared end of the war - the United States, by means of regular forces or by "proxies", invaded Guatemala, Cuba, the Dominican Republic, Grenada and Panama; while the Soviet Union did the same in Hungary, Czechoslovakia and Afghanistan. Moreover, both ignored the ostensible sovereign rights of other states – in order to manipulate their internal politics – by adopting a series of illicit means less flashy than invasion. As for the disregard for the Charter's restrictions on intervention in general and the use of force in particular, the superpowers were obviously not alone. France, for example, has formed and disbanded governments in West Africa on a discretionary basis. (FARER, 2006).

Thus, it is noticeable that many nations still use the use of force to achieve interests and objectives. However, in order not to suffer restrictions and to reduce the wear and tear of international public opinion, they developed new methods for the legal use of force. Thus, strong states often attack small states, supporting revolutions and even creating situations for intervention, using force in a legal and apparently fair way.

With the terrorist attack of September 11, 2001, Article 51 of the United Nations Charter was much discussed, because from the moment that the U.S. was being attacked, a fight against the terrorist based on self-defense would be implemented.

In this new world order, or rather, in the new era of weapons of mass destruction marked by terrorist threats and the still growing development of technological and nuclear weapons, it is not at all strange that States mobilize in advance in the face of a movement of hostile intent by a terrorist group or a State directed against its citizens. Naturally, the human being faced with an increasingly close threat tends to avoid it before it materializes, anticipating all its results, often using force. (TORRES, 2010)

Thus, the concept of preventive self-defense arises, which seeks to legitimize the use of force in states that generate world insecurity through terrorism or the development of weapons of mass destruction. However, this concept is unfortunately also used to disguise the true intentions of states to achieve objectives in nations of little power. Thus, the theory of preventive legitimate defense taken to the scope of International Collective Security is marked by its patent ambiguity and by the risk of being taken to mask evil in the name of the common good (TORRES, 2010).

WAR OF THE PAST VS WAR OF THE PRESENT

War has always been present in human societies. The earliest records of army corps were found in Greek society. Going through the Middle Ages, modern and contemporary, the way of war has changed. Initially, it was predominantly used for land conquest and expansion of borders. The states that owned the most land were considered the strongest states.

However, with the evolution of technologies, war has become more dangerous for all human society. With the industrial revolution, weapons were greatly improved and weapons of mass destruction were created. The German physicist Albert Einstein said: "I don't know what the third world war will be like, but the fourth will be of sticks and stones" (FERRONI; 2007)

Over the years, war has undergone enormous changes in its mode of combat and use. It has been present in human daily life since the most remote times. Initially, rudimentary instruments were used and there were no rules of engagement.

In this way, war ended up being a method of imposing the will of strong nations on weak nations. Thus, the sovereignty of states was often compromised by the overwhelming force of dominant nations.

With the evolution of society, it has been realized that wars should not be used indiscriminately for simply nations to achieve objectives over other nations of lesser power. The use of force should be avoided and used only for self-defense. Thus, international pacts and agreements were created.

The pinnacle of this quest for world peace was the creation of the United Nations in 1945. Its guidelines are based on the United Nations Charter which:

[...]It includes among its main objectives the protection of human rights. To perform this function, it used, among others, the following means:
1) the proclamation of human rights in declarations and agreements; 2) the creation of bodies with specific responsibilities in the area in question; 3) the identification and deepening of principles with relevance to the protection of human rights, such as the responsibility to protect; 4) support for the creation and operation of institutions that pursue convergent objectives, such as the International Criminal Court. (LOBO, 2015).

In this way, war is no longer indiscriminate and follows stricter rules. These changes were fundamental to human society worldwide. With these changes, nations became obliged to respect fundamental human rights and only use the use of force for self-defense.

We know that the world is still not fair and there are still many wars for economic and political purposes that violate human rights. However, with a brief study of the evolution of wars, we realize that over the years, wars are more subject to rules in search of a fairer and consequently more peaceful international society.

OF INTERNATIONAL LAW

Based on the fact that relations between people increasingly cross the borders of countries, it could not be in an adverse way that legal relations are concerned, given that Law is the fruit of society, and it is up to it to adapt in the best possible way to this transformation.

International law can therefore be defined as the set of legal principles and rules, written and unwritten, intended to regulate relations between sovereign states and international organizations. (CAPARROZ, 2012, p. 23)

International law has norms and rules that govern the relations between the State, Organizations and other bodies, always valuing the good coexistence of nations.

Thus, international law can be defined as the set of legal norms that governs the international community, determines the rights and obligations of subjects, especially in the mutual relations of states and, subsidiarily, of other international persons, such as certain organizations, as well as of individuals. (CASELLA; ACCIOLY; NASCIMENTO E SILVA, 2012, p. 45).

International law is divided into: Public International Law and Private International Law.

PUBLIC AND PRIVATE INTERNATIONAL LAW

Private International Law, a branch of law that derives from the plurality of states, as a consequence of this the laws of each nation and the flow of people, goods and services between them.

In view of this, we realize that there is no Law superior to all others, capable of resolving these conflicts. Private International Law makes up for this absence, determining which legal system should be applied to each concrete situation, which allows (due to connecting elements) the applicability of more than one legal system. (DOS SANTOS, 2011, p. 10).

Deals with issues related to individuals who have interests in more than one country.

As international law is quite broad and comprehensive, there is another legal system dedicated to regulating relations between individuals, individuals or legal entities, arising from contracts and other obligations of a civil nature. In this case, Private International Law is taken care of, which is characterized precisely by the absence of state participation. (CAPARROZ, 2012, p. 24)

The study of Private International Law will not be the focus of study in our article.

The article in question will focus more objectively on Public International Law.

The so-called public international law or law of nations (*jus gentium*) is based on the idea of consent, by which states are only bound by rules that they have freely adhered to, or even on the hypothesis of having produced them together with other sovereign wills. (CAPARROZ, 2012, p. 23).

It is mostly understood that its origin dates back to the sixteenth and seventeenth centuries, with the then Treaty of Westphalia, the expansion of maritime power and the creation of the Modern State. From a certain order of rules and treaties, relations between European States would be regulated, with a certain mutual recognition between the parties, and this new characteristic in the legal system would become increasingly complex with the globalization that has been occurring in recent decades.

Public International Law, as mentioned above, seeks to analyze the relations between States based on treaties and conventions, regularizing the possible conflicts that may exist between these subjects, and is not only applied to States, but also to various bodies such as the UN (United Nations Organizations) and the WTO (World Trade Organization).

Public International Law has as its mission the establishment of an international legal norm, that is, respect for the sovereignty of States, individuals and their peculiarities. For this reason, many treaties and conventions are made, always with the purpose of bringing States closer together. (COMO, 2017)

Public International Law is characterized by the fact that there is no hierarchy between its norms, just as there is in the domestic sphere, in the DIP there is a horizontal space of laws. States continue to be main actors, however, with the growing participation of several other actors, such as NGOs, liberation movements, the concepts change a little. This process occurs due to changes in the world, such as globalization.

Based on this background in the international legal system, Public International Law is made by international treaties and conventions, with regard to collective and humanitarian rights of States before individuals.

INTERNATIONAL LAW OF ARMED CONFLICT, INTERNATIONAL HUMANITARIAN LAW, AND THE LAW OF WAR

The presence of wars throughout the history of humanity is a historical truth. The terrible effects of armed conflicts on peoples induced, over time, the creation of a legal discipline whose purpose would be to give war, within a context of generalized violence and denial of rights, a minimum of humanity. (PALMA, 2010).

Originating from the wars and atrocities that took place in the world, within Public International Law, a branch called International Law of Armed Conflict (DICA) or also known as International Humanitarian Law (IHL) was created, which was initially recognized as War Law.

It is done by a set of rules and regulations that aim to limit the actions that a State can unleash during a war or armed conflict. It is part of the DIP because it is a norm, which aims to regulate the action of a State (main actor in the DIP).

The expressions Law of War, Laws of War, TIP or IHL are therefore equivalent. The Armed Forces, in a more usual way, adopt the expression DICA, because they understand it to be more in line with the protection provided by this Law, since it refers to the standardization of actions in combat. In academia, on the other hand, the term IHL is dominant, a synonymy that does not change its scope. (AMAN, 2013, p. 5).

INTERNATIONAL CRIMINAL COURT

BRIEF HISTORY

It is evident that historical events and changes that have occurred in the international sphere, in addition to having repercussions on social values, are determining factors for the evolution of the concept of sovereignty.

The internal order of a State is responsible for creating its own legal system, in which the process of elaboration and approval of the norm emanates from the State entity. The latter imposes a legal order on its subordinates, supervising and applying sanctions in case of violation. The same is not true of international society. In this society there is no superior entity capable of imposing an international legal order.

Thus, it was in this emerging scenario of universal values that the idea of creating a permanent and supranational court that would put an end to partial trials and the inapplicability of international sanctions gained strength. The ICC was established in June 1998 through a multilateral treaty. In this way, sovereign states established a pact of sovereignty, that is, they transferred powers to an institution capable of composing specific disputes of International Criminal Law.

According to Antonio Cassese, International Criminal Law would be a body of international rules aimed at both the prohibition of international crimes to prosecute and judge people accused of such crimes.

Finally, the limit of action of International Criminal Law is close to the means of penalizing the serious violations of the Law of Nations, inserted in interstate relations and in a goal of protection of the international legal order.

UPWELLING OF THE ICC

In view of the precedents, it is possible to recognize the existence, even before the Second World War, of facts susceptible to the creation of mechanisms that would ensure the sanction of individuals at the international level. This trend gave rise to an international consensus in the face of the barbarity and greatness of the crimes committed by the German Third Reich. This favored the implementation of the idea of the creation of international military tribunals by the victorious allies.

The International Military Tribunal at Nuremberg consisted of a tribunal founded by the four victorious nations. This court declared itself competent to judge crimes against humanity. He tried the most important Nazi crimes, leaving the lesser cases to the states in which such crimes had been committed.

Following the same logic as the Nuremberg Tribunal, the International Military Tribunal for the Far East was then created; Tokyo.

Thus, the work developed by the Nuremberg and Tokyo tribunals can be considered a milestone in the history of International Criminal Law.

Both the statute and the judgments of the Nuremberg and Tokyo tribunals expressly established individual criminal responsibility for the international war crimes of the European Axis countries.

Finally, the consolidation of the ICC is part of a process of recognition of the vitality of the concept of international justice. This demonstrated that the lessons of Nuremberg had not expired. After all, only a fully independent international tribunal would guarantee a global justice system (and not revenge) in which the principles of impartiality and justice determine the practice of international criminal law.

In this sense, this initiative represents an immense advance, allowing the legal vacuum of the international system to be filled with the effective prosecution of those responsible for serious violations of human rights and humanitarian law.

CONTEMPORARY INTERNATIONAL LAW

ARMED CONFLICTS IN SYRIA

Some conflicts in the Middle East can be seen, in part, as a consequence of the disputes between two major regional powers, Iran and Saudi Arabia. In the case of the conflict in Syria, we can perceive some influence from Iran, since it supports the Shiite government of Bashar al-Assad. In turn, Syria is a state that has a majority Sunni population, which had many of their rights taken away with the Assad government. The civil war broke out in 2011 after a series of protests that began in the city of Deera and then dissipated across the country. These demonstrations were against the attitude of the government of Bashar al-Assad, of Alawite origin, which repressed, through the use of force, the majority of the population, which is Sunni- (COUNCIL ON FOREIGN RELATIONS, 2015). "Over the past four and a half years, more than 200,000 Syrians have lost their lives in the conflict between troops loyal to President Bashar al-Assad and opposition forces. The violent war has already destroyed entire neighborhoods and left 11 million homeless" (BBC, 2015).

Five years later, the war already accounts for the number of more than 250 thousand dead as a result of the conflict (government data). Government forces carried out attacks that directly targeted civilians, such as shelling civilian residential areas and medical facilities with artillery, and allegedly chemical agents, killing civilians illegally. The same forces also imposed prolonged sieges, trapping civilians and depriving them of food, medical care, and other necessities.

Also faced by civilians in Syria is the fact that they are the targets of the Syrian government and the Islamic State, contrary to a basic principle of the Law of War. Civilians are victims of the government's use of cluster munitions and this use results in deaths and serious injuries.

Syria's sovereignty over its own territory was also violated in the course of the fighting. Nowadays, several non-state armed groups, such as the Islamic State, occupy a large part of Syrian territory, further aggravating violence and terrorist attacks in the country. There is a great disrespect for the Universal Declaration of Human Rights:

Several articles of the Universal Declaration of Human Rights were violated, such as arts. 2, 3, 5, 9 and 25. The 2015 world report that addresses events in 2014 by Human Rights Watch brought some data that proves the violations. According to the report, the Syrian Network for Human Rights highlighted the possibility that 85,000 Syrians were subjected to enforced disappearance (forced removal of someone from their family and social environment illegally) by the government. Such a

statement violates the right to peace, freedom and human dignity and also the 1992 Declaration on the Protection of All Persons from Enforced Disappearance. (GARCIA, 2016)

In addition, the aforementioned report and also reports by Amnesty International highlight the existence of several cases of ill-treatment and torture, which are direct violations of Article 5 of the Universal Declaration of Human Rights and the Declaration on the Protection of All Persons from Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment of 1975.

The bombing of civilians in the refugee camp constitutes a war crime because it violates the principles and rights set out in Additional Protocol II to the Geneva Conventions of 12 August 1949 on the Protection of Victims of Non-International Armed Conflicts. Article 4 of the Protocol provides that all civilians must be protected and respected, in addition to prohibiting "attacks on the life, health or physical or mental well-being of persons, in particular murder, as well as cruel treatment, such as torture, mutilation or any form of corporal punishment. Acts of terrorism; Attacks on the dignity of the person, namely humiliating and degrading treatment, rape, coercion into prostitution and any indecent assault." Another example of human rights violations in Syria is cited.

Another example of a violation of humanitarian law is the attack on the civilian population in the city of Aleppo, the main city in northern Syria that is destroyed as a result of the war. Another violation was reported in April this year, when aerial bombardments attacked the Al-Quds hospital, causing the death of at least 27 people, including children and doctors. Attacks on civilian hospitals constitute a violation of Article 18 of Convention IV, Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which provides that "civilian hospitals organized to care for the wounded, sick, sick and parturients shall not, under any circumstances, be the target of attacks; shall always be respected and protected by the Parties to the conflict." (GARCIA, 2016).

There is a great disrespect for Human Rights in the region.

Therefore, International Criminal Law, as provided for in the Rome Statute of the International Criminal Court, points out genocide, crimes against humanity, and war crimes as violations of International Law. In addition, according to Brant, the following are also incorporated into the definitions of international crime: crimes of aggression, terrorism, money laundering and terrorist financing, corruption, as well as global crimes (trafficking in persons, organs, among others). Among the crimes alluded to, it is worth mentioning some difficulty encountered in relation to the crimes of aggression and terrorism, since the definitions of both are still nebulous. In relation to crimes of aggression, unlike the others, the conceptualization is not clear. (GARCIA, 2016)

The attempt at a ceasefire in Syria highlights the internationalization of the conflict, which has come to involve several actors and has consequences that go far beyond the country's own borders, having great repercussions on the security and politics of the Middle East and also other regions. For this reason, the unfolding of the conflict is watched very closely. The growing flow of refugees, especially towards Europe, and the fight against extremist groups, are issues directly linked to the conflict in Syria that should continue to be highlighted in the world media, at least in the coming years.

ARMED CONFLICTS IN IRAQ

In 2003, after the U.S. government acquired internal permission for invasion, it began attacks on Iraq in order to control its oil reserves, capture Saddam Hussein and transform Iraq into a foothold for U.S. influence in the Middle East, in addition, the government, in its propaganda, predicted the restoration of democracy in the country that lived under dictatorial rule.

The war took drastic proportions, even after the Iraqi government was restored to a democracy, American troops remained in the country causing even more problems, civil battles, discontent. The war had a catastrophic result for the country, it increased its poverty, its environmental problems, and political instability was increasingly clear. This war lasted until 2011, already under the administration of Barack Obama, who decreed the withdrawal of troops.

To obtain legal permission from the UN for the invasion of Iraq, the US declared that the Iraqi state was responsible for instability on the international stage, mainly due to Saddam's hatred of the Western world and his history of conflicts. The U.S., Britain and other countries that united in favor of the invasion affirmed Saddam's creation of chemical and biological weapons, and he was prohibited from such activity due to other UN resolutions.

Despite intense pressure from the US, the UN did not give in and did not grant the legal bases for the invasion, receiving the support of other large countries that deemed such political, economic, social and military wear and tear unnecessary. After all, Iraq was already suffering internally due to UN embargoes. For example, as of resolution 687, Iraq had limitations on its imports, and it was claimed that such a resolution would be a way to prevent the country from building chemical weapons. However, such restriction was

extreme, preventing the importation of medicines, food, basic elements of survival, and was expected to increase over the years.

In addition to a power vacuum, the state suffers from a lack of qualified national military forces to fight terrorist groups that threaten the country's security, such as the Islamic State, an extremist group that claims to adopt the Sunni side. This group, which was initially called Al Qaeda Iraq, emerged after the invasion of the United States. Later, it would benefit from this instability in the region, gaining strength from 2011 onwards, due to the high recruitment rates that arose with the Syrian War, as many Sunnis began to adopt an even more radical stance against the Assad government and against the Shiite side, predominant in Iraq. Currently, this group threatens many states and populations in the region, including Syria, Iraq and Kurdistan. (THE NEW YORK TIMES, 2015).

Thus, two conflicts can be perceived that can be analyzed differently according to the perspectives of the DIP. As in the case of the Syrian conflict, it initially arose within its own border, which according to the principles of the DIP does not fit the international legal concept, precisely because it portrays an internal conflict, a civil war, thus not having a conflict between two or more States (MAZZUOLI, 2013). The point is that such conflict, in the face of the high use of force, generated considerable impacts with regard to the violation of rights, erupting, extending and involving neighboring countries, as well as those of other continents.

In this way, the war in Syria, which, at first, involved only internal agents, ended up becoming one of the main international conflicts of the early twenty-first century, even involving the interests of international actors that, by the way, end up, to a certain extent, compromising its resolution even more.

CONCLUSION

In view of the prohibition of waging war defined by International Law, wars continued to exist. After the creation of the DIP and bodies such as the UN, there was a greater contribution to the promotion of peace in the world, the big issue is that the mechanisms brought by the International Criminal Court only work if the States submit to them, which generates a discussion about the sovereignty of the countries, as far as an international norm through an International Organization, such as the United Nations, can intervene in the country.

The evolution of international criminal law over the centuries and the greater consent of countries not to wage war is evident. With the U.S. invasion of Iraq, without the consent of the UN Permanent Council, it demonstrates that the legal prohibition of waging war

preached by the DIP still does not have the force and legal order it deserves. However, the withdrawal of troops from Iraq caused the worsening of the country's political situation with the advent of the Islamic State and other terrorist groups in the region.

It is a fact that there have been and still are great affronts to rights in both the conflicts in Syria and Iraq, however there is also a growing agreement from countries around the world to pressure the parties involved and international organizations such as the UN to resolve the disputes in question.

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