


## THE FEASIBILITY OF INTERNATIONAL HUMANITARIAN LAW (IHL) IN URBAN OPERATIONS AND LAW AND ORDER ENFORCEMENT (GLO) OPERATIONS

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### ABSTRACT

The work was developed within the theme of international humanitarian law (IHL). The research was based on several renowned authors and articles in electronic media. The objective of the article is to show within the current context, based on the applicability of the International Law of Armed Conflict (DICA), the differences and similarities of Military Operations in an Urban Environment and the Operation of Guarantee of Law and Order (GLO). The definitions of the dignity of the human person were briefly addressed, based on the increase in the protection of the human person over the years, the historical evolution of international humanitarian law and the international law of armed conflicts. The legal basis for GLO operations, its relationship with Complementary Law No. 97/1999, and the use of International Humanitarian Law and DICA with urban combat operations were explained.

**Keywords:** Origins of LC No. 97/1999. Urban Combat. International Humanitarian Law. International Law of Armed Conflict (DICA).

## INTRODUCTION

The changes experienced by societies, with repercussions on the way of doing politics and the emergence of a new geopolitical configuration, have gradually altered power relations, causing instabilities and uncertainties and giving rise to the emergence of local conflicts and the insertion of new state and non-state actors, especially those who engage in armed violence.

The operations carried out in the national territory are characterized by the performance of elements of the Ground Force (FT), in certain and restricted areas, supported by diplomas of the state of exception, with temporary suspension of constitutional rights and guarantees.

Operations carried out abroad are characterized by the performance of FT employment elements in previously defined areas. They are based on diplomas from international security organizations (OSI), of which Brazil is a signatory, and which support the use of the Armed Forces (FA) in actions deemed necessary to maintain or reestablish international peace and security. Normally, when conducted abroad and when the United Nations (UN) needs it, they are carried out in the context of Peace Operations (Peace Operation). Thus, Peace Operations have been used in the peaceful settlement of disputes (Chapter VI of the Charter of the United Nations) and also by invoking Chapter VII (action in case of threat to peace and act of aggression).

Following a global trend of conflicts in urban areas, the use of military power in Law and Order Guarantee Operations (Op GLO) has been incorporated into Brazilian states in recent years, especially in the State of Rio de Janeiro. In this sense, the Brazilian Army (EB), as well as the other FA, has as its mission established in Article 142 of the Constitution of the Federative Republic of Brazil of 1988 (CRFB/88) the defense of the Homeland, the guarantee of the Constitutional Powers and, on the initiative of any of these, the guarantee of law and order (GLO). This last assignment has demanded great effort from the Armed Forces in recent years, being the most used employment possibility by the Brazilian State. Complementary Law No. 97/1999 regulates the general rules to be adopted in the organization, preparation and employment of the Armed Forces, as provided for in paragraph 1 of Article 142 of the CRFB/1988.

The EB70-MC-10.223 OPERATIONS Campaign Manual (2017, p. 3-1), defines operations as basic and complementary. The first are divided into Offensive Operations (Op Of), Defensive Operations (Op Def) and Cooperation and Coordination with Agencies

(OCCA). Offensive and defensive operations occur only in war situations while OCCA occur primarily in non-war situations, but can be triggered in war situations.

Complementary operations, on the other hand, are intended to support basic operations and contribute to the increase of their results.

The purpose of this article is to verify the feasibility of the DICA in Urban Operations and Law and Order Guarantee Operations, reporting what they have in common and to what extent they can be confused.

## **OPERATIONS UNDER THE INTERNATIONAL LAW OF ARMED CONFLICT (DICA)**

Currently, Urban Operations uses DICA as a scope for protection in war situations. After the Second World War, in view of its devastating effects, a new regulatory cycle of IHL (International Humanitarian Law) was created. Thus, four international conventions were adopted in Geneva in 1949.

The **first** deals with better protection for the wounded and sick of armies in the field; the **second** deals with improving the lot of the wounded, sick and shipwrecked of armed forces at sea; the **third** deals with prisoners of war; and the **fourth** focuses on the protection of civilians in time of war (ICRC, 1949).

Taking into account the internal conflicts that occurred in the 1960s and 1970s, originated by the ideological conflict of the Cold War, two Additional Protocols were adopted in 1977 to the Geneva Conventions of 1949, which deal with international armed conflicts (PA I), and conflicts of a non-international nature (PA II).

The four Geneva Conventions of 1949, together with the two Additional Protocols of 1977, form the legal basis of the IAC.

Constituted by the Conventions, Treaties and Protocols present in the Law of Geneva (1949), The Hague (1899), and New York (1968), these norms are the set of rules that delimit the IAC and, consequently, the *Jus In Bello* (law that governs the way in which war is conducted). The Law of Rome can also be cited, which offers rules that regulate post-war law (*Jus Post Bello*), applied when hostilities cease.

## **LAW OF GENEVA**

Geneva Law consists of four Conventions, adopted on August 12, 1949, which contemplate the humanitarian bias of the DICA. The two Additional Protocols to the Geneva Conventions, created in 1977, can also be cited.

Palma (2010) also discusses Geneva Law:

Geneva Law is based on the principle of humanity, which advocates the protection of people who do not participate in hostilities or no longer participate (out of combat due to injury, disease, shipwreck or detention by the enemy). It is centered on the victim of war (it constitutes the "victim's weapon"), on passive agents – those out of combat, prisoners of war or civilians who only suffer from the conflict and need protection.

## HAGUE LAW

The origin of Hague Law is related to the Declaration of St. Petersburg of 1868, which was the first international instrument that regulated the methods and means used during an armed conflict. Since then, other treaties of the same nature have been signed, the most important being in the city of The Hague.

According to Najla Nassif Palma (*op. cit.*) and the approach to Hague Law:

The oldest of the strands that make up the IAC is based on the principle of limitation and aims to regulate the conduct of war by restricting means and methods of combat, in addition to prohibiting the use of some types of weapons. The choice of objectives and the use of weapons are regulated, factors considered more important. Its nature is preventive and is intended for combatants, reinforcing mainly what cannot be done in war. By convention, this set of rules is called "Hague Law", "Hague-type law" or "law relating to the conduct of hostilities", because the two International Peace Conferences were held in The Hague, Netherlands, in 1899 and 1907, respectively. However, the origin of this Law is much older, having been developed over the centuries by the customs of States (customary law). (PALMA, 2010)

## NEW YORK LAW

With the recent involvement of the United Nations (UN) and the International Law of Armed Conflict, after the Tehran conference on Human Rights in 1968, the Hague-Geneva axis shifted to New York.

The Manual for the Use of the International Law of Armed Conflict (IAC) in the Armed Forces (2011, page 16) addresses the creation of this right:

Technological innovations and the complexity of contemporary armed conflicts, coupled with the demands of the international community to limit the development of means of destruction, have contributed to bringing together the two strands of DICA – Hague Law and Geneva Law. (...) The linkage of the IAC to the new proposals for instruments, which have a complementary character in the limitation of means and protection of the human person, and the contribution of the UN to the latest instruments for limiting the use of weapons justify a new current called New York Law or Mixed Law, as it contemplates aspects of the classic strands of The Hague and Geneva (BRASIL, 2011)

## LAW OF ROME

Called *Jus Post Bellum*, or Post-War Law, it is considered the fourth strand of the DICA, applied from the moment hostilities cease. Its tools are the International Criminal Court (ICC) and the *ad hoc* Courts that preceded it, whose function is to prevent post-war justice from being only a trial of the vanquished by the victors, must, as their main task, repress war and promote appeasement through the prosecution of violators of humanitarian norms, regardless of the side to which they belonged. (AMAN, 2018, page 36)

Garcia (2016) also defines the Law of Rome as:

The most recent subdivision of the IAC is inseparable from IHRL. While the former prescribes rights, the former represses violations. This relationship is so close that the IHRL and IAPS instruments are subsidiary sources of IPR. Its main function is to prescribe international crimes and to impose on States the obligation to prosecute and judge at least some of these crimes, imputing the execution of these crimes to the individuals responsible for the crimes.

## OPERATIONS IN AN URBAN ENVIRONMENT

Military operations in urban terrain, divided into war and non-war operations, are broadly defined as all operations planned and developed against an objective integrated by a topographical complex and its adjacent natural terrain, where constructions made by human hands or the density of non-combatants are the dominant characteristics. (PACIFICATION OPERATIONS, 2015, p.12)

The war situation employs the National Power with a predominance of Military Expression, exploiting the fullness of its characteristics of violence in the defense of the homeland in the broad spectrum of conflicts. Thus, war operations exploit the fullness of their characteristics of violence in the defense of the homeland. (PACIFICATION OPERATIONS, 2015, p.126)

The non-war situation, on the other hand, occurs when the National Power with a predominance of Military Expression is employed without implying effective combat actions, except in special circumstances, where combat power is used in a limited way in a situation of institutional normality or not, in the guarantee of constitutional powers, guarantee of law and order, threat prevention, crisis management and conflict resolution. Thus, non-war Operations are employed in tasks that do not involve combat itself, except in special circumstances, where this power is used to a limited extent. (PACIFICATION OPERATIONS, 2015, p.127)

Peace Operations consist of the use of military force in support of diplomatic efforts to maintain, impose or build peace in a foreign country. These operations can be divided into five categories of non-war operations: preventive diplomacy, peacekeeping, peacekeeping, peacebuilding, and peace-enforcement.

Some war-torn cities such as Aleppo, Mosul, Mogadishu and Gaza are examples of the growing trend towards global conflict in which violent fighting around the world is increasingly fought in densely populated urban areas, at a severe cost to the lives of their inhabitants. According to Frederico Aranha (2018): "Despite their aversion to urban combat, military strategists are generally convinced that the future of war lies in the cities."

When criminal or political violence overwhelms the local police and the regional state security apparatus, military forces need to restore order. Military theorists and doctrine have always recommended that armies avoid bypassing or isolating cities instead of conducting combat operations within them.

In this way, military forces that are not trained, organized, or equipped to operate in urban environments are increasingly employed to restore political stability in cities, acting against these pockets of resistance. Thus, the presence of buildings, infrastructure, and the humanization of the area influence the planning and decision-making of the commander about the line of action to be adopted for the fulfillment of the mission.

The following are some historical battles as examples of urban operations in war situations (MESQUITA, 2019, p.3 - p.6):

- a) Stalingrad: battle that took place in the context of World War II from July 1942 to February 1943, when the German army was inflating eastwards in an attempt to enter Russian territory. It took place in the Russian city of Stalingrad. Divided into 4 major phases, it was characterized by a defensive executed by the Russian army, then by a Russian counterattack to the north and south of the city surrounding the Germans, then the Germans tried to reinforce their troops without success and finally, in 1943, the Russians surrendered close to 90 thousand German soldiers.
- b) Beirut: due to the irregular configuration of the city, Israelis often combined the two types of investment (selective and systematic). When the enemy is weak, selective investment is the most indicated. In Beirut there were areas with strong resistance, where the Israel Defense Forces employed systematic investment.

This was the result of the experience in the Yom Kippur War and the fighting in Suez and Jerusalem.

- c) Grozny (1994): two battles that took place during the invasion of Chechnya by the Russian army in 1994 and 1995. In the first, a great Russian failure that belittled the Chechen resistance. In the second, the Russians learning from their mistakes, entered the city of Grozny and put down the resistance. It should be noted that the Russians should have employed the systematic investment, on account of the well-prepared enemy, which did not occur due to a deficient intelligence study carried out. It was characterized by the intense use of armored vehicles.
- d) Baghdad (2003): battle led by the US army, in the invasion of Iraq. Characterized by the intense use of bombing raids (which caused serious collateral damage) and foot troops in the conquest and maintenance. The enemy was disorganized and offered little resistance, favoring selective investment. There, operations in an urban environment were inaugurated in the twenty-first century.

In non-war situations, we have some examples of operations in urban environments by the Brazilian Armed Forces, especially EB, such as: Operation Archangel (2011-2012), Operation San Francisco (2014-2015), and Operation Hurricane (2017-2018). In these operations, the theater of operations was the city of Rio de Janeiro/RJ, where the insufficiency of the Public Security Organs (OSP) required that federal forces be employed to guarantee the safety of people and property and the application of the law.

Therefore, in the contemporary environment, the tactics, techniques and procedures (TTP) applied to military operations guide the current concept of the Battlefield and the conception of a new perspective of military operations. The rules of engagement in war as well as non-war are very distinct and defined as internal rules of the military component that delimit the extent of the use of force in its use. Provides rules on the actions of the elements of use of the Ground Force in relation to other forces or agents involved in operations. Thus, they are principally linked to the application of the principle of distinction, proportionality and legality. This is to guide the action of the federal troops and prevent the violation of human rights and domestic criminal law.

Behind the rise in urban violence and the resurgence of war in cities is the convergence of global demographic trends, domestic political power dynamics, and changes in the character of armed conflict.

It can be seen, then, that urban operations contemplate both war and non-war situations, referring, therefore, to an operational environment. He can also add peacekeeping operations, which are also within the scope of EB's employment possibilities and largely include actions in an urban environment.

## **THE GUARANTEE OF LAW AND ORDER**

It is estimated that since 1992, EB has carried out more than two hundred operations in the context of ensuring law and order. These missions range from guaranteeing the electoral election requested by the Electoral Court to supporting the Public Security Agencies (OSP) of the State of Rio de Janeiro in the fight against crime in favela complexes.

The Operation to Guarantee Law and Order is a military operation conducted by the Armed Forces, by decision of the President of the Republic, in an episodic manner, in a previously established area (rural or urban) and for a limited time, with the purpose of ensuring the full functioning of the Democratic Rule of Law, peace and public order. Thus, in the spectrum of conflicts, non-war operations have a deterrent character.

As already defined in the previous section, the situation of non-war occurs when the National Power with a predominance of Military Expression is employed without implying actions of effective combat, except in special circumstances, where combat power is used in a limited way in a situation of institutional normality or not, in the guarantee of constitutional powers, ensuring law and order, threat prevention, crisis management and conflict resolution. Thus, non-war Operations are employed in tasks that do not involve combat itself, except in special circumstances, where this power is used to a limited extent. Thus, GLO Operations fall into non-war situations and have tactics, techniques, and procedures (TTP) similar to those used in war and non-war. The rules of engagement, on the other hand, are more restrictive in relation to the war situation.

The guarantee of law and order is achieved through activities of a preventive and repressive nature, in a rural or urban environment in the context of an **Operation of Cooperation and Coordination with Agencies (OCCA)**. It involves several actions that seek to stabilize the area of operations, such as: ostensive motorized and foot patrols, establishment of roadblocks and control of roads and urban roads, occupation of strong points and static security points, search and seizure operations and riot control operations.



As a result of this demand, the Brazilian Army created the Law and Order Guarantee Operations Instruction Center (CIOpGLO) in 2005 as a Military Organization (OM). In 2006, it was extinguished as OM and recreated as the School Subunit of the 28th Light Infantry Battalion (28º BIL), in the city of Campinas-SP. Nowadays, CIOpGLO is undergoing a restructuring project in order to meet more demands from the Ground Force.

As can be seen, the guarantee of law and order is a situation in which the Armed Forces are used after the decision of the President of the Republic (PR) who, by means of a presidential decree, determines their use when requested by any governor of the states of the federation after recognizing the non-existence, insufficiency or unavailability of the OSP.

The decree delimits the space where the action of the federal force will take place and the time in which this action will take place. In this type of employment, actions similar to policing are established, however, it should be noted that such actions are framed in a military operation with all its characteristics and should not be confused with the constitutional police activity provided for in article 144 of the CF/1988.

It is a fact that operations to guarantee law and order when established have a greater dimension when in an urban environment (see those already mentioned in the city of Rio de Janeiro), but they can occur in a rural environment, as long as the delimitation of the area by the executive branch contemplates this environment, this is proven by the use of EB in Kaiabi operations (MT, 2012), Serra da Borda (MT, 2015) and Apyterewa (PA, 2016).

## **FINAL CONSIDERATIONS**

The use of military forces fighting in an urban environment is an extremely important issue for the various segments of the Armed Forces and in particular for the Brazilian Army (EB). The future of global violence is urban to a large extent. While rural insurgencies have not disappeared, recent trends reflect the rise of intranational conflicts involving non-state actors taking advantage of the possible tactical advantages of cities to achieve their political objectives. This growth of urban violence and the resurgence of war in cities results from three key factors: the global trend towards urbanization; the growing volatility of the political situation in developing countries and the changes in the particularities of armed conflicts.

In this world of rapidly urbanizing, deficient state infrastructure is a source of urban violence as armed groups are empowered to exploit popular discontent and poor governance to secure their presence in affected urban areas. At the same time, the growing vocation of armed groups to fight in cities stems from the fact that the urban environment alone already disconcerts repressive actions and alters the balance of power between regular state forces and irregular armed groups.

The creation of the Law and Order Guarantee Instruction Center (2005), later called the Urban Operations Instruction Center (awaiting approval from the upper echelon) responded to the demand for this type of knowledge. The purpose would be to prepare permanent specialized units, with their own doctrine, specially equipped for this type of mission and with the capacity to move quickly.

From what has been presented, it is concluded that operations in an urban environment are quite broad, refer to the operational environment and are independent of the legal framework that supports it. We can have urban operations under the aegis of International Humanitarian Law (IHL) as exemplified in historical cases, the Federal Constitution and infra-constitutional legislation, such as in the use to guarantee law and order and even UN legislation when in peacekeeping operations composing contingents of the United Nations, as in the Brazilian participation in the United Nations Stabilization Mission in Haiti (MINUSTAH).

The tactics, techniques and procedures (TTP) in both cases will be quite similar, with specificities precisely when observing the rules of engagement in each case. For GLO activities, these are more restricted.

The operations carried out in the context of the GLO (legal framework) are OCCA, whether urban or **rural**, as they are characterized by frequent interaction between governmental and non-governmental agencies and have very specific actions aimed at stabilizing areas.

Within this scope and considering the feasibility of dealing with urban operations in a broader sense and not only when referring to GLO, there is a need to internalize more concepts of International Law in order to better train/prepare the Brazilian military to face the disputes of the twenty-first century that are already more demanding worldwide.

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