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THE CONFLICT-SENSITIVE APPROACH APPLIED TO THE MITIGATION OF ENVIRONMENTAL DEGRADATION ARISING FROM ARMED CONFLICTS

A CONFLICT-SENSITIVE APPROACH APLICADA À MITIGAÇÃO DA DEGRADAÇÃO AMBIENTAL DECORRENTE DE CONFLITOS ARMADOS

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ABSTRACT

Considering, therefore, the aggravation and agglutination of increasingly complex and simultaneous phenomena in large-scale humanitarian emergencies, this study will understand the interconnections between the elements of conflict, humanitarian assistance, and environmental degradation. In this respect, this investigation aims to present the conflict-sensitive approach as a useful analytical tool that can greatly contribute to dealing with such multifaceted situations. The main objective of this research is to understand the impacts caused by the combination of the occurrence of armed conflicts and the occurrence of the climate and environmental crisis in the lives of the most vulnerable populations. Furthermore, seeking to improve the debate for lasting and effective solutions, this proposal will lead to hypotheses that will serve both possible legal and humanitarian solutions. Then, it will be necessary to understand, in the following order: how armed conflicts affect the natural environment (I); how the climate crisis exacerbates the severity of armed conflicts (II); and, finally, the understanding of the natural environment as a neglected victim by the International Humanitarian Law and its scope of protection, at the same time that it can be used as an effective weapon of war when it comes particularly to the conduct of hostilities (III). The conflict-sensitive approach will base this study as a methodological theory belonging to the area of knowledge relating to humanitarian studies (international humanitarian action).
Keywords: Climate change. Environmental catastrophes. Environmental degradation. International Environmental Law. International Humanitarian Law

RESUMO

Considerando o agravamento e aglutinamento de emergências humanitárias de larga escala, neste estudo compreender-se-á as interconexões entre os elementos conflito, assistência humanitária e degradação ambiental. Nesse sentido, buscar-se-á apresentar a conflict-sensitive approach como uma ferramenta analítica útil que em muito pode contribuir para lidar com conjunturas tão multifacetadas. A presente pesquisa tem por principal objetivo compreender os impactos causados pela combinação entre a ocorrência de conflitos armados e a ocorrência da crise climática e ambiental na vida das populações mais vulneráveis. Outrossim, buscando o aprimoramento do debate por soluções duradouras e efetivas, esta proposta conduzirá hipóteses que servirão tanto a possíveis soluções jurídicas quanto possíveis soluções ao setor humanitário. Nesse sentido, será necessário compreender, na seguinte ordem: como os conflitos armados afetam o meio ambiente natural (I); como a crise climática agrava a severidade dos conflitos armados (II); e, por fim, o entendimento do meio ambiente natural enquanto vítima negligenciada por parte do Direito Internacional dos Conflitos Armados e seu âmbito de proteção, ao mesmo tempo em que pode ser utilizado como uma efetiva arma de guerra quando se trata particularmente da condução das hostilidades (III). A abordagem conflict-sensitive fundamentará este estudo como teoria metodológica pertencente à área do conhecimento referente a estudos humanitários (international humanitarian action).
Palavras-chaves: Catástrofes Ambientais. Degradação ambiental. Direito Internacional Ambiental. Direito Internacional Humanitário Mudanças climáticas.
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1. INITIAL CONSIDERATIONS

International Humanitarian Assistance, organized under the framework of the International Humanitarian Architecture specific to each type of humanitarian emergency (e.g., forced displacement of refugees, forced displacement of internally displaced persons, international armed conflict, environmental disaster, socio-economic crisis etc.), is already facing profound challenges. However, the reality of the international humanitarian sector today is one of multifaceted emergencies, connecting its various independent catastrophes to aggravating transversal factors.

Particularly, the combination of armed conflict combined with disaster or environmental catastrophe has become recurrent, weakening preventive and peace-making structures and institutions more deeply. It is a fact that the needs are infinitely greater than the means and tools of humanitarian organizations and other response entities; thus, the importance of effective allocation of resources becomes more evident. Furthermore, the response time is often extremely short for the effective implementation of actions, projects and programs that effectively make sense for the local context.

The delivery of humanitarian assistance can become an aggravating transversal element, since it relies, in most cases, on the insertion of material and immaterial resources in contexts of scarcity. Despite the best intentions, therefore, the humanitarian sector is still capable of causing harm, with its supplies – often concentrated in the areas of assistance or protection – insufficient and inadequate.

As for the debate of hypotheses concerning the humanitarian sector, the possibility of applying the conflict-sensitive approach will be tested as a perspective of improving the response of international organizations to humanitarian emergencies. Furthermore, when dealing with hypotheses for legal solutions, three related phases of application will be dealt with: Convergences between International Humanitarian Law and International Environmental Law - (a) in the theoretical-doctrinal scope (fundamentals and purposes), (b) in the normative scope (analysis of principles and norms) and (c) in the practical scope (concrete cases).

It will also look at the effects that conflicts generate in communities affected by environmental disasters and catastrophes and the mechanisms for responding to environmental disasters and catastrophes in contexts of armed conflict. The main examples

of these simultaneous occurrences are the cases: South Sudan, Afghanistan, Sierra Leone, Nepal, Haiti, Ethiopia, Myanmar, Zimbabwe, Yemen, and Colombia.

To complement the developed debate, the future of the interaction between International Humanitarian Law and International Environmental Law will be considered, in terms of the effective protection of the Environment and its challenges. The general objective of the present study remains focused on analyzing the theoretical aspects of International Policy and Strategic Studies, combining them with International Humanitarian Law and International Environmental Law, considering the validity of its applicability in contemporary armed conflicts at the international level in terms of regarding the protection of the environment.

It will also seek to delimit the main elements and contours of the International Law of Armed Conflicts; to analyze the respect for the norms of International Humanitarian Law in the protection of the environment in the current armed conflicts; describe the legal bases that underlie the International Law of Armed Conflicts; to investigate the experiences of international protection of the environment of the norms of International Humanitarian Law; to propose solutions to strengthen the applicability of the norms of International Humanitarian Law in the protection of the environment; encourage the formation of international research networks with a view to improving the quality of academic production; verifying whether IHL rules on environmental protection are applicable in cases of non-international armed conflict; and, finally, to investigate the actions taken to protect the environment by international bodies in ongoing armed conflicts.

Despite the invaluable progress represented by the norms of International Law in protecting the environment, the constant violation of these norms of International Humanitarian Law, added to the difficulty in understanding some of their aspects, testifies in favor of the need for a theoretical strengthening to witness practical results in the international scenario.

Contemplating these assumptions, the hypothesis is raised that the norms of the International Law of Armed Conflicts in the protection of the environment have not yet reached their theoretical-scientific fullness, still lacking studies regarding their potential as an instrument for protecting the environment in case of war. Thus, we seek to understand the related effects between the impacts of armed conflicts, environmental degradation, and climate risks.

2. HYPOTHESIS FOR THE INTERACTIONS BETWEEN ENVIRONMENTAL DEGRADATION AND ARMED CONFLICTS

According to report data “When rain turns to dust”, from the International Committee of the Red Cross: 60% of the 20 countries considered most vulnerable to climate change are affected by armed conflict and 14 of the 34 countries in food crisis have experienced the dual impact caused by the coexistence of armed conflict and climate shocks. The coexistence, or simultaneous occurrence, gives rise to what the doctrine calls intersecting risks, or cumulative effects of this interaction, specifically.

Therefore, the simultaneous occurrence of environmental disasters and catastrophes and armed conflicts is already a bitter consequence of the connection between environmental degradation and such conflicts, however, “while a certain level of environmental damage is inherent in armed conflict, it cannot be unlimited” (ICRC, 2020(a), p. 12). Environmental degradation can be defined as “A process through which the natural environment is compromised in some way, reducing biological diversity and the general health of the environment. This process can be entirely natural in origin, or it can be accelerated or caused by human activities” (ICRC, 2020 (b), p. 06).

However, the biggest concern, in addition to the challenges that we currently face in the field, focuses on how to develop integrative methodologies to deal with the different faces of simultaneous occurrences, as they become more complex and recurring day after day. In this sense, it is what can be termed as conflict-related environmental damage (ICRC, 2020(a)).

Although profoundly relevant to the future of international humanitarian assistance, the coexistence of conflicts and environmental emergencies is rarely mentioned in the humanitarian sector and in academia unfortunately. The answer to this neglect may stem from some aspects, the first of which is the way in which phenomena are thought of, separately, isolated, so that one can then analyze their characteristics and theorize about them.

Whether or not we understand the origins of the apparent inability to predict and deal with the coexistence of phenomena that, by themselves, constitute independent catastrophes, it is essential to note that the consequences of an armed conflict will be different from the consequences of a context in which occur simultaneously acts of

belligerence within or between States and disasters or catastrophes associated with natural hazards.

> As always, analysis (and responses) must be context-specific and must seek to explore how particular risks are influenced by individual characteristics such as age, gender, capacity, occupation, or health – risks vary from one community to another and from one individual to another, and manifest themselves differently in urban, peri-urban, and rural areas (ICRC, 2020 (b), p. 41).

The hypothesis applicable to the search for lasting solutions for the effective response of international organizations focused on humanitarian assistance constitutes an integrative approach, centered on people and on causing no harm. Considering as many variables as possible in the analysis of the environmental catastrophe equation improves the ability to search for viable and lasting solutions, since these factors weaken political and social organization and, therefore, reduce the efficiency of the response to the challenges encountered.

> The convergence of climate risks and conflict further worsens food and economic insecurity and health disparities, limits access to essential services, while weakening the capacity of governments, institutions, and societies to provide support. [...]. Ripple effects can shape mobility, patterns of transhumance or access to resources on a continental scale. The consequences of collapsing governance are just as wide-ranging and far-reaching, from a breakdown in territorial control to an inability to maintain essential infrastructure, protect ecosystems, manage resources, resolve tensions, implement long-term plans, mobilize international support, or engage in regional diplomacy (ICRC, 2020 (b), p. 08).

Disasters and environmental catastrophes proportionally produce more people affected in fragile contexts, such as those resulting from armed conflicts, and while the practice of international organizations and States and the theory of International Law ignore the coexistence of these phenomena, treating them as isolated, it will not be possible to deal with their devastating effects. In the same sense, it is expected that climate change will intensify the frequency and intensity of environmental disasters and catastrophes over the years, also aggravating, in view of this, the nations affected by conflicts.

Climate change can be defined as “A change in the state of the climate that persists for an extended period: typically, for decades or longer. It refers to any change in climate over time, whether owing to natural variability or as a result of human activity” (ICRC, 2020 (b), p. 06).

More than half of deaths caused by natural hazards occur in the 30 most fragile states, affecting more than 01 (one) billion people. Other factors that cut across this reality are climate change, population growth and resource depletion – as there is clearly a close relationship between conflict, instability, hostility, and resource management, particularly in contexts of extreme socioeconomic inequality. The long-term devastation caused by recurring events must also be largely considered in their own contexts, as affected communities are obliged to adjust their lives to the occurrence of these phenomena associated with natural hazards.

Natural hazards linked to an environmental catastrophe or disaster arise only when the hazard is exposed to vulnerable people and structures. In this sense, the reasons that produce the risk of disasters and catastrophes are human, social, economic, political, etc. (not natural). A population already weakened by the frightening consequences of an armed conflict has its ability to face such environmental risks weakened. Furthermore, the scarcity of resources caused by the climate crisis and environmental degradation linked to the dispute for political power, domination and control produce deep division, discrimination, and exclusion, reducing the opportunity to access resources:

> In Iraq and Yemen, we see water insecurity threaten public health and jeopardize food and economic security. In Mali and Niger, we have seen how scarcity of resources, combined with limited mechanisms to ensure sustainable and equitable resource sharing, can exacerbate violence. [...] Most major armed conflicts between 1950 and 2000 took place in biodiversity hotspots, putting delicate ecological balances at risk. Countries experiencing conflict are also on the front line of climate change: 12 of the 20 countries which, according to the ND-GAIN Country Index, are the most vulnerable to climate change are also sites of armed conflict. [...] While a certain amount of environmental damage may be inherent to war, it cannot be unlimited, and it is now up to governments and all parties to armed conflict to take action accordingly. [...] The environment can no longer remain a silent casualty of war (ICRC, 2020 (a), p. 04).

In this sense, conflict poverty and political factors mutually aggravate the adverse situation and, eventually, increase vulnerability by diverting resources, further affecting vulnerable populations, limiting access, and reducing governance's ability to cope. Vulnerability, considering the theoretical framework of studies on environmental degradation, can be defined as:

> Condition brought about by physical, social, economic, environmental, and political factors or processes that increase the susceptibility of a community or individuals to a specific shock or hazard. The term describes a person or group's inability to

> anticipate, cope with, resist and/or recover from the impact of natural or man-made shocks or hazards without compromising their long-term prospects (ICRC, 2020 (b), p. 06).

The risk is contained in the recipient, in vulnerability, in the lack of resilience – in the human-nature interaction, such as, for example, in water management, in land use and, in climate change –, not because it is the sole and exclusive responsibility of the affected population, but because public capacity to respond deteriorates over time.

Affected communities only seek to guarantee their own survival in the face of food insecurity, loss of livelihood opportunities, damage to health and forced displacement to which they are subjected, phenomena which are exacerbated by environmental degradation and climate change: “People will keep trying to cope with and adapt to a degraded environment, growing risks of floods, droughts, extreme heat and poverty by searching for new livelihood strategies, changing their way of life or leaving their homes” (ICRC, 2019, p. 66).

Displacement is not usually the first adaptation strategy of a population, so it is commonly chosen first to diversify livelihoods, change irrigation methods, use different seeds, graze other species of animals, or even by the seasonal displacement of a family member to other regions of the country where it is possible to find resources that are more abundant.

In the absence of other viable possibilities, however, many decide to move, both preventively, with the deterioration of the situation in which they find themselves, and as an emergency, when staying can mean an immediate risk to their lives and the survival of their family. On the other hand, faced with the lack of public or civil society support for resettlement, whether across borders or within the country itself, the poorest individuals or most marginalized communities end up trapped either where they are, or are obliged to move to even more scarce areas in terms of resources and more exposed to risks, having to remain in continuous motion without having the chance to really start over.

2.1 ARMED CONFLICTS DEGRADE THE NATURAL ENVIRONMENT

The degradation of the natural environment because of hostilities arising from international and non-international armed conflicts causes effects that are often more lasting than the conflict itself, beyond any possibility of measurement. Unfortunately, frequently, the

natural environment is directly attacked or suffers collateral damage in relation to the main military objectives. Among the possible damages, one should also consider the destruction of infrastructure and facilities that guarantee services such as sanitation and the distribution of water and electricity.

> The environment is considered the physical, chemical, and biological conditions that make possible and are propitious to the life of living creatures. It is prohibited to use methods or means of warfare, which are intended or may be expected to cause widespread, long-term, and severe damage to the natural environment and thereby to prejudice the health or survival of the population. Attacks against the natural environment by way of reprisals are also prohibited (BOUVIER; GRIGNON; QUINTIN, 2014).

The multiple sources of degradation can be understood as direct – which contaminate water resources and soil and produce pollution, for example – and indirect – such as explosion and soil contamination by explosive remnants, or damage to biodiversity of the affected region. Furthermore, the environmental consequences of armed conflicts also contribute to climate change, as in situations where extensive forest areas are cleared, or the destruction of industrial and oil structures that release greenhouse gases into the atmosphere.

Forced displacement – and here is the connection with International Refugee Law and the theory of Environmental Refugees – will be another consequence of immense relevance, given that the affected populations will migrate in search of resources necessary for their survival and better living conditions and dignity. The forced displacement produced may promote the development of more hostilities, considering the ongoing ethnic and/or religious tensions and the marginalization of minorities. Parties to the conflict, whether state or non-state, armed or unarmed, may resort to harmful and unsustainable exploitation of natural resources to sustain hostilities.

> Natural resources are actual or potential sources of wealth that occur in a natural state, such as timber, water, fertile land, wildlife, minerals, metals, stones, and hydrocarbons. A natural resource qualifies as a renewable resource if it is replenished by natural processes at a rate comparable to its rate of consumption by humans or other users. A natural resource is considered non-renewable when it exists in a fixed amount, or when it cannot be regenerated on a scale comparative to its consumption (UNITED NATIONS, 2010, p. 57).

Each element is treated here as a cause and a consequence of the same phenomenon, because in terms of human variables in relation to environmental variables,

the same system of influences is observed, which has the natural environment at the center. Climate risks will generate setbacks to development already in connection with ongoing-armed conflicts:

> Taking into account the above, and as noted in the commentary on Article 55 of Additional Protocol I, the term “natural environment” should be understood in the widest possible sense, in line with the meaning States have given it in the context of IHL.30 This approach accords with the fact that the notion of the “natural environment” may evolve over time, as knowledge about it increases and as the environment itself is constantly changing (ICRC, 2020 (a), p. 16).

Finally, a weakened state will be unable to manage internal disturbances and tensions, causing the systemic collapse of an entire nation. In the future, that State will be less skilled in managing processes of prevention and response to natural disasters, leaving it even more vulnerable. Some examples that will be addressed in terms of the worsening severity of armed conflicts resulting from the climate crisis include Mali, the Central African Republic and Iraq.

2.2 THE CLIMATE CRISIS AGGRAVATES THE SEVERITY OF ARMED CONFLICTS

The climate crisis exacerbates armed conflicts insofar as it offers a double threat (doble afectación) to already vulnerable populations, to further mitigate their ability to adapt and make it impossible to build community resilience. Adaptability can be defined as “The ability of systems, institutions and humans to adjust to potential damage, take advantage of opportunities, or respond to the consequences of climate impacts”, the adaptation process can be defined as “The process of adjustment in natural or human systems in response to actual or expected climate change and its effects, which seeks to moderate or avoid harm or exploit beneficial opportunities” and, finally, the related resilience phenomenon can be conceptualized as “The ability of individuals, communities, institutions and systems to anticipate, absorb, adapt, respond to and/or recover from shocks and stressors caused by conflict, violence and hazards of various kinds without compromising their long-term prospects”, according to the glossary of the 2020 report “When rain turns to dust” by the International Committee of the Red Cross (ICRC, 2020 (b), p. 06-07).

The already scarce access to water and food is deteriorating, directly affecting the survival capacity and dignity of the affected communities, as they have to deal with the

horrors of the ongoing-armed conflicts. The incompatibilities and interests in relation to the management of natural resources are also triggers of conflicts, which are aggravated in contexts of scarcity.

> In recent years, concern has been growing about security risks resulting from climate change, as have warnings that a changing climate could provoke a succession of wars. Scientists generally agree that climate change does not directly cause armed conflict, but that it may indirectly increase the risk of conflict by exacerbating factors that can, in a complex interplay, ultimately lead to conflict. Such factors include social exclusion, a history of conflict and grievances, economic risks, environmental degradation, and tensions over the management of resources (ICRC, 2020 (b), p. 19).

Environmental degradation directly affects the generation of livelihoods in processes of continuous aggravation since a State primarily affected by armed conflicts – which sometimes last for decades – very likely could not develop properly. In this sense, more drastic climate changes will generate from occasional rains and droughts to intense rains and floods, thus causing the lack of livelihoods or their complete commitment.

The civilian population (civilians), a category of people protected by International Humanitarian Law, is the main indirect victim of the phenomena represented here, although it is not the only one, as we will see below in this debate. Climate change will also influence competition for resources, producing more instability that, largely, is closely related to socio-political variables specific to each region.

Thus, it is necessary to observe the relationship between the phases of the conflict, or the identification of the stage in which the conflict is, and the protection of the environment, in order to understand the natural resources as protagonists in each phase. The aforementioned phases refer to the analysis of armed conflicts from a security perspective and are divided into pre-conflict, in-conflict e post conflict (DAS, 2013).

In the phase pre-conflict, the structure of conflict prevention focused on the environmental conflicts, establishing a close connection between environmental pressures and conflicts – in combination, as discussed above, with other possible underlying variables such as socio-economic or political factors. In the phase pre-conflict this is where the most significant collective efforts by the international community to prevent mitigate or manage, environmental issues that can potentially motivate conflict should focus. In the in-conflict phase, obviously, there is intense difficulty in applying the relevant rules and principles of

IHL in relation to environmental protection, since the “exit” clause from military necessity can always be raised.

Furthermore, it is equally important to point out the few and fragile successes regarding accountability for environmental damage caused during armed conflicts, despite the important victory when it comes to the Iraq case, in the First Gulf War. Finally, the post conflict phase also brings interesting conclusions. It is at this stage that efforts to manage natural resources must be concentrated so that they do not become reasons for resorting to hostilities. In addition, international cooperation efforts must include the integration of necessary environmental priorities along with other security, humanitarian, and socio-economic development factors.

When it comes to areas of improvement, gaps are observed in the response methodologies at all stages. In the pre-conflict and preventive stage, there is a clear lack of urgency, exposing the regions in question to irreparable damage from vicious cycles of environmental hazards that fuel conflict, while conflict is fueled by environmental degradation.

In the stage “during” the conflict, the convenient justification of the military necessity for the violation of the protection of the environment is faced, both for the execution and for the accountability. Customary IHL also fails to provide adequate protection in practice. Among the results arising from this reality, we can mention the almost non-existent culture of reparations for environmental damage, in addition to the adversities encountered in the post-conflict phase to obtain funding for cleaning, damage remediation and environmental management (DAS, 2013, p. 252).

Finally, it remains to add the interesting perspective of hot wars and cold wars, modalities of conflict classified according to the different forms of response to armed conflicts when influenced by climate change:

> A Hot War is conflict were climatic heating leads to loss of water and desertification of habitats, driven especially by changes in precipitation patterns. While some climate change may lead to increases in precipitation, a Hot War occurs when precipitation declines. There is, of course, feedback: a warming climate will lead to greater evaporation of water and will compound problems of aridity. […] In a Cold War, an area that is relatively uninhabitable to humans due to cold temperatures becomes habitable. The Cold War type is most often common to the Polar Tension Belt. The degree of change over time in a Cold War is more episodic compared to the long-term nature of Hot War conflict in the Equatorial Tension Belt. The Cold War is driven by temperature increases and the warming of cooler parts of the planet. Where the Hot War is characterized by the breakdown of state functions and internal

> strife, the Cold War exemplifies conditions of expanding state control and external conflict (LEE, 2009, p. 14-16).

The study exemplified above also considers historical-geographical, socioeconomic, and political-cultural factors, demonstrating the relevance of investigating the interaction between conflicts and climate change. Finally, climate change and environmental degradation translate into violence and conflict. Likewise, violence and conflict influence climate change and produce environmental degradation.

2.3 THE NATURAL ENVIRONMENT AS A NEGLECTED VICTIM AND A WEAPON OF WAR IN ARMED CONFLICTS

The natural environment has been systematically used, exploited, and compromised to the detriment of its own existence – and the future of human survival – to appear as a weapon of war or a neglected victim. Weaponizing is a term widely seen in IHL doctrine to represent anything that is turned into means or methods of warfare. Therefore, it is worth adding the concept of Geophysical warfare, a practice prohibited by the 1976 ENMOD Convention, which can be defined as "Refers to military tactics that turn the geophysical patterns of the earth into weapons, for instance, by provoking earthquakes, tsunamis, and changes in weather patterns" (UNITED NATIONS, 2010, p. 56).

> Despite the protection afforded by several important legal instruments, the environment continues to be the silent victim of armed conflicts worldwide...armed conflict causes significant harm to the environment and the communities that depend on natural resources. Direct and indirect environmental damage, coupled with the collapse of institutions, lead to environmental risks that can threaten people's health, livelihoods, and security, and ultimately undermine post-conflict peacebuilding (UNITED NATIONS, 2010, p. 04).

Concerning the impacts of armed conflicts on the environment, there are "environmental attacks" – a term that we will see more particularly in the course of this study –, air pollution, mining, deforestation, forest fires, degradation of protected areas and contamination of water and soil. In this sense, some examples to be discussed are Ukraine, the Democratic Republic of Congo and Colombia.

It is also relevant to mention Environmental Conflicts or Climate Conflicts, a specific type of conflict aimed at disputes over natural resources and the future of armed conflicts for a humanity subjected to an absolute regime of scarcity – a reality already experienced

by several countries around the world. Environmental Conflicts or Climate Conflicts focus on access to and management of natural resources as a key factor in armed violence:

> Climate Conflicts arise when climate change alters the environment as to cause damage (primary damage) which limits the options of affected states and people to deal with the primary damage in such a manner that clashes of interests, between at least two parties arise over resources, arable land and territory of significant duration and magnitude, irrespective of the use of armed force (CHRISTIANSEN, 2016, p. 241).

Furthermore, the illegality of the processes of production of financial resources for the activities of illegitimate belligerent's members of non-state armed groups involves the promotion of deforestation, harmful mining processes, among other examples, such as devastating effects on wild animal populations that serve as food and resource for the insurgents.

It is worth mentioning some well-known scenarios for purposes of exemplification: (I) In Iraq, in the early 1990s, the swamps of Mesopotamia, the largest wetland ecosystem in the Middle East, are drained. A series of dikes and canals reduces the swamps to less than 10% of their original extent and transforms the landscape into a salt-crusted desert; (II) Decades of conflict destroy more than half of Afghanistan's forests, with the country being deforested by up to 95% in certain areas, in part due to people's survival strategies and the collapse of environmental governance during decades of war.

Other relevant examples are: (III) Unregulated gold mining and logging as a source of financing for non-state armed groups in Colombia, generating mercury pollution of rivers and land, especially in the Quito River basin; (IV) Agent Orange (herbicide and defoliant) used in forests during the Vietnam War as part of a deliberate destruction to deprive Vietnamese guerrillas of their camouflage. It should be noted, as appropriate, that the destruction of the environment in scenarios of wars and armed conflicts has been widely used throughout human history.

Still, it is possible to draw a parallel between climate change and state fragility, especially in conflicts characterized by competition for natural resources and insecurity of livelihoods. From this perspective, non-state armed groups (NSAGs) proliferate more easily due to fragile environments, where the state has little or no authority. Sometimes, in these situations, NSAGs control natural resources in order to fill the gap left by the state to ensure the trust and support of the local population.

Another important point is that the scarcity of livelihoods makes affected population groups more vulnerable to recruitment by NSAGs, as they can offer alternative livelihoods. Finally, NSAGs are increasingly using natural resources as a weapon of war, inhibiting access to natural resources such as water. The scarcer resources become more power those who control them have (NETT; RÜTTINGER, 2016).

3. THE CONFLICT-SENSITIVE APPROACH AND THE HUMANITARIAN SECTOR

Although the protection of the natural environment does not appear as a central debate in International Humanitarian Law, it cannot be forgotten that, in a reflexive way, they are related to human protection and the guarantee of their survival as an integral subject, producing harmful results, including permanent and independent of the conflict. In addition to collapsing structures of normality, armed conflicts, as demonstrated, paralyze environmental management systems while people struggle to survive.

More than ever, a full movement of transformation is needed in the way the humanitarian sector adapts to deal with environmental challenges in armed conflicts and other anticipated models of coexistence. In this sense, strengthening funding and capacity building to address the challenges arising from environmental degradation and climate change must become a reality for all humanitarian emergency scenarios.

Furthermore, when it comes to recurrent disasters and protracted conflicts, ignoring the aggregate results becomes not only non-compliance, but also negligence. If the authorities and the local and international humanitarian or civil society organizations operating in the country are not prepared to deal with the multiple affects, then neither will the population be. For that, the conflict-sensitive approach is essential.

The conflict-sensitive approach seeks precisely to promote a practice of reflection, through the understanding that humanitarian assistance can sometimes support peace or war, depending on the indirect support produced by the relationship (Resources vs. Power). Furthermore, the relationship between stakeholders and their interventions must be analyzed so that conflicts and tensions do not worsen. It is also necessary to analyze the principle of no harm and its implications for the performance of humanitarian organizations and the situations of conflict connected to environmental catastrophes.

The proposal focuses not only on developing capacities concerning the conflict-sensitive approach, but also on integrating it into programs in an integral way, thus forming

conflict-sensitive disaster response programs. The implementation of activities, projects and programs will always have an impact on communities, whether positive or negative. In addition to developing participatory mechanisms during planning (through community participation and community-based protection mechanisms), projects must also consider reducing the risk of conflict. The conflict-sensitive approach is perfectly aligned with peacebuilding and conflict risk reduction processes, although it cannot be confused with them.

Being conflict-sensitive refers to an organization's ability to: (i) understand the dynamics of conflicts in the context in which they occur; (ii) understand the interaction between intervention and conflict dynamics in the specific context; and, finally, (iii) act in accordance with this understanding to avoid negative impacts and maximize the positive impacts of the intervention in the dynamics of the conflict.

On the other hand, conflict risk reduction processes take ownership of the three skills and attitudes above, adding to them: (iv) deliberate efforts to address conflict factors and contribute to reducing the risk of conflict through a focus on not harm (do no harm), more conservatively, or deliberately designing project objectives to impact improved stability through peace talks, for example.

Furthermore, it is known that vulnerability to environmental disasters and catastrophes is different for men and women, as well as for different marginalized social groups due to discrepancies in access to land, water, and other resources. When programs ignore social and gender relations, minorities and groups marginalized due to conflict and the historical-cultural elements of the context, they end up reproducing and strengthening existing conflicts and power relations. In this sense, the implementation of conflict-sensitive disaster and catastrophe response programs can contribute to a fair allocation of (natural) resources to different vulnerable groups.

4. CONVERGENCES BETWEEN THE INTERNATIONAL HUMANITARIAN LAW AND THE INTERNATIONAL ENVIRONMENTAL LAW

The following question can be presented: how to organize International Law through its norms, principles, and methods in order to conduct the nexus between environmental catastrophe and conflict more appropriately?

Ongoing-armed conflicts, both international and non-international, make it difficult to intervene in response to environmental disasters, such as national and international programs of humanitarian assistance. However, it is essential to understand that response models typically assume that there is a functioning (and not bankrupt or weakened) government. The normative framework of international law currently available does not provide guidelines on how to deal with the conflict-environmental disaster nexus.

International humanitarian law focuses exclusively on conflict, while the permanent disaster guidelines, the Hyogo Framework for Action and the Sendai Framework for Disaster Risk Reduction do not include the notion of conflict and its varied interactions. Disaster response policies are therefore of little help in dealing with disaster situations where the government is unable or unwilling to act and where the risk of escalating conflict is imminent.

Both legal systems (Environmental and Humanitarian) presuppose necessary conditions of full applicability that, sometimes, even consider functional and operative structures, in addition to the intentions of their subjects as absolute truths. Presupposing perfect conditions for the observance of human phenomena in no way helps in the design of more effective tools or methodologies.

On the one hand, the models for regulating and triggering a disaster response system associated with natural risks assume the existence of a fully functioning government capable of responding to disasters and catastrophes in accordance with established protocols, carrying out what is expected. On the other hand, the positive and customary norms of International Humanitarian Law assume that acts of belligerence will be strategically measured to cause the least possible harm. Both orders thus ignore the field and practice. Certainly, if they were based on the worst damage and the worst intentions, they would most likely be more effective.

In this sense, if a fragile government is not capable of sustaining the necessary structures for the implementation of guidelines specific to environmental disasters and the rules of International Humanitarian Law, then there are no functioning systems. With innocuous and incipient structures, it is only possible to expect negligence when it comes to institutes such as disaster preparedness and disaster risk reduction.

As for the convergences between International Humanitarian Law and International Environmental Law, we can mention: the principle of distinction – civil objectives and objects must be spared, including natural resources necessary for the survival of the population; the

principle of proportionality – environmental damage is not infrequently the result of a disproportionate response to the pursuit of a threat; the principle of military necessity – the use of military force is only justified to the extent of the need to achieve a defined military objective; and the principle of humanity – causing unnecessary destruction such as poisoning artesian wells and destroying arable land for agriculture is prohibited.

As for the norms of International Humanitarian Law that protect the natural environment, directly or indirectly, we will divide the rules and recommendations into 04 (four) categories: Specific protection of the natural environment under International Humanitarian Law (I); General protection of the natural environment under international humanitarian law (II); Protection of the natural environment provided by rules on specific weapons; and Respect, implementation and dissemination of the rules of International Humanitarian Law that protect the natural environment (IV):

> For the benefit of clarity, this section distinguishes between direct protection of the environment and indirect protection of the environment, the difference being the intention of the drafters or the ratio behind the specific rule. Rules that directly protect the environment were intended to do so by the drafters; rules that indirectly protect the environment were not intended to do so but may nevertheless be conducive to environmental protection (KOPPE, 2008, p. 122).

It is important to point out, before listing the categories of available rules, that International Humanitarian Law, according to the International Committee of the Red Cross, classifies everything that may be subject to attack or destruction during belligerence, whether civil or military. In this sense, the natural environment has a notoriously civil character for the doctrine and normative diplomas in force in IHL - being, therefore, protected against incidental damage, also because civil objects are all those that are not military objects and the natural environment is in Part IV, Section I, Chapter III of Additional Protocol I, entitled Civilian Objects.

However, unfortunately - considering the importance of the natural environment - parts of it can be considered military objectives depending on characteristics such as nature, location, purpose, and use, if their destruction, capture, or neutralization offers a clear military advantage. Considering the anthropocentric vision under which International Humanitarian Law was conceived, the natural environment, or its constituent elements, will only be understood as civil objects when they are used by civilians or when the damage caused to the natural environment harms civilians.

Therefore, it is essential to point out that this research effort considers the natural environment in its intrinsic value, through the so-called intrinsic value approach: “This approach recognizes the intrinsic dependence of all humans on the natural environment, as well as the still relatively limited knowledge of the effects of armed conflict on the environment and the implications of this for civilians” (ICRC, 2020. p. 18).

The rules referring to the first category (I) deal with the use of means and methods of warfare that take into account the protection of the environment, the prohibition of means and methods of warfare that cause widespread, long-term and severe damage to the natural environment. , the prohibition of the use of the destruction of the natural environment as a weapon of war and the prohibition of the attack on the natural environment as a form of reprisal:

> Rule 1 – Due regard for the natural environment in military operations; Rule 2 – Prohibition of widespread, long-term, and severe damage to the natural environment; Rule 3 – Prohibition of using the destruction of the natural environment as a weapon; Rule 4 – Prohibition of attacking the natural environment by way of reprisal (ICRC, 2020(a). p. 07).
>
> Rule 3 – Prohibition of using the destruction of the natural environment as a weapon. A. Destruction of the natural environment may not be used as a weapon. B. For States party to the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD Convention), the military or any other hostile use of environmental modification techniques having widespread, long-lasting, or severe effects as the means of destruction, damage or injury to any other State Party is prohibited (ICRC(a), 2020. p. 40).

It is essential to point out that the threshold necessary for the violation of Articles 35 and 55 of Additional Protocol I to the Geneva Conventions to occur, considers thresholds that are not only imprecise, but also almost impossible to achieve. Here it is about the prohibition of “widespread, long-term and severe damage” (serious, generalized, and long-term damage), so the three conditions must be fulfilled in order to be facing a violation. Furthermore, isolated terms are not merely defined (UNITED NATIONS, 2010).

As for the second category (II), we found a series of rules arising from general principles of International Humanitarian Law that generically cover the natural environment, although this is not explicit, such as precautions, proportionality, and distinction. Furthermore, there is a ban on the attack and destruction of objects indispensable to the survival of the civilian population, the protection of facilities and structures containing dangerous forces – such as dams, dykes and nuclear plants, for example –, the protection

of property cultural, in addition to also contemplating military occupations and non-international armed conflicts regarding the application of protection, the martens clause and the authorization of expansion of environmental protection in armed conflicts. Below are their titles:

> Rule 5 – Principle of distinction between civilian objects and military objectives; Rule 6 – Prohibition of indiscriminate attacks; Rule 7 – Proportionality in attack; Rule 8 – Precautions; Rule 9 – Passive precautions; Rule 10 – Prohibitions regarding objects indispensable to the survival of the civilian population; Rule 11 – Prohibitions regarding works and installations containing dangerous forces; Rule 12 – Prohibitions regarding cultural property; Rule 13 – Prohibition of the destruction of the natural environment not justified by imperative military necessity; Rule 14 – Prohibition of pillage; Rule 15 – Rules concerning private and public property, including the natural environment, in case of occupation; Rule 16 – The Martens Clause with respect to the protection of the natural environment; Recommendation 17 – Conclusion of agreements to provide additional protection to the natural environment"; e Recommendation 18 – Application to non-international armed conflicts of international humanitarian law rules protecting the natural environment in international armed conflicts (ICRC(a), 2020. p. 07).

For the third category (III), there are rules regarding the prohibition of poisoned, biological, chemical weapons and the use of herbicides as a method of warfare. This category also includes the regulation of incendiary weapons, land mines and cluster munitions:

> Rule 19 – Prohibition of using poison or poisoned weapons; Rule 20 – Prohibition of using biological weapons; Rule 21 – Prohibition of using chemical weapons; Rule 22 – Prohibition of using herbicides as a method of warfare; Rule 23 – Incendiary weapons; Rule 24 – Landmines; e Rule 25 – Minimizing the impact of explosive remnants of war, including unexploded cluster munitions. (ICRC, 2020(a) p. 09).

Finally, the fourth category (IV) brings the obligation to respect the rules listed above, the integration of this order into the domestic law of each nation, the repression of environmental war crimes, the dissemination of the rules of environmental content of IHL to the forces national armed forces and the civilian population, legal advice in relation to such norms and the evaluation with respect to future weapons created:

> Rule 26 – Obligation to respect and ensure respect for international humanitarian law, including the rules protecting the natural environment; Rule 27 – National implementation of international humanitarian law rules protecting the natural environment; Rule 28 – Repression of war crimes that concern the natural environment; Rule 29 – Instruction in international humanitarian law within armed forces, including in the rules protecting the natural environment; Rule 30 – Dissemination of international humanitarian law, including of the rules protecting the

> natural environment, to the civilian population; Rule 31 – Legal advice to the armed forces on international humanitarian law, including on the rules protecting the natural environment; e Rule 32 – Evaluation of whether new weapons, means or methods of warfare would be prohibited by international humanitarian law, including by the rules protecting the natural environment (ICRC, 2020(a) p. 10).

Articles 35(3) and 55 of Additional Protocol I are cited representing the express provisions for the protection of the natural environment and the rules 43, 44 e 45 of Customary International Humanitarian Law. Regarding the continuity or not of the application of Environmental Law treaties during armed conflicts, the International Court of Justice, in its Advisory Opinion in the Nuclear Weapons case, stated that Environmental Law "indicates important factors that must be correctly taken into account in the scope of the implementation of the principles and norms of the law applicable in armed conflicts".

Also added is the provision of Art. 8(2)(b)(IV) of the Statute of the International Criminal Court (1998): "Intentionally launching an attack, knowing that it will cause accidental loss of life or injury to the civilian population, damage to civilian property or damages extensive, lasting and serious damage to the environment which are clearly excessive in relation to the anticipated concrete and direct global military advantage" and the 1976 Convention on the Prohibition of the Use of Environmental Modification Techniques for Military or Any Other Hostile Purposes.

Despite the existence of international legal norms to be applied in the scenarios described above, it is necessary to understand what the mechanisms are so that the protection and preservation of the environment in scenarios of armed conflict can be presented satisfactorily, and not just formally. Thus, there are two perspectives that can be used to understand this relationship: the first is that the protection of the natural environment in the context of armed conflicts is relevant and has an end in itself, per se; the second provides that the aforementioned protection be based on the protection of protected persons, especially civilians.

Finally, there are two more points of convergence between the orders that could not be left untreated. The first refers to the norms of protection of the natural environment in armed conflicts applicable to non-international armed conflicts and the second to an extensive understanding of the effectiveness of said protection, considering both orders together (Humanitarian and Environmental). International humanitarian law was not designed for internal conflicts and non-state armed groups, much less for the protection of the environment by parties to the conflict that are outside the state-centric perspective.

It is under this characterization, however, that most of today's armed conflicts can be classified, which, due to theoretical-normative gaps, lose in applicability and effectiveness. It is important to note that currently internal conflicts are intensely associated with the natural environment, so that, according to recent research by the International Committee of the Red Cross, at least 40% of all non-international armed conflicts in the last 60 (sixty) years are linked to natural resources. This link can be associated with either the origins or reasons of the conflict, as well as the consequences, outcomes, and objectives.

However, when it comes to cases that address the responsibility of States for violations of International Humanitarian Law (not necessarily violations of environmental protection, but generically), their rare existence is observed. Specifically on the protection of the natural environment, it is known that there were few interpretations made by judiciary bodies, courts, and tribunals on the matter. Nevertheless, one cannot deny the relevance of such interpretations in terms of guidelines and clarifications on the protection of the natural environment in armed conflicts. Therefore, jurisprudence, even of an internal nature, or that bring IHL as a collateral matter, are essential for the visualization of practical gaps in the normative framework.

5. FINAL CONSIDERATIONS

The humanitarian sector, notoriously, already conducts several activities, projects, and programs to establish and reinforce the resilience of communities; however, it is necessary that such efforts be reshaped under a contextualized understanding of the local climate risks of short and long term. The refinement of the system serves all humanitarian organizations regardless of their size or function, so that the contextualization of climate risks becomes a transversal approach to all sectors, to the same extent as the conflict-sensitive approach. Thus, it is understood that, on the one hand, a transversal approach must be established for the understanding and consideration of environmental risks, and, on the other hand, efforts are needed for the broad implementation of the conflict-sensitive approach.

Both approaches must be transmitted and widely disseminated through programmatic guidelines, provided through training for humanitarian professionals and incorporated into activities in protection, assistance, economic security, water, habitat, and health. Furthermore, in contexts where instability and fragility of structures and institutions

have long discouraged development efforts, coordination between institutions will need to be improved so that mandates are complementary.

Today we know that dedication to stopping the climate crisis is just as important as efforts to build community resilience. In this scenario, people affected by armed conflict, while being among the most vulnerable to the climate crisis, are also among the most neglected by climate action activities, projects, programs, and organizations. This is precisely because of the understanding that the aforementioned humanitarian emergencies should not be approached under the same prism and incorporated into the same response plans - a paradigm that we seek to deconstruct with this research effort.

Possible guidelines for improving the international humanitarian assistance system in relation to the challenge of coexistence between environmental disasters and catastrophes (associated with natural risks) and armed conflicts can be listed in: (a) allocation of resources, knowledge and leadership aimed at training for respond appropriately to vulnerabilities and needs resulting from the intersection of conflict and climate risks; (b) ensuring that people already suffering the consequences of war are not ignored when it comes to climate risks; (c) anticipating risks and building resilience to protect communities, including by developing livelihoods, resilient shelters and promoting access to essential services and information on adaptation pathways; (d) mobilization to improve climate action and its financing, including for a balance between mitigation and adaptation efforts; (e) leadership in terms of the resilience of humanitarian operations to extreme weather events.

Furthermore, it is a fact that the application of indirect principles and regulations in particular to the protection of the environment in armed conflicts requires clarification, interpretation, and jurisprudence, in order to better understand their uses. In the same sense, it is clear that the natural environment from the perspective of the classical doctrine of International Humanitarian Law is still perceived as an object belonging to the class of civil objects, relevant to the survival of the civilian population (protected person). However, the natural environment will only be respected and effectively protected in armed conflicts when it is considered a subject in need of protection, receiving the status of protected person and the corresponding protective legal framework.

The international community must accept its responsibility to collectively offer financial and technical support to restore and manage environmental damage at all stages

of the conflict, in an integrative manner regarding other factors of socio-economic development in war-torn countries.

REFERÊNCIAS

AUSTIN, J. E. BRUCH, A. E. **The environmental consequences of war: legal, economic, and scientific perspectives.** Cambridge: Cambridge University Press, 2000.

BOUVIER, A. GRIGNON, J. QUINTIN, A. SASSÒLI, M. **How does law protect in war?** Geneva: ICRC, 2014. Disponível em: https://casebook.icrc.org/glossary/environment Acesso em: 14 de fevereiro de 2022.

CHRISTIANSEN, S. M. **Climate Conflicts: a case of International Environmental and Humanitarian Law**. Springer International Publishing, 2016.

DAS, O**. Environmental Protection, Security and Armed Conflict: a sustainable development perspective.** Cheltenham, Northampton: Edward Elgar Publishing Limited, 2013.

GUERRA, S. **O Direito Internacional das Catástrofes.** 1 ed. Curitiba: Instituto Memória, 2021.

GUERRA, S**. Curso de Direito Internacional Público.** 14 ed. São Paulo: Saraiva Educação, 2022(a).

GUERRA, S. **Curso de Direitos Humanos.** 7 ed. São Paulo: Saraiva Educação, 2022(b).

HILHORST, D. VOORST, R. V. **Humanitarian action in disaster and conflict settings: insights of an expert panel.** The Hague: International Institute of Social Sciences (ISS), 2018.

INSTITUTE FOR ECONOMICS & PEACE. **Ecological Threat Report 2021: understanding ecological threats, resilience, and peace.** Sydney: IEP, 2021.

INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC**). The Geneva Conventions of 12 August 1949.** Geneva: ICRC, 1949.

INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC). **Protocol Additional to the Geneva Conventions of 12 august 1949 and relating to the protection of victims of international armed conflicts (Protocol I), of 8 June 1977**. Geneva: ICRC, 1977.

INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC). **International Humanitarian Law and the challenges of contemporary armed conflicts recommitting to protection in armed conflict on the 70th anniversary of the Geneva Conventions.** Geneva: ICRC, 2019.

INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC). **Guidelines on the protection of the natural environment in armed conflict: rules and recommendations relating to the protection of the natural environment under international humanitarian law, with commentary.** Geneva: ICRC, 2020 (a).

INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC). **When rain turns to dust: understanding and responding to the combined impact of armed conflicts and the climate and environment crisis on people's lives.** Geneva: ICRC, 2020 (b).

INTERNATIONAL COMMITTEE OF THE RED CROSS**. Customary IHL Database.** Disponível: https://ihl-databases.icrc.org/customary-ihl/eng/docs/home Acesso em: 17 mai. 2021.

KOPPE, E. **The Use of nuclear weapons and the Protection of the Environment during International Armed Conflict.** Oxford, Portland, Oregon: Hart Publishing, 2008.

KUNREUTHER, H. C., MICHEL-KERJAN, E. O. **At War with the Weather Managing Large-Scale Risks in a New Era of Catastrophes.** Cambridge, London: The MIT Press, 2009.

LEE, J. R. **Climate Change and Armed Conflict: Hot and Cold Wars.** Routledge, 2009.

NETT, K. RÜTTINGER, L. **Insurgency, Terrorism and Organised Crime in a Warming Climate: analysing the links between climate change and non-state armed groups.** Berlin: Climate Diplomacy, 2016.

SASSÒLI, M. **International Humanitarian Law: rules, controversies, and solutions to problems arising in warfare.** Cheltenham: Edward Elgar Publishing Limited, 2019.

UNITED NATIONS. **Protecting the Environment during Armed Conflict: an inventory and analysis of International Law.** United Nations, 2010.

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