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Review article

Integrative perspective of the human rights and humanitarian law model within the framework of international society*

Perspectiva integradora del modelo de derechos humanos y derecho humanitario en el marco de la sociedad internacional

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Abstract
Integrating perspective of the model of human rights and humanitarian law in the framework of international society the intention of this article is to establish as a central discussion the actions that should be considered by international society to generate a model that integrates human rights and humanitarian law, in which both perspectives are privileged and some of the rights are not exempted, which is a complex task that requires a study of the world order related to institutions, rules and principles, among them: giving value to the ethics of the use of

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physical force. Through the documentary technique and the comparative method, an exhaustive review is carried out in different sources to find a common line that allows the generation of this proposal with the intention of having a current model that influences the study tendencies on the discussion of the subject. It is concluded that some significant and urgent decisions are considered in this regard in terms of international humanitarian law and human rights in which the International Committee of the Red Cross has been present to assist people and institutions such as the International Criminal Court have interceded; to ensure that the law in its broadest sense fulfills its social function and manages to protect and protect the most basic rights of people living both in peace and in war.
Keywords: Human Rights, Humanitarian Law, International Society

Resumen
La intención del presente artículo es establecer como discusión central las acciones que debe considerar la sociedad internacional para generar un modelo que integre a la par derechos humanos y derecho humanitario, en el que se privilegien ambas perspectivas y no se eximan a algunos de los derechos lo cual es una tarea compleja, que requiere de un estudio del orden mundial relacionado con instituciones, reglas y principios, entre ellos: dar valor a la ética del uso de la fuerza física. A través de la técnica documental y del método comparativo se realiza una revisión exhaustiva en diversas fuentes para encontrar una línea común que permita generar esta propuesta con la intención de tener un modelo actual que incida en las tendencias de estudio sobre la discusión del tema. Se concluye que se estiman algunas decisiones significativas y urgentes al respecto en materia de derecho internacional humanitario y derechos humanos en las que ha estado presente el Comité Internacional de la Cruz Roja para atender a personas e intercedieron instituciones como la Corte Penal Internacional; para lograr que el derecho en su más amplio sentido cumpla su función social y logre tutelar y proteger los derechos más elementales de las personas que viven tanto en paz como en guerra.
Palabras Clave: Derechos Humanos, Derecho Humanitario, Sociedad Internacional

SUMMARY

Introduction

The State and its strength is a necessary figure of analysis in the field of human rights, derived from the Peace of Westphalia in Europe, which puts an end to a model of meager political society and gives way to a new organization with sovereignty, territory, and legal equality. It marks a watershed in which countries had a belligerent type of behavior protected by the strength of the alliances that were forged between States, thus configuring the great empires, but without any desire to achieve cooperation between them, a kind of international society of the Hobbesian type in which the most important resource was force and in which human rights and humanitarian law did not figure formally.

The achievement of this agreement derives from international relations. It lays the foundations for the later revolutionary movements that originated the modern liberal State, in which not only the freedoms of countries but mainly of individuals are guaranteed. Therefore, the concept of sovereignty regains a meaning applicable to human rights, not only the sphere or protective framework that it gives to States but mainly to the people. The culmination of

these struggles occurred after the French Revolution and the resulting instruments, such as the Declaration of the Rights of Man and the Citizen.

In parallel, a variety of fundamental agreements on relations between countries and international law were developed, such as the Paris Treaties of 1814, which put an end to the Napoleonic Wars and originated a new territorial distribution in Europe. Years later, instruments specific to humanitarian law emerged with the emergence of Geneva law that led to the International Committee of the Red Cross in 1864 and the Hague Law in the Peace Conferences between 1899 and 1907, with which agreements were established and defined that establish laws and customs of war, among others that put an end to wars and that tried to establish better relations between countries as well as their relations such as Versailles, Warsaw, Moscow, Yalta and Potsdam.

However, the struggle to guarantee the dignity of people and the prevalence of the principles of non-discrimination has been much more extensive and has a long way to go. This questions whether war has been more important for countries and their legal systems than any other type of rights. Not only has the recognition of dignity, the basis of human rights, been set aside, but also the most basic freedoms and rights that individuals have to guarantee their subsistence.

As humanity, we see constant armed conflicts, the repetition of stories of repression and violation of human rights, giving rise to war crimes and crimes against humanity, which, after the Nuremberg trials and years later with the Rome agreements, are attempted to be prevented from succeeding. It calls into question the functionality of treaties or agreements to achieve the privilege of human rights, and at the center of the discussion is the concept of the exercise of sovereignty by countries under the concept that the will of the people is the basis of power and not the other way around. In addition, the current liberal state model guarantees the freedoms of both countries and individuals. It is constantly put at risk by warning of the possible effects that may occur in the face of the imminent arrival of authoritarianism. This problem entails not only a change that impacts the sectors but also the sighting of possible violations that may occur and the probable war crimes or crimes against humanity that may occur in the face of a lack of compliance by countries with humanitarian law, putting at risk the most basic rights of every person.

This situation prevailed in dictatorships such as Videla's in Argentina, in Chile during the period of Augusto Pinochet, and other cases of human rights violations such as Guantanamo and Abu Ghraib during the American invasion at the beginning of this century and now the crimes committed in the so-called Crimean peninsula in the face of the American invasion. In the face of a state that succumbs by not assuming its responsibility, it is much more likely that there will be an interpretation that privileges international humanitarian law and not human rights when a state of exception is declared. Therefore, the thesis that postulates that, in this case, the model must be integrative is viable.

Resolution scheme

1. Research problem

Through what principles and from what perspective can human rights and humanitarian law be related in such a way that no rights are excluded?

2. Methodology

For this research, a qualitative approach is considered since the common information of scientific documents is interpreted. The technique used was documentary. An exhaustive search was made of the historical background that is related to humanitarian law to proceed with the search in academic texts that consider international law, as well as humanitarian law, which provided a basis for the desirable analysis that is a model of a perspective of international society.

Therefore, by resorting to the historical background of authors such as Rafael Calduch, who analyzes and makes proposals on international society and its theoretical elements, it is important to highlight that the same academic technique used for comparative law was also used. Later, authors such as José Zalaquett were consulted, who proposed the most important aspects related to the chair of humanitarian law. It should be noted that these two authors are considered primary sources in the field of humanitarian law as well as international law.

This context of knowledge was essential to carry out integration and comparison with contemporary authors and the current situation in order to have a solid argumentative framework that allows a better understanding of the phenomenon by building a conceptual framework that favors understanding and, in this way, a contribution to science is made through the identification of the principles of human rights present in humanitarian law, particularly in the use of force.

3. Writing plan

3.1 The legislation of peace and war

There is international law, both private, which deals with the legal framework between nations, and public law, which establishes relations between individuals, and public law, which refers to relations that prevail in states. There is currently international humanitarian law, which regulates relations and, more importantly, conflicts between states in times of war or confrontation.

Ius ad bellum or the law of war – is in Bello, the law in war, study what the legal limits are and how the authority must act in the case of an international conflict. Some authors have even classified them as human rights in times of armed conflict (Ruiz, 2004). It is important to note that it is not the right to make war, also known as oils at barium. It is a right that distinguishes the national from the international, as well as that it grants rules to hostilities, to the means and methods used in war, and also to the protection of victims (Salmón, 2014). It implies a right through which states are obliged to follow a series of rules that will devastate them, and it is also expected that if they continue like this, they will end up being exterminated. A right that, in fact, balances power with a humanitarian basis and, at the same time, complies with the demands of military and economic strategy, which is the strongest war that countries are fighting. For this reason, the role of human rights is transcendental, the route to follow in order not to break the harmony that they have signed in the treaties and particularly to guarantee that peace prevails for civilians, people who have not committed any crime or offense and who nevertheless become victims.

The exercise of human rights is not exclusive to a particular event or situation but rather applies at all times to guarantee the minimum sphere of protection of the person as such. It must be understood that people are not only part of the countries that possess sovereignty, but

they are also part of an international society in which they have the same rights and guarantees. There are points in common between both, such as the way in which they protect through principles and rules, organs and mechanisms of protection, and their phases of protection, which are prevention, control, and repression.

However, the point in question is that humanitarian law prevails and, except for what is stated in Article 5 of the IV Geneva Convention, International Humanitarian Law is not suspended. Human rights are applicable in times of peace, and many of its provisions can be suspended in times of war. The figure of the State of exception is part of the nature of the modern State. In it, we find that countries, as indicated even in Article 29 of the Political Constitution of the United Mexican States, can carry out with the authorization of the Supreme Court of Justice of the Nation and/or, where appropriate, the so-called suspension of guarantees (United Nations Organization, 2011).

Both rights also protect the right to life, health, and dignity; in this case, it should be noted that the passive subjects differ in each of them. Human rights include provisions that are difficult to apply in practice in war, such as the freedom of assembly or association. In the same way, rights are considered within the economic, social, or cultural classification. It should be noted that humanitarian law covers, in particular, certain important areas, such as the protection of people who do not participate or who no longer participate in hostilities.

In humanitarian law, there are a series of restrictions or rules on the means of war, such as legislation on the use of weapons and methods of war. In this case, as also happens in countries, without there being a priority of people, because above all, there is a principle of equality; in humanitarian law, the groups of people who must be protected are very well located, such as civilians and medical and religious personnel. In this way, those who no longer participate in combat are also taken into account, such as wounded or sick combatants, shipwrecked persons, and prisoners of war—people who have the right to have their lives respected as well as their physical and moral integrity.

In the case of means and methods of war for humanitarian law, it is important to highlight that those that cause unnecessary damage, that do not distinguish the victims, and even that put the environment at long-term risk are avoided. There are also actions that States, in accordance with the Geneva Convention, must take into account the norms that are applicable in this regard, avoiding the commission of so-called war crimes at all times.

In order for respect for the dignity of the person to prevail, they must identify whether or not there is a conflict and characterize it, which, therefore, requires a protocol. It creates a margin of error and initiates a conflict that should not exist and, therefore, violates rights. One of the major issues regarding humanitarian law is that there are certain problems of asymmetry, given that some are political conflicts that, even when they present high tension, are not sufficient to declare war. In some cases, human rights organizations, especially official ones, prefer to ignore it (Zalaquett, 1982).

At the same time, there is a disparity because countries with greater resources probably have these actions more developed in the spheres of their powers; however, it is unlikely that less developed countries consider these options, and therefore, human rights are systematically violated. It has been attempted to be reduced through the obligations established for countries that sign agreements; however, sometimes they become mandatory requirements, such as the case of the adoption of measures on what actions have been taken, guaranteeing the protected rights, and the implementation of rights without setbacks. Therefore, one of the principles that prevail in both rights is the principle of the ethics of the use of force, which raises certain necessary or obligatory requirements for countries to act, indicated both in the preamble of the

Universal Declaration of Human Rights and in article 1 of Protocol 1 of 1977, additional to the Geneva Conventions of 1949. In this sense, what puts the population at risk has been the use of force. Therefore, the legitimacy of the monarch has been left behind to give way to the very important function that they have to guarantee governance and international security through the functions conferred on the so-called United Nations Security Council (Montero, 2013).

4. Research results

4.1 Relationship between human rights and humanitarian law

According to the authors, what is called the just cause, which is precisely when humanitarian intervention is justified, must be a situation in which fundamental rights are being violated. In this regard, there are also ethical principles that allow countries to reestablish their order, which means the opportunity for them to rebuild or reestablish their situation. As a response, those affected will have the opportunity to express themselves at all times through civil disobedience and social protest, and thus prevent their rights from being violated. The agreements on civil and political rights provide for this collectively.

In terms of international humanitarian law, the principles of distinction, not causing superfluous harm or unnecessary suffering, the principle of proportionality, and the principle of precaution are located. In human rights, reference is made to the following principles: inviolability, non-discrimination, and security, in turn, the freedom and social well-being that, in this case, all individuals enjoy without distinction.

For the above reasons, three theoretical trends have been generated regarding human rights and humanitarian law, as indicated by (Pictet, 1990):

- An integrationist tendency that fuses both international humanitarian law and human rights.
- The separatist tendency that is based on the idea that they are totally different branches and that the union of them generates confusion for their corresponding application.
- The third, known as complementarist, which affirms that human rights and international humanitarian law are different systems that complement each other.

Human rights legislation deals with a set of rules that govern individuals who claim to be in society and those who enjoy rights and freedoms (International Committee of the Red Cross (ICRC), 1984). There are some institutions with a universal character, such as the United Nations, or regional ones, such as the Inter-American Commission and Court or the European Commission and Court, which deal with human rights issues. In particular, both protection systems would apply in the event that the Rome Statute, which emerged in 1998 and is applied by the International Criminal Court in the so-called crimes against humanity, were applied. Considering that the Inter-American Human Rights System will focus on the member states, while the Court will do so on an individual basis.

It is crucial to identify legislation that protects both rights. On the one hand, in the humanitarian field, there are the Geneva Conventions of 1949, in which almost all States participate. These conventions highlight the protection of the wounded and the armed forces in the field, the protection of armed forces at sea, the treatment of prisoners of war, and the protection of civilians in times of war. The 1977 protocols supplement these conventions: the protection of victims of international and non-international armed conflicts; the 1954 Hague

Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two protocols; the 1972 Biological Weapons Convention; the 1980 Convention on Certain Conventional Weapons and its five protocols; the 1993 Chemical Weapons Convention; the 1997 Ottawa Treaty on Anti-Personnel Mines; and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Customs are also an important source of this right. In the area of human rights, these include the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and treaties relating to the prevention and punishment of torture and other cruel, inhuman or degrading practices, as well as the elimination of racial discrimination, discrimination against women and the protection of children's rights. The charters for the Americas, Africa, and Europe are also considered, in addition to the Tehran treaties mentioned above. In both cases, the work of the International Committee of the Red Cross (ICRC) is noteworthy. In 1996, it began teaching humanitarian law and human rights to police and security forces. Two years later, it published a training manual entitled Serve and Protect.

Conclusions

Some significant and urgent decisions are estimated in this regard in the area of international humanitarian law and human rights, in which the International Committee of the Red Cross has been present to assist people and institutions such as the International Criminal Court intervened to ensure that the law in its broadest sense fulfills its social function and manages to safeguard and protect the most basic rights of people who live both in peace and war.

That there is an ethic of the use of force, identification of need, and justice capable of avoiding the escalation of conflicts and, where appropriate, being very aware that some situations do not yet merit being determined by wars and in which governments act immediately, showing themselves to be countries that protect innocent victims. Particularly, the problem has increased in the Middle East and North Africa, as is the case of Syria, where after ten years of conflict during the First Arab World War, the fire has not ceased, as well as Libya, where even powers such as Russia and Turkey have intervened to reach a peace treaty; Yemen, where even the United Nations (UN) itself has intervened to bring about a ceasefire, but this has not been achieved.

Some countries also have humanitarian emergency figures, such as Ethiopia, where more than 9 million people are facing famine, and the country itself has prevented aid from arriving; alternatively, the case of Cabo Delgado in Mozambique, where, due to isolated attacks, there are around 1.3 million people who require humanitarian aid. In the case of the Middle East, there is a deep humanitarian crisis in Afghanistan, which also violates human rights, in the face of a situation of violence that was not entirely satisfactory for the United States; however, the West has withdrawn all aid so as not to support the Taliban government, which is expected to affect millions of children. The conflict that has millions of eyes on is the Russian invasion of Ukraine that has been going on for more than four months and, as pointed out by the United Nations High Commissioner for Human Rights, she requested that international human rights and humanitarian law be used in light of the way hostilities have been conducted, which have been deliberately violated.

In the case of the attack on the train station, 60 civilians were killed and 111 injured, and the principle of distinction in humanitarian matters was never applied. In this case, the United Nations human rights monitoring mission in Ukraine documented that weapons were

apparently used with indiscriminate effects, causing both civilian victims and damage to property. Therefore, it is a human crisis that involves international humanitarian law and human rights. Not only is the framework for protecting people questioned but the help that can be provided is now being questioned, given that the support provided by humanitarian organizations has been called into question. The challenge for institutions is to present an integrative model that provides a perspective on both human rights and humanitarian law, granting both a level on par. It means a broad interpretation, that is, a model in which there is humanitarian law with a human rights perspective—in this case, exempting the so-called lex specialis derogat legi generali principle or generating more specific laws on human rights in war situations. According to Bobbio and Peces-Barba, in the historical development of human rights, there are four stages: postulation, generalization, internationalization, and specification. Moreover, currently, a fifth stage, "expansion," is the model that must prevail today to prevent further arbitrary acts from being committed (De-Asís, 2006).

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