



Paula Stuurman

The different dimensions of IHL: armed conflict in times of a pandemic.

The purpose of international humanitarian law ('IHL') is to limit the effects of violence used in armed conflicts through both protecting those who do not, or no longer, participate in hostilities and restricting the means and methods of warfare.¹ This body of law plays an essential role in ensuring the efficient and effective protection of civilians affected by armed conflict, as well as the humane treatment of detained individuals. The complexity of armed conflict today, due to phenomena such as the urbanisation of conflict and the development of new technologies and weapons as means and method of warfare, causes the application of IHL to be challenging at the best of times. Indeed, in many armed conflicts IHL has been, or is being violated.² With the emergence of COVID-19 the objective of effectively protecting those who do not or no longer take part in hostilities has taken on new dimensions. Over the last few months, the international community has witnessed the havoc a pandemic can wreak on strong health-systems in countries where civilians are not suffering the effects of armed conflict. Yet in countries such as Syria, Libya, and Yemen, where personal and communal devastation did not wait for a pandemic but were already caused by armed conflict and violations of IHL, COVID-19 has far-reaching consequences for both the participants in armed conflicts and the civilians affected by it.

This article will discuss several of the new dimensions COVID-19 has added to armed conflict. It will consider how the pandemic affects states' duties in observing IHL and how it aggravates the effects of armed conflict on civilians' lives. It will first focus on the consequences of COVID-19 in relation to the duties of participants to armed conflict with regards to detention and the management of the dead. Second, taking the non-international

¹ Nils Melzer, *International Humanitarian Law: A comprehensive Introduction*, (ICRC, 2016), 17.

² See for example cases of war crimes and crimes against humanity (codified in international criminal law) addressed or under investigation by the International Criminal Court: The ICC, <https://www.icc-cpi.int/Pages/Main.aspx>, last accessed 13/07/2020.

armed conflict (‘NIAC’) in Yemen as a case-study, it will consider the effects of armed conflict and violations of IHL on providing health care and humanitarian assistance during a pandemic.

It can be said that through its very existence IHL confirms the right to engage in armed conflict. Yet in addition to this right, it sets out the participants’ duties. While armed conflict by necessity occurs at an intersection of considerations – military necessity, protecting civilians and objects required for their survival, proportionality in designing attacks – COVID-19 has clearly shown how a pandemic complicates fulfilling all duties enshrined in IHL. Indeed, we can observe a domino effect³: both in an international armed conflict (‘IAC’) and a NIAC each party to the conflict is obliged to “treat humanely” all individuals “taking no active part in hostilities”, including detained or interned individuals.⁴ Humane treatment includes, amongst other things, providing safeguards as to health and hygiene, receiving adequate medical treatment, and being allowed to send and receive correspondence.⁵ However, as humane treatment requires safeguards regarding the health-situation in detention, quite apart from conditions within detention centres which may make individuals more susceptible⁶, fulfilling for example the right to send and receive correspondence may endanger the health of detainees or interned civilians as COVID-19 can be transmitted via contaminated surfaces.⁷ The details pertaining to detention in IACs and NIACs and the consequences of COVID-19 on all IHL rules is beyond the scope of this article. However, the example of correspondence shows how COVID-19 may cause rights to infringe upon other rights and highlights the need for a new balance. Similar difficulties can be identified in relation to the management of the dead: in designing its guidance the ICRC has attempted to balance the need to safeguard the health of staff involved with respectful treatment, identification, investigations, and cultural considerations.⁸

³ The situation in which one event causes a series of related events, one following another. “Domino effect”, Cambridge Business English Dictionary, Cambridge University Press, <https://dictionary.cambridge.org/dictionary/english/domino-effect>, last accessed at 14/07/2020.

⁴ ICRC, “The Geneva Convention relative to the Treatment of Prisoners of War”, Common Article 3, <https://ihl-databases.icrc.org/ihl/WebART/375-590006>, last accessed at 14/07/2020.

⁵ The basis of this duty is enshrined in Common Article 3 to the 4 Geneva Conventions of 1949, and further developed in articles 22(1), 23(1), 29, 30 and 31 of the third Geneva Convention and articles 83(1), 85(1), 91-92 of the fourth Geneva Convention in relation to an IAC, and articles 5(1)(b) and 5(2)(c) of Additional Protocol II to the 1949 Geneva Conventions and Rules 118 and 121 ICRC Customary International Humanitarian Law Study in relation to a NIAC. See: ICRC, “COVID-19: How IHL Provides Crucial Safeguards during Pandemics”, <https://www.icrc.org/en/document/covid-19-how-ihl-provides-crucial-safeguards-during-pandemics>, last accessed at 14/07/2020.

⁶ ICRC, “COVID-19: Protecting prison populations from infectious coronavirus disease”, <https://www.icrc.org/en/document/protecting-prison-populations-infectious-disease>, last accessed at 14/07/2020.

⁷ Oran Finegan, et al., “International Committee of the Red Cross (ICRC): General guidance for the management of the dead related to COVID-19”, *Forensic Science International Synergy* 2, (2020) 130.

⁸ Ibid. See ie.: ICRC Database of Customary IHL, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter35_rule115#Fn_4C706F6A_00013, last accessed 14/07/2020.

While above we have discussed several examples of the difficulties related to complying in good faith with IHL during a pandemic, the effects of these complications are felt even more keenly by civilians, particularly when dealing with actors who violate certain rules of IHL. This is evident for example in illegal attacks on medical personnel, facilities, and transports.⁹ In 2017, 573 documented attacks on nearly 350 medical facilities were reported from the start of the Syrian conflict in 2011 onwards, almost 90% of which were conducted by the Syrian government and its allies.¹⁰ In May 2019, around 25 hospitals on a no-strike list were bombed, leading doctors to no longer sharing hospital-coordinates with the United Nations ('UN').¹¹ In Libya, despite the UN's request for a "humanitarian pause" in hostilities to stop the spread of COVID-19, the targeting of hospitals continues; a Libya-analyst at the Clingendael Institute in the Hague even noted that COVID-19's is providing a global distraction which is convincing perpetrators of a lack of attention and potential condemnation on the international stage.¹²

The ICRC's President noted that "violations of IHL are the enemy of a pandemic response".¹³ In the context of the NIACs taking place in Yemen¹⁴, MSF documented the occurrence of at least 40 incidents of violence against the Al-Thawra General Hospital between 2018 and 2020.¹⁵ The humanitarians stepping in to provide the relief the respective parties in control of territory cannot provide, faced a lack of supplies, facilities, health-crises such as cholera, and donor fatigue prior to the pandemic reaching Yemen. In a country particularly vulnerable due to these previous and ongoing crises, COVID-19 has aggravated the 'foreseeable' effects of armed conflict on the civilian population: a lack of infrastructure (health-

⁹ IHL rules relating to the inviolability of medical personnel, facilities, and transports, see: Common Article 3 of the 4 Geneva Conventions of 1949; Arts 19, 23, 24, 25, 26 and 35 Geneva Convention I; Art 36 Geneva Convention II; Arts 14(1), 15, 18, 20-21 and 56 Geneva Convention IV; Arts 12, 15-16 and 21 Additional Protocol I; Arts 10 and 11 Additional Protocol II; Rules 25, 26, 28, 29 and 35 ICRC Customary IHL (CIHL) Study.

¹⁰ Miriam Orcutt et al., "International failure in northwest Syria: humanitarian health catastrophe demands action", *The Lancet* 394, (July 2019), 101.

¹¹ Hall R, Daragahi B. "Doctors in Idlib will no longer share coordinates of hospitals with UN after repeated attacks from Russian and Syrian forces", *The Independent*, (June 2019), <https://www.independent.co.uk/news/world/middle-east/syria-hospital-bombings-idlib-un-doctors-russia-assad-attack-a8942076.html>, last accessed 14/07/2020.

¹² Washington Post, "Libya's war escalates despite international calls for 'humanitarian pause' amid pandemic", *Washington Post*, https://www.washingtonpost.com/world/middle-east/libyas-war-escalates-despite-international-calls-for-humanitarian-pause-amid-pandemic/2020/04/13/a16627a2-7a90-11ea-a311-adeb1344719a9_story.html, last accessed 14/07/2020.

¹³ Peter Mauer, "Six essential lessons for a pandemic response in humanitarian settings; Statement to UN Security Council Open Debate: Pandemics and Security", *ICRC*, <https://www.icrc.org/en/document/six-essential-lessons-pandemic-response-humanitarian-settings>, last accessed 14/07/2020.

¹⁴ Geneva Academy, "Rulac: Yemen", *Geneva Academy*, <http://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-yemen>, last accessed 14/07/2020.

¹⁵ MSF, "Constant attacks on hospitals and staff jeopardise healthcare in Taiz", *MSF*, <https://www.msf.org/hospitals-and-staff-under-constant-attack-taiz-yemen>, last accessed 14/07/2020.

related (such as required for contact tracing), water etc.), a weakened population particularly susceptible to diseases, displacement and overcrowding, and a lack of trust in the authorities. While all these effects have already had a devastating effect on civilians, during this pandemic they even more frequently prove to be lethal: 80% of the population is currently in need of humanitarian aid and / or protection, while aid organisations face a funding gap of more than \$1 billion.¹⁶ Indeed, 31 of the 41 UN programmes have reduced their scope or closed since mid-April, and aid operations are expected to shrink even further.¹⁷ Circumstances in Yemen have contributed to 25% of confirmed COVID-19 cases resulting in death, which amounts to 5 times the global average.¹⁸

In the case of Yemen, not only has the pandemic diverted what global attention there was for the ongoing NIACs – attention urgently needed for funding and humanitarian aid –, COVID-19 has aggravated the impact of armed conflict on the civilian population while ‘foreseeable’ effects of armed conflict, such as collateral destruction of infrastructure, make the pandemic more complicated to address and its consequences more complicated to mitigate. The health-system is hit particularly hard due to attacks against facilities and staff, the scaling down of aid, and difficulties for internally displaced persons (‘IDPs’) in following prevention-guidelines, such as isolating when presenting mild symptoms.

This brief overview has shown that armed conflicts in times of a pandemic takes on new dimensions, both in terms of obliging IHL and mitigating the effects of armed conflict on civilians. The current pandemic increases the difficulty of attaining IHL’s purpose exponentially. It will affect many areas of IHL, and while discussion of all lies beyond the scope of this article, they merit contemplation: it is safe to conclude that COVID-19 is here to stay for some time, and similar pandemics may occur in the future. As the international community continues to learn about COVID-19, all those involved in armed conflict and mitigating its consequences need to adopt a dynamic approach to adapt to the consequences of a global health crisis on abiding by IHL, as well as on the effects of armed conflict on civilians. New challenges in the application of IHL, such as those related to the management of the dead and guarantees of health in detention, may emerge as time passes. These new dimensions to armed conflict must be addressed as soon as they become apparent, for a pandemic does not change the purpose or relevance of IHL. Indeed, the case-study of Yemen shows the heightened

¹⁶ OCHA, “Yemen Humanitarian Update: A tragedy unfolds as funding falls short”, *OCHA*, <https://reliefweb.int/sites/reliefweb.int/files/resources/Yemen%20Humanitarian%20Update%20Issue%206%20%28June%202020%29%20%5BEN%5D.pdf>, last accessed 14/07/2020.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

importance of implementing IHL, while the devastating combined impact on civilians of armed conflict and COVID-19 continues to increase.