

The Subtraction of International Humanitary Law: An Analysis through the Lens of the Israel-Hamas Armed Conflict

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Abstract

This scientific study explores the historical origins of the conflict between the people of the region of Palestine, starting from its earliest historical records, *prima facie*, passed down through generations via oral transmission of traditions, ways of life, information, perceptions of reality, and worldviews, in a time when social complexity and dynamics were little beyond the established post-tribal routine. The main focus is the analysis of the contemporary conflict, especially with the rise of organizations like Hamas, as well as how these groups have changed the dynamics of confrontations, resulting in a significant increase in violations of International Humanitarian Law (IHL). Among other issues, the study proposes to approach the violations of International Humanitarian Law (IHL) carried out through attacks on civilians, as well as the use of autonomous weapons and the blocking of humanitarian aid. The methodology is interdisciplinary, combining documentary research, analysis of historical-philosophical sources, and the bibliographic review of renowned authors, with the purpose of examining the origins, roots, and various ramifications of the conflict. The objective is to address the complexity of the conflict in the region and its impact on the global order, while also pressing for solutions that promote respect for and compliance with International Humanitarian Law (IHL) in this extremely challenging context.

Keywords

Armed Conflicts, International Humanitarian Law, Hamas, Israel

1. Introduction

The conflict involving peoples in the region of Palestine traces back to a centuries-old history, whose original premises have reached modernity through records mainly passed on by the oral tradition of the involved people. Due to the imprecision of the records, based on I. Kant (Kant, 2012)¹, it is permissible to speculate about the brute facts and the extent to which today's processed history is the result of manufacturing, the probable history, as of the given elements.

Contextualizing the matter of discussion, it is recorded that before the advent of the great empires of antiquity, many people organized themselves with the purpose of coexisting, starting from the social structures that led to the formation of the first cities. The protection offered by the urban lifestyle was seductive. In droves, individuals sought therein the insertion and fit necessary for the initially outlined and complexly publicized organizational model.

As a structural mechanism that mitigated the fear of the individual, and of society itself, the city reshaped the cultural model of primitive societies, since it needed to accommodate the masses that sought refuge and protection therein, in contrast to the state of nature, for the realization of a socially organized life.

Reflecting the culture, the idea of civilization took shape and was characterized by a variety of influences, such as technology, ways, scientific development, religion, customs, etc. The civilizational outline, as a construction of culture, ranged from the type of dwellings to the relationship between couples, including the form of punishment determined by the state system and even the diet. Thus, civilization, as a result of the cultural process, is a concept that expresses the consciousness a society has of itself. (Elias, 2011)²

Indeed, civilization does not mean the same thing to different peoples under the influence of different cultures. At this point, human societies diverge, to the extent that civilizational (cultural) differences impose separation and promote campaigns to erect walls, both physical and ideological, in the name of preserving identity, without realizing an undeniable fact: despite the barriers and distances that are imposed..., they are merely human!

It can be said: the temples that societies erect in the name of virtue, as well as the dungeons they dig for vices, ultimately exacerbate socio-spatial segregation, while forcing them to walk in different directions, as a consequence of the practical nature of all knowledge and the cognitive distinctions of those who experience different sensations, because their journeys are distinct.

Drawing on a theme treated by Aristotle, also present in the work of Herbert Marcuse (Marcuse, 1997)³, it can be concluded that distinct cognitive journeys cause some to occupy themselves with what is necessary for daily existence, while others delight in the pursuit of happiness, whose order is established from

¹Kant, Immanuel. *Philosophy of History*. Trans. Cláudio J. A. Rodrigues. São Paulo: Icon, 2012, pp. 45-64.

²Elias, Norbert. *The Civilizing Process: A History of Manners*. Trans. Ruy Jungmann. Rio de Janeiro: Zahar, 2011, p. 23.

³Marcuse, Herbert. *Culture and Society*. Trans. Wolfgang Leo Maar et al. Rio de Janeiro: Paz e Terra, 1997, p. 89.

the fundamental distinction between the necessary and useful (on one side) and the beautiful and pleasurable (on the other). As pointed out by the Stagirite:

“All of life is divided between work and rest, war and peace, and all our actions are divided into necessary actions, useful actions, or honorable actions. We must establish the same order among them as between the parts of our soul and its acts, subordinating war to peace, labor to rest, and the necessary or useful to the honorable”. (Aristotle, 1998)⁴

In theory, Aristotle’s maxim is very well established and appears easily applicable to human realities. However, in practice, the distinct cognitive journeys undertaken by different societies, instead of subordinating war to peace, labor to rest, and the necessary (or useful) to the honorable, often result in subordinating one nation (or people) to another, one form of labor to its monetary compensation, and thus one individual to another, and the necessary (or useful) to the superfluous, as an aesthetic deformation of the relationships between the individual and his possessions, which are undeniable factors of human, all too human, segregation.

It should not be so: the saga of human societies should be guided by a single purpose, a single journey: happiness! As Giovanni Reale and Dario Antiseri once put forth: “Let us begin with ethics. All human actions tend toward ends that are goods. The aggregate of human actions and the set of particular ends to which they aim are subordinate to a final end, which is the supreme good, which all men agree to call happiness.” (Reale, 1990)⁵

Yet, the cultural differences among peoples have historically been (and continue to be) the driving force behind the construction of diverse cognitive paths and experiences, leading to different journeys. Human societies have chosen various paths along their existential journey.

As civilizations diverge due to choices of different journeys, so too do humans in their purposes. In such a scenario, human intent yields to the social determination of a people, and the pursuit that should be for happiness becomes dominated by power.

Thus, work exists for its own sake, disregarding rest. The necessary (or useful) no longer concerns the honest, because human dishonesty will prevail in the very definition of necessity and utility.

Moreover, war ceases to be subordinate to peace and instead becomes merely a corrupted reflection of the belligerent society, like Dorian Gray, who cannot face himself in the mirror due to the severity of the aftermath, the deformity of the scars, and the permanent marks left by stolen lives, excessive violence, and altered paths.

In this context, the subtraction of international law is evident, particularly through the contempt for human rights, an unwanted consequence of the ac-

⁴ARISTOTLE. *Politics*. Trans. Roberto Leal Ferreira. São Paulo: Martins Fontes, 1998, pp. 65-66.

⁵REALE, Giovanni; ANTISERI, Dario. *History of Philosophy* (Vol. I). São Paulo: Paulus, 1990, p. 203.

tions of a humanity that lost its way due to the choices made (collectively in society) along the journey.

Through social organicity, as a cultural object, humans created (*ir*)rational mechanisms of coexistence. The struggle to rescue the unfortunate human from the state of nature and barbarism led to their replacement with a coercive socio-cultural model of coexistence, driven by a state of mistrust and generalized war among (*un*)civilized peoples.

By cultural imposition, individuals subjugate their fellows, disregarding that there is only one human journey to be traveled. They condemn each other reciprocally, as if the struggle for survival were different and not the same (and necessary) for everyone. They become hateful and hated, as if there were no DNA to bind them biologically, from the beginning. They act irrationally, imposing cultures as if the human purpose of *happiness* (the journey), the reason for existence, were not immanent to all individuals.

And it is at this point that the critical issue of violations of International Humanitarian Law (IHL) arises from armed conflicts, among which, for analysis and consideration, the conflict between Hamas and Israel is highlighted (Hamas, 1988).

In terms of social relevance, this resides in the importance of inspiring constructive dialogues among the involved communities, academics, and norm-makers (normative discourse of formulation, application, and justification), in defense of Humanitarian Law (IHL) and the promotion of peace in the Palestine region.

As a theoretical framework, the research was based on the works of internationalists Antônio Augusto de Cançado Trindade, André de Carvalho Ramos (2005), and Flávia Piovesan (2007). Among other philosophical authors, support was sought in the works of Aristotle, Immanuel Kant, Herbert Marcuse, and Norbert Elias, as well as other research sources such as the International Committee of the Red Cross (ICRC).

Through an interdisciplinary approach that combined documentary research, analysis of historical sources, and specialized literature, the study aims to shed light on the complexities of the current Israel-Hamas conflict and to analyze how this clash perfects itself, in a two-way street, as a true subtraction of International Humanitarian Law (IHL).

2. In the Manner of the First Essays. A Probable (Re)Beginning

From the cultural organization of the peoples that have fueled (and always have fueled) the conflict under analysis, originally biased by a religious nature⁶, From the cultural organization of the peoples that fuel (and have always fueled) the conflict under analysis, originally biased by a religious nature, there emerges a tensioned vocation that extends beyond matters of faith. While as-

⁶As inspired by the respective sacred books, like the Torah, Bible, Quran etc.

pects of religious order and faith are determinative factors in the manipulation of the masses, the purpose of cultural organization is underpinned by the establishment of a particular society in a specific locality, with the imposition of its culture and way of life on the surroundings. An order established by power that aims, beyond its stabilization, at the indiscriminate expansion of this same power, as long as and to the extent possible. The more power, the more power!

In this regard, the strengthening of sociocultural aspects and the determination of a given society, as an expression of faith (and power), creates an environment conducive to conflict. Power, rather than aligning with flexibility, relates more to the will for determination and imposition. Those with power do not yield; instead, they impose themselves! And if several have power, a state of uncertainty prevails, spreading fear. In this environment, there is a cognitive distancing and a lack of convergence of purposes. Therefore, pessimism about the direction of the conflict and a lack of perspective on overcoming the differences of those who maintain it are inevitable.

From ancient times, the predominant direction given to societies was tinged with socially (religiously motivated) appeals that shaped the state throughout history. Since antiquity, a state entity has presented itself as a guarantor of order. However, despite society already experiencing late modernity, disorder is a topic closer to reality than the social organization of humans.

Although recent memory allows us to reconstruct history from moments before antiquity, authentic information (the brute facta) about the real origin and meaning of the narratives that influenced (and still influence) the persistent conflictual situation under analysis has been lost over time.

Despite the long and structured narratives existing about the historical conflict, variable depending on the side, the main focus of the work is its analysis in contemporaneity, especially since it was a fertile ground for the rise of organizations like Hamas. Furthermore, how groups like Hamas have changed the configuration and dynamics of confrontations, resulting in a significant increase in violations of International Humanitarian Law (IHL) norms, as well as the possibilities of a new (re)beginning.

3. Brief Historical Contextualizing of the Arab-Israel Conflict

The conflict involving the Palestine region, as previously discussed, traces back to a multiseccular sociocultural saga, enacted by various peoples across different eras of human civilization. This saga has been (and continues to be) nuanced (and intensified) by constant tensions, akin to those witnessed today.

The region that currently includes the State of Israel and Palestine has always been the stage for a multifaceted and intricate history, filled with events that transcend the limits of time and contemporary geopolitics. Supported by the sacredness of the religious books of the peoples inhabiting it, this area is the locus of a human dissent loaded with religious meanings and indelible cultural marks,

crucial for the distancing of the societies that coexist (or need to coexist) within it.

This centuries-old conflict, marked by demonstrations and impositions of power as well as territorial, political, and religious disputes, gained even more complex contours after the creation of the State of Israel in 1948 and the emergence of anti-Zionist organizations, such as Hamas (founded in 1987 after the start of the First Intifada), which redefined the dynamics of confrontations in this region of the Middle East.

In the contemporary context, Hamas stands out not only as a political facet but also as a zealous anti-Zionist organization, which resorts to reprehensible practices in its actions, leading to numerous violations of International Humanitarian Law (IHL), through the use of condemnable tactics, e.g., attacks on civilians, schools, hospitals, blocking humanitarian aid, use of autonomous weapons, among others.

Before delving into the central issue of this article, which is the subtraction of Humanitarian Law, it is essential to consider some historical aspects, even as a way to provide context to the main theme.

The origins of the conflict can be addressed from numerous and diversified aspects, among which are historical-civilizational, religious, ideological, and political orders. Essentially, they occur for two reasons, derived from the idea and sensation of what is defined as power: 1) the right of possession of the lands of Palestine and 2) the religious issue involving the right to self-determination of the Jewish people (Josephus, 2013).

The population of the Palestine region is predominantly made up of Arabs and Jews, who are brotherly peoples, born from the same stock. To explain: in the genealogy of the peoples (Jews and Arabs), Abraham is the patriarch from whom Ishmael and Isaac descend, ancestors of the Arab and Jewish peoples, respectively.

In the Pentateuch, which underpins the sacred books of Christians (Bible) and Jews (Torah), the book of Genesis narrates the story in which God made a covenant with Abraham, promising him an heir, whose descendants would inhabit the lands from Egypt to the Euphrates (Bible, Genesis 15: 18).⁷

However, as narrated in the sacred book of the Jews and Christians, Sarah, Abraham's wife, was unable to bear children. Frustrated and advanced in age, she arranged for Abraham to lie with her servant Hagar, so that he might have a son with her and thus secure the covenant that was to be established with God. Abraham did so, and with Hagar, his wife's servant, he had his first son, Ishmael.

After the birth of Ishmael, God reaffirmed His covenant with Abraham, promising him all the land of Canaan. Furthermore, the covenant would be es-

⁷“On that same day the Lord made a covenant with Abram, saying: “To your descendants I have given this land, from the river of Egypt to the great river, the Euphrates” (Genesis 15: 18). Internet: <https://www.bibliaonline.com.br/acf/gn/15>.

tablished through Sarah, his wife, since it was from her that an heir named Isaac would come, and with him, a perpetual covenant would be established. (Bible, Genesis 17: 15-21)⁸

From reading the Pentateuch (Bible and Torah), it is evident that Ishmael, the son of Abraham with his servant Hagar, was blessed by God⁹. However, by the account of the Hebrews, the new covenant was formed with Isaac, “The Son of The Promise” implying that the land was given to the Israelites.

The Pentateuch also directs its narrative towards Ishmael, who, at the request of Sarah, was sent away by Abraham along with his mother Hagar. They left the patriarch’s land and headed towards the Wilderness of Beersheba, eventually settling in the Wilderness of Paran (Arabia).

Therefore, Ishmael and his mother Hagar moved to a region that supposedly belongs to present-day Saudi Arabia. There, he married an Egyptian, and with her, he had twelve princes, giving rise to the Arab peoples.

In turn, Isaac, “The Son of the Promise”, set off towards the Promised Land (Canaan), formed 12 (twelve) tribes, and gave rise to the Jewish people.

In the version presented by the Quran, the narrative is reversed. The promise is made to Abraham, but the heir is Ishmael. For the Arabs, he is considered the son of the promise.¹⁰ Using the same narrative technique as the Pentateuch, the Quran defends the promise (and the lands) made to Abraham’s Arab descendants, similarly warning the other descendants (of Isaac and Jacob) about the

⁸“(15) Then God said to Abraham, ‘As for Sarai your wife, you shall not call her name Sarai, but Sarah shall be her name. (16) I will bless her, and indeed I will give you a son by her. Then I will bless her, and she shall be a mother of nations; kings of peoples will come from her.’ (17) Then Abraham fell on his face and laughed, and said in his heart, ‘Will a child be born to a man one hundred years old? And will Sarah, who is ninety years old, bear a child?’ (18) And Abraham said to God, ‘Oh that Ishmael might live before You!’ (19) But God said, ‘No, but Sarah your wife will bear you a son, and you shall call his name Isaac; and I will establish My covenant with him for an everlasting covenant for his descendants after him. (20) As for Ishmael, I have heard you; behold, I have blessed him, and will make him fruitful and will multiply him exceedingly. He shall become the father of twelve princes, and I will make him a great nation. (21) But My covenant I will establish with Isaac, whom Sarah will bear to you at this set time next year’” (Genesis 17:15-21). Internet:

<https://www.bibliaonline.com.br/acf/gn/17>.

⁹“But I will also make a nation of the son of the slave woman because he is your offspring” (Genesis 21:13). Furthermore: “(17) God heard the boy crying, and the angel of God called to Hagar from heaven and said to her, ‘What is the matter, Hagar? Do not be afraid; God has heard the boy crying as he lies there. (18) Lift the boy up and take him by the hand, for I will make him into a great nation. (19) Then God opened her eyes and she saw a well of water. She went and filled the skin with water and gave the boy a drink. (20) God was with the boy as he grew up. He lived in the desert and became an archer. (21) He lived in the Desert of Paran; and his mother got him a wife from Egypt.”

Internet: <https://www.bibliaonline.com.br/acf/gn>.

¹⁰2^a SURATA. AL BÁCARA - THE COW - Part 1. “(125) And [mention] when We made the House a place of return for the people and a place of security. And take, [O believers], from the standing place of Abraham a place of prayer. And We charged Abraham and Ishmael, [saying], ‘Purify My House for those who perform Tawaf and those who are staying [there] for worship and those who bow and prostrate [in prayer].’ (126) And when Abraham said, ‘My Lord, make this a secure city and provide its people with fruits, those of them who believe in Allah and the Last Day.’ He said, ‘And whoever disbelieves, I will grant him enjoyment for a short time, then I will compel him to the punishment of the Fire, and wretched is the destination.’”

<https://islamb.com.br/wp-content/uploads/2019/03/Alcor%C3%A3o_Sagrado.pdf>.

consequences of transgression.¹¹

Here lies one of the crucial points of the conflict: the indefiniteness that can only be discerned if cognition could be performed by investigating the brute facts, which is unfeasible for obvious reasons, and the conviction, held by each people, that reason is on their side.

According to the Quran, for the Arab peoples, the firstborn, the son of the promise and the covenant with God, was Ishmael, and the Jewish people, by rejecting Islamic precepts, were condemned and cursed by Allah himself.

The Quran mentions about Israel: “That is a nation that has passed away; they will reap what they have deserved, and you will reap what you deserve, and you will not be questioned about what they did” (SURAH 2: AL-BAQARAH - THE COW - Part 1, Verse 134). In the sacred book of the Muslims, besides the overt condemnation of Israel, there is an express reference to the merit of the Arab people, including, being considered innocent of anything they did.

In turn, for the Jews, the son of the promise, to whom the Land of Canaan was promised, is Isaac, who received, in addition to the blessings of the promise, all the lands that extended from Egypt to the great River Euphrates.

In this particular case, even as this research also adheres to elements and methodologies of historical study, there is more rationality and justification for defending the reasoning presented by the Jews, since the written records of the Pentateuch (as a basis for the Bible and the Torah) generated from oral traditions, date back much earlier than the first records of the Quran.

While on one hand, the Pentateuch reports the knowledge and customs of a people and their relationship with their God, recorded for history from transcriptions of oral tradition, starting from the 8th century BC, with more emphasis from the reign of Josiah (649 to 609 BC), on the other hand, the timeline of the Quran was inaugurated on December 22, 609, when Muhammad first recited a chapter of his sacred book, following the revelation of the angel Gabriel of sura Al-Alaq, in the Cave of Hira. (Sadeghi, 2010)¹²

As the purpose of this study is not to determine the rights and justify the actions of the conflicting parties, it is merely noted that a deeper historical understanding is recommended to advance the discussion.

Indeed, from ancient times, Arab and Jewish peoples have clashed over the

¹¹2^a SURATA. AL BÁCARA - THE COW - Part 1. And who would be averse to the religion of Abraham except one who makes a fool of himself? And We had chosen him in this world, and indeed he, in the Hereafter, will be among the righteous. (131) When his Lord said to him, ‘Submit [to Me],’ he said, ‘I have submitted [in Islam] to the Lord of the worlds.’ (132) And Abraham instructed his sons [to do the same] and [so did] Jacob, [saying], ‘O my sons, Allah has chosen the religion for you, so do not die except while you are Muslims.’ (133) Or were you witnesses when death approached Jacob, when he said to his sons, ‘What will you worship after me?’ They said, ‘We will worship your God and the God of your fathers, Abraham, Ishmael and Isaac - one God. And we are Muslims [in submission] to Him.’ (134) That was a nation that has passed. They will have what they earned, and you will have what you have earned. And you will not be asked about what they used to do. Internet: <https://islamb.com.br/wp-content/uploads/2019/03/Alcor%C3%A3o_Sagrado.pdf>.

¹²SADEGHI, B., BERGMANN, U. (2010). *The Codex of a Companion of the Prophet and the Qurān of the Prophet*. Arabica, 57(4), 343-436. Internet: <<https://doi.org/10.1163/157005810X504518>>.

lands of Palestine (the current territorial dispute encompasses only 22% of what was once the entire territory of Palestine). The struggle for power, exacerbated by religious issues, continues to perpetuate a seemingly endless conflict to this day. The quest for power is characterized by the will and determination to impose sociocultural dominance, notably through the creation of armed groups such as Hamas, which, lacking state rationale and any commitment to International Humanitarian Law (IHL), engage in barbarity and atrocities in the region that serves as their stage¹³ of one of the most enduring human conflicts.

As mentioned, the focus of this article is not on an exhaustive analysis of the history of the conflict, which is impractical given space constraints. Instead, it aims to provide a historical contextualization of the most relevant elements that fuel the perpetuation of the conflict and the recurring violations of humanitarian law, defining what has been termed the subtraction of international humanitarian law.

From a religious perspective, it is important to highlight Mount Moriah¹⁴ Mount Moriah was purchased during the reign of King David (1010 to 970 BC) and upon it was constructed the First Temple of Jerusalem by his son, King Solomon (970 to 930 BC), to house and safeguard the Ark of the Covenant containing the Tablets of the Law that were given to Moses. Therefore, it is a sacred site for the Jewish people.

However, around 586 BC, Babylon, led by King Nebuchadnezzar II, invaded Jerusalem, destroyed the Temple built by King Solomon, and took the people into captivity in Babylon. For some (from a political perspective), Nebuchadnezzar II represented an enemy, a destroyer of nations. For others (from a religious perspective), despite the cruelty, Nebuchadnezzar II was merely an instrument of God used to punish the disobedient and transgressive people.

A Second Temple was erected on the same site, with support from King Darius I of Persia, around 515 BC, and remained intact until 66 AD when it was destroyed for the second time by the Romans. From the Second Temple, only the current Western Wall remains, which, according to tradition, dates back to the period of the Prophet Jeremiah.

During the expansion of Islam in the 7th century, the first mosque on the Temple Mount was built in the city of Jerusalem. Later, under Arab rule (between 685 to 705 AD), the Dome of the Rock (also known as the Omar Mosque) and the Al-Aqsa Mosque were constructed, forming the Temple Mount complex, thus also a sacred site for Muslims.

In this same territory, less than one kilometer away from the Temple Mount and the Western Wall, the Church of the Holy Sepulchre was erected, thus a sacred site for Christians. Christian tradition believes that the site of the church houses the tomb where Jesus' body was placed after his crucifixion.

¹³It is important to say that along the millenia, the 2 people occupied (sometimes cohabiting) the region.

¹⁴Location where Abraham is said to have offered his son Isaac as a burnt offering. For Arabs, the firstborn son offered in sacrifice was Ishmael.

Based on this explanation, it is possible to identify relevant issues that shade the Arab-Israeli conflict. The region is marked by the presence of sacred sites for Jews (e.g., Western Wall), Arabs (e.g., Temple Mount), and Christians (e.g., Church of the Holy Sepulchre). These sites are immovable symbols for the mentioned religions, and in defense of their faith and in the struggle for the imposition of sociocultural models, the peoples see an intensification of the territorial dispute.

All three temples—the Temple Mount, Western Wall, and Church of the Holy Sepulchre—are located in the same region of the city of Jerusalem and are uniquely sacred to each of the religions, be it Islamic, Jewish, or Christian.

Moving forward in history, in the context of World War I (1914-1918), under British rule, the United Kingdom sought to consolidate alliances and secure strategic support on various fronts to defeat the Ottoman Empire, including the Middle East. To this end, the British entered into agreements, promising territories in exchange for military support against the Central Powers.

Among these agreements, two are particularly noteworthy: 1) the HUSSEIN-MCMAHON CORRESPONDENCE (1914-1915), through which the British government sought Arab support to combat the Ottomans and, in exchange, promised to collaborate with the Arab independence claim and recognize their self-determination, and 2) the BALFOUR DECLARATION (1917)¹⁵, by which the British Foreign Secretary, Arthur James Balfour, expressed his government's support for the Zionist movement and its objective to establish a Jewish homeland in Palestine.

With the end of World War I and the victory of the Allies (United Kingdom, France, and Russian Empire), a major issue that came to the fore was the fulfillment of the agreements previously made. One of the resolutions of the war was that the region of Palestine would be subject to British mandates, and the mandate holder would be responsible for implementing the Balfour Declaration.

The reaction was not well-received among the Arabs, who were infuriated by the news and pressured the British government. In this context, Winston Churchill, then Secretary of State for the United Kingdom, in order to avoid a war in the Middle East, handed over 78% (seventy-eight percent) of the total area of Palestine to the *Hashemite* family in 1921. Therefore, the dispute over the lands of today's Palestine (Israel, Palestine, and Gaza) only concerns 22% (twenty-two percent) of what the territory once was.

The purpose of the British mandates (1920-1948) over the region of Palestine was to implement the Balfour Declaration and, certainly, to maintain order and peace in the region. However, during this period, clashes between Arabs and Jews were constant, given the Arab opposition to the creation of a Jewish home in Palestine and the demand for the full fulfillment of the *Hussein-McMahon agreement*.

¹⁵Although it did not produce international legal effects, it had significant political repercussions, especially among the Arabs.

In the face of numerous conflicts in the region, a commission was established with the purpose of investigating the roots of the Arab-Israeli conflict and proposing peace solutions. This commission was called the *Peel Commission*, and its main plan proposed partitioning the territory between the two peoples (two independent sovereign states) through a treaty system.

Certainly, the proposal was rejected by the Arabs, and a new commission was created, the Woodhead Commission in February 1938, which concluded that the partition of Palestine on the terms proposed by the *Peel Commission* was unfeasible, presenting three (3) alternatives as a solution, aimed at defining the borders for the division of Palestine, which were also not accepted.

Despite the efforts, the British government studied the Woodhead Commission report and concluded that “*the political, administrative, and financial difficulties involved in the proposal to create independent Arab and Jewish states in Palestine are so great that this solution to the problem is impracticable.*” (Reino Unido, 1938)¹⁶, Understanding that the British Mandate should perpetuate itself.

Later, with the expansionism of Nazi Germany, World War II erupted, at a time when the White Paper, which limited the entry of Jews into Palestine, was in effect, resulting in 60 million deaths, of which approximately 6 million were Jews.

With the victory of the Allies (United Kingdom, France, Soviet Union, and USA) in 1945 and the end of World War II, after all the atrocities experienced with numerous violations of Humanitarian Law, in October 1945, several countries voluntarily gathered, creating the United Nations (UN), in the pursuit of world peace (United Nations, Charter of the United Nations, 2024).

In this post-war scenario, the quantity of Jewish refugees fleeing from Europe was urgent, and the Jewish community needed to unite to rescue their memories, stories, and overcome the rubble left by the Holocaust. Palestine was the land to which Judaism had, and has, an indestructible connection, and where there was the largest concentration of Jews.

In the search for a solution for Palestine, on May 15, 1947, the *UNSCOP* (United Nations Special Committee on Palestine) was established, composed of 11 (eleven) countries, which was tasked with impartially analyzing the issue and determining the territory’s political, economic, and social future.

UNSCOP did something similar to the study previously conducted by the Peel Commission and visited Palestine to understand more about the Arab-Israeli conflict. At that time, in 1947, approximately 1,200,000 Arabs and 600,000 Jews inhabited Palestine, living under a semi-military regime, with roadblocks, border closures, machine gun posts, and armored car patrols aimed at preventing attacks.

After 03 (three) months in Palestine, *UNSCOP* presented its considerations, with the first option being the division of the territory (remaining 22%) into two independent states, economically united, and the second option being the for-

¹⁶(UNITED KINGDOM, Statement by His Majesty’s Government in the United Kingdom, 1938).

mation of a unitary state with a federal structure.

On November 29, 1947, through Resolution No. 181/1947, the UN adopted the *UNSCOP* Majority Plan to solve the Arab-Israeli conflict, dividing the territory into two independent states. And it was at the Special Session, chaired by the head of the Brazilian delegation, Osvaldo Euclides da Cunha Aranha, that the UN General Assembly approved the division of Palestine into two states, within the limits set out in the *UNSCOP* report.

The division intensified the conflicts, and faced with the unsustainable situation, the British Parliament informed that the mandate over Palestine would end on May 15, 1948, beginning the transition process to the independence of the States (Arab and Jewish). The following months were marked by violent attacks from both sides, making the situation uncontrollable.

Finally, after 28 (twenty-eight) years of British control, on May 14, 1948, at the Tel Aviv Municipal Museum, at 4 pm, the Jewish People's Council, chaired by David Ben-Gurion, declared the establishment of a Jewish State, the State of Israel. However, after the creation of the State of Israel, the Arabs revolted, and the next day they attacked Israel, marking the beginning of a new phase of the conflict (modern conflict), known as the War of Independence.

In addition to the War of Independence, several other conflicts occurred, such as the Suez War (1946), Six-Day War (1967), Yom Kippur War (1973), BDS Movement, among numerous other events of clashes between Arabs and Jews in the Israel, Palestine, and Gaza region.

To conclude the historical analysis, it is noteworthy that in 1987, during the First Intifada, Hamas was created, then characterized as a Palestinian political and military organization, known for its anti-Zionist ideology. Internationally, Hamas is labeled by several countries as a terrorist organization.

Its rise marked the beginning of a new phase in the conflict, characterized by extremely harsh, cruel, and humanly disregarded tactics. In the modern conflict, the world witnessed a true subtraction from International Humanitarian Law (IHL), demonstrating the brutality of Hamas's *modus operandi*, which prompted an unbridled and equally harsh and cruel reaction from the Government of Israel, which also demonstrates, in a two-way street, its disregard for humanity.

4. Terrorism, the Excess of Legitimate Defence and the Subtraction of Internatinal Humanitary Law

As previously seen, the conflict in the region of Israel and Palestine has dragged on for millennia, characterized by deeply rooted territorial and religious disputes (religious fanaticism). Hatred between Arabs and Jews perpetuates across generations, fueling the continuation of hostilities.

However, since the emergence of terrorist organizations on the international scene (perhaps due to the absence of a reference state), specifically Hamas (the subject of this study), the conflict in the Middle East has taken on a new guise,

with significant changes in combat tactics, resorting to outright atrocities to instill terror.

Hamas is considered a Palestinian Islamic Organization, founded in 1987 ([Hamas Foundation Charter, 1988](#)) as a political and military organization of Palestine. However, it would be unjust to the honorable people of Palestine if we considered Hamas as their representatives in the conflict. In the current conflict scenario, it is not about Israel versus Palestine, but Israel versus Hamas, etc. Although Hamas is a Palestinian organization, it cannot be said that the entire Palestinian population supports their actions, especially those that violate the norms of International Humanitarian Law (IHL). Therefore, prudence recommends naming the conflict Hamas-Israel.

Among the numerous cruelties practiced by Hamas, the organization uses tactics such as launching rockets and missiles into civilian areas in Israel. Surprise attacks with ambushes, the use of torture, suicide bombers, kidnapping of women and children, and sexual violence, often committed in front of the victims' own children and partners, are some of the atrocities carried out by the group.

This inhumane behavior, devoid of empathy and regard, is routinely conducted using cruel and inhuman tactics, in clear subversion of order, which materializes with the subtraction of humanitarian rights.

In addition to these tactics, Hamas sometimes uses civilians as human shields, positioning themselves in delicate, densely populated areas close to civilian infrastructure to avoid attacks.

At the end of 2023, the media reported on a Hamas command center that had been dug beneath the Shifa Hospital, located in Gaza City. The underground structure, which appears to spread throughout the hospital area, consists of various rooms and communication passages between them, in a complex network of tunnels. This indicates that Hamas uses its own people as human shields to avoid attacks and conduct its war.

Moreover, Hamas also impedes humanitarian aid through border blockades. It controls and obstructs humanitarian corridors, preventing the evacuation of the injured and sick, and the delivery of food and water to the population involved in this hostile environment.

But what is the reason for such practices? What is the sense in so much villainy, perpetrated against one's own people? The answer may not be simple, but some factors are evident: the establishment of terror, the spread of hatred towards Jews, protest against the Jewish religion, and the state of Israel.

However, it is important to note that both sides (Israel and Hamas) have been accused of violations of International Humanitarian Law (IHL) norms. In addition to the reprehensible tactics used by Hamas, there are also concerns regarding the disproportionate, inhumane, and equally cruel response carried out by the Government of Israel, particularly concerning the disproportionality of the attacks launched under the pretext of exercising the right to legitimate defense,

as provided by Article 51 of the UN Charter.¹⁷

Israel has frequently been accused of using disproportionate force in response to perceived threats, resulting in civilian deaths and injuries, and significant damage to civil infrastructure, destroying schools, hospitals, and homes not only in the Gaza Strip but also in other Palestinian areas. These actions have raised questions about the proportionality and distinction between military and civilian targets in the attacks.

The excessive use of force by Israel, under the claim of legitimate defense, has similarly resulted in blatant violations of International Humanitarian Law (IHL). There are overt violations of rights, including the right to life, security, and dignity of people (mostly innocent) affected by the conflict.

Specific incidents such as airstrikes that have caused significant casualties among the civilian population and the bombing of essential infrastructures like hospitals and schools are examples of the disproportionate use of force, which thus violate the *jus in bello*.¹⁸

On the other hand, defenders of Israel's security policies argue that the country faces significant threats to its security, involving cruel tactics practiced by Hamas, which they claim justifies the adoption of extreme measures, whether to protect its citizens or to curb terrorist activities. By retaliating disproportionately to attacks, Israel violates International Humanitarian Law norms and inflicts significant suffering on the civilian population in Palestine and Gaza, who are most affected by this conflict. One wrong should never justify another!

The notion of humanizing warfare may seem paradoxical. (Sousa, 2011)¹⁹, however, efforts must be made to defend International Humanitarian Law (IHL) in order to mitigate human suffering and protect the fundamental rights of people affected by conflicts. To achieve this, it is necessary to understand what IHL is and how it is safeguarded.

Jean Marcel Fernandes defines Humanitarian Law (Fernandes, 2006)²⁰:

It is the sphere of Public International Law consisting of treaties and international customs designed to promote peace in situations of armed conflict and after the cessation of hostilities, through the suppression of violence in the following ways: protection of victims and property, limitation of means and methods of combat, safeguarding of human rights, and prosecution of offenders.

¹⁷Article 51 of the UN Charter - "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under this Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

¹⁸Limitation of hostilities during armed conflicts.

¹⁹Sousa, Mónica Teresa Costa. **Humanitarian International Law**. 2 ed. Curitiba: Juruá:2011, pág. 19.

²⁰Fernandes, Jean Marcel. **Humanitarian International Law: Theoretical Pillars. The promotion of peace by IHL** Porto Alegre: Sergio Antônio Fabris Editor, 2006.

The International Committee of the Red Cross (ICRC), one of the most prominent organizations on the international stage, defines International Humanitarian Law (IHL) as follows²¹:

International Humanitarian Law (IHL) governs the relationships between states, international organizations, and other subjects of international law. It is an area of public international law based on norms that, in times of armed conflict, seek, for humanitarian reasons, to protect individuals who are not participating or who have ceased to participate directly in hostilities, and to restrict the means and methods of warfare. In other words, IHL consists of norms from international treaties or customary law (for example, norms arising from state practice and observed due to a sense of obligation), whose specific purpose is to address humanitarian problems directly arising from armed conflict, whether of an international or non-international character.

Suddenly, it is observed that the main element of humanitarian law is the human person and their protection in the midst of armed conflict, which is characterized as one of the three aspects of human protection, namely, 1) Human Rights, 2) Humanitarian Law, and 3) Refugee Law.

Cançado Trindade mentions, on the behalf of the 3 strands of human protection: (Cançado Trindade, 2003: pp. 341)²²

However, this does not exclude the possibility, already realized in practice, of the simultaneous application of the three aspects of protection, or of two of them, precisely because they are essentially complementary. Furthermore, they are guided by a basic identity of purpose: the protection of the human person in all circumstances.

Thus, the common purpose of the three strands is unquestionable: to safeguard the human being. To enforce Humanitarian Law, it is essential to establish norms that limit the conduct of sovereign states and their agents. However, dictating norms to be adhered to by states in war seems utopian, given that states often use the argument of national sovereignty to violate International Humanitarian Law (IHL) norms.

The norms of International Humanitarian Law (IHL) are a set of rules that seek to protect individuals who do not directly participate in the conflict but are affected by it, such as civilians, prisoners of war, and those who no longer actively participate in the conflict, such as the wounded and sick, limiting the methods and means of warfare during armed conflicts to prevent them from turning into outright barbarity.

IHL is considered a *jus cogens* norm, meaning it holds the status of a manda-

²¹International Committee of the Red Cross: Available at: file:///C:/Users/User/Downloads/0703_007-ebook.pdf

²²Cançado Trindade, Antônio Augusto. **Treaty of International Law of Human Rights**. Volume I. 2 ed. Porto Alegre: Sérgio Antônio Fabris Editor: 2003, pág. 341.

tory norm. (Sousa, 2011)²³ It is comprised of treaties, primarily governed by the four 1949 Geneva Conventions, their additional protocols of 1977, and by Customary International Law. The latter is based on practices repeated over time by different states and accepted as binding legal norms, and can arise from various sources, such as judicial precedents, diplomatic practices, and state declarations.

Each of the Geneva Conventions specifies the victims it protects. The first Convention concerns wounded and sick combatants of the armed forces, the second concerns wounded and sick combatants of naval forces, the third Convention concerns prisoners of war, and the fourth Convention concerns civilians in times of war.

As stated, it is not only the Geneva Conventions that form the body of international humanitarian norms. Associated with these Conventions are the two additional protocols of 1977, namely: 1) Protocol I relating to the victims of international armed conflicts, and 2) Protocol II relating to the victims of non-international armed conflicts.

Meanwhile, all these protocols, conventions, and international treaties discuss armed conflicts involving State vs. State, and, from this perspective, Hamas would not be obligated to adhere to the norms of humanitarian law.

However, Hamas's status as a non-state organization does not exempt it from responsibility under international laws. Although IHL is traditionally applied to conflicts between states, the international community has other mechanisms to hold terrorist organizations accountable for atrocities committed.

With the rise of terrorist groups in the late 20th century and the evolution of warfare tactics that significantly increased the number of civilian casualties in armed conflicts, the international community needed to combat impunity for serious crimes.

In 1998, during a diplomatic conference in Rome, the International Criminal Court (ICC) was established by the Rome Statute to combat serious international crimes such as genocide, war crimes, and crimes of aggression, in response to the need for justice and accountability for these crimes at an international level (Rome Statute, 1998).

The Rome Statute came into force in 2002 and became the first International Criminal Court (ICC) tasked with judging individuals for international crimes. The ICC was created to complement national systems, acting as a court of last resort when states are unable or unwilling to prosecute these crimes within their own judicial systems.

Thus, given the jurisdiction of the ICC and the responsibility before the international community, Hamas can be held accountable by the Hague Tribunal for the crimes committed, namely genocide, war crimes, and crimes of aggression.

Continuously, the doctrine emerged the concept of the "Responsibility to Protect," proposing the legalization of humanitarian intervention, a concept that

²³Sousa, Mônica Teresa Costa. **Humanitary International Law**. 2 ed. Curitiba: Juruá:2011, pág. 36.

was adopted by the UN during the World Summit held in September 2005. In his work, Wellington Pereira Carneiro (2008)²⁴ mentions the “responsibility to protect”:

This doctrine, developed by a panel of experts sponsored by Canada, subordinates sovereignty to the protection of its populations (Jubilut, 2008) and shifts the focus from state security to people, in the innovative concept of “human security.” It aims to be a powerful deterrent against genocide and crimes against humanity (Oliveira, 2006). The General Assembly ultimately included the responsibility to protect in its Resolution on the Reform of the UN in 2005.

This decision marked a significant milestone in the understanding and acceptance of the shared responsibility of the international community to protect civilian populations in situations of severe humanitarian crisis. The Responsibility to Protect is now considered a fundamental principle of international law and international relations, although its implementation still faces challenges and debates in practical and political terms.

Liliana Jubilut (2008)²⁵ mentions that the first and most important change with the responsibility to protect is the alteration of the concept of sovereignty as an absolute right. *This shift is based on the concept of individual sovereignty rather than state sovereignty and focuses on the limits of the exercise of sovereignty.*

According to the ICIS²⁶ International Commission on Intervention and State Sovereignty, the responsibility to protect encompasses three different types of responsibilities: 1) the responsibility during humanitarian crises—responsibility to react; 2) the responsibility prior to a humanitarian crisis—responsibility to prevent; and 3) the responsibility after a humanitarian crisis, in order to prevent a new crisis—responsibility to rebuild.

It’s important to recognize that both sides have their reasons and perspectives, and the aim of this discussion is not to question the validity of those reasons (political, religious, and territorial). However, it is crucial to highlight that the civilian population of this region is the most impacted and suffers the most from the real humanitarian crisis caused by this prolonged conflict.

The consequences of attacks and violations of International Humanitarian Law (IHL) cause not only material damage and loss of life but also have a devastating impact on the emotional, psychological, and social well-being of the af-

²⁴Carneiro, Wellington Pereira. **Facing Crime: Brazilian Foreign Policy Regarding Crimes Against Humanity in the Post-Cold War Era: From Humanitarian Intervention to the Expansion of the Security Council.** Universitas. Relações Internacionais. Brasília, v. 06, n. 2, p. 39-69, jul./dez. 2008

²⁵Jubilut, Liliana Lyra. “**The responsibility to protect’ is a real change for humanitarian interventions.**”. Revista eletrônica de Direito Internacional. V. 2, p. 409-449, 2008.

²⁶The International Commission on Intervention and State Sovereignty (ICISS) was an ad hoc commission of participants that in 2001 worked to popularize the concept of humanitarian intervention under the name of “Responsibility to Protect.”

fectured people. Displaced families, the injured, the deceased, and women subjected to violence endure traumas that last a lifetime, representing a tragic reality that deserves immediate attention and action from the international community.

The humanitarian crisis in this region is severe and requires a coordinated and effective approach to ensure the protection of civilian lives, access to humanitarian assistance, and the pursuit of peaceful and lasting solutions. The international community must redouble its efforts to promote peace and respect for Humanitarian Law in this region.

Therefore, both parties (Israel and Hamas) should be held accountable for the atrocities committed, which constitute a true subtraction of humanitarian rights, before the International Criminal Court (ICC). This position is supported by the recent warrant against Benjamin Netanyahu, the Prime Minister of Israel, and Yoav Gallant, the Minister of Defence of Israel, both accused of war crimes and crimes against humanity, moved by the ICC Prosecutor Karim A.A, as well as a warrant against Yahya SINWAR (Head of the Islamic Resistance Movement (“Hamas”) in the Gaza Strip), Mohammed Diab Ibrahim AL-MASRI, more commonly known as DEIF (Commander-in-Chief of the military wing of Hamas, known as the *Al-Qassam Brigades*), and Ismail HANIYEH (Head of Hamas Political Bureau). (*International Criminal Court, 2024*)²⁷

Effective accountability not only seeks to ensure justice for the victims but also plays a crucial role in preventing future transgressions, aiming to discourage behaviors that could lead to new violations of these fundamental norms.

5. Between War and Peace: The Slow Walking of International Law

In conclusion, the conflict between peoples and nations can be seen as a manifestation of humanity’s unsuccessful journey. The lack of understanding between humans is the exclusive reason for the deviations of societies from what should be the real purpose—the pursuit of happiness.

As previously noted elsewhere, human actions tend to aim towards ends that are goods, and their collective efforts should be subordinated to the greater purpose, the ultimate end, which is the supreme good that all agree to call happiness.

However, the emancipation of individuals—which can be understood from the Kantian perspective on the four stages of reason (Kant, 2012)²⁸ The task of international law becomes arduous as it must balance the plural interests of diverse societies, with their multiple and differentiated readings and state projects, harmonizing and ordering them in the wake of the sociocultural determinations that serve as their reference. When humans were emancipated through rational-

²⁷International Criminal Court. Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine. Available in <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>. Access in 23 may 2024.

²⁸KANT, Immanuel. *Philosophy of History*. Trad. Cláudio J. A. Rodrigues. São Paulo: Ícone, 2012.

ity, various societies (at different times and places) embarked on journeys that took them to different places and times, leading to inevitable cultural and civilizational distancing.

Due to the sociocultural distancing of peoples, the agenda of International Humanitarian Law (IHL) has become Herculean regarding the need to reconcile the greatest interest of humanity with the different agendas of plural societies. Therefore, reordering the path of the many, in a way that allows a horizon of definitions favorable to peaceful human existence, as the purpose of International Humanitarian Law, is perhaps the greatest challenge posed to the scrutiny of the International Community.

In this context, a basic premise is that there is no normative agenda—a purely ethical determination—that can reconcile in the short and medium term, the unified reason and the determination of peoples in conflict, since, inevitably, the discourse appropriate to the humanitarian agenda must pass through the sieve of human cognitive openness, for all to see themselves as such. Hence, purely normative and sanctioning solutions tend to fail, as the sense of justice—which is at the heart of the Hamas versus Israel conflict—is not achievable within the scope of the ethical-normative debate.

It makes itself necessary to overcome the discourse based on *na autorictas, non veritas facit legem*²⁹. Before discussing the Legal Aspects, it is necessary to discuss justice itself and the relations between law and forgiveness, as in the Merchant of Venice (Porcia) (Shakespeare, 1978)³⁰.

The various agendas and proposals that undergo consideration by two (or more) states, or by a single state with equal rights among the peoples, tend to be merely palliative to the conflict, and as such, are already flirting with failure from their inception.

Through the lens of a Perpetual Peace (Kant, 2002)³¹, it is believed that resolution will only be possible through addressing the conflict with a socio-philosophical interpretation, which must be perfected within a historically contextualized framework, allowing for the revision of historical agendas and the reorientation of paths shaped by various human social determinants. A union of purposes must occur in order to speak of lasting peace and only after returning to the origin of the events—the closest possible to the brute facts—should society (unified) normatively discuss, from a feasible legal perspective, with alternatives and tolerance, the issues that determine (or will determine) *the raison d'état*.

What hinders lasting peace, we believe, is the difficulty of reorienting the journey by revisiting the past. It is necessary to reconstruct history through a lens of “reciprocal forgiveness” between the peoples involved in the conflict. Therefore, the path to a solution is socio-philosophical rather than juridical/jurisdictional. Hence, as long as the international community does not move

²⁹Free Translation: “It is the authority that makes the truth, not the law.”

³⁰SHAKESPEARE, William. *The Merchant Of Venice*. Trad. F. Carlos de Almeida Cunha Medeiros e Oscar Mendes. São Paulo: Abril Cultural, 1978.

³¹KANT, Immanuel. *Perpetual Peace*. Trad. Artur Morão. Lisboa: Edições 70, 2002, p. 119-171.

away from juridical approaches and delve into the intricacies of sociology and philosophy, the conflict is likely to persist (Bobbio, 2000). It is imperative to return as much as possible—to a collective therapeutic setting—to the events of brute fact, and from there, engage in a discourse on reciprocal forgiveness. Perhaps, then, an end to the conflict can be envisaged.

Once such a purpose is achieved, perhaps the (unified) society can discuss a “constitutional theory of tolerance,” in the manner of Peter Häberle (Mendes, 2009)³², in such a way that the subject may advance into the field of normativity, and thereby, offer an agenda with an air of definitiveness to conflicts that spill over the boundaries of Hamas versus Israel.

6. Final Considerations

After all considerations in this article, it is evident that the interconnection between numerous historical events of Arab-Israeli confrontations plays a crucial role in understanding the ongoing dynamics of the conflict. The analysis of historical narratives underscores the complexity of the conflict, revealing how past events have shaped the perceptions and actions of the parties involved.

The persistence of the Arab-Israeli conflict is exacerbated by a series of factors, including deeply rooted cultural, religious, and territorial issues, as observed. Over the millennia, Arabs and Hebrews have occupied the lands of Palestine, which does not facilitate the resolution of the conflict, since both defend their right to the territory.

Therefore, the solution to the impasse and the credible agenda for lasting peace must go beyond the realm of mere normativity. It is far more complex than is commonly portrayed. Many opinions devoid of proposals are fuel for the unpayable fire of conflict, which greatly complicates the agenda of International Humanitarian Law, which is continuously subtracted.

Advancement in the socio-philosophical front is necessary, reconstructing the path from where it deviated, close to the brute facta, to find an appropriate solution that enables further discussion in the field of normativity (which only becomes viable after addressing the moral perspective), because justice in the conflict under analysis cannot be found and satisfied in the realm of rules.

In the case of the Hamas versus Israel conflict, only a discourse developed by an open society will be capable of outlining a lasting peace project. There is a historical (and current) issue involving mutual forgiveness, which must be addressed in the field of reciprocity. But, for this, societies need to return to the origin, at the point where the deviation and distancing began, so that differences can be evaluated, forgiven, and overcome, so that the human can be deemed more relevant than its norms, which will prevent new subtractions of International Humanitarian Law (IHL).

It is necessary to initiate a concrete agenda of actions. It is necessary to move

³²MENDES, Gilmar Ferreira. Apresentação, XIII. HÄBERLE, Peter. *Academic Conversations With Peter Häberle*. Org. Diego Valadés. Trad. Carlos dos Santos Almeida. São Paulo: Saraiva, 2009.

from the realm of ideas to practice so that (one day), when they gain enough substance, like those agendas of the federalist papers.³³, such as the movement towards union and peace be a reality, on the contrary of a mere ideal supposition, being inevitable!

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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³³HAMILTON, Alexander, JAY, John, MADISON, James. *The Federalist*. Trans. Viriato Soromenho-Marques e João C. S. Duarte. Lisbon: Calouste Gulbenkian, 2011. 812p.

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