



BRILL
NIJHOFF

NORDIC JOURNAL OF INTERNATIONAL LAW

92 (2023) 528–547

NORDIC
JOURNAL
OF
INTERNATIONAL
LAW

brill.com/nord

Is All Mental Harm Equal? The Importance of Discussing Civilian War Trauma from a Socio-Economic Legal Framework's Perspective

Solon Solomon | ORCID: 0000-0002-8664-7459

Brunel University London School of Law, London, UK

Corresponding author

solon.solomon@brunel.ac.uk

Ya'akov M. Bayer

Department of Health Policy & Management, Ben Gurion University of the Negev & Beer Sheva Mental Health Centre, Beersheba, Israel

ymebayer@gmail.com

Received: 7 January 2023 | Accepted: 14 May 2023 |

Published online: 30 June 2023

Abstract

In recent years, international law scholars have discussed how civilian mental harm in warfare should also form part of the *jus in bello* proportionality principle and be balanced to the anticipated military advantage. Yet, these scholars have not proceeded one step further to examine whether socio-economic parameters shaping the individual's personality, such as education, family ties or the level of income, should be also taken into account as varying variables in this balancing task. This is particularly important given that the particular parameters are tied to the socio-economics rights discourse and the relevant minimal living standards notion developed there. Based on a study we conducted, the article explores whether civilian mental harm should be affected by socio-economic parameters and what this means for the wider role socio-economic rights can play in armed conflicts as well as for the reading of *jus in bello* along Marxist terms.

Keywords

civilian mental harm – socio-economic rights – Marxist interpretation – jus in bello

1 Introduction

In war, there is an assumption that humans on all sides suffer the same. In that sense, there is a certain universality in the way mental harm is to be experienced. Yet, so far, this assumption has not been actually tested. Furthermore, given that the right to mental health is a socio-economic right, this assumption has not been tested on the basis of any interrelation that right might have with other socio-economic rights. So far, both parts of the problematic have been largely understated in international law literature. When it comes to civilian mental harm, it is only relevantly recently that international law scholars have started arguing that such harm should be included as a legal measure in the jus in bello proportionality balance that the military commander is called to wage.¹ Equally, nothing has been written on how socio-economic rights in general relate to the concept of civilian mental harm and if-beyond the right to health-there are other socio-economic rights that are significantly correlated with this civilian mental harm discussion. In other words, scholars have not so far examined how socio-economic rights interact with the right to mental health, a socio-economic right on its own.² Furthermore, scholars have not built any socio-economic theoretical frameworks in order to then empirically test which socio-economic rights potentially impact upon the experiencing of

-
- 1 Eliav Lieblich, *Beyond Life and Limb: Exploring Incidental Mental Harm in International Humanitarian Law in Applying International Humanitarian Law in Judicial and Quasi-Judicial Bodies* (Derek Jinks, Jackson Maogoto & Solon Solomon, TMC Asser Press, 2014) 185; Emanuela-Chiara Gillard, *Joint Symposium: Chatham House Report on Proportionality in the Conduct of Hostilities-Some Key Elements*, EJIL!Talk, 28 Jan. 2019 available at <https://www.ejiltalk.org/joint-symposium-chatham-house-report-on-proportionality-in-the-conduct-of-hostilities-some-key-elements/comment-page-1/>; Solon Solomon, *Bringing Psychological Harm to the Forefront: Incidental Civilian Fear as Trauma in the case of Recurrent Attacks*, EJIL!Talk, 25 April 2018 available at <https://www.ejiltalk.org/bringing-psychological-civilian-harm-to-the-forefront-incident-civilian-fear-as-trauma-in-the-case-of-recurrent-attacks/>; ILA Study Group, *The Conduct of Hostilities and International Humanitarian Law: Challenges of 21st Century Warfare*, 25 June 2017 at 28–29. For the proportionality jus in bello and its distinction with the jus ad bellum proportionality principle see Raphael van Steenberghe, *Proportionality Jus ad Bellum and Jus in Bello: Clarifying their Relationship*, 45 *Israel L. Rev.* 107 (2012).
 - 2 On this see article 12 of the International Covenant on Economic, Social and Cultural Rights. See also Sanskriti Sanghi & Raushan Tara Jaswal, *Of Promises and Discontents:*

civilian mental harm. The construction of such socio-economic frameworks is important given the impact socio-economic factors have on human behaviour.³

It is inside these realms that the current article discusses education, family and income as socio-economic parameters interact with civilian mental harm. This, given the role family and education play to the shaping of a person's character, including possible fears and anxieties.⁴ Income was chosen as the par excellence socio-economic parameter, indicating a person's social status. Moreover, to the extent that education and family relates to relevant socio-economic rights embedded in international human rights law documents and the parameter of income corresponds to the minimal living standards associated with a dignified life that is highly attached to a good level of well-being,⁵ the current article speaks not only about socio-economic parameters, but about wider socio-economic legal frameworks able to aggravate or reduce the intensity of any mental harm experiencing. On this account, the article comes to rely on the writings of previous scholars who have pointed out how socio-economic rights and the right to health in particular, 'have not yet delivered on robustly egalitarian policies.'⁶

The purpose of the article is not just descriptive, namely, only to map how these parameters shape the civilians' level of war trauma. Rather, the article aims to show how any potential impact of socio-economic parameters on the experienced civilian war trauma can be translated on a policy level to international human rights law measures that States can take vis a vis their

Mapping India's Response to Guaranteeing the Right to Mental Health during the COVID-19 Pandemic, 12 *Asian J. Int'l. L.* 121 (2022).

- 3 Rikuya Hosokawa & Toshiki Katsura, Effect of socioeconomic status on behavioral problems from preschool to early elementary school-A Japanese longitudinal study, 13 *PLoS One* 1 (2018).
- 4 For example, mental health studies have shown how parameters like education or family ties can have a post-trauma therapeutic effect, aiding the person overcome the adverse effects of trauma. On this see Shirley Wang, Joanna Herres & Guy Diamond, Unique Interactions of Interpersonal Trauma and Positive Peer and Family Experiences on Traumatic Distress among Pediatric Primary Care Patients, 36 *J Interpersonal Violence* 976 (2021) and Shervin Assari, Family Socioeconomic status and Exposure to Childhood Trauma: Racial Differences, 7 *Children* 57 (2020).
- 5 Narasimha Rao & Jihoon Min, Decent Living Standards: Material Prerequisites for Human WellBeing, 138 *Soc Indic Res* 225 (2018). See also the European Court of Human Rights *MSS* judgment where the Court found a violation of the right to inhumane and degrading treatment because an asylum seeker spent months in extreme poverty, unable to cater for his most basic needs, such as food, hygiene and accommodation and thus 'such living conditions combined with the prolonged uncertainty in which he has remained' led the Court to assert a violation of article 3 of the European Convention on Human Rights. (*MSS v Belgium and Greece*, Grand Chamber, Judgment, 21 January 2011, paras.254 & 263).
- 6 Alicia Ely Yamin & Andres Constantin, A Long and Winding Road: The Evolution of Applying Human Rights Frameworks to Health, 49 *Geo. J. Int'l. L.* 191, 194 (2018).

citizens and the persons living under their jurisdiction. These measures can be aimed at strengthening relevant socio-economic rights associated with the parameters which may negatively impact on the exhibition of trauma. On the other hand, by discussing if and how socio-economic considerations affect civilian war trauma, the article may be seen as offering guidelines also to military commanders in the course of the latter's assessment of civilian harm vis a vis the anticipated military advantage. Finally, we aspire to highlight to international legal scholars and bodies, how discussion of civilian mental harm in warfare should take place cautiously on a case-to-case basis and with no predetermined rules and assumptions. The dynamic this has for the overall discussion of how the laws of war should be seen in conjunction with the socio-economic background each time in place, opens the discussion of whether *jus in bello* can be seen along Marxist terms.

On this account, the article wants to dispute the horizontal treatment of mental harm in the laws of war and by extension in international criminal law once any violations of the laws of war as tagged as war crimes and brought before international and national courts. For this reason, the next section will discuss how the socio-economic rights of education and family as well as the income parameter can interact on a normative basis with the right to mental health. In order to assess whether such interaction indeed can take place on an empirical level, in section 3 we will briefly discuss the findings of a small but indicative study we conducted on Israeli civilians subject to rocket attacks, measuring their trauma in conjunction with their education, family ties and income level. Finally, in section 4 we will discuss how the impact of socio-economic frameworks in warfare can enable also a Marxist reading of *jus in bello*.

2 Discussing the Role of Education, Family and Income as Socio-Economic Legal Frameworks in the Course of Armed Conflicts

The last years have seen scholars increasingly writing about the enforceability of socio-economic rights and their role as real 'rights' both in national jurisdictions as well as in international law.⁷ As a result, socio-economic rights have been discussed in the realms of warfare, regarding both international and

7 James Fowkes, *Normal Rights, Just New: Understanding the Judicial Enforcement of Socio-Economic Rights*, 68 *American Journal Comparative L.* 722 (2020); Nour Mohammad & Sayed MM Hasan, *Judicial Enforceability of Economic, Social and Cultural Rights in Bangladesh: A Critical Evaluation*, 23 *Asia-Pacific Journal on Human Rights & The Law* 80 (2022); Ben Saul, David Kinley & Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials*, Oxford University Press (2014) 3; Sandra Fredman, *Comparative Human Rights Law*, Oxford University Press (2018) 59.

non-international armed conflicts.⁸ Nevertheless, little has been written on how socio-economic rights interrelate between them as well as with the laws of war in questions referring to targeting operational decisions. For example, in the the jus in bello proportionality principle and article 51(5)b) of AP I, the notion of ‘damage to civilian objects’, has been discussed in connection to the right to property.⁹ To the extent that the particular right is seen in the context of war under socio-economic lens, it can be argued that incidents of pillage or appropriation of property in cases not justified by military necessity,¹⁰ do violate the right to property also from a socio-economic perspective. Equally, as stated above, the notion of ‘injury’ in the particular provision has been interpreted as encompassing also mental harm, namely a violation of the right to mental health, another socio-economic right. Both in the case of pillage as well as the causation of mental harm to civilians, international scholars have not so far examined how the socio-economic rights discourse can impact on the legal treatment of these laws of war violations once they are seen also as violations of socio-economic rights. Moreover, international scholars have not so far discussed how the fact that these laws of war violations as socio-economic rights interact with other socio-economic rights and parameters, creating a wider socio-economic framework in which their discussion should take place. The current article would like to focus on this aspect given that the wider insulation of the socio-economic rights discourse in the context of warfare is surprising for two reasons: firstly, as the UN Committee on Economic, Social and Cultural Rights has stated in its General Comment No.4, socio-economic rights are to be read not in isolation from other rights.¹¹

8 Amrei Muller, *The Relationship between Economic, Social and Cultural Rights and International Humanitarian Law: An Analysis of Health Related Issues in Non International Conflicts*, Martinus Nijhoff (2013) 149; Amrei Muller, *States’ Obligation to Mitigate the Direct and Indirect Health Consequences of Non-International Armed Conflicts: Complementarity of IHL and the Right to Health*, 95 *Int’l. Rev. Red Cross* 129 (2013).

9 The right to property has entered the human rights discourse as an individual property-related civil and political right, but has since evolved as a socio-economic right, related to an adequate standard of living. On this *see* Asbjorn Eide, *Economic and Social Rights in Human Rights: Concepts and Standards* (Janusz Symonides ed.2000) Routledge, 119–120.

10 Evelyne Schmid, *War Crimes Related to Violations of Economic, Social and Cultural Rights*, 71 *ZaoRV* 535–536 (2011).

11 UN Committee on Economic, Social and Cultural Rights, *General Comment no.4: The Right to Adequate Housing* (6th sess.,1991) para.9; D.M. Davis, *Socio-Economic Rights in The Oxford Handbook of Comparative Constitutional Law* (Michel Rosenfeld & Andras Sajó eds, Oxford University Press, 2012) 1020.

The systemic interpretation of international human rights law has taken this idea one step further, by showing how other human rights systems must be also considered in the interpretation of a particular human rights provision.¹² Secondly, human rights are meant to apply concurrently with the laws of war.¹³ Any discussion of the laws of war provisions which does not take into account the human rights parameters of any relevant notions, risks becoming partial and incomplete.

Under this lens, we argue that the civilians' right to mental health should be discussed in the context of warfare at least in conjunction with two other socio-economic rights—the right to education and the right to family. Like the right to mental health, these two rights have equally discussed so far in the realms of warfare on an isolated basis. For example, the right to education is embedded in article 13 of the International Covenant on Social, Economic and Cultural Rights as well as article 28 of the UN Convention on the Rights of the Child which states that every child has the right to education and that States have to satisfy this right progressively and on the basis of granting equal opportunities.¹⁴

In scenarios entailing armed conflicts, the right to education has been brought forth so far in situations where schools or other educational facilities are used for the conduct of attacks.¹⁵ Under the laws of war, educational institutions are being protected either due to their cultural value or due to their association with the life and the integrity of children. It is inside this framework, that the use of schools for military purposes has been denounced by the UN Security Council in a number of Resolutions¹⁶ as well as by the UN

12 Adamantia Rachovitsa, *The Principle of Systemic Integration in Human Rights Law*, 66 *ICLQ* 557 (2017); Vito Todeschini, *The Impact of International Humanitarian Law on the Principle of Systemic Integration*, 23 *J. Conflict & Security L.* 359,360–64 (2018) For the fact that the systemic interpretation can connect also between different fields of international law *see* Vito Todeschini at 359 (referring to the fact that in the Oil Platforms case, the International Court of Justice connected the U.S.-Iran commercial treaty with *ius ad bellum*).

13 Theodor Meron, *The Humanization of International Law*, 94 *AJIL* 239 (2000); ICJ, *Legality of the Threat or Use of Nuclear Weapons Advisory Opinion*, ICJ Rep. 1996, 226 at para.25; ICJ, *Wall Advisory Opinion* ICJ Rep. 2004, 178 at para.112; Evelyne Schmid, *War Crimes Related to Violations of Economic, Social and Cultural Rights*, 71 *ZaoRV* 523 (2011).

14 UN Convention on the Rights of the Child, UN General Assembly Resolution 44/25 adopted on November 20, 1989.

15 Zama Coursen-Neff, *The Right to Education: Regulating the Conduct of Armed Forces under International Law*, 37 *Harvard Int'l. Rev.* 27 (2015).

16 *See* indicatively UN Security Council Resolution 2143 (2014), para.18; UN Security Council Resolution 2225 (2015), para.26; UN Security Council Resolution 2401 (2018), para.8; UN

Committee on the Rights of the Child.¹⁷ Equally, the Guidelines from Protecting Schools and Universities from Military Use during Armed Conflict,¹⁸ which although are not legally binding, provide a clear direction towards the need for educational institutions not to be used for the launch of attacks.

Yet, whereas the right to education in warfare has been examined extensively regarding the impact attacks have on educational buildings and institutions, little has been written on the impact warfare has on the level of the provided education.¹⁹ For example, article 50 of the Fourth Geneva Convention stipulates that the occupying power must facilitate the proper working of all educational institutions after hostilities have ended and during the occupation phase.²⁰ Article 4(3)(a) of Additional Protocol II to the Geneva Conventions holds that it is a 'fundamental guarantee' that children shall receive an education 'along the wishes of their parents.' The provision potentially covers also situations where hostilities are in place, yet the Protocol refers only to non-international armed conflicts. Yet, as noted,²¹ an attack on education must be seen as comprising both an attack to educational facilities and staff as well as an attack to education itself as a concept.

A systemic reading of the rights to education and mental health would thus call States to show a duty of care towards their own citizens when it comes to the enforcing of the education levels as a way of minimizing the exhibition of trauma. The duty for States to cater for the educational needs for the persons under their jurisdiction, exists in the realms of the Geneva Conventions in cases of military occupations.²² An argument a *minore ad maius* renders

Security Council Resolution 2419 (2018), para.12; UN Security Council Resolution 2427 (2018), paras.15–16.

17 UN Committee on the Rights of the Child, Concluding Observations, *CRC/C/OPAC/COL/CO/1*, 2010, paras. 39–40; UN Committee on the Rights of the Child, Concluding Observations, *CRC/C/THA/CO/3-4*, 2012, para.85; UN Committee on the Rights of the Child, Concluding Observations, *CRC/C/PAK/CO/5*, 2016, paras. 62 & 64.

18 Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, Annex II, Commentary on the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, Global Coalition to Protect Education from Attack.

19 On this *see* Tavassoli-Naini Manuchehr, Education right of children during war and armed conflicts, 15 *Procedia Social & Behavioral Sciences* 302 (2011).

20 Geneva Convention Relative to the Protection of Civilian Persons in Times of War (Fourth Geneva Convention), August 12, 1949 75 UNTS 287, art.50.

21 Protecting Education in Insecurity and Armed Conflict: An International Law Handbook, British Institute of International & Comparative Law at 2.

22 Jorene Soti, The Application of Education Rights in the Occupied Territories, 13 *Florida J. Int'l L.* 211 (2001). Article 50 of the Fourth Geneva Convention holds in its third paragraph that the occupying power must provide for the education of orphans and of children

imperative for States to cater for the educational needs also of their own citizens, especially given that as discussed above, strong educational ties can contribute to the minimization of any trauma effects.

On an international level, the right to family is embedded in article 10 of the International Covenant on Economic, Social and Cultural Rights as well as in other international human rights documents.²³ To the extent that also on a domestic level, many constitutions encompass the right to family as a constitutional right,²⁴ our study highlights how the particular right should be safeguarded even in times of national emergencies, like for example in warfare scenarios, where States may generally feel obliged to derogate from certain human rights obligations of theirs.

So far, the right to family in warfare has been discussed in the realms of warfare inside a certain framework. In the aftermath of hostilities leading to military occupations, the respect of the family rights of the persons residing in the occupied territory has been codified in article 46 of The Hague Regulations as well as in the Fourth Geneva Convention and the Additional Protocols. Thus, in the particular framework, discussions around the specific right have aimed at protecting the concept of the family by stressing for example the need for family unity to be preserved²⁵ or by enabling the reunion of families temporarily separated by hostilities.²⁶ Moreover, the protection of children in conflict²⁷ and the right of relatives to ask for information about their beloved

separated from their parents in case the local authorities are not in a position to do so. On this *see supra* note 28. *See also* Michael Siegrist, *The Functional Beginning of Belligerent Occupation*, Graduate Institute e-Papers, Geneva, 2011 available at *The Functional Beginning of Belligerent Occupation – V. Positive and negative obligations due to the mere fact of occupation – Graduate Institute Publications* (openedition.org) (arguing that article 50 of the Fourth Geneva Convention should be read in conjunction with article 24, placing the primary responsibility for the providing education on local authorities).

23 *See* indicatively Universal Declaration of Human Rights, article 16; International Covenant on Civil and Political Rights, articles 17, 23 and 24; African Charter on Human and Peoples' Rights, article 18; American Convention on Human Rights, article 17; European Convention on Human Rights, article 8.

24 Grzegorz Pastuszko, *Protection of Families in National Constitutions, in Particular in the Polish Constitution*, 3 *Central European J. Comparative L.* 161 (2022).

25 *See* articles 49 and 82 of the Fourth Geneva Convention discussing family unity in cases of evacuation or detention. *See also* articles 75 and 77 of Additional Protocol I to the Geneva Conventions and article 5 of the Additional Protocol II.

26 *See* article 26 of the Fourth Geneva Convention, article 74 of Additional Protocol I and article 4(3)(b) Additional Protocol II to the Geneva Conventions.

27 Sandra Singer, *The Protection of Children during Armed Conflict Situations*, 252 *Int'l. Rev. Red Cross* 133 (1986).

ones, lost or killed in the realms of a conflict²⁸ have equally been seen as manifestations of the right to family in situations of armed conflict. Yet, the particular right has never been before discussed as a correlator to the level of the experienced trauma.

This is the case also when it comes to the parameter of the annual income. Whereas ‘income’ per se is not a right, the concept of minimum core standards aimed to ensuring the satisfaction of at least minimum levels of enjoyment, is embedded in the theory and jurisprudence of socio-economic rights²⁹ and can be seen as utterly linked to the notion of income. The Committee on Economic, Social and Cultural Rights has issued General Comment No.14 titled ‘The Right to the Highest Attainable Standard of Health’ and referring to the fact that such violations of the right to health that are associated with the non-adherence to these standards, may take place also through the omission of States to take the necessary measures arising from their legal obligations.³⁰

The need for socio-economic rights and parameters to be read in conjunction with the right to mental health can be substantiated on a normative level, yet the question is if the socio-economic factors mentioned in this section actually do have the potential to impact on the experienced mental harm. On these lines, the next section will discuss a small empirical study we undertook on the issue.

28 Article 32 of Additional Protocol I.

29 See for example General Comment No.3 of the Committee on Economic, Social and Cultural Rights at para.10, stating that ‘... the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party.’ Committee on Economic, Social and Cultural Rights, General Comment No.3, 5th Sess, December 14, 1990. See also David Bilchitz, *Towards a Reasonable Approach to the Minimum Core: Laying the Foundations for Future Socio-Economic Rights Jurisprudence*, 19 *South African J. Human Rights* 1 (2003); George Jotham Kondowe, *Implementing Economic and Social Rights in ‘Domestic’ Jurisdictions: Understanding the Minimum Core Obligations Approach*, 46 *Commonwealth Law Bulletin* 314 (2020); Lisa Forman, *Can Minimum Core Obligations Survive a Reasonableness Standard of Review under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights?* 47 *Ottawa L. Rev.* 557 (2016).

30 Committee on Economic, Social and Cultural Rights, General Comment No.14, 22nd Sess., August 11, 2000, para.49.

3 Discussing Empirically the Association between Civilian War Trauma and Socio- Economic Legal Frameworks

Following Hamas's control over the Gaza Strip,³¹ Israeli civilians, particularly those residing near Gaza, became subject to recurrent rocket attacks.³² In May 2021, another such barrage of attacks occurred. In the course of 12 days, Israeli civilians became recipients of thousands of rockets. Against this background, we conducted a small but indicative study between November 2021 and March 2022 on the trauma symptoms these civilians developed as a result. In the particular study we examined the impact socio-economic rights frameworks can have on the emergence levels of civilian mental harm in warfare, taking as a stress trigger the sounding of the Red Alert siren.³³ The latter refers to the siren sounding each time a rocket from Gaza is launched, giving Israeli civilians some seconds to find a shelter.³⁴

We tested two hypotheses: i) the first is the question whether levels of educations and family ties are associated with decrease in the level of civilian war trauma ii) the second is the question whether an increase of the socio-economic status of the affected civilians is correlated with the emerged war trauma. We recruited 395 Israeli civilians (mean age 38.81, *SD* = 13.87), residing in the larger Tel Aviv metropolitan area, around the Gaza strip, all subject to intense rocket attacks that took place in May 2021. All participants volunteered to answer our questionnaire with no compensation. Through social media we distributed to the participants two questionnaires. The first was a PCL-5 questionnaire, translated in Hebrew. We opted to use the PCL-5 given its wide

31 Conal Urquart, Ian Black & Mark Tran, Hamas Takes Control of Gaza, *The Guardian*, 15 June 2007 available at <https://www.theguardian.com/world/2007/jun/15/israel4>.

32 Lior Akerman, Rocket Attacks from Gaza, *The Jerusalem Post*, 6 December 2018 available at <https://www.jpost.com/Opinion/Rocket-attacks-from-Gaza-573691>.

33 Whereas it can be argued that the siren hearing cannot be used as a stress trigger of the same intensity with an actual attack, the life-threatening feelings the siren hearing invokes render it a considerable stress trigger in the particular occasion. On this see Sarah Hall et als, *The Acute Physiological Stress Response to an Emergency Alarm and Mobilization during the day and at night*, 18 *Noise & Health* 150 (2016). See also Report of the UN Fact-Finding Mission on the Gaza Conflict, A/HRC/12/48, 25 September 2009 at para.1598 (noting that 'the rockets and mortars have caused relatively few fatalities and physical injuries among the residents of Southern Israel More widespread however has been the psychological trauma and the feeling of insecurity that living under rocket fire has caused and continues to cause ...').

34 Israeli Ministry of Foreign Affairs, *The Threat to Israel's Civilian Population and Israel's Civil Defence Measures at 108* available at https://mfa.gov.il/ProtectiveEdge/Documents/Threat_to_%20Home_Front.pdf.

use by mental health experts for the reporting of trauma symptoms.³⁵ The second questionnaire, originally drafted in Hebrew, comprised demographic questions participants were called to answer *inter alia* regarding their age, their gender, their income, their education level and their family status. From all the parameters that can be possibly associated with socio-economic factors and rights, we deliberately focused on those of income, education and family, for the reasons stated in this article's introduction. We did not ask the participants for any identifying details and informed them that participation was entirely voluntary.

In the final results we took into account the answers of 378 participants, excluding 17 participants who did not fully engage with the questionnaire. Given that post-traumatic symptoms are key elements for the diagnosis of PTSD when they are sufficiently high in number and intensity,³⁶ we examined how the elements of education, family and income interacted in cases of participants who stated enough symptoms in number and intensity for them to be potentially suffering from probable PTSD or PTSD. Due to the fact that probable PTSD requires the exhibition of at least one intrusion symptom, one avoidance symptom, two symptoms of negative alteration to mood and cognitions and two arousal symptoms being marked as moderate or above,³⁷ for the sake of this research and since our purpose was not to diagnose which of the participant actually experienced probable PTSD or PTSD, we made a distinction between participants stating they experienced 6 symptoms and above on a moderate scale and those that experienced on a moderate scale less than 6 symptoms. The moderacy of the symptoms was measured through the established PCL-5 questionnaire standards, where participants can circle the number '2' in a scale of 0-4 regarding how intense they have experienced the symptoms, with number 2 equalling 'moderate' in the particular scale.

We first tested the hypothesis on whether education and family ties affect the emergence levels of trauma. The results are presented in Tables 1 and 2. Among the participants with a university higher education, 10% stated they had experienced more than 6 symptoms on a moderate scale, rendering this group susceptible to a further psychiatric evaluation on whether probable PTSD or PTSD should be diagnosed also for some of these participants. Moreover, the

35 Michelle Bovin et al, Psychometric Properties of the PTSD Checklist for Diagnostic and Statistical Manual of Mental Disorders-Fifth Edition (PCL-5) in Veterans, 28 *Psychological Assessment* 1379 (2016).

36 Quinn Biggs et al, Daily Variation in Post Traumatic Stress Symptoms in Individuals with and without Probable Post Traumatic Stress Disorder, 19 *BMC Psychiatry* 1 (2019).

37 Philippa Specker et al, A Factor Analytic Investigation of DSM-5 PTSD symptoms in a culturally diverse sample of refugees resettled in Australia, 12 *Conflict & Health* 1, 5 (2018).

TABLE 1 Impact of education levels on the experiencing of civilian war trauma

	Participants (percentage out of total sample)	Participants stating at least 6 trauma symptoms on a moderate level
University Studies	239 (63%)	23 (10%)
Non-academic studies	138 (37%)	38 (28%)

TABLE 2 Impact of family status on the experiencing of civilian war trauma

	Participants (percentage out of total sample)	Participants experiencing at least 6 trauma symptoms on a moderate level
Single	145 (38%)	33 (23%)
Married	215 (57%)	27 (13%)
With Children	233 (62%)	27 (12%)
With no children	145 (38%)	34 (23%)

percentage rose to 28% among the persons who stated they did not have any university education.

When it comes to family ties, 13% of the participants who were married stated they had experienced 6 or more symptoms at least on a moderate scale, compared to 23% among the participants who stated they were single. Equally, the existence of children seemed to affect the levels of the experienced trauma. Among participants with at least one child, 12% declared experiencing 6 or more trauma symptoms on a moderate scale and beyond, compared to 23% among participants with no children.

Consequently, we tested the second hypothesis. In order to do so, we asked the participants to state to which scale their annual income fell between a number of scales ranging from 0–6,000 Shekels to over 24,000 Shekels, given that such a salary above 24,000 Shekels is considered to be a high one. For

TABLE 3 Impact of income on the experiencing of civilian war trauma

	Number of Participants	Participants stating at least 6 symptoms on a moderate level
Income between 0–6,000 NIS	47 (14%)	12 (26%)
Income between 6,001–15,000 NIS	94 (29%)	19 (20%)
Income between 15,001–24,000 NIS	111 (34%)	13 (12%)
Income above 24,001 NIS	75 (23%)	7 (9%)

example, in the banking sector, only 10% of the people in Israel who work in the sector have annual gross salaries above 23,000 Shekels.³⁸ On this account, the results of the current survey regarding the interrelation of the income with the number of trauma exhibited, is presented in Table 3.

From the participants who stated that their annual income was above 24,001 shekels, only 9% responded they had experienced above 6 trauma symptoms on a moderate scale. On the contrary, 20% of the respondents with an annual income 6,000–15,000 shekels stated they had moderately experienced 6 or more trauma symptoms and the percentage climbed to 26% among the participants with income 0–6,000 shekels.

The study results demonstrate the high correlation between levels of education, family ties and income and the experiencing of mental harm and trauma. The difference between the number of the trauma symptoms experienced on a moderate level, is considerable among civilians who had university education compared to those who did not. ($p < 0.001$) Equally, our study recorded a considerable impact of family status to the experiencing of war trauma, ($p = 0.0108$), with the existence of children making the difference in such experiencing even starker ($p = 0.0022$).

The ability of higher levels of education and family ties to shield any attack impact even if this attack takes place from close by, is important for populations exposed to shelling or land warfare, where the attacks do not necessarily take

38 Paylab: Salaries in the Category: Banking available at Banking, Israel salaries – Paylab.com (last accessed on November 20, 2022).

place with the relevant army apparatus being situated far away. At the same time, on the flipside, the fact that loose education and family ties can lead to the starker manifestation of trauma even if the attack takes place from afar, holds less promising news for civilians residing far away from the battlefield. In both cases, the message is sent to States, about how the strengthening of the education and family infrastructures can lead to the soothing of the civilian war trauma.

This finding is important on two levels. From a socio-economic human rights perspective, the correlation between education, family and trauma calls upon States, policy-makers as well as scholars to think about how the right to education and the right to family can contribute to the soothing of the trauma among the civilians affected by warfare. Whereas socio-economic rights are rights which are to be fulfilled on a progressive basis and according to the available resources,³⁹ the findings of the study provide an impetus for States to prioritize policies that see the maximization of the educational opportunities as well as the opportunity for young couples to come together and have a family. These policies may be translated to more budget for the creation of schools and universities or benefits for families and support for child upbringing.

When it comes to the second hypothesis of our research, namely how the general socio-economic status impacts upon the chances of civilian mental harm to emerge, our study indeed pointed out to a correlation between a person's economic status and the experienced mental harm. ($p = 0.0044$) This opens a whole discussion and calls for further studies on whether international law scholars discussing the laws of war, should consider also socio-economic factors in their analysis, the same way these factors have been considered in the analysis of scholars regarding jus ad bellum and the initiation of wars.⁴⁰ On this account, our findings that people with lower income are prone to experiencing more starkly the impact of warfare, must alarm State-decision makers and the international community which should pay an emphasis to the more equal distribution of wealth not only among developed and developing countries, but also inside a country itself.

Finally, from a laws of war perspective, the interrelation of civilian war trauma with levels of attained education and family ties, provides a compass to the military commander on how to a priori assess the severity of the

39 On this see Article 2 of the International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3; Committee on Economic, Social and Cultural Rights, General Comment No.3, adopted at the fifth session, 14 December 1990.

40 See *infra*, section 4.

mental harm that the civilians are due to experience on account of a specific military operation. This may mean that commanders should be aware that in impoverished suburbs or areas where conditions also in peacetime are dire and difficult, with low education levels and not tight family ties, any continuous shelling or recurrent air strikes may more rapidly lead to high PTSD levels among the affected civilians. This does not mean that in this case the military operation should not ipso facto take place. It should though mean that the military commander has a higher onus to prove how the anticipated military advantage outweighs the incidental civilian harm incurred to the affected civilians. By providing thus an indication to the military commander of the susceptibility of a particular civilian population to PTSD, our study contributes to the question of how practically such commander can know in advance and before the operation takes place, the extent of psychological harm that this operation is due to cause.⁴¹

Yet, more importantly, when it comes to the laws of war, the study exemplifies how the application of socio-economic legal frameworks in the experiencing of warfare's psychological impact, can redefine the role also the relevant socio-economic rights to education, family and property can play in the realms of an armed conflict. This will be discussed in the next section.

4 Discussing a Marxist Reading for Jus in Bello

The impact socio-economic factors have on the right to mental health in the context of warfare as well as the interrelation socio-economic rights can have in the realms of an armed conflict, bring forth the question of whether jus in bello should be seen beyond interpretational lens that will allow these socio-economic parameters to be taken into account. In other words, whether the actual experiencing of warfare and its conduct should be seen as tied to socio-economic factors and inequalities, which ultimately render a different experience for the individuals exposed to hostilities. So far, scholars have put their focus only on jus ad bellum, arguing how the laws pertaining to the initiation of hostilities should be seen under a Marxist theory lens.⁴² It has

41 On the posing of the whole problematic *see* Noam Lubell & Amichai Cohen, Strategic Proportionality: Limitations on the Use of Force in Modern Armed Conflicts, 96 Int'l. L. Studies 161, 174 (2020). *See also* Eliav Lieblich, *supra* note 1 for an approach based on the use of algorithms as possible solution.

42 Karel Kara, On the Marxist Theory of War and Peace, 5 Journal of Peace Research 1 (1968); Fanny Coulomb & Renaud Bellais, The Marxist Analysis of War and Military Expenditures, between Certainty and Uncertainty, 19 Defence & Peace Economics 351 (2008).

been thus analysed how wars start as a result of the ambitions countries have to find new resources and expand their wealth.⁴³ Similarly, it has been argued that socio-economic inequalities due to unbalanced societal development can lead to wars.⁴⁴

The importance attached to socio-economic inequalities regarding *jus ad bellum* and the initiation of hostilities, is lacking in the way *jus in bello* is discussed by international scholars. Whereas the latter have discussed how *jus ad bellum* is formed also through informal processes, like UN Security Council deliberations which sanction State actions ranging beyond the classical *jus ad bellum* framework,⁴⁵ the importance socio-economic factors can play to the way *jus in bello* is shaped, has not been equally acknowledged. In relation to the discussed right to mental health, the assumption is thus that all civilians affected by warfare suffer the same. The legal treatment of civilian mental harm in international law is created on horizontal grounds.

As things currently stand, the laws of war do not provide any classification of civilian mental harm attached to income or class distinctive characteristics. The causation of mental harm to civilians, once done intentionally, is a war crime irrespective of the class the civilian belongs to. While this is correct and stems from the fact that we are all human beings and thus born equal, there are two wrong starting points in the way international law treats the issue.

The first wrong starting point is procedural and refers to the fact that international courts do not take pains to establish through experts the extent of the mental harm that has been incurred and whether it is indeed 'serious'.⁴⁶

43 On this see Alexander Anievas, *Marxist Theory and the origins of the First World War in Cataclysm 1914: The First World War and the Making of Modern World Politics* (Alexander Anievas ed, Brill, 2015) 96 (critically discussing whether the Marxist perception could be valid in the initiation of the First World War); Anthony Carty, *Marxism and International Law: Perspectives for the American (Twenty-First) Century?* 17 *Leiden J. Int'l. L.* 247,257 (2004) (noting that 'the United States found its way out of the Great Depression by adopting the 'warfare-welfare' economy of armaments').

44 For more on this as well as for a critical view of this position see Thomas Furst et al., *Effect of an Armed Conflict on Relative Socioeconomic Position of Rural Households: Case Study from Western Cote d'Ivoire*, 7 *Emerging Themes in Epidemiology* 1 (2010). See also Robert Knox, *Marxist Approaches to International Law in The Oxford Handbook of the Theory of International Law* (Anne Orford, Florian Hoffmann & Martin Clark eds, Oxford University Press, 2016) 308.

45 Monica Hakimi, *The Jus Ad Bellum's Regulatory Form*, 112 *AJIL* 151,155 (2018).

46 Solon Solomon, *International Criminal Courts and the Introduction of the Daubert standard as a Mode of Assessing the Psychological Impact of Warfare on Civilians*, King's College London (2019) available at https://kclpure.kcl.ac.uk/portal/files/115693026/2019_Solomon_Solon_1270287_thesis.pdf.

The second one lies on the assumption, that apart from women and children who according to mental health studies, are more prone to PTSD,⁴⁷ there is no need for courts to link the severity of the victim's mental harm to any particular conditions, particular any socio-economic frameworks.

There are a number of reasons for the inability or reluctance of *jus in bello* to adopt a less formalistic stance on the issue. Firstly, there is a presumption that there is something universal in the concept of suffering tied to the notion of the human nature. In other words, the assumption is that all humans suffer the same and no distinctions should be made between poor and rich. The idea that someone is first a human being and then a soldier is an idea that pervades the inception of the laws of war as a distinct legal field in the 19th field. It is not by accident that The Hague Regulations emanating *inter alia* from the second Hague Convention in 1899,⁴⁸ meant to set rules for the conduct of war, while the First Geneva Convention in 1864 emphasized the need for wounded soldiers and war prisoners to have a humane treatment.⁴⁹ This same idea according to which the combatant always remains a human being who must be respected as such, is behind also the scholarly approach that explicitly emphasizes the soldiers' right to life when it comes to the execution of their military duties.⁵⁰

Secondly, from a legal perspective, the equality among belligerents may have also played a role in deterring scholars from any Marxist reading attempts. In *jus ad bellum*, international law has a different legal treatment for the party initiating hostilities and for the party exercising force in response. The first is the aggressor, liable also to be brought also before the International Criminal Court given that aggression is an international crime.⁵¹ The responding party

47 Miranda Olf, Sex and Gender Differences in Post-traumatic Stress Disorder: An Update, 8 *Eur. J. Psychotraumatology* (2017); Yuanyuan Lee et als, Post-traumatic Stress Disorder in Children and Adolescents: Some Recent Research Findings in Psychosomatic Medicine (Ignacio Jauregui Lobera ed, 2020) 157.

48 Hague Convention II with Respect to the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 29 July 1899 available at <https://ihl-databases.icrc.org/ihl/INTRO/150>.

49 On this *see* First Geneva Convention on Amelioration of the Condition of the Wounded on the Field of Battle, August 22, 1864 available at https://avalon.law.yale.edu/19th_century/geneva04.asp.

50 Solon Solomon, Targeted Killings and the Soldiers' Right to Life, 14 *ILSA J. Int'l & Comp. L.* 99 (2007); Gabriella Blum, The Dispensable Lives of Soldiers, 2 *Journal of Legal Analysis* 69 (2010).

51 For this inequality among the parties in *jus ad bellum see* Michael Mandel, Aggressors' Rights: The Doctrine of 'Equality between Belligerents' and the Legacy of Nuremberg, 24 *Leiden J Int'l. L.* 627 (arguing that equality between belligerents should not exist also in *jus in bello*).

on the other hand is the party acting in self-defence, exercising its right under article 51 of the UN Charter and thus acting within the ambit of international law.⁵² This different legal treatment can be seen as embalming also ethical components in the Marxist thought. The aggressor is linked to imperialism and the attacking party's quest to expand its dominion for economic purposes. To the extent that capitalism favours the markets, in Marxist thought, the world is seen on capitalism-socialism binary terms.⁵³ The West is the aggressor which conducts wars to serve capitalism's needs, whereas the socialist world finds itself on the defence.⁵⁴ Whereas this depiction may prove to be too simplistic in actual international terms, it does offer a manichaist view of the use of force.

Whereas there have been lately scholars which have argued that the aggressors-victims *jus ad bellum* moral distinction, should be imported also in *jus in bello*,⁵⁵ so far this is not the case. On the contrary, once hostilities erupt, according to the laws of war, all parties, even the one responsible for the opening of the hostilities in the first place, have the same rights and obligations. This is entrenched both in articles 1 and 2 of all the four Geneva Conventions, in article 1 of the First Additional Protocol as well as in customary law.⁵⁶ This equality hinders the depiction of one party as the vile one vis a vis the other and promotes the assumption that during warfare all suffer the same. This assumption is further reinforced by the fact that the laws of war apply concurrently with international human rights law. In the realms of the latter, rights are granted to individuals irrespective of any distinctive differences to the extent that international human rights law enjoys strong links with natural law.⁵⁷ International human rights law instruments clarify how their provisions apply to all humans irrespective race, sex and religion. Quite interestingly, when it comes to the right to health, the Constitution of the World Health Organization adds also the socio-economic parameter. Thus, the Preamble of the particular document states that 'the enjoyment of the highest attainable

52 Francois Bugnion, *Just War, War of Aggression and International Humanitarian Law*, 84 *Int'l. Rev. Red Cross* 523 (2002).

53 N.A. Samoylov & Marianna Muening, *From Imperialist to Innovator: Some Remarks on the Use of the 'West' in PRC history curricula and textbooks during the 1950s and 1980s*, 11 *Vestnik of Saint-Petersburg University* 480,485 (2019).

54 *Ibid*; Etienne Balibar, *Marxism and War*, 160 *Radical Philosophy* 9,11 (2010).

55 On a critical reading of these scholars' arguments see Eliav Lieblich, *The Humanization of Jus ad Bellum: Prospects and Perils*, 32 *EJIL* 579,584–85 (2021).

56 Vaios Koutroulis, *And Yet it Exists: In Defence of the Equality of Belligerents Principle*, 26 *Leiden J. Int'l. L.* 449,452–460 (2013); Terry Gill, *Reconciling the Irreconcilable: Some Thoughts on Belligerent Equality in Non- International Armed Conflicts*, *Netherlands Yearbook of Int'l. L.* 343 (2020).

57 Lieblich, *supra* note 52 at 585.

standard of health is one of the fundamental rights without distinction of race, religion, political belief, economic or social condition.⁵⁸

The approach *jus in bello* reserves for all combatants irrespective of the justness of their cause, is commendable to the extent that it wants to view humans first of all as human beings and then as products of their societies and social environments. Already from antiquity it has been emphasized how natural law should constitute the basis of how we as individuals view our obligations and duties towards the general society.⁵⁹ At the same time, as discussed in the previous section, this horizontal approach that presupposes that suffering is the same among all the people engaged in an armed conflict, combatants and civilians alike, can lead to faulty conclusions. As has been recorded,⁶⁰ socio-economic status plays a role in the way human rights are to be experienced as a concept by various people.

This is particularly true when it comes to the right to health given that the interrelation between socio-economic inequalities and health parameters, has been underlined already from the 19th century. For example, in France, Louis Rene Villerme, one of the founders of epidemiology, conducted in the early 19th century-Paris a study in order to decipher the mortality rates in the capital's different neighbourhoods.⁶¹ Hypothesizing that the economic class differences might be a reason for the different mortality rates across the capital, he examined these rates in conjunction with a rent tax levied on the capital's wealthier residents. His findings were that the neighbourhoods with the lowest mortality rates had also lowest proportion of tax-exempt households, meaning that they comprised households whose residents were deemed to be wealthy.⁶² Our study indicated the same regarding the correlation between the level of income and the harm incurred to the civilians' mental health.

Furthermore, the fact that the intensity of civilian war trauma is interrelated to the levels of satisfaction these civilians enjoy when it comes to socio-economic frameworks such as education and family ties as well as income levels, renders imperative for international law scholars to examine how the rights to family, education and the right to property, can be better enjoyed

58 Constitution of the World Health Organization, New York, 22 July 1946 available at https://treaties.un.org/doc/Treaties/1948/04/19480407%2010-51%20PM/Ch_IX_01p.pdf.

59 Maurice Le Bel, *Natural Law in the Greek Period* in *Nature Law Institute Proceedings*, vol. 2, Notre Dame Law School (1949) 3.

60 James Ron, David Crow & Shannon Golden, *Human Rights Familiarity and Socio-Economic Status: A Four Country Study*, 11 *SUR-Int'l J Human Rights* 335 (2014).

61 Lynn Freedman, *Reflections on Emerging Frameworks of Health and Human Rights*, 1 *Health and Human Rights* 314,317–318 (1995).

62 *Ibid.*

by the affected civilians, so that education and family ties on one hand and income levels on the other, can ameliorate, diminishing thus consequently also the levels of the experienced trauma. In other words, international law scholars are called to unveil new dimensions regarding the enjoyment of socio-economic rights that were not discussed in the past. They are called to see these rights not on an isolated basis, but in a way that holistically touches also upon their interrelation to the right to mental health.

5 Conclusion

The fact that civilian mental harm should lead to legal accountability even when it is not intentionally incurred, has by now been argued in international law. What has been left unaddressed is whether the legal repercussions for the incurred mental harm should be the same irrespective of the conflict framework and setting. The idea that the laws of war should not look into the living circumstances of the civilians subject to hostilities is based on the premises that war causes equal havoc and suffering to all. In that sense, international judicial and quasi-judicial bodies wanting to establish liability based on the mental harm incurred to civilians, as a result of the latter's exposure to hostilities, should not take account whether these civilians find themselves in developing or developed countries or other parameters such as these civilians' levels of education and family ties.

In this article we showed how this premise is wrong by conducting a study on the Israeli civilians exposed to intermittent and recurrent rocket attacks. Given that our study demonstrated that the experienced civilian war trauma is interconnected to how much the education and family ties frameworks are developed as well as to the level of income, the article highlighted how important it is for the socio-economic rights to education, family and property to be discussed in the laws of war not on an isolated basis as this is the currently the case, but in a holistic way, involving also the right to mental health. Moreover, the interrelation between the levels of income and the way civilian war trauma is experienced, led us to discuss how not only *jus ad bellum*, but also *jus in bello*, can be read along Marxist terms.

In that sense, this article put forth certain guidelines regarding the role of socio-economic rights and parameters in warfare and their interaction with civilian mental harm. More importantly, it has shown how such harm cannot be seen as monolithic. It rests upon warfare's protagonists as well as international legal scholars and bodies, to draw on these nuances and discuss civilian mental harm in warfare in a more thorough and accurate way that will do justice to law and most importantly, to the affected civilians.