THE REFLECTIONS ON THE HISTORICAL DEVELOPMENT OF INTERNATIONAL LAW OF WAR

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Abstract. This article focuses on the international law of armed conflict and the international humanitarian law issues corresponding to it. These matters are presented in a chronological perspective of selected historical events. This includes a brief summary of discussion on an issue, and important – in the author's opinion – legal agreements. The following text is divided into two analogical parts that focus on a distinct, but interconnected issues. First part concerns the laws of war – its origin, historical evolution and others, including custom rules of conflict leading to legal acts. Part of it deals with themes of chivalric ethos as the source of modern European "just war" notion. The second part of the article focuses on the human issues in times of war and its legal allocation within international legislations, especially in the Hague Conventions. Responsibilities and ordinances applied to the state and the governments in terms of the introduction and application of international regulations of humanitarian law are also pointed out.

In the general awareness, war is often perceived as a phenomenon in contrary to all laws and rules. That opinion functions today as well as it has been propagated from time immemorial. Even during the ancient times, the terms "right" and "weapon" was presented as a classic example of antonym. A model Greek warrior, personified in the mythical figure of Achilles, was depicted in the *Iliad* as follows: "there is no law for him, he gets everything with a weapon". The same issues of war and law were perceived by the Christian thinker –Tertullian. He said that "deception, cruelty and injustice are proper business of war"[1]. These believes are not to the end in line with reality. Since a man decided to use the weapons against his neighbour, social relations were specified with regulations and behaviours accepted within the group. Also, the war that came with the development of civilization and technology was subject to a kind of moral constraints. Early forms of regulation for the conduct of war were nevertheless ethical demands of more than legal obligations towards the opponent. Within time, the standards evolved into the common law, which eventually evolved into a well-known contemporary international law of armed conflicts.

[1] H. Grotius, *O prawie wojny i pokoju*, volume I, Warsaw 1957, p. 49.

The basis for normativisation of conduct of war is the belief that even during the hostilities there are certain social rules, willingly accepted in a period of peace. These relate to the treatment of the weak, the defenceless and those who found themselves at the mercy of the enemy. Example of such standard is the principle of respect for the inviolability of MPs, protection of women, children, the elderly or the civilian population in general, as well as the integrity of the clergy. Often a special status included prisoners of war and opponents wounded in the battle. Noble leader shall not condone the abuse of defeated and disarmed enemies. This behaviour was considered as vile and cruel, matching more to barbarians than civilized people. Obligation to respect the opponent was sometimes extended to objects and buildings, which was especially noticeable in the case of sacred objects or property decisive for the survival of the civilian population (e.g. food). Compliance with the rules of war dictated a sense of honour and dignity of a warrior, which at the highest level of government facilitated work of diplomats: conducting peace negotiations, establishing policy to buy-out of captives, determining ways of fighting and general treatment of opponents – both during conflict and after the victory.

Although the customary law of war referred to a human morality having a common element in every civilization, their demands were not uniform for all armed conflicts. These rules differ mainly with specific details resulting from the historical period, region, cultural circle and technological development of conflicting communities[2]. In order to realize this relationship it is sufficient to compare the current law of war today with the most ancient military traditions known to us, which will include the so-called Laws of Manu. The name of the law derives from the name of a Hindu deity – the forefather of Manu mankind. This set of orders and prohibitions practiced in the period between the twelfth century BC and the third century AD, defines in detail the principles which should guide the warrior. Book of Manu[3] which is the set of standards instructed that: unequal fight was not allowed and equal opportunities were required – a walker could only fight with a walker, a cavalry trooper with a cavalry trooper and the chariot with the chariot; the use of poisonous or barbed arrows was also forbidden; it was ordered to differentiate the armed and the civilians which were treated with respect and care; and it was unacceptable to harm "sleeping, naked, helpless, watching the fight, and one that has already fighting with another person (...) prisoners should not be killed, but treated as own children"[4].

Customs of war of the ancient Mediterranean people were differently formulated, although similar in matters of general respect for the opponent. Rules for

[2] M. Flemming, *Międzynarodowe prawo konfliktów zbrojnych*, Warsaw 1991, p. 3.

[3] M. Ossowska, *Socjologia moralności*, Warsaw 1963, p. 222-223.

[4] N. Singh, *Armed conflicts and humanitarian laws of Ancient India*, (in) *Etudes et essays sur le droit international humanitaire et sur les principes de la Croix-Rouge*, Genewa-Haga 1984, p. 531.

continuing communication between the parties of the conflict (ceasefire, peace negotiations, etc.) and the principle of inviolability of the messengers were adopted here and usually obeyed. The custom of exchange of hostages, which guaranteed to meet commitments towards the opponent was also introduced. Moreover, in the circle of the Mediterranean civilizations – especially ancient Greece and Rome – great importance was put to formalities connected with the declaration of war. The rules of war were strongly influenced by religion which required proper respect for fallen warriors and ensured integrity of their bodies. Religious fervour and respect for the deceased was strong in the ancient Greece. If the battle was fought between the Greeks, the victories was commemorated only by putting a wooden statue called „tropaion" the memory of the fratricidal battle shall not last forever, and disappear *with the putrefaction of such a monument*[5].

Strong religiousness also characterized warriors living in another historical period – the Middle Ages. It was a time when chaos, constant conflicts and increasing cruelty of the armed created after the fall of the Roman Empire, were the bane of the European population. Solution of the problem of war atrocities was spread of the Christian religion which tenets were a perfect base for creating new rules of conduct in armed conflicts. Then a model of a medieval knight evolved – a faithful, reliable, disciplined man who respects the defeated and vulnerable and is a strong believer in God and the Church. From now on you could only use very specific methods of warfare. Those who did not respect these canons, exposed themselves to excommunication and were pushed on the frontier of social life. Keep in mind that the customs of knights was not equally applied to people of lower social status and elite. This is evident even in the contemporary understanding of the principle of redemption from captivity, which actually affected almost exclusively the wealthy individuals and of noble birth[6].

The methods of combat and the rules of conduct of soldiers in battle have become at some point in the history the nature of the formal orders of the king. An example of such normalization of knighthood was a well-known English *Magna Carta Libertatum* (*The Great Charter*) of 1215. The document next to the list of rights and privileges of the nobles, introduced issues related to the conduct of war, including defining the status of merchants during the conflict. In addition, "the Great Charter" contained so called amnesty clause about forgiving trespasses against the king, committed in connection with the ended war.

The Great Charter was one of the first pieces of legislation regulating the conduct of war, but it was not an exceptional document. Similar orders were issued in

[5] M. Flemming, *Międzynarodowe prawo...*, op. cit., p. 4.

[6] Ibidem, p. 4-5. More information about this may be found in: M. Adamkiewicz, *Z dziejów etosu wojska*, Warsaw 1997.

many European kingdoms. We can mention i.e.: the agreement of Swiss cantons of 1393 known as Sempacher Brief; a set of regulations regarding navigation in time of conflict and peace in fourteenth century document issued in Barcelona – *Consolado del Mare*; English rules of naval warfare entitled *Black Book of the Admiralty*[7], or German Kriegsartikel.

Polish equivalent of these regulations were *the Articles of War*[8] issued in the mid-fourteenth century by Casimir III the Great, and confirmed and developed by Wladyslaw Jagiello and his successors. These codes primarily defined the regulation of daily life of warriors, the formation of military camps, marches (called in the Old Polish terminology "drawings"), mobilization ("picking up") to the battle and conduct during it. Under these standards there was also a system of penalties for infringements of military law, guarded by the royal authority. Although the provisions of the Articles of War largely contained practical advice for dealing with the military, it also expressed the demands of chivalric code. Punishment was given not only for breach of military discipline, but also cruel behaviour towards the enemy taken in captivity or with the civilian population. Fair behaviour, even courtesy was required towards a defeated enemy. The custom of knights commanded to give the prisoners back to their superiors within 36 hours from capture[9].

European Knights Code of Chivalry was not equal for all enemies, it merely protected Christians. Atrocities against infidels and heretics were socially accepted, especially during the crusades to the Holy Land. Not infrequently there were situations when the European warriors, in the name of ill-conceived belief in God, broke its own code of honour. Contemporary Islamic culture was closer to modern humanity of war, especially on the treatment of prisoners and the population, than the European Chivalry. Koran ordered its followers that "the Prisoners are your brothers (...) since they depend on your grace, treat them like yourself, this refers to food, clothing and shelter. Do not require work beyond their strength"[10].

Renaissance did not change the existing customs of war valid in Europe. Despite revolutionary advances in science and art, armed conflicts were conducted in a cruel and ruthless way. There were number of reasons for this. Development of firearms and decline of chivalry, associated with socio-political and religious transformations caused that the mercenary troops were the foreground of the battlefields (they played a great role in many conflicts, such as the Hundred-Year War (1337-1453) and Polish-Teutonic War (1453-1466)). This type of formations largely made up of a vexatious litigant and thieves often deprived of moral brakes, began to define a modern way of warfare.

[7] Ibidem, p. 7-8.
[8] S. Kutrzeba, *Polskie ustawy i artykuły wojskowe od XV do XVII wieku*, Warsaw 1937, p. 109-134.
[9] Ibidem.
[10] H.S. Leve, *Documents on Prisoners of War*, Newport 1979, p. 4.

A situation of Polish-Lithuanian state was slightly different at this time as it was dominated by an unprecedented number of nobles, where the feudal system and knightly code modelled on the medieval was still in force. In *Articles of war* by Florian Zebrzydowski we can read: "on the unfriendly ground, women, children, elderly people and priests shall not be murdered (...) who raped a girl or a woman shall be hung"[11]. In a sense, an economic situation of the people during the conflict was also issue to be cared. Food purchased from local people – whether on their own or enemy territory – would always be paid at rates established by law (and sometimes passed by the Sejm). One of these tariffs, for example, pointed out that "a cow or heifer for five Lithuanian cents, [...] and other things, are sold"[12]. Therefore, there were special war prices which determined financial relationships between the knights and civilians vulnerable to abuse.

Other centuries for Poland meant the decline of nobility ideology, but for European a renaissance of codification of war behaviour. Professional armies, barracked in time of peace, characterized by a high discipline so that there was a strong drop in robberies and lawlessness among the soldiers. The war itself has also become the domain of a selected group of people professionally involved in the war, and not, as it was in the past, all people who are appointed under the act of the royal. Professionalization of the army has brought yet another significant change. The professional soldiers began to treat the enemy with more respect and humanity, aware that in the long career of the warrior they can also be found after the losing side.

The eighteenth century which was full of conflicts, saw a fall in hazards to the civilian population. The legitimacy of such state of affairs was claimed by French philosopher Jean Jacques Rousseau in his work entitled *Contrat social* (*Social Contract*) published in 1762: "War then is a relation, not between man and man, but between State and State (...) and individuals are enemies only accidentally, not as men, nor even as citizens, but only as soldiers (...) in real war, a just prince, while laying hands in the enemy's country, on al that belongs to the public, respect the life and goods of individuals"[13].

The two main principles of international law of war, still current today, were also formed and consolidated this century. The first of them is the principle of equality between the belligerent parties declaring that in the course of the struggle of war and situations directly associated with them, both the aggressor and the defending party is banded with the same rights and obligations. Hence, each party is required an equal treatment of prisoners of war, even if they constitute a heavy burden for fighting formation[14]. Giving judgments against captured enemies without the proper

[11] Kutrzeba S., *Polskie ustawy i artykuły wojskowe...*, op. cit., p. 124.
[12] Ibidem, p. 125.
[13] J.J. Rousseau, *Umowa społeczna*, Łódź 1948, p. 14.
[14] M. Flemming, *Międzynarodowe prawo...*, op. cit., p. 7-8.

legal procedure is also forbidden. After all, evaluation of behaviour of soldiers during the battle and their compliance with accepted rules of war can only be done by independent judiciary.

The second rule – the principle of military necessity (military) – is a peculiar, juristic standard of conduct on the battlefield which states that during war it is allowed to act very specific, though hostile to life; actions calculated to defeat an armed enemy are allowed. This rule limits the scope and scale of the admissibility of prosecution of members of battles. Armed conflict creates here a space for right free from moral and formal grievances against the actors of bloody struggles, since the imperative which is "you shall not kill" is provisionally rejected, which in the state of peace is subject to a stern sanctions. This does not mean, however, that the war entitles you to all kinds of crimes. Although it is possible that even millions of enemy soldiers die, attacking a defenceless civilian population is always met with unqualified condemnation. It does not change the sad truth of the reality of war that the murders of civilians not engaged in combat and is still accompanied by armed conflicts. The principle of military necessity permits the deliberate acts of destruction of material goods, and forcing inhabitants of the occupied territories to work for the invader.

Together with the growing importance of professional armies, but also technological development of the tools, the dissemination of the codification of conduct of war were more and more popular. Since the mid-nineteenth century we can see a breakthrough in the laws of war, caused by the series of multilateral agreements. The scale of the war treaty legislation system slowly began to develop globally. Onset of these legislative changes was brought about in the Paris Declaration Respecting Maritime Law of 16 April 1856. It formulated some rules for naval combat by introducing the idea that the blockade of the port may be legally binding only if it is performed by a fleet powerful enough to actually protest the access to the coast. More importantly, the Paris Declaration also abolished privateering, which means hiring "legal" pirate ships operating in favour of one of the conflicting parties. This was the final triumph of the principle that war can not be conducted by private individuals.

Another equally important act of international law of war was the *Declaration on explosive projectiles* adopted on 29th November (11th December) 1868 in St. Petersburg, also referred to as the *Declaration of St. Petersburg* for the city's name. The main assumption of this multilateral agreement was a renouncing the use, in time of war, of explosive projectiles under 400 grams weight. Perhaps the intention of its authors was to reduce the scale of use of that ammunition in the battle, especially preventing the use of it in the air gun. Nowadays, this record is no longer valid, but part of its content continues to be well founded, so issues of law and morality. After all, according to contemporary norms only legitimate motive of battle is to weaken the military strength of your opponent, not its extermination, which certainly is

possible with the use of such ammunition. Therefore, the actions of the war in theory should be the goal to incapacitate the greatest number of enemy soldiers than their mass killing. Especially it is forbidden to use of arms unnecessarily increasing the suffering of injured or contributing to injury or imminent death[15].

The last step in the internationalization of the laws of war taken in the second half of the nineteenth century was the *Brussels Declaration* of 1874, dealing with a difficult project of humanitarity of civil war. The Oxford Manual which is the list of solutions to reduce the scope of the brutality of the battlefields was based on the assumption in the document. Events in the very bloody American Civil War (1861-1865) and the cruelty of European conflicts in 1866 (Austro-Prussian war) and 1870-1971 (the war between Prussia and France) lead to reduction in the image of armed struggle. Rank of the document was sufficiently significant, so in 1880 it was accepted by the Institute of International Law[16].

The real breakthrough in the process of humanitarity and dissemination of global law of war occurred in the years 1899 and 1907, when important military-laws decisions were made during two international conferences at the Hague. These symposia brought together representatives of many countries. The first summit (from 18th May to 29th July 1899) included delegations of 26 countries, while the second (from 15th June to 18th October 1907) gathered representatives of 44 governments. These figures indicate a growing international community needs to develop a common code of armed conflicts. As a result, twelve conventions forming the fundamental and most universal set of laws of war were developed during the Second Hague Conference[17], which related to contemporary standards, even military actions. Among these conventions one which is under number IV stands out. It is accompanied by a set of rules governing the armed struggle on the land, known as the Hague Regulations. It presents such issues as the definition of the armed forces, unlawful methods of fighting, principles dealing with prisoners of war, acceptable behaviour of soldiers in the dominated territory, treatment of the opposite party's delegates and agreeing on the conditions for a ceasefire. The Hague Convention has identified a set of legal solutions, which today are accepted by all civilized nations. Many years later (in 1946) the Nuremberg Tribunal confirmed the importance of these provisions and stated that: "these standards must be respected regardless of the formal legal reasons, such as the fact that a country is not a signatory to the Convention. No state can also be released from compliance with these standards by issuing domestic law different in the content"[18].

[15] Flemming M., *Międzynarodowe prawo...*, op. cit., p. 7.

[16] Ibidem.

[17] There are thirteen Hague Conventions but one of them, the twelfth in accordance with the numeration, has not entered into force.

[18] R. Bierzanek, *Wojna a prawo międzynarodowe*, Warsaw 1982, p. 74.

Other Hague Conventions also covered important issues of codification of the war. For example the Fifth Convention governs the rights and duties of neutral countries during battles, or the Third Convention defines the procedure to declare war. Most of the Hague Conventions was on the methods of naval combat[19]. In this matter, however, a much greater influence had a customary law, expressed in the form of not formally binding instruments such as the Oxford *Manual of Naval War* of 1913 or the London Declaration concerning the Laws of Naval War of 26th February 1909. This declaration, though unofficial, even today is considered a reliable set of guidelines, especially in case of the sea blockades and actions against enemy shipping and trade[20].

The authors of the Hague Convention were aware that, the same as in the case of the maritime law, not all relevant issues have been adequately standardized (for example, the legal status of guerrillas was not agreed on). Therefore, the clause has been introduced to the document, which states that "in cases not covered by the Convention, the population and belligerents remain under the supervision and authority of the principles of the law of nations, deriving from the usages established among civilized peoples and the principles of humanity and the dictates of public conscience"[21].

The usefulness of international instruments and laws of war has been confirmed by the events of the First World War. Although, during the first global conflict the set of standards was generally respected, there were some infamous cases breaking it. On the other hand, the armed struggle of 1914-1918 showed that the standards adopted in the past require constant analysis and adjustment to the changes taking place in the world. As it turned out a long-term struggle, and the scale of conflict contributed to the development of military technology, especially the increasing explosiveness of the battlefield areas (e.g., chemical and biological weapons). Thereby some part of regulations unadjusted to the changing image of the war needed updating. Reply to a changing face of such armed conflicts constitutes was Geneva Protocol of June 17, 1925, which contains ban to use poison gas and similar substances, and bacteriological factors[22]. It is worth mentioning that the International Law Association during the session in Warsaw in 1928 prepared a draft law of the war occupation and at the congress in Amsterdam in 1938 – the concept of the Convention on the protection of civilians in time of war.

[19] These are Conventions No.: VI, VII, VIII, IX, X, XI i XII.

[20] L. Gelberg (ed.), *Prawo Międzynarodowe i historia dyplomatyczna*, Volume I, Warsaw 1954, p. 296--307.

[21] Ibidem, p. 27.

[22] "Journal of Laws" of 1929, No. 28, item. 278. The protocol enetred into life on the 8th February 1928. Poland ratified it on the 3rd April 1929.

Horrors of the Great War and a number of contracts and international pacts generated after its final did not stop mankind from the initiation of Second World War, even more tragic in consequences. As a result of the unprecedented brutality and ruthlessness of the conflict, supported by highly developed technology of destruction, one could see acts of mass killing. These losses also affected the civilian population, which according to various calculations reached 25 to 35 million killed, thus giving the testimony of breach of all the standards and laws of war. These figures are all the more shocking when we realize that the majority of civilian victims of the conflict did not die accidentally (by the way of military action targeting the enemy army), but as a result of deliberate murder, motivated by nationalist, racial or political propaganda slogans[23]. It is not surprising that after the Second World War, despite the initial reluctance of the global community to deal with issues of war, there were attempts of further development and improvement of international laws of war, more often called the law of armed conflicts. This evolution of terminology associated with the change of the classical understanding of war, which was increasingly visible in the conduct of local armed conflicts.

After the Second World War concern for universal adherence to international laws of war has been institutionalized and the United Nations becomes the organization responsible for upholding the accepted standards created in 1945. Further acts of law of war were primarily formulated under the aegis of that institution. Among many new legislative rules it is worth remembering this drawn up on 10th October 1980 in Geneva *Convention on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects*[24]. It is a prelude to the established on Jan. 13, 1993, in Paris *Convention on ban to carry out researches, production, stockpiling and use of chemical weapons and destruction of its stock*[25]. Thanks to these two agreements there are also voices about the need to prohibit the use of nuclear weapons.

Geneva Convention of 1980 is also somewhat symbolic. The city for centuries has been associated with international agreements, referring to humanitarian law which is often understood as "an ally and helper" of the laws of war. These standards were established in order to protect the fundamental personal rights in situations where other regulations seem to be fruitless. In this sense they guard the human rights in

[23] M. Flemming, *Międzynarodowe prawo...*, op. cit., p. 9.

[24] T. Leśko, *Prawa i zwyczaje wojenne, strona w konflikcie i jej siły zbrojne, ochrona rannych i chorych, jeńcy i ich traktowanie*, Warsaw 1986, p. 11.

[25] "Journal of Laws" of 1999, No. 63, item. 704. The Convention entered into life on 29th April 1997. Poland ratified it on the 19th April 1999. A full list of 120 countries which have ratified the above mentioned convention so far may be found on the internet: http://www.abc.com.pl/serwis/du/1999/0/03.htm. The Convention has not been ratified by some Asia countries (e.g. South and North Korea, Taiwan) and almost all region of Near East (e.g. Libia, Iraq, Iran, Syria, Israel and Egypt).

general. It can be therefore expressed the conviction that humanity is striving to ensure respect for and protection of human freedoms and to facilitate international assistance in circumstances that most threaten the life, health and human dignity. War is one of the most common sources of these threats, because it is characterized by "disregard and contempt for human rights and acts of barbaric apposition, which shock the conscience of mankind"[26].

Evolution of humanitarian law was a response to the human need to help the suffering, the helpless and the aggravated i.e. by the war. Armed conflicts have always brought with them a great deal of cruelty. However, the development of military technologies, especially after the spread of gunpowder in Europe, caused constant brutalization. As the effectiveness of weapon inflicting serious wounds and mutilations was growing, the social consciousness arose a need to find a way to reduce the suffering of victims of conflicts. Therefore, there was an atmosphere which favoured formation of the charitable organizations, setting itself the task of helping victims of military actions. The result of this trend resulted in creation of the Red Cross which quickly became the world's largest civil movement aimed at preventing and alleviating human suffering. The emergence of this organization was associated with the history of Henri Dunant, a Swiss banker who became an accidental witness of unspeakable anguish of soldiers wounded in the battle of Solferino on 24th June 1859. The two armies clashed nearby this small Italian town: Austrian and Italian-French. As a result of the ongoing battle for almost the whole day about 40 thousand soldiers were deprived of life, injured or abandoned without care on the battlefield. So heavy losses after all, were considered essential, because there had been no organized military medical assistance yet. Henri Dunant shocked with agony of injured tried to relieve their plight by creating, for the first time in the history, the ad hoc first aid made in case of the residents of neighbouring towns.

After returning to Geneva Dunant wrote a book called *A Memory of Solferino* in which he demanded creation of a professional medical service operating in the time of war[27]. According to the assumptions set out in this work, members of the medical staff, trained in the time of peace by the national aid associations would take care of the wounded. Both paramedics and their patients would be neutral, even on the battlefield at the time of battles. The idea was appreciated by Dunant's friends – the citizens of Geneva who has been already participating in charity activities. By joining forces in 1863 they formed the International Aid Societies for the Nursing of the War Wounded, which was then converted to the International Committee of the Red Cross (ICRC).

[26] T. Jasudowicz (prep.), *Prawa człowieka w konfliktach zbrojnych. Rekonstrukcja międzynarodowego prawa humanitarnego*, Toruń 1997, p. 10.

[27] W. Dunin, *Prawa wojny i pokoju*, Warsaw-Cracow 1917, p. 14-29.

Once the organization was founded there was the need to develop appropriate legal framework in order to bring the international humanitarian aid. Solving the problem resulted in the conclusion of the Convention "for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field", which expressed the idea of the Red Cross about the necessity to prevent war losses arising from disregard of medical care for the soldiers. On the 22nd August 1864 in Geneva the convention was signed by delegations from sixteen countries, which lead to the codification of humanity henceforth treated as one of the fundamental and universally binding norms of international law. The Birth of Red Cross and the beginnings of its activities are therefore an important moment in the history of mankind, because these events helped to shape the appropriate conditions for acceptance of a coherent humanitarian law which is international, permanent, modern and universally applicable[28].

The first Geneva Convention allowed the creation of the National Red Cross Societies in the countries which have ratified it. The signatories were all independent states in contemporary Europe as well as the United States and Japan. The great success of this agreement was the resolution of a general obligation to obey the four fundamental humanitarian principles during war:

1. All the wounded and sick soldiers are entitled to medical care regardless of which side of the conflict are they;
2. Ambulances and military field hospitals should be treated as a neutral entity and be subject to the protection and respect from all the fighting troops;
3. Medical staff, medical transport service, and military chaplains should be allowed to exercise their functions even when they are in the hands of the enemy;
4. A red cross on a white background was set as a protective sign of military medical equipment and therapeutic staff [29].

These rules have become one of the cornerstones of international humanitarian law and consistently penetrated the consciousness of society. The Red Cross has become widely respected organization and its representatives often used – during both world wars – neutral passports issued by the Swiss government, allowing them to freely carry out the mission of the association. Nowadays, the respect for humanitarian activities is large enough that contracts concluded between the ICRC and some countries, admit its delegates immunity equals to a diplomatic[30].

[28] M. Flemming, *Międzynarodowe prawo konfliktów zbrojnych...*, op. cit., p. 9.

[29] The second emblem accepted in 1876 during Russian and Persian war by the the Ottoman Society for Relief to the Wounded and by now used by the islamic countries is the red crescent. It is a sign which protects and distinguish the Society in the same way as the red cross. The same sign is an emblem of Red lion and Sun Society.

[30] cf. M. Flemming, *Międzynarodowe prawo konfliktów zbrojnych...*, op. cit., p. 10.

Decisions adopted at the First Geneva Convention, have not completed the legislative work on humanitarian law. In subsequent years, further efforts were taken to expand the content and scope of these provisions. Initially the focus was mainly on issues related to maritime war. The Adaptation to Maritime Warfare of Principles of Geneva Convention of 1864 was signed at an international meeting in the Hague in 1899, as a result of these interests. Further work led to the replacement of the current Geneva Convention of 1864[31] by a new, expanded settlement, also signed in Geneva in 1906 by delegations from 35 countries[32]. The experience of the First World War constituted a further incentive to continue work on the development of international humanitarian law, but this time on the issues of slavery soldiers. This problem was widely described by M. Fleming in his book T*he prisoners of war*: *legal and historical study.* With the publication we can get to know about the scale of this phenomenon in the various wars. Hence, we learn that during the First World War here were about 6,000,000 soldiers in captivity[33].

In the decade after the Great War, on 29th July 1929 in Geneva, there was another diplomatic conference devoted to issues of international humanitarian law, which adopted the two conventions during this time. The first was a revised and expanded version of Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. The second one laid down the standards for the treatment of prisoners of war and developed the provisions of the Hague Regulations of 1907 with the same issues[34]. Above mentioned settlements together with the Convention of 1906 for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea now have only historical value. After all, after the Second World War, these acts were replaced by new international agreements, developed at the Diplomatic Conference in Geneva which lasted from 21st April to 12th August 1949. Four documents were passed than: (i) Convention for the Amelioration of the Wounded and Sick in Armed Forced in the Field, (ii) Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, and (iii) the Convention on the Treatment of prisoners of war, and (iv) Convention for the Protection of Civilian Persons in Time of War[35]. These agreements formed the nucleus of the international humanitarian law developing in the post-war period.

[31] Hague Convention of 1899 was soon replaced by a new settlement referring to a maritime war viz. X Hague Covention of 1907.

[32] Poland accessed the convention on 19 July 1919, in a few months after gaining independence.

[33] see M. Flemming, *Jeńcy wojenni: studium prawno-historyczne*, Warsaw 2000.

[34] "Journal of Laws" of 1932, No. 32.

[35] "Journal of Laws" of 1956 No. 38 item. 171-179. The II Geneva Convention was ratified in Poland on 12th February, and the remaining three conventions – October 21, 1950. Polish ratification

Continuously advancing development of military technology and ways of conduct of military operations that were used in subsequent armed conflicts, revealed a need for continued study for the upgrade and improvement of humanitarian law. Since the mid-sixties, the supervision over the conduct of such works was taken by the UN, with significant support from the International Committee of the Red Cross. Henceforth the following issues began to prevail in the humanitarianism: the protection of civilian medical services, safety of civilians and protection of victims of not global armed conflict. The result of undertaken efforts is two *Additional Protocols to the Geneva Conventions of 1949*. These documents have been adopted on 10th June 1977. The first deals with the victims of international armed conflicts, while the second concerns the protection of victims of internal conflicts[36].

Confirmation and update of humanitarian law included in the Protocols, covers both developments of provisions for the protection of individual victims of war, as well as specifies rules for population group protection, after all, the rules limiting the use of certain means and ways of conduct of military operations. The provisions in the Protocols significantly expand the overall protection of wounded, sick and shipwrecked including both combatants and civilians. It should be noted that according to international law, the term "veteran" means a member of the Armed Forces. Therefore this word is understood unlike in Poland, where this term applies to former participants of war.

The Protocols extend the right to special protection to all persons belonging to the medical personnel – military and civilian. Thus, this institution can be beneficial to both the military medical services, civil teams of doctors working in the civil defence organizations, members of the resistance movement (guerrilla groups) as well as health and aviation crafts, designed solely to transport the wounded, sick and shipwrecked. From a humanitarian point of view, a special attention shall be put to the fact that new provisions reinforce the protection of human rights and prevent medical experiments or retrieving organs for transplantation from persons deprived of their liberty. What is important it also confirmed the principle that no one can be punished for providing medical assistance or require the transmission of patient information.

documents of four conventions were submitted to Swiss government on Nov. 26, 1954 year. The signatories of the Convention were 166 countries.

[36] The protocols were developed by a global diplomatic conference which was held in Genevain the years 1974-1977. The works of this conference have been completed on 10th June 1977 and the legislation enacted was opened for signature on 12th December 1977. The Protocols entered into force on 7th December 1978. Signatories of the First Protocol are 104, while the second – 94 countries. These figures may change as the number of countries acceding to these agreements is growing. Poland ratified the Protocols on 19th September 1991.

The Geneva Conventions and Additional Protocols use three important concepts which have come into normative acts of humanitarian law "protection", "respect" and "humane treatment".

The first of these means obligation to act in aid of people, objects and items that are subject to special care. The protection often has a special character, especially when children are covered by favouritism, often together with their mothers, the elderly and people with disabilities. In relation to the wounded and sick, this assurance means a duty to provide medical aid, care, protection against infection, contamination or danger of war (evacuation to the rear) or bad treatment. A special protection is for all persons who provide assistance to the needy, as well as buildings, vehicles and other tangible objects which are supplied to health care. The prisoners of war shall be protected against the risk of violence, intimidation, insults and curiosity of the public. The provisions of the Convention on the treatment of prisoners concern their conditions of detention in captivity, protection within criminal and disciplinary proceedings and security of personal property. With regard to the civilian population there is, inter alia, protection against some of the direct effects of war, through the establishment of safety and neutralized zones, guarding hospitals with staff and sanitary transports.

The second aspect – the respect for another human being – is to refrain from acting on his injury, inter alia, by ensuring physical integrity, inviolability of the dignity, respect of the customs, beliefs, their family rights, etc.

Humane treatment is a social attitude embedded on the basis of universal standards of moral consideration. It includes in particular the prohibition of acts likely to cause distress or cachexia, such as medical experiments, collective punishment, or any cruel or degrading conduct, leading to besmirching or discrimination. Because of this inhumane treatment are referred to as a war crime.

The impact of international humanitarian norms is wide. However, from the point of view the ethics and morality especially important and properly exposed are the right to life and health protection and prohibition of torture and intentionally inflict suffering. The right to life is guaranteed in a number of documents relating to property rights, so that occupies a special place in international humanitarian legislation[37]. Moreover, both the Geneva Conventions, as and the Additional Protocols contain provisions prohibiting killing of people and restrict the use of death penalty. The documents regulating the legal protection of human life assumed that:

[37] Right "of every human life" to life is guaranteed, inter alia in Art. 3 of the Universal Declaration of Human Rights, Article. 6 of the International Covenant on Civil and Political Rights, Article 2 of the European Convention on Human Rights.

- any attempts on life of the sick and wounded, including, inter alia, banging and destruction are strictly prohibited[38];
- intentional homicide of a person protected by the convention is considered a crime[39];
- any actions intended to cause the death of a prisoner of war shall be prohibited[40];
- it is prohibited to use any methods causing destruction of protected persons[41];
- under any circumstances, regardless of the type of armed conflict it is not allowed to give an order of the total extermination of the enemy, and the threat of genocide against the enemy is prohibited[42];
- death penalty as a unique sanction may be imposed only for the most serious offenses that are directly associated with the conduct of hostilities[43];
- the death sentence order can not be awarded against a protected person, or one that at the time of the offense was under eighteen years of age[44];
- death sentence may not be performed on pregnant women or mothers caring for young children[45];
- in any case, legal sanctions should be issued "by a duly constituted court which gives process guarantees, recognized as indispensable by civilized people"[46].

In the field of international humanitarian law an intentional infliction of suffering and torture of captured persons are condemned[47]. These activities are in fact treated as being contrary to morality and prohibited. It is prohibited (...) to use any means likely to cause physical suffering (...) murder, torture, corporal punishment

[38] Article 12, The First and Second Geneva Convetions.

[39] Article 50, The First Geneva Convention.

[40] Article 13, The Third Geneva Convention.

[41] Article 32, The Fourth Geneva Convention.

[42] Article 40, The First Additional Protocol (on the protection of victims involved in the international armed conflicts) and Article. 4, Second Additional Protocol (concerning internal conflicts).

[43] In accordance with Article 1, Fourth Protocol to the European Convention on Human Rights The death penalty will be abolished. Nobody can be condemned to such penalty, and it can not be executed. However, the same Convention allows the death penalty in time of war. Article 2 says: "The country may make a provision in its law for the death penalty for acts committed in time of war or imminent threat of war".

[44] Article 68, *The Fourth Geneva Convention*, Art. 77, The First Additional Protocol and Article 6, The Second Additional Protocol.

[45] Article 76, The First Additional Protocol and Article 6, The Second Additional Protocol.

[46] Article 3, *The First Geneva Convention*.

[47] The law that prohibits such inhuman practices in any situation is contained, inter alia, in: Article 5 of The Universal Declaration of Human Rights, Article 3 of The European Convention on Human Rights, Article 7 of the International Covenant on Civil and Political Orava.

(...) and any other acts of brutality by civilian or military[48]. It is also prohibited to carry out biological experiments on humans, and medical experiments and it is indicated that: "no prisoner of war may be (...) subjected to medical or scientific experiments of any kind which are not justified by treating the prisoner and are not in his best interests"[49]. After all, every patient should have the right to health protection, therefore, criteria other than medical shall not be used to anyone. In accordance with this intention wounded and sick shall "be cured by this Party in the conflict in whose power they are, it is forbidden to leave them with no medical assistance or without care"[50]. It is not allowed to force anyone, including persons deprived of their liberty, to a physical exercise which would be dangerous to their health, and therefore lengthy shutdowns and appeals, punishment exercises, a military exercise and diet restrictions are particularly forbidden[51]. Bodies of prisoners and detainees should not be marked with any characters, because "tattooing or extrusion marks or an inscription on the identity of the body is prohibited"[52]. The crime is considered serious body injury, including mutilation of a person in custody – "no prisoner can not be physically maimed"[53]. Every person, whether convicted of the most serious crimes, should be treated with dignity. Yet "a spy, saboteur, a person who is detrimental to the security of the Occupying Power, (...) shall, however, be humanely treated"[54]. Following the above provisions, it is obvious that a considerable part of them was under the influence of experience with the events taking place during the Second World War.

The organizations centred on the symbol of the Red Cross, which enjoyed the status of unquestioned independence, are distinguished in the promotion and

[48] Article 32 of *The Fourth Geneva Convention* and Article 147 of that Convention, and in relation to other protected persons: article 50 of the Geneva Convention, Article 12 of *The Second Geneva Convention*, Article 87 and Article 130 of *The Third Geneva Convention*.

[49] Article 13 of *The Third Geneva Convention* and Article 130 of that Conventionin in relation to other protected persons: Article 12 and 50 of *The Second Geneva Convention*, Article 12 of *The Second Geneva Convention*, Article 32 and 147 of *The Fourth Geneva Convention*.

[50] Article 12 of the First Geneva Convention, in relation to other protected persons in international and internal conflicts: Article 12 of *The Second Geneva Convention*, Article 10 of the First Additional Protocol and Article 7 of The Second Additional Protocol.

[51] Article 100 of *The Fourth Geneva Convention*.

[52] Ibidem.

[53] Article 13 of *The Third Geneva Convention* and Article 130 of that Convention in relation to other protected persons in international and internal conflicts: Article 50 of *The First Geneva Convention*, Article 32 of *The Fourth Geneva Convention*, Article 75 of The First Additional Protocol, Article 4 of the Second Additional Protocol.

[54] Article 5 of *The Fourth Geneva Convention*. This order is associated with all previous prohibitions on cruel treatment of victims of war. In practice this means that almost all articles of the Geneva Conventions and the Additional Protocols refer to the order of treatment for all victims, both involved in the international and internal armed conflicts.

implementation of international humanitarian law. Activity of the ICRC is execution of the mission of the association, which is to "develop humanitarian activities in particular in the event of armed conflict, and other international or internal disturbances, to provide protection and assistance to military and civilian victims of such incidents and their immediate aftermath"[55]. In addition, the Red Cross trains medical staff and prepares the materials necessary for the activities of emergency medical services during the war, especially in places of a high risk of its occurrence. The ICRC carries out these tasks in cooperation with Red Cross Societies in different countries, as well as competent authorities and the military and civilian health services. It delegates work wherever ongoing military operations, organizing and carrying humanitarian aid. Much of this activity is directed to the needs of soldiers and civilians held in oppression.

Because of the need to show the religious neutrality, described social initiative is nowadays referred to as the International Federation of Red Cross and Red Crescent Societies. As a conglomerate organization it has over 250 million members and volunteers working in almost all countries of the world. General purpose of these associations is to help the needy and suffering, regardless of their believes, background or wealth. This concern is expressed not only in the form of care to the wounded during the armed struggles or civil protection in the occupied territories, but also:

- in helping physically and mentally handicapped people,
- in the care for prisoners' rights,
- in bringing aid to victims of natural disasters;
- when connecting families separated during disasters, wars and political events,
- conducting sanitary courses;
- promotion of blood donation, etc.

Wide activities of the organization centred under the logo of the Red Cross and similar, is possible thanks to entries of the international humanitarian law. In *The First Geneva Convention* it is stipulated that the prescribed activities carried out by entities of a given country may not restrict humanitarian activities on its territory. "The provisions of this Convention constitute no obstacle to the humanitarian activities of the International Committee of the Red Cross as well as any other impartial humanitarian organization run in order to provide help wounded, sick and members of the medical personnel and chaplains, and assist them with the consent of the interested parties in the conflict"[56].

[55] Cit for: T. Leśko, *Prawa i zwyczaje wojenne, strona w konflikcie i jej siły zbrojne, ochrona rannych i chorych...*, cf. p. 23-24.

[56] Article 9 of *The First Geneva Convention.*

The *Third Geneva Convention* governs the amount of international aid organizations that may operate in one country, partly by reducing their number. At the same time it puts a stipulation that "such restriction does not prevent from giving effective and adequate assistance to all prisoners of war". In addition, ICRC privileged position is highlighted. "The particular situation of the International Committee of the Red Cross in this field will be recognized and respected"[57]. The issue of humanitarian organizations in the interest of people suffering due to reasons attributable to war is formulated in the Additional Protocol to the Geneva Conventions. This act provides the legal protection for organizations and individuals who conduct such activities. It says that: "Such societies as the National Red Cross (...) should be allowed – even on their own initiative – to collect the wounded, sick and survivors and their care, even in areas of invasion or occupation. No one can be harmed, prosecuted, convicted or punished for such humanitarian activities"[58]. In this document, we can find specific obligations of the signatory governments to facilitate the operations of the Red Cross organizations on their territory. We can read that: "the parties to the conflict shall grant the International Committee of the Red Cross all facilities that are in their power to enable it to carry out humanitarian tasks set by the Conventions and this Protocol in order to protect and assist victims of armed conflicts. The International Committee of the Red Cross may with the consent of the parties to the conflict, engage in any other humanitarian activities on behalf of such victims"[59].

The above-mentioned provisions of law define the field in which the governments in crisis shall cooperate with organizations working under the banner of the Red Cross and Crescent. The cooperation, however, requires clarification of a number of organizational issues, such as determination of the type, size and location of which is to be targeted for technical support and material aid. Often, it is also necessary to develop an appropriate settlement with the countries, in an area where through materials are delivered for care, and where there is a recruitment of volunteers – participants in humanitarian missions. The activities of the representatives of the ICRC and other similar organizations also requires frequent contact, sometimes very close and solid, the military health services in the areas affected by the war. But often the situation of the countries devastated by armed conflicts for many years, forces the ICRC to act independently. Then the charities develop their own big hospitals, orthopaedic centres, mobile first aid teams, the dressing stations etc. A good example of such support was an activity of the Red Cross during the previous war in Afghanistan and the conflict in Ethiopia. The ICRC hospital in the

[57] Article 125 of *The Third Geneva Convention*.
[58] Article 17 of The First Addictional Protocol.
[59] Article 81 of the First Additional Protocol.

frontier city of Peshawar (Pakistan) provided more than 300 surgeries per month[60]. Support of this type often proves necessary, because the war conflicts mostly regards less developed countries, which even in peacetime need humanitarian help. Thus, in crisis situations the international support is crucial.

Even among highly developed countries there are few which in the face of armed invasion would be able to provide medical care of civilians, using only its own occupational health service (including military). Frequently, it is necessary to mobilize all available resources and human kind. Therefore, military medical units attach great importance to cooperation with non-governmental, social, charitable organizations, which could help in a crisis state in the following areas: protection of wounded and sick, medical transport and preventive actions and those preventing epidemics. In accordance with the international humanitarian law, belligerent may apply to the formation of the NGO sector "to collect the wounded and care for them, and to search for the dead and identifying the places where they are located (...) If the opposing party gains or regains control over such area, it will provide the same protection and convenience, so long as it is needed"[61]. Such structures include professional associations, societies caring for children, single mothers, homeless, terminally ill etc. The "aid" organizations includes associations of a religious nature, including such well-deserved as the Catholic Knights of Malta, Caritas, Order of Saint John and also various religious congregations which deal with care of the sick, lame or children.

Some of these organizations are operating in our country, but the indisputable achievements in implementing the provisions of international humanitarian law are the Polish Red Cross which was created 19 April 1919. Current activities of the Polish Red Cross are governed by the Act of 16th November 1964 on the Polish Red Cross, and the Statute of 31October 1990 issued on the basis of it. In accordance with the second mentioned document it is required from the Polish Red Cross in situations of armed conflict:

- to participate in the organization of civil protection against the effects of armed conflict;
- to give voluntary health aid to Armed Forces of the Republic of Poland;
- to run humanitarian activities for people guarded with international settlements, in particular the Geneva Conventions for the Protection of War Victims.

In addition, the Polish Red Cross should promote the principles of international law applicable in armed conflict. For this reason, Polish Red Cross is required, inter

[60] M. Flemming (prepared by), *Służby medyczne w czasie konfliktu zbrojnego w świetle prawa międzynarodowego*, Warsaw 1992, p. 58-71.

[61] Article 17 of the First Additional Protocol.

alia, to run the national bureau of information, according to the Geneva Conventions for the Protection of War Victims.

The Geneva Conventions, together with Additional Protocols supporting them are likely to be eligible to become the most important provisions of international law, especially in its military aspect. After all, since 1864, when during the 1st Geneva Convention humanitarian law has emerged contractually, the long, multistage process leading to the legislation progress and ensuring people due protection and care during military conflicts has been commenced. Since then the countries that have been up in arms against each other have been obliged to set their sights not only on achieving a victory, but also they have had to care for the victory to be just and morally acceptable. For this reason humanitarianism has become one of the most significant components of the international law of armed conflicts. After all, placing the element of war in the framework of laws, codes and international agreements has been ever aimed at assuaging the face of this terrifying phenomenon. Nowadays, when a highly developed technology allows to battle regardless of the distance to overcome and allows using extremely deadly devices, such norms, restricting the tendency to cruelty that's deeply hidden in people, seem to be particularly important. Therefore provisions of the international law of war should be continuously adapted to changing military technologies the development of which no country will abandon.

BIBLIOGRAPHY

1. M. Adamkiewicz, *Z dziejów etosu wojska*, Warsaw 1997.
2. R. Bierzanek, *Wojna a prawo międzynarodowe*, Warsaw 1982.
3. W. Dunin, *Prawa wojny i pokoju*, Warsaw-Cracow 1917.
4. European Convention on Human Rights and Additional Protocols.
5. M. Flemming (prepared by), *Służby medyczne w czasie konfliktu zbrojnego w świetle prawa międzynarodowego*, Warsaw 1992.
6. M. Flemming, *Międzynarodowe prawo konfliktów zbrojnych*, Warsaw 1991.
7. M. Flemming, *Jeńcy wojenni: studium prawno-historyczne*, Warsaw 2000.
8. L. Gelberg (edit.), *Prawo Międzynarodowe i historia dyplomatyczna*, Volume I, Warsaw 1954.
9. Geneva Convetions and Additional Protocols.
10. H. Grotius, *O prawie wojny i pokoju*, volume I, Warsaw 1957.
11. "Journal of Laws", 1999, No. 63.
12. T. Jasudowicz (prep.), *Prawa człowieka w konfliktach zbrojnych. Rekonstrukcja międzynarodowego prawa humanitarnego*, Toruń 1997.
13. "Journal of Laws", 1929, No. 28.

14. "Journal of Laws", 1932, No. 32.
15. "Journal of Laws", 1956 No. 38.
16. S. Kutrzeba, *Polskie ustawy i artykuły wojskowe od XV do XVII wieku*, Warsaw 1937.
17. T. Leśko, *Prawa i zwyczaje wojenne, strona w konflikcie i jej siły zbrojne, ochrona rannych i chorych, jeńcy i ich traktowanie*, Warsaw 1986.
18. H.S. Leve, *Documents on Prisoners of War*, Newport 1979.
19. M. Ossowska, *Socjologia moralności*, Warsaw 1963.
20. J.J. Rousseau, *Umowa społeczna*, Łódź 1948.
21. N. Singh, *Armed conflicts and humanitarian laws of Ancient India*, (w:) *Etudes et essays sur le droit international humanitaire et sur les principes de la Croix-Rouge,* Genewa-Haga 1984.

Refleksje o historycznym rozwoju międzynarodowego prawa wojennego

Streszczenie. W artykule podjęto rozważania na temat międzynarodowego prawa konfliktów zbrojnych oraz międzynarodowego prawa humanitarnego. Sposób prezentacji tych zagadnień przybrał formę chronologicznego przedstawienia wybranych wydarzeń historycznych oraz krótkiego streszczenia związanych z nimi, istotnych – zdaniem autora – umów prawnych. Tekst można podzielić na dwie części opisujące odrębne, lecz powiązane wzajemnie zagadnienia. Pierwsza część dotyczy kwestii prawa wojennego – jego genezy, ewolucji historycznej oraz motywów wprowadzenia do relacji społecznych. Poruszono również zagadnienia etosu rycerskiego jako źródła nowożytnej, europejskiej idei wojny sprawiedliwej, wymagającej moralnego uzasadnienia. Druga część artykułu traktuje o humanitaryzmie w czasach wojny oraz jego prawnym ulokowaniu w międzynarodowych przepisach, zwłaszcza w Konwencjach Haskich. Wskazano na obowiązki oraz nakazy stosowane wobec państw i rządów pod względem wprowadzania i stosowania regulacji międzynarodowego prawa humanitarnego.