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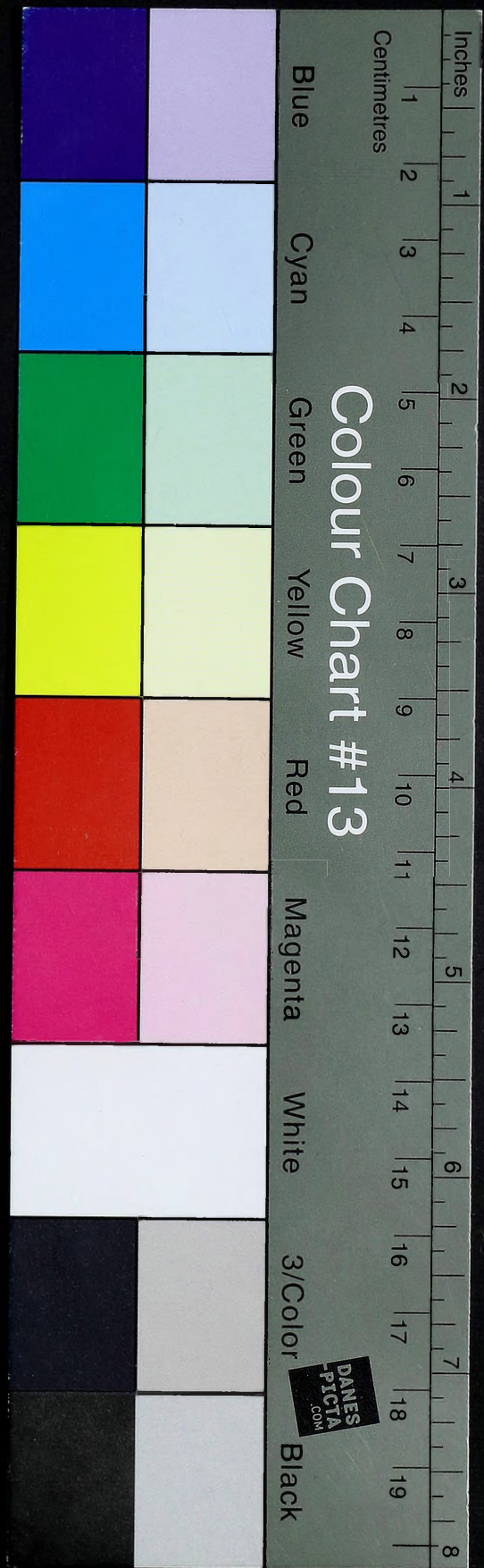
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# Dissemination of international humanitarian law in central european countries

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NATIONAL DEFENCE UNIVERSITY



**NATIONAL DEFENCE UNIVERSITY**

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**STRATEGIC-DEFENCE FACULTY**

SECURITY AND INTERNATIONAL LAW DEPARTMENT



**DISSEMINATION OF INTERNATIONAL  
HUMANITARIAN LAW IN CENTRAL EUROPEAN  
COUNTRIES**

Edited by Andrzej CIUPIŃSKI

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**WARSAW 2004**

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## FOREWORD

“Dissemination of Humanitarian Law in Central and Eastern European Countries” was a topic of the symposium held in November 2002 in Cracow (Poland). The event was a part of a research project “Evolution of Visegrad Countries’ Security and Defence Policy in Year 1997-2002” partially financed by International Visegrad Fund.

The symposium was attended by over one hundred representatives of various institutions dealing with education of the war of armed conflict and protection of cultural property in case of armed conflict. Auspices over the event, organized by National Defence University and Defence Affairs Bureau of Ministry of Culture and National Heritage of the Republic of Poland, were held by both Visegrad Group and the Polish branch of UNESCO.

The twenty five papers presented in this book are the outcome of the symposium.

I wish to express my gratitude to all authors for their work on preparing the valuable study papers which will contribute to improvement of education standards in the field of the law of armed conflicts.

I am also grateful to the International Visegrad Fund for financial support which help us to organize the symposium.

**Chief of Security and  
International Law Department**

*/-/ Col. Assoc. Prof. Andrzej CIUPIŃSKI, Ph.D.*

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**Part I**

**INTERNATIONAL AND NATIONAL PROTECTION  
OF CULTURAL PROPERTY**

# 1. THE MISSION OF UNESCO IN THE PROTECTION OF NATIONAL HERITAGE IN MODERN WORLD

Łukasz WILLMANN

The tragic experiences of recent years have led us to a conviction that modern times are not solely those of peace and relative stability, but also, unfortunately, those of conflict. The situation seems even more menacing due to the fact that divisions run through various societies, cultures as well as different civilizations. A conflict between civilizations on one hand, threats brought along by globalization on the other, constitute challenges that necessitate cooperation of various institutions - both those responsible for preventive policy as well as the ones still instrumental to military actions. Therefore, armed forces should take into account activities aimed at protecting cultural heritage - also during peacetime. Respectively, organizations such as UNESCO should define their policy in case of an armed conflict, even going as far as developing a strategy for working along the frontlines. In the XXI century a precognition that the beginning of war means the end of diplomacy is no longer true. Three conventions stand as pillars of UNESCO's mission in the area of protecting cultural heritage: Convention on the Protection of World Cultural Heritage and Natural Heritage; Convention for the Protection of Cultural Property in the Event of Armed Conflict and Convention on Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Names of the conventions alone show the complexity of protecting cultural heritage. They suggest three possible perspectives: preventive, war and post-war. During today's presentation I would like to focus on the first two conventions as well as touch upon the *Declaration on Cultural Diversity* and the *World Memory Program*. Both the Declaration and the Program constitute UNESCO's basic instruments in the area of protection of cultural heritage.

Cultural heritage - tangible and intangible alike - is a visible testimony to the condition of societies and nations. It is a record of their history, social life and a natural

diversity guarantees a wider spectrum to choose from as well as greater possibilities to fulfill one's intellectual, emotional, moral and spiritual needs.

A man without identity feels lost in a uniform world. By taking away cultural and religious diversity, by depriving man of God, we are stripping him of his dignity. Cultural and religious differences are quickly substituted by a more dramatic differentiation - between the rich and the poor. In the following context tolerance along with strengthening of diversity - thus fortifying cultural identity of each community - seems like an antidote to a menace resulting from uniformization and the clash of civilizations. A dialogue based on acceptance, encouragement of diversity and protection of cultural identity poses a significant challenge for the international community. Among others, this is the aim of the policy of protecting cultural and natural heritage. The World Heritage List is one of its elements. Maybe because material as well as natural heritage is the most easily accepted part of the many centuries long history of mankind. The language of sight seems universal. Everyone can be ravished by looking at something astonishing. Understanding unfamiliar, often older cultures seems more challenging. This is demonstrated by European tourists in China and India, or American visitors in Rome. Unfortunately, cultural property does not only enrapture and ravish. In many instances it becomes an object of envy and a target of military action, conscious extermination or robbery. Central European nations have witnessed this many times. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is meant as an instrument preventing such practices.

The 1954 Hague Convention is the first international document of such stature dedicated to the protection of cultural heritage. Inspiration for drafting the document came from the tragic experience of world war II, which had particularly harshly affected the Old Continent, Central and Eastern Europe especially. In the first years after the second world war main accent was put on rebuilding the infrastructure. Today more emphasis is being placed on the damage done to social structures and to what we call the intangible heritage. Central Europe was not only plundered, but also deprived of its multicultural character. Nowadays in our relations with the world we are trying to rebuild this character, only on another level. Poland's NATO membership, our foreseen EU accession, creation of a civil society, are really an attempt to place Poland firmly within the Euro-Atlantic structures as well as Western culture. Nevertheless, it seems that multiethnic societies in our region - once a source of

source of identity. By preserving it for future generations we are strengthening the identity of a given society along with stimulating its development. Cultural heritage constitutes a bridge between the present and the future. Without it building of the future would be extremely difficult, if not impossible altogether. Hence, cultural property is an element of shaping one's identity. This is all the more important today - in times of globalization and uniformization of life. The concern for preserving traces of the past, which stand as a testimony to man's higher aspirations, was the main motive behind adopting the Convention on Protection of World Cultural Heritage. Even though it was thirty years ago that the UN General Assembly adopted the Convention, it seems it is today that we are able to fully appreciate the significance of that event. Throughout the past thirty years the main emphasis was placed mainly on the material aspect of preserving the heritage, its enlargement and preservation. Today, in a year established by the UN as the Cultural Heritage Year and on the anniversary of signing of the Convention, the approach is different. New properties are still being added to the World Heritage List, but the signatory states of the Convention focus more attention on disseminating knowledge about the existing inscriptions as well as reading the significance and meaning embedded in their history. Nowadays objects listed on the World Heritage List serve to strengthen cultural identity and reinforce diversity.

When speaking about Polish properties inscribed on the World Heritage List, it is worth mentioning that they not only constitute marvelous objects or architectural complexes, but moreover are a testimony to Poland's multiethnic history. Multiethnic society of Poland was undoubtedly a source of the country's development. Polish cultural objects remind us of the tradition which was abruptly cut short by the partitions and later the second world war. These properties are an adequate example of nation's growing attachment to its national and cultural identity in conditions of tolerance and acceptance for diversity. Such experiences are even more valuable today as Poland prepares to enter the multicultural community of the European Union.

The *Resolution on Cultural Diversity* is an another instrument facilitating the protection of cultural property. Cultural diversity is a common heritage of the mankind. In a diverse society, the feeling of belonging to the same cultural community helps the process of communication between various social groups in the spirit of solidarity. Interactions between different cultures taking place in multicultural societies, vital in order to maintain social unity are, a source of progress and social dynamism. Cultural

a paragraph foreseeing individual and criminal liability for serious breaches of the Convention.

Concluding I would like to touch upon one instrument at UNESCO's disposal in its mission of protecting cultural heritage, namely about the World Memory Program. Initiated by UNESCO in 1992, the Program aims at conserving and disseminating documentary heritage. Collections of libraries and archives which make up the memory of nations, languages and cultures are particularly vulnerable to destruction. Light, water and dust cause materials carrying information to fall into decay. Paper, leather, parchment, film and magnetic tape all are subject to the work of time as well as various natural disasters. Nowadays, fires, floods, hurricanes, storms and earthquakes are next to wars among the most serious threats to cultural heritage. Preventing disasters from happening is obviously impossible, thus it is crucial to focus on copying and recording cultural heritage, parallel to providing safe storage for the originals. One of the goals of the Program is to create high quality digital banks of texts, sounds and sights. Dissemination of documentary heritage is another aim of the Program. A wide ranging access to documents of national and international significance is now possible thanks to digital technology. Popularizing materials testifying to our history, and therefore increasing the attention they gain, makes it easier to win funds for both conservation and proper storage of these materials. A special list has been created within the Program's framework. Objects whose significance has been certified by the International Advisory Committee are inscribed on the list. Polish objects on the list include: autographs by Nicholas Copernicus and Frederic Chopin, in addition to the Ringelbaum Archive. Also, there is a separate national list functioning alongside the international one. Properties are inscribed on both lists according to a wide range of criteria. The most important one specifies that an object must have significance to the world surpassing an individual national or cultural circle. Aside from the talked about lists there are also two separate registers which serve to underline the vulnerability of documentary heritage: the Lost Memory - a list of libraries and archives destroyed in the XX century, and the Endangered Memory - a global list of endangered libraries and archives.

great diversity and development - belong to the past. Seeing how difficult it is for nations to heal from wounds of war, how long and arduous this process is, it seems even more appropriate to appreciate the Hague Convention which strives at protecting cultural heritage. The Convention has a considerably wide application, ranging from architectural monuments, works of art, manuscripts, archeological sites to scientific achievements. All member-states of the Convention have pleaded to protect objects of cultural heritage not only during armed conflict, but - what is even more significant - during peacetime. Special markings of these objects are recommended. It may encompass a limited number of special shelters with the purpose of safeguarding these properties. Special protection is granted to the object by inscribing it on to the International Register of Cultural Properties under Special Protection. By doing so an object becomes untouchable. During the time of armed conflict cultural property benefiting from special protection should be marked accordingly. The Convention specifies the distinctive emblem as a shield, pointed below, per saltire blue and white. In the event of an armed conflict, it is the Commissioners General for Cultural Property that stand guard of respecting provisions of the Convention. The Commissioners are chosen, with approval, by a party by which the Commissioners will fulfill their tasks as well as by the Protecting Powers of the opposing parties. Specialized posts dealing with the protection of cultural property are to be established within the army framework. Compared to the initially preventive character of UNESCO's mission, the 1954 Hague Convention entrust the organization with additional tasks. At the outbreak of a conflict UNESCO's Secretariat contacts the parties concerned informing them of commitments pertaining to the protection of cultural property, offering technical support or sending experts to a was engulfed territory. During peacetime UNESCO cooperates with the UN and other international organizations such as the European Council, ICCROM, ICOM, ICCOMS and the Red Cross. Currently works are underway on Poland ratifying the second protocol to the Convention which specifically defines the nature of protection that a state should extend over cultural property located on its territory. The second protocol also strengthens these provisions by stating that cultural property cannot become a military target unless there is no other practical way of achieving military gain other than by attacking the object. Additionally, the protocol reinforces the status of a specially protected object by creating a third, most carefully guarded category of cultural properties. It also supplements

However, in the recent armed conflicts, cultural property became one of the most important targets of attack. As the cultural heritage of people is often central to the life of their communities and to their identity, it is regarded to be a symbol of the "soul" of the adverse party. The destruction of the cultural property means destruction of this soul and of the roots of the enemy – of a nation or ethnic or religious group, particularly in the case of churches, mosques and cemeteries. Therefore this problem has become very important for the International Red Cross and Red Crescent Movement in recent years. With its delegates witnessing the tragedy of people deprived of material evidence of their identity and cultural affiliation, the Movement could not remain indifferent.

Additional argument for the Red Cross concern about cultural property protection is that, as it is pointed out in the Red Cross documents, "the speed of reconstruction and reconciliation following a conflict may be enhanced if the cultural property has been respected and preserved during hostilities"<sup>1</sup>.

## **2. General remarks on the composition of the International Red Cross and Red Crescent Movement**

International Red Cross and Red Crescent Movement has a very complicated structure which has to be presented first, because it is crucial for the proper understanding of Movement's activities<sup>2</sup>.

The Movement is composed of three components: National Red Cross and Red Crescent Societies, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies. The components of the

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<sup>1</sup> CD 2001/11/1, Geneva, September 2001, p. 6

<sup>2</sup> The structure of the International Red Cross and Red Crescent Movement, the role of its components, the legal basis for their activities etc. are presented in numerous publications, e.g. F. Bugnion, *Le Comité international de la Croix-Rouge et la protection des victimes de la guerre*, CICR, Geneva, 1994; A. Durand, *The International Committee of the Red Cross*, ICRC, Geneva, 1982; *Études et essais sur le droit international humanitaire et sur les principes de la Croix-Rouge en l'honneur de Jean Pictet* (ed. Ch. Swinarski), CICR – Martinus Nijhoff Publishers, Geneva – The Hague, 1984, part E, pp. 851 - 1019; H. Haug, *Humanity for All. The International Red Cross and Red Crescent Movement*, Henry Dunant Institute – Haupt, Geneva – Berne, 1993; M. Huber, *Rotes Kreuz. Grundsätze und Probleme*, Atlantis Verlag, Zurich, 1941; R. Perruchoud, *Les résolutions des conférences internationales de la Croix-Rouge*, Institut Henry-Dunant, Geneva, 1979; R. Perruchoud, *International Responsibilities of National Red Cross and Red Crescent Societies*, Henry Dunant Institute, Geneva, 1982. See also: *Statutes of the International Red Cross and Red Crescent Movement* published either in the form of separate brochures or within collections of documents, e.g. *Handbook of the International Red Cross and Red Crescent Movement*, ICRC – IFRC/RCS, Geneva, 1994, pp. 417–432.

## **2. THE INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT AND THE PROTECTION OF CULTURAL PROPERTY IN TIME OF ARMED CONFLICT**

Elżbieta MIKOS-SKUZA

### **1. Introduction**

The destruction of cultural property was always and continues to be a serious problem during armed conflicts. The destruction of historic monuments, books, works of art results in a loss not only to the community or country concerned, but also to the cultural heritage of all people.

International humanitarian law of armed conflicts (IHL) provides for the protection of cultural property during hostilities. The main international treaty adopted specifically for this purpose is the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict supplemented by its two Protocols of 1954 and 1999. The United Nations Educational, Scientific and Cultural Organization (UNESCO) played a paramount role in the process of drafting, adopting and encouraging ratification and implementation of those documents and until today it maintains its most important implementing agency.

However, one should not forget the role – certainly less significant, but still important – played in this field by the international humanitarian movement called the International Red Cross and Red Crescent Movement.

The long-standing role of the International Red Cross and Red Crescent Movement in international humanitarian law has been to work for the implementation and improvement of the protection of victims of armed conflicts. Traditionally, and for valid reasons, the focus has been on the protection of human beings, their health and general welfare, rather than on the protection of their property, including cultural property. The more so, that for a long time in the history of wars the destruction of cultural property has been, as a rule, collateral.

tions on the Protection of War Victims of 1949 and their Protocols Additional of 1977 impose many concrete tasks on the Committee. These different tasks have some common features: they all are of a humanitarian nature, they are carried out during international or non-international armed conflicts or in anticipation of such conflicts and they have one main purpose – ensuring the protection of and assistance to military and civilian victims of conflicts. It follows from the above-mentioned that the fulfillment of those tasks means not only vast operational activities during armed conflicts, but also certain peace-time activities. The latter ones include the training of personnel, the preparation of equipment and, last but not least, the working “for the understanding and dissemination of knowledge of international humanitarian law applicable in armed conflicts”. The Committee's duty is also “to prepare any development thereof”<sup>4</sup>.

To sum up - from among three Red Cross / Red Crescent components there are actually two that are, by definition, active in times of armed conflicts: International Committee of the Red Cross and National Red Cross and Red Crescent Societies. The Federation is of much lesser significance in this regard. There is a saying in English language that – as concerns international institutions – the ICRC deals with the consequences of “man-made disasters” while the Federation has to cope with the problems caused by “natural disasters”. If the Federation brings help to victims of armed conflicts or gets engaged in the promotion of international humanitarian law, it is a kind of a secondary activity – assistance to the ICRC.

The role of the International Committee of the Red Cross in the protection of cultural property in time of armed conflict

The mandate of the ICRC “to work for the faithful application of international humanitarian law applicable in armed conflicts (...), for the understanding and dissemination of knowledge of international humanitarian law”<sup>5</sup> covers also norms of international humanitarian law aiming at the protection of cultural property in the event of armed conflict. In other words, if in common parlance the ICRC is called, because of

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<sup>4</sup> Art. 5 par. 2 of the *Statutes of the International Red Cross and Red Crescent Movement* and Art. 4 par. 1 of the *Statutes of the International Committee of the Red Cross*, *idem*, pp. 422, 449.

<sup>5</sup> *Ibidem*.

Movement meet every two years at the meetings called Council of Delegates to discuss matters which concern the Movement as a whole. The common opinion on such matters is expressed in resolutions adopted by the Council. The resolutions constitute a kind of *soft law*. Another, more important forum for debates and decisions on humanitarian matters, is the International Conference of the Red Cross and Red Crescent. Here, the three above-mentioned components of the Movement meet every four years with the states parties to the Geneva Conventions of 1949. At present, there are 190 states bound by the Geneva Conventions.

The **National Societies (NS)** form the basic units of the Movement. There are 178 societies – autonomous national organizations all over the world. They work in conformity with national legislation and cooperate with the public authorities in the prevention of disease, the promotion of health and generally – the mitigation of human suffering. They are active both in time of peace and in time of war organizing emergency relief operations and other services to assist the victims of armed conflicts, of natural disasters and other emergencies at national and international level. They disseminate international humanitarian law of armed conflicts and cooperate with their governments to ensure respect for this law.

The **International Federation (IFRC/RCS)** is an international non-governmental humanitarian organization composed of National Red Cross and Red Crescent Societies. Its general object is to inspire, encourage, facilitate and promote at all times all forms of humanitarian activities by the national societies, with a view to preventing and alleviating human suffering. According to Art. 6 par. 4 of the Statutes of the Movement and Art. 3 par. 1 of the Constitution of the Federation, it acts as the permanent body of liaison, coordination and study between the national societies, serves as their official representative in the international field, brings relief to disaster victims and coordinates international relief actions, assists national societies in their disaster relief preparedness and operations, in their activities for safeguarding public health, in their education of youth in humanitarian ideals.<sup>3</sup> Its headquarters are in Geneva.

Another “Geneva – based institution” is the **International Committee of the Red Cross (ICRC)**, Swiss humanitarian organization composed of Swiss citizens, but formally recognized in international treaty and customary law. The Geneva Conven-

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<sup>3</sup> *Handbook of the International Red Cross and Red Crescent Movement*, op. cit., pp. 423–424; 458–459.

proach directly the main topic of the present conference - the dissemination of IHL which is one of the traditional tasks of the ICRC. Although, legally speaking, the responsibility for dissemination falls on the governments of the States bound by the Geneva Conventions of 1949, Hague Convention of 1954 and Protocols Additional of 1977, only a handful of countries have seriously tried to fulfill their formal obligation to make those documents known. The Red Cross has to cope with the tragic consequences of this failure and therefore has a very direct interest in doing its best to improve this situation. The ICRC drew up a list of eight primary audiences in order to determine the categories of people who, in case of armed conflict, would be in a position to apply IHL provisions and who should consequently receive some instruction in their content. These "target-groups" are:

- armed forces,
- staff of National Red Cross and Red Crescent Societies,
- civil servants in the government ministries concerned,
- the academic community,
- primary and secondary schools,
- medical professions,
- journalists and the media,
- the public at large.

As the ICRC can not do all dissemination work on its own, its role has also a lot to do with advising, inspiring, "teaching the teachers", providing for material, exchanging information and coordinating the whole network of dissemination activities throughout the world.

Against this background one should perceive the role of the ICRC in the dissemination of knowledge on the protection of cultural property in armed conflicts. In the past, the Committee did not separate this topic from other IHL issues for the purpose of dissemination activities. There was a kind of integral approach in this respect – the cultural property was dealt with either in the framework of the law on the conduct of hostilities or in the framework of the law on the protection of civilian persons and objects. This approach changed in the mid-1990s when the ICRC started organizing seminars devoted, solely and exclusively, to the protection of cultural property in armed conflicts. The first one was organized – in cooperation with UNESCO – in 1995 in Uzbekistan . It was a regional meeting for countries of Central Asia. Among the participants there were civil servants from different government ministries, repre-

such tasks, "the guardian of IHL", it means the guardian of customary and treaty provisions on cultural property too<sup>6</sup>.

There are different aspects of the function of the guardian of IHL in the context of cultural property protection.

First and foremost it comprises new initiatives in this field - preparation of draft documents and participation in negotiations. In this regard one should mention the involvement of the ICRC in the review process of the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, which resulted in the adoption of its Second Protocol at The Hague on March 26, 1999. The primary initiative belonged to the UNESCO and the Dutch government, but the Committee, in its capacity of an observer, submitted a comprehensive set of proposals designed to bring the 1954 Hague Convention into line with modern humanitarian law as reflected in the 1977 Protocols Additional and customary international law<sup>7</sup>. Particularly worthwhile mentioning are:

- proposals relating to the present Art. 6 on the impact of imperative military necessity on the scope of protection of cultural property;
- proposals relating to present Art. 15 which lists the so-called serious violations of the Protocol;
- proposals aiming at equalization of the scope of protection accorded to cultural property placed under enhanced protection with that accorded to medical units under the Geneva Conventions of 1949 and Protocols Additional of 1977; unfortunately this initiative has not been received favourably by international community and now we have only one brief and rather general Art. 12 relating in vague terms to the "Immunity of cultural property under enhanced protection".

ICRC's mission encompasses also advocacy activities with the purpose of achieving wider respect for international humanitarian law. In this context we ap-

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<sup>6</sup> The ICRC's role as the guardian of IHL is discussed by: T.Pfanner, *Le role du Comite international de la Croix-Rouge dans la mise en oeuvre du droit international humanitaire*, "Law in Humanitarian Crisis", Luxembourg, Office for Official Publications of the European Communities, vol. 1, 1995, pp. 177-248; Y. Sandoz, *Le droit d'initiative du Comite international de la Croix-Rouge*, "German Yearbook of International Law", vol. 22, 1979, pp. 352-373; Y. Sandoz, *The International Committee of the Red Cross as Guardian of International Humanitarian Law*, ICRC, Geneva, 1998; C. Sommaruga, *Humanitarian Law and Human Rights in the Legal Arsenal of the ICRC* [in:] *Human Rights and Humanitarian Law*, The Hague, Martinus Nijhoff Publishers, 1997, pp. 125-133.

<sup>7</sup> ICRC Annual Reports 1997, 1998 and 1999, chapters entitled "International law, communication and the Movement", subchapters "Strengthening and developing the law".

visory Service on International Humanitarian Law should be emphasized. The Service has existed since 1995 and aims to provide – at the request of states or with their consent – technical assistance in the adoption of national laws and regulations pertaining to international humanitarian law. It works in a decentralized manner with lawyers based on every continent. Among its priority areas of activity are, for example: translation of IHL documents, The Hague Convention and its Protocols including, into national languages; incorporation (where necessary) of IHL into national law; incorporation of teaching on IHL into official curricula. It publishes reports on national implementation of IHL.<sup>11</sup>

One should not forget either that such events as those mentioned above give the ICRC a good pretext for lobbying for ratification of international conventions, for promoting wider participation in relevant treaties. For example, during the meeting in Peru three Latin American countries announced their readiness to join the Second Protocol of 1999.

The role of other components and bodies of the Movement in the protection of cultural property in time of armed conflict

The Statutes and the practice of the Movement confer upon the ICRC a chief role in all activities pertaining to dissemination and implementation of international humanitarian law of armed conflicts. It does not mean, however, that the ICRC is the only body to carry out such tasks. Art. 3 par. 2 of the Statutes of the International Red Cross and Red Crescent Movement mentions also National Red Cross and Red Crescent Societies explicitly among those bodies that have to contribute to better knowledge, understanding and application of IHL: "They disseminate and assist their governments in disseminating international humanitarian law; they take initiatives in this respect. (...) They also cooperate with their governments to ensure respect for international humanitarian law ...". It follows from this wording that IHL promotion falls within the national societies' function as auxiliaries to public authorities.

There are national societies that are very active in this field, there are also societies that are less active – to put it in vague terms. The Polish Red Cross (PRC) belongs to the first group. Its tasks in IHL dissemination are fulfilled by two structures that are very closely linked one to another.

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<sup>11</sup> The last one is the: *Biennial Report 2000–2001. National implementation of international humanitarian law*, ICRC Advisory Service, Geneva 2002.

representatives of armed forces, of academic community and of National Red Cross or Red Crescent Societies. Later on similar conferences – on cultural property protection – were organized by the ICRC in Armenia, in Azerbaijan and in Georgia in 1996. They were followed by the meeting organized in Nepal in 1997 for six countries of South Asia.<sup>8</sup>

In the year 2000 a very ambitious project was carried out by the ICRC – organization of not a regional, but a universal “Meeting of experts on national implementation of the rules for the protection of cultural property in the event of armed conflict”. It was held in Switzerland (in Geneva) in October 2000 and attended by some forty participants from around the world – experts in museology, legal advisers, military specialists, specialists on monuments and archives. The report of this meeting contains a valuable document “Practical advice for the protection of cultural property in the event of armed conflict” which aims to help national authorities to adopt and implement measures for the effective protection of such a property.<sup>9</sup>

In May 2002 a similar, but again a regional initiative was taken in Latin America. The ICRC organized in Peru a Regional Expert Meeting on the subject “To protect cultural property in the event of armed conflict: implementation of international regulations in this field at national level”. 14 Latin American countries and Spain took part in the meeting.<sup>10</sup>

The main aims of the above-mentioned meetings were to spread knowledge of international regulations on the protection of cultural property in the event of armed conflicts, to share information and consider technical methods used by certain countries with a view to identifying and inventorying cultural property and adopting measures to safeguard and protect it during such situations, to facilitate exchange of information between the specialists and the competent national authorities.

As in any other sphere of ICRC’s dissemination activities, it is very difficult to differentiate between the dissemination and implementation issues. It was particularly clear during the meeting in Geneva in 2000 when presentations and discussions focused mostly on national implementation of international legal regulations adopted by States or about to be adopted by States. In this regard, a crucial role of the ICRC Ad-

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<sup>8</sup> See respective *ICRC Annual Reports*.

<sup>9</sup> *Protection of Cultural Property in the Event of Armed Conflict*. Report on the Meeting of Experts (Geneva, 5-6 October 2000) (ed. M. T. Dutli), ICRC, Geneva, 2002, pp. 143–183.

<sup>10</sup> Information on this event can be found at the ICRC’s website: <http://www.icrc.org>

for this purpose, provided some funds and additionally two Ministry's representatives delivered lectures on the protection of cultural property there. The experience gathered in Radziejowice, as well as at other occasions, enables us to plan similar events –perhaps in a broader scale – for the future.

This presentation would not be comprehensive if the role of other Red Cross / Red Crescent bodies was not mentioned.

The 27<sup>th</sup> International Conference of the Red Cross and Red Crescent that took place in Geneva in 1999 adopted the Plan of Action for the years 2000 – 2003 which calls upon states to consider or reconsider, in order to enhance the universal character of international humanitarian law, becoming party to the relevant treaties concluded since the adoption of the 1949 Geneva Conventions, The Hague Convention of 1954 and its Protocols including<sup>13</sup>. The participants of the conference confirmed their obligations resulting from IHL treaty and customary rules in the following words: "All the parties to an armed conflict take effective measures to respect and ensure respect for international humanitarian law and to ensure, in particular (...) that in the conduct of hostilities every effort is made (...) to protect civilian objects including cultural property"<sup>14</sup>. Similar wording was contained in the Final Declaration of the 1993 International Conference for the Protection of War Victims and it was endorsed by the 26<sup>th</sup> International Conference of the Red Cross and Red Crescent in 1995.

The Council of Delegates, too, has recently taken a role in promoting the Hague Convention of 1954 and its Protocols. In 2001, for the first time in the Council's history, it adopted a resolution relating specifically to the protection of cultural property in the event of armed conflict. According to Resolution 11 of November 14, 2001, the Council of Delegates:

1. Notes with appreciation the increasing role of the ICRC, in co-operation with UNESCO, in encouraging ratification and implementation of the Hague Convention and its Protocols;

2. Encourages National Societies to include the Hague Convention and its Protocols in their activities to promote, disseminate and implement international humanitarian law, either on their own initiative or in co-operation with their governments;

3. Invites the States that have not yet done so to become party to the relevant treaties concluded since the 1949 Geneva Conventions, in particular the 1954 Hague

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<sup>13</sup> Final goal 1.3, par. 12.

<sup>14</sup> Final goal 1.1, par. 1 (a).

The first one is the Dissemination Center at the PRC Headquarters that was set up in 1980 and has two regular employees. Since 1981 it has been organizing, together with the ICRC, the annual Warsaw Summer Courses on International Humanitarian Law held in English for 35 – 40 young lawyers from Europe and North America. It also runs a IHL library, prepares publications and organizes book promotions, exhibitions and competitions, sets up different training programs and, last but not least, coordinates the activities of the second structure – voluntary Commission for Dissemination of International Humanitarian Law.

The Commission was established in the mid-1980s and is composed of 25 volunteers willing to help the PRC in its dissemination activities. Among them there are academic teachers at civilian universities and military academies and representatives of different governmental ministries and departments. At present I have the honour to chair this Commission. The Commission's main task is to assist the PRC Dissemination Center in planning and carrying out its activities. However, there are also some initiatives taken by the Commission itself. They include organization of conferences to increase awareness of IHL within different "target-groups" in Poland, other educational initiatives relating to the law of armed conflicts (e.g., setting up of a special course "Armed conflicts and the media" at the Institute of Journalism of the Warsaw University), organization of an annual competition where the best degree dissertations and doctorate thesis in IHL are chosen, lobbying for the establishment of a national IHL committee.<sup>12</sup>

All such dissemination activities comprise dissemination of knowledge of the principles of cultural property protection during armed conflicts. However, some of our initiatives are particularly closely related to this issue. Among Commission's members there is a representative of the Ministry of Culture – Mr. Krzysztof Salaciński – who provides us with his expertise during our conferences. One recent example is the Seminar on International Humanitarian Law organized in April 2002 by the Polish Red Cross for Polish university students as well as for students from military and police academies. The Ministry of Culture assisted the Polish Red Cross in the preparation and organization of the seminar – it rented a nice palace in Radziejowice

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<sup>12</sup> A national interministerial committee for the implementation of IHL, once established, would be competent to advise and assist the government in the implementation and dissemination of IHL, including those IHL rules that provide for the protection of cultural property in armed conflicts. Such committees have been set up in more than 60 countries all over the world. The Polish Red Cross advocates for the creation of such a body in Poland too.

### **3. LEGAL ORGANIZATION CONDITION OF CULTURAL PROPERTY PROTECTION IN CASE OF MENACE TO STATE SECURITY AND ARMED CONFLICT**

Grzegorz LESZCZYŃSKI

#### **1. Introduction**

Security is ranked among priority values in every reference system. A distinctive feature of it is concentration on its material aspects, e.g. military, economical. Emotional or intellectual aspects of society security are rather rarely noticed. It seems obvious, regarding the fact that dangers within these spheres are revealed with various time delays. Issues of cultural property protection, that is of national identity, are rarely seen in direct, existential way as they do not bring effects fast enough to find a response in social awareness. Necessity of wider perspective for the issue of country and nation security has been given rather great attention by many Polish researchers, who point at increasing importance of non-military security means in recent years. They evaluate economical, cultural and ecological security factors on a par with military ones.

Culture is an exceptional material of a nation. A country without cultural identity which determines national identity becomes a weak and fragile construction. It should be emphasised that this way of finding security was reflected in principal documents on country defence. For instance the basic aim of the new Polish Security Strategy is among others: to guarantee sovereignty and integrity of the country, to create environment for efficient country defence, to assure security of citizens, and to preserve national heritage of Poland.

Further, in Polish Defence Strategy, national heritage was recognised as one of the principle values, which mirror national interests.

Convention and its two Protocols, with a view to strengthening the universality of international humanitarian law.

The International Red Cross and Red Crescent Movement's role in the protection of cultural property in time of armed conflicts is first and foremost to promote and encourage implementation of pertinent legal instruments during hostilities. Very soon, in the year 2004 we shall celebrate the 50<sup>th</sup> anniversary of the Hague Convention of 1954. As every anniversary, it will provide a good occasion for the enhancement of activities of all the states and institutions concerned. The International Red Cross and Red Crescent Movement prepares itself for this occasion and intends to co-operate in this respect with national authorities and educational institutions. Let us hope that the enthusiasm and good will accompanying celebrations and ceremonies will be staying with us much longer.

Article 27 IV of the convention says that: *"during sieges and shelling any necessary means must be used to save temples, edifices for science and charity purposes, historic monuments"*.

In 9<sup>th</sup> Convention this record was repeated for commanders of warships engaged in combat activities against harbours and towns from sea.

In spite of the fact that legal regulations actually existed at that time, during World War 2 acts of barbarism against cultural property were committed on an unprecedented scale.

Only resolutions of the Hague Convention of 1907 on protection of such property could be used, although it happened rarely.

This situation made international public take steps to avoid such dealings in future.

As a result the Hague Convention of 1954 on cultural property protection in case of an armed conflict was signed.

It should be stressed that loss of cultural heritage brings suffering not only to the population on whose territory the war is ongoing, but we all became poorer at the very moment when a monument is being destroyed.

The preamble to the Hague Convention of 1954 puts it clear-cut: *"...destruction of cultural heritage of any nation is a damage to cultural heritage of the whole mankind as each nation has its part in shaping world's culture"*.

It must not be forgotten how much suffering is caused by destruction of national heritage.

An example of this may be words of a young Muslim man spoken after a 300-year-old mosque in Trebina, Bosnia was destroyed during conflict in former Yugoslavia: *"at that moment all I had was burnt. It is not that my family was burnt – the point is that my background was burnt. It is me that was burnt"*.

Such cases were collected by doctors who work with survivors from dramatic situations in armed conflicts.

During war in former Yugoslavia, on territory of Croatia attackers destroyed with particular ferocity all religious buildings: churches, chapels, presbyteries, monasteries, catholic cemeteries, and even wayside crosses, all being obvious symbols of cultural identity of Croatian nation.

A special part in defending the heritage is played by non-military defence actors, whose task is to ensure material, information and spiritual principles of population life in circumstances of external threat for country security (crisis).

But realisation of cultural heritage protection must be understood more widely and must involve all levels of authorities, state and local administration, services, and owners, and users of cultural property.

## **2. History of development of cultural property principles in case of an armed conflict**

War is not only the enemy of man, it is also the enemy of all man's most precious pieces of work: art, culture, historic monuments, whole cultural and historical heritage.

A vast number of pieces of art were destroyed in past centuries – works that we never knew and never will be able to admire anymore.

Two huge world wars of 20<sup>th</sup> century caused the biggest destruction in the history of mankind. Conflicts following the World War 2 completed destruction. Let us only remember the Iran-Iraq war, Persian Gulf War, destruction of historic monuments and museums in Kabul, and havoc in historic cities of former Yugoslavia.

Paraphrasing the words of the luminary in this field of issues – professor Stanisław Nahlik – we can say that destruction and plunder of monuments and pieces of art are as old as war.

As a part of humanitarian tradition special rules on cultural heritage protection were developed, and became implemented in law practice throughout the world.

In Europe, rules on cultural heritage protection have been developing since old times.

Some mentions of this are found in Greek historian Polibius, Roman lawyer Cicero, and German poet Goethe, and they were codified by lawyers in 19<sup>th</sup> and 20<sup>th</sup> century.

In 1997 during international conference in Hague, two conventions were signed concerning cultural property.

It was: 4<sup>th</sup> Convention on rules and habits of land war, and 9<sup>th</sup> Convention on shelling by navy during war.

Great credit goes for the Church for building up the system of cultural property protection.

Long before the 2<sup>nd</sup> Vatican Council the Church served culture of whole humanity. Many masterpieces and monuments of ancient pagan world were preserved thanks to handing monasteries over under protection of bishops.

During wars it was church curses, or even knightly habits developed under influence of Gospel that guarded historic churches.

It may be noticed that ideas included within church legislation evolved towards complete understanding of the concept of pieces of art. protection, starting from 16<sup>th</sup> century.

It may be concluded then that the Church pioneered activities in the field of legal legitimisation of cultural property protection, and the world would be far poorer spiritually but for the effort of many popes and bishops who contributed to build up legal protection system, as well as effort of innumerable priests and believers.

### **3. Kinds of threats against cultural property in case of an armed conflict**

Main threats against cultural property will come from:

- conventional actions;
- sabotage action;
- mass weapon employment.

In large conflicts involving land forces with the use of artillery, airforce and rockets (in case of siege, invasion or occupation), cultural institutions, their property and staff are hurt as a result of being accidentally targeted during fights between armed forces – often even if the rules of respecting cultural institutions are followed, formally or informally. It happens when such institutions are located on the fixed lines of troops redeployment, within areas of troops stationing, and in places where equipment is stored: within strategic directions, near water routes, railways, natural spots of defensive significance, near military structures, warehouses, factories or storage grounds, in cities and densely populated areas which may be attacked because they support military units and are common resistance spots. Cultural institutions which were not directly targeted by artillery, airforce or rockets, suffer accidental shelling or missed bombardment of military targets. Hypertension appearing during bomb explo-

It was particularly during occupation of most of Croatia territory that purposeful operation were undertaken to destroy and plunder – even cemeteries were not saved.

In many cases churches and cemeteries were destroyed so thoroughly that no trace of them remained left.

Loss is huge and irreversible, and it gives clear evidence of aggressor's motives and strategies. According to data, 1313 religious buildings were destroyed or damaged.

Conflict in former Yugoslavia confirms inefficiency of international law on cultural property, and indicates a new source of threats against security, which is found within culture.

Therefore, the issues of cultural property protection are continuously in international public eye, which resulted in signing the Document of Cracow Symposium on cultural heritage of CSCE (now OSCE countries).

Representatives of CSCE countries, including the Holy See, met on Symposium in Cracow from May 27 to June 7, 1991 and signed the document mentioned.

One of the points of the document says that: *"understanding that religious believes, religious organisations and institutions greatly contribute into cultural heritage, the CSCE countries will closely cooperate for the sake of cultural heritage protection and rendering appropriate protection to monuments and objects of religious cult"*.

Two conventions initiated by UNESCO to improve cultural property protection in case of an armed conflict should be mentioned at this point: Convention of 1970 banning illegal transfer of cultural property, and Convention of 1972 on world's cultural heritage protection.

Another field of activities aiming at cultural property protection in case of armed conflicts was a part of a wider process of building up and development of international humanitarian law.

They resulted in passing the so-called Additional Protocols to Geneva Conventions in 1977.

Article 53 of the First Protocol bans, among others, resorting to any hostile acts against historic monuments, pieces of art, places of religious cult, which are part of cultural and spiritual heritage of mankind; it also bans using this property to resist enemy force.

works are carried out, including training for people responsible for cultural property protection.

Duty to protect cultural property lies with bodies managing the property – which cooperates with appropriate branches of civil defence. Cooperation includes particularly locating places of cultural property evacuation, assessing transportation demand, working on civil defence projects.

Another legal act which influences cultural property protection during crisis and war, is the decree of the Cabinet of June 25, 2002 on range of operation of the Chief of Country Civil Defence, chiefs of province civil defence and local civil defence branches. According to the decree, among the tasks of chiefs of province and local civil defence are planning, protecting and preparing evacuation plans of cultural property in case of destruction threats.

In the process of realisation of the tasks of cultural property protection in case of crisis or war, a very significant part is played by the decree of the Cabinet of February 5, 2002 on services for defence. It specifies the subject and kinds of services rendered in peacetime in case of threats – including war. It makes a mayor or a local administrator responsible for drawing up a project of services, personnel and material, to be provided in case of mobilization or outbreak of war. The project is developed on the basis of proposals made by civil defense bodies concerning services for cultural property protection. Such proposals are submitted by owners or consumers of cultural property to civil defense bodies. In case there is no chance of provision of services, a mayor or a local administrator informs a concerned mover on this.

The obligation to personnel services is not imposed upon persons unfit for military service according to a decree of the Cabinet of April 3, 1993 on unfit persons and compulsory active military service in case of outbreak of war. Presently, a legal act in force providing resolutions on cultural property protection is the decree 23 of Minister of Art and Culture on cultural property protection in case of threats against country security or armed conflicts.

According to the decree, in case of threat against country security or an armed conflict protection is given to the cultural property included in the Hague Convention of 1954, act of 1962 on cultural property protection irrespective of whose property it is, or who uses it. All protective measures are to be designed from the basic level (organizational units), through provincial level to national level of cultural property protection plans. Planning and realization of preparatory works is a duty of chiefs of

sion breaks windows, weakens and separates building materials, crushes foundations and cause cracks in most materials.

Cultural objects may also be exposed to destruction as a result of:

- being used by fighting armies as shelters during artillery shelling due to the solid construction of such buildings;
- employing high cultural structures as observation towers;
- illegal take-over by groups of refugees.

Finally, cultural institutions may become victims of robbery or enemy reprisal.

In conflicts where nuclear, chemical or biological weapons are employed, cultural institutions, their property and staff under attack are temporarily contaminated. A nearby nuclear explosion brings destruction by creating a suppressing hypertension wave and following firestorm and radiation.

#### **4. Legal-organisational condition of cultural property protection in Poland in case of an armed conflict**

The basic legal act in case of threat against state security or armed conflict is the act of November 21, 1967 on total defence duty. In article 2 it says that: *"improving defence of the people's Republic of Poland, preparing citizens and national property in case of a war, as well as carrying out any other tasks of total defence, is a duty of all authorities and state administration, other governmental bodies and state institutions, local governments, other organisations, social organisations, and every citizen according to appropriate acts"*.

Article 137 of the act says that cultural property protection in case of war is to be realised within civil defence. *"Civil defence task is to protect population, offices and public utility buildings, cultural property, to save and help victims of war, to participate in fighting natural disasters and environmental threats"*.

A decree of the Cabinet of September 28, 1993 on civil defence specifies the tasks of civil defence, duties and rights of state administration, other state institutions and bodies, local governments and social organisations. The decree rules that: *"the tasks of civil defence to protect cultural property during war include particularly protecting cultural property"*. Protection is prepared during peace, and protection activities are carried out during war or natural disasters in order to protect against destruction, damage or devastation. In peacetime necessary planning and organisational

Besides this, the project of the decree:

- will adapt cultural property protection system to existing administrative structure of the country – it will include local levels in the process of planning and reacting during crisis, and adapts the system to crisis management structures after Civil Defense is merged with Fire Department.
- will take into account new international regulations included in 2<sup>nd</sup> Protocol to the Hague Convention of 1954 on cultural property protection in case of an armed conflict, which constitutes the third level of cultural property “strengthened protection”. The 2<sup>nd</sup> protocol in article 5 makes extensive references to peaceful measures that countries-parties of the Protocol should take in peacetime to protect cultural property against effects of predictable dangers.

Activities aiming at improvement of protection condition of national collections. (stand taken by participants of Polish conference *Security of cultural property – New Ideas and Technologies*, Warsaw 2001).

In face of increasing threats against cultural heritage due to destructive forces of nature and man, we find it necessary to start working on comprehensive, long lasting, and inter-department program *Security of cultural property*. The program should specifically include: preventing crime, fire protection, protection against threats to cultural environment, cultural property protection in case of serious dangers (catastrophies, natural disasters, armed conflicts).

The following should be prepared as a part of the program:

- modification of existing legal regulations and new regulations on security of cultural property,
- common training programs and integrated exercises on different levels of public administration,
- new elements of cooperation and exchange of experiences between departments,
- grounds for implementation of new ideas, technological solutions,
- proposals of education activities aiming at building social awareness of the necessity of improving heritage protection,
- conclusions derived from experiences and international solutions in the field of cultural property security.

organizational units, owners and users of cultural property. National and local administration offices are obliged to prepare and realize tasks of cultural property protection in case of danger according to their operational specifics.

To sum up, there is an urgent need to develop integrated system of monuments protection against natural and civilization dangers (during war and peace). As a part of the system, a decree of Minister of Culture will be issued this year on organization and methods of historic monuments protection in case of armed conflicts or crisis situations.

The decree will replaced the above mentioned decree 23 of Minister of Culture and Art of 1995 on cultural property protection in case of menace to state security or war.

The basic change introduced by the decree – comparing to the decree 23 – is that the system of cultural property protection in case of armed conflicts will be expanded to include the system of cultural property protection in case of serious dangers in peacetime.

Such integrated approach to the issue of cultural property protection system organization brings the following positive aspects:

- firstly, it is favorable from the perspective of theory and practice of managing crisis situations, and development of coherent cultural property protection system.
- secondly, it reflects modern tendency – which proved efficient in Western European countries – to join both systems of cultural property protection.

It should be mentioned that UE countries promote a thesis that a well designed system of cultural property protection in case of serious dangers in peacetime gives a foundations on which the system of protection in case of armed conflicts can be build, taking into account only some particular characteristics of the danger.

The new approach towards development of cultural property protection system comes across the need to make a re-evaluation of scale and kinds of modern dangers. Presently, in this part of Europe one does not assume a possibility of a large-scale armed conflict within at least 20-30 years. However, much more attention is paid to dangers in peacetime (terrorism, natural disasters, catastrophes, etc.). Also, the concept of security is being redefined. Nowadays we consider its non-military, widely understood aspects.

Employ all accessible communication technologies, including TV, radio and Internet as necessary means of preventive, operational activities and develop education programs on cultural property protection and promotion of cultural-natural heritage.

Make sure that implementation of new technologies ensures security of cultural property, facilitates access to this property and expands possibilities of using them.

Establish within public service (Police, Fire Department, Custom Offices and Border Guards) organizational units or posts specialized in cultural property security.

Improve status of prevention in cultural property protection by means of documentation made by Monuments Protection Service in the Monuments Documentation Center, Historic Landscape Protection Center and Public Collections Protection Center.

Take efforts to provide finances for inter-department program "Cultural property security" in accordance with records of article 80, act of November 26, 1998 "On public finances" as a long-lasting program of "cultural heritage protection" which is a common good of all Polish citizens.

The following activities aiming at improving cultural property security are found to be of great importance:

- Give special protection to the most valuable cultural property on the World Heritage List, historic monuments, national collections of libraries and archives, precious movables and property, natural-cultural landscapes within particular provinces.
- Include issues of cultural property security in acts prepared on emergency states, civil readiness and managing crisis situations.
- Close cooperation between provincial monument conservators and representatives within the most important churches and religions who are responsible for this field of culture on assessing collections, their condition and documentation, protection of objects and collections, preventive and training actions, especially common training courses, seminars and conferences.
- Enforce execution of protection project on every organizational levels and include the issues of cultural landscape protection in development strategies on national and local level as well as in spatial planning as priorities of steady social-economical development.

#### ***4.1. Developing criteria and implementation systems for cultural property protection***

Develop a system of registry, availability, and protection of data on church and private cultural property.

Initiate actions for new forms of organization, technology and information circulation in the field of registry and loss in cultural property documentation.

Integrate natural and cultural values protection system, and activities of monument protection and nature preservation service as a new element of security.

Closer cooperation with social, professional and voluntary organizations to use their potential for the sake of improving cultural property protection.

Take efforts to entrust the *Civil and military personnel education center on cultural property protection in case of serious dangers* with the tasks of main information center providing data on undertakings in the field of cultural property protection at home and abroad.

- destruction or damage done by radiation after thermo-nuclear explosion (especially paint decorations or historical paintings)
- destruction of movable pieces and collections of art done by looting, intentional or unintentional damage by looters or marauders. Loss of collections or individual pieces of art seized by enemy units during war activity.

## 2. Polish and European war experiences

The biggest loss in cultural property was caused by destruction and looting during wars. The cases of devastation and looting of conquered cities and towns were abundant in ancient times, in middle ages, as well as during the following centuries – including the 20<sup>th</sup> century.

Respect for places of religious cult and religious prohibition of looting – postulated in ancient times and middle ages – proved to be of little efficiency.

Looking at Polish history before the partitions of Poland, none of the wars was as devastating for our cultural property as Swedish invasion (so-called: Swedish deluge) of the 1655-1657 period. Swedes meticulously looted our country. Out of all bigger Polish towns of that time, only Lwow and Gdansk were not occupied by the Swedish army. All the remaining towns, after they have been captured, were being destroyed and robbed. The war severely afflicted Warsaw, which surrendered three times against the attackers, and as a result was robbed of cultural property. Cracow, which was ruled by Swedes for nearly two years, lost the most valuable property. The Crown Treasure and wall-rugs of Jagiello dynasty were saved, thanks to their being moved to Silesia region in time.

In 1702, as Karol's XII troops were marching across Poland, the Wawel castle was robbed again, and the soldiers which quartered on its premises caused fire – leaving the castle ruined.

During the partitions of Poland, occupying armies started robbing the most valuable cultural property. Prussians emptied the crown treasure in Wawel castle, which included (according to records of scribes): 5 crowns, including the oldest one called "boleslawowska" with 359 rubies, sapphires and pearls, the so called "Hungarian" crown belonging to Queen Jadwiga, and the so called "szwedka" crown belonging to king Zygmunt III; 4 scepters, 5 apple-shaped regalia, 4 chains, 2 swords – the so-called "Szczerebiec" and king Zygmunt Stary's sword.

## 4. CULTURAL PROPERTY PROTECTION IN CASE OF AN ARMED CONFLICT IN INTERNATIONAL AND POLISH LAW

Krzysztof SAŁACIŃSKI

### 1. Dangers to cultural property

Cultural property is vulnerable to various dangers. The character of the dangers is twofold. They may be caused either by nature (earthquakes, hurricanes, rainstorms, floods, lightnings), or by man himself – out of his ill-will (wars, thefts, arsons, vandalism, disrespect, terrorism), negligence, disrespect, ignorance, lack of imagination and sheer stupidity. These dangers may occur on individual, local, regional or international level. Therefore, they call for home regulations and activities within a state, as well as international regulations and activities.

As we have been shown by experiences of past wars and fights – there have been many different means and methods employed in destroying cultural property. The most important of them are:

- mechanical destruction – caused by direct, often point-blank, strikes by means of air-bombs, rockets, artillery or mortar shelling, heavy machine-gun fire, explosive materials;
- destruction or damage done by exceeding dynamic stress caused by tremors, vibrations of surface and foundations, heavy blows and rapid air whirls;
- destruction done by fire caused by incendiary shells or bombs, direct arson or arson caused by damaging interior installations, such as: electrical, heating or gas;
- destruction or damage done by chemical substances used as military weapon;

the outbreak of World War II, Poland was basically unprepared to protect our cultural property.

Only thanks to patriotic attitudes of a circle of people – museum workers – over 200 historical objects were evacuated from the Wawel collections to Canada.

Many people concerned with cultural property protection, protected the most valuable historical objects against destruction and looting by occupying authorities during war.

The biggest ransacking of cultural property was done by Peter Paulsen and his unit from September to November 1939. Kommando Paulsen job was to take record of pieces of art, secure them and move to Germany. Paulsen's team drove away a lot of cultural property from museums and libraries in Warsaw and Cracow.

Nazi occupation increased losses in Polish cultural property. All too often, German museum curators and authority representatives would visit cultural institutions in Poland, pick up and take away some property. German occupation authorities published a number of regulations to provide a precisely developed legal framework for the robberies. The primary goal of German authorities was to wipe out any signs of distinctiveness or autonomy of Polish culture. Materially, all the monuments located near historical Warsaw communication routes and squares, were destroyed or damaged during the war: Nowy Świat street, Krakowskie Przedmieście street, Miodowa street, Plac Teatralny, Plac Bankowy.

Private art collection suffered significant loss when their owners were being displaced and their houses occupied by the occupying authorities. This afflicted mainly Jews who were displaced into ghetto and Poles living in western provinces which were incorporated into Germany.

Also Russian authorities were taking away cultural property – from the area of Poland taken up after 1939 and from the north west lands as Russian troops were gradually taking over the area towards the end of the war. According to documents, it was a planned and organized action, which must have been supported by appropriate orders.

The period of Warsaw Insurrection was the next stage of increasing loss. Many objects were seized by German troops, plundered and robbed of collections, and after the insurrection was lost, some buildings were not guarded and exposed to robbery.

The czarist authorities took away the collection of wall-rugs of Jagiello dynasty, which had been stored inside the Carmelite Warsaw monastery since Saxon times, and the whole collection of the biggest library in Poland – Żaluskich Library, and all major archives. The most beautiful pieces of art from the Royal Castle, Łazienki Palace and Belvedere – including entire collection of Canaletto's images of Warsaw – were moved away. After Kościuszki insurrection and Listopadowe insurrection, a significant number of military objects was stolen, especially cannons and standard.

Austria caused serious damage to Polish cultural heritage too. The whole interior of Royal Palace in Koźienice was robbed, including 179 pictures from the famous gallery of king Stanisław August. The most painful loss was devastation of the Wawel castle, which was quite intentionally turned into military quarters. Out of the splendid number of 190, only 39 Wawel heads survived. The Wawel castle became then a zero-style building, hardly similar to any of historical residences of Polish kings.

Organized cultural property protection dates back to only since World War I. Huge destruction brought by developing military technology, high mobility of troops and persistent fighting, made the war-zone countries take steps in order to protect cultural property.

The project was initiated in France, and there were three sections established in General Command of French Army: for the area of East, Centre and North.

Ministry of War provided construction materials and means of transport. Officers-artists and historians were withdrawn from the army. The action of saving monuments was carried out by a special evacuation group which rescued over 10 000 endangered objects. Works were done on securing facades and thombstones, evacuating pictures and fabrics, and even altars. In 1918 all the collections of Louvre were evacuated from the exhibition rooms. Part of them was stored in the cellars, and some part was moved South – to Spain.

During World War I, bombings of religious buildings happened often. Responsible for these acts were Germans, who claimed that there were observation points located in these very buildings, and hence, they were justified in doing so.

In Italy, major objects were secured. Facades were covered with sand-bags, and monuments were restored.

Between World War I and World War II in Poland, there were no organized projects made on cultural property protection in case of an armed conflict. This is why at

destruction or intentional profanation whatsoever of this kind of establishments, historical monuments, pieces of art. and science are forbidden and shall be punished”.

The 9<sup>th</sup> Hague convention on bombardment from the sea during war, included rules on cultural property protection too. They ordered: “during bombardment from the sea, a commander should take all necessary precautions to save, as far as it is possible, buildings used for religious purposes, fine arts and scientific establishments, charities, historical monuments, hospitals and places where the sick and the wounded are located, provided these places are not used for military purposes at the same time. People’s responsibility is to mark the monuments, buildings or establishments with well-seen markings: two non-flexible boards of rectangular shape, divided diagonally into two triangles, the yellow up and the blue down.”

Both Hague conventions (IV, IX) referred to cultural property protection to a limited degree, but still they were the first international codification to be ratified by majority of civilized countries. Poland ratified the convention IV in 1927, and the convention IX in 1936.

Issues of historical monuments and art protection during war, were described in the Treaty on art and science establishments and historical monuments protection signed in Washington on April 15, 1935 by 21 American countries.

Article 1 of the Treaty said that historical monuments, museums and scientific or education institutions must be respected and protected by the Parties of an armed conflict. Much the same, the respect and protection should be granted for the monuments in peacetime too.

In further articles, the Parties make commitment to obey the Treaty on all subordinate territories of theirs, and to introduce necessary regulations into their home legislation. In order to identify a protected monument, the following identification flag must be used “ red circle with a three red spheres on white background”.

Each of the Parties of the Treaty may put forward a list of historical monuments, which they expect to be protected by Pan-American Union. Other governments are notified of the list.

Historical monuments and institutions mentioned in article 1 cease to be protected when they are used for military purposes.

The Roerich Pact is still a binding international standard, within limited geographical area though.

European and Polish experiences remind us that international commitments were not obeyed, destroying historical monuments and religious buildings is one of the military tasks to eliminate cultural distinctiveness and autonomy in order to decrease a nation's ability to fight.

### **3. International legislation**

#### ***3.1. International law before the Hague Convention of May 14, 1945***

In 1874 international conference was held in Brussels, where a declaration of laws and habits of land war was developed. In this declaration it was emphasized that: "communal property and property of religious establishments, charities, education, art and science – even if it belongs to state – shall be treated as private property. Occupancy, destruction or intentional profanation of this kind of establishments and historical buildings will be prosecuted by civil court."

Although this declaration was not ratified, it was a starting point for the Hague conferences of 1899 and 1907, where quite a few of suggested regulations were identical or similar.

As a result of works of the latter Hague conference, 13 international conventions, commonly referred to as "Hague Conventions", were accepted on October 18, 1907. The conventions became a basis and the most universal code of law of war. Convention IV – on laws and habits of land war, said that: "the Agreeing superpowers shall give their land forces instructions following the regulations on laws and habits of land war". The regulations referred to methods of conducting war, public and private property, people and property protection, as well as cultural property protection. Article 27 of the regulations on law and habits of land war said that: "during sieges and shelling, all available means must be used, if it is possible, to protect temples, buildings used for education, science and charity, historical monuments, hospitals and places where the sick and the wounded are located – provided these places are not military employed at the same time."

Also, the regulations ordered to respect different forms of property: "communal property of churches, charities and education, fine arts or science establishments – even if they are owned by state – shall be taken as private property. Any occupancy,

protection as follows: "In understanding of the present Convention, cultural property, irrespective of their origin or proprietor, are:

- movables or real estates of great significance for cultural heritage of a nation, for example historical architecture or art, both religious or secular, archaeological sites, structures of historical or artistic significance, pieces of art, manuscripts, books and other objects of artistic, historic or archaeological value, as well as scientific collections and significant collections of books, archives or reproductions of the property mentioned above;
- edifices which are primarily meant, and used in practice, to store or exhibit movable cultural property specified in a), for example museums, big libraries, archives, as well as shelters meant to store movable cultural property specified in a) during armed conflicts;
- centers having a significant number of cultural property specified in a) and b), which shall be known hereafter as "historical centers".

The Convention include a series of duties that the agreeing parties accept, as for their own cultural property as well as the property they may find on the area afflicted by an armed conflict.

The Convention obliged the agreeing parties to forbid any acts of theft, robbery or appropriation of any kind, of cultural property. Undoubtedly, it is supposed to be meant not to allow mass robbery of cultural property from occupied countries happen again. It obliges an occupying army to support all efforts on an occupying territory which aim at providing care for cultural property of an occupied country. The Convention makes it possible for some cultural property to be provided with special protection. This kind of protection is given by putting an object on "International Record of Special Protection Cultural Property".

The Convention emphasizes the need to respect the personnel responsible for cultural property protection, if it is captured by enemy troops. In such case, the personnel should be given a possibility to continue performing their duties, provided the cultural property of their responsibility is also captured by enemy.

In order to make identification of protected cultural property easier during an armed conflict, the Convention sets a special identification mark. It is a shield pointed downwards, divided diagonally into four fields – 2 blue and 2 white.

The Treaty, that specified rules of historical monuments and art protection, both during war and peace, was one of the most important documents of the middle war period. A record on the personnel assigned to protection is a very important element of protection of historical monuments, pieces of art, museums, scientific institutions.

A positive thing about the Treaty is the formula on neutrality of monuments, i.e. total exclusion of the monuments from war activity, binding for both parties of a conflict.

A disadvantage, on the other hand, is lack of international control – the only guarantee of obeying the regulations is a fear of revenge.

In Europe, a new stimulus to develop regulations on cultural property protection was provided by a Spanish civil war. As ordered by the League of Nations, a Committee of Experts was established, which developed a working project of international convention on monuments and art protection during armed conflicts.

In introduction to this project, Hague conventions of 1899 and 1907 were referred to, and the regulations of this project were based up on projects developed after World War I. A very important record in this project said that protective activities can only be successful if they are already prepared in peacetime and organized both on national and international level. The outbreak of World War II stopped works on accepting this convention.

### ***3.2. Convention of May 14, 1954 on cultural property protection in case of armed conflicts***

After World War II efforts on codifying cultural property protection were taken again. Two parallel tendencies became apparent. The first being an attempt at recovering from the war by means of restitution, and the second – a claim to improve penal regulations in order to secure cultural property against robbery and destruction.

In 1954 a special diplomatic conference was called in Hague, which resulted in signing a final act on cultural property protection in case of armed conflicts along with executive regulations and protocol, on May 14. Resolutions were also signed.

A great achievement of the Convention is a clear definition of the subject of protection. Terminology included in previous acts was not uniform: "monument", "piece of art", "historical and art monuments". The Convention of 1954 defined the subject of

Among the conclusions made by experts the most important are:

- conditions and requirements of being put on the list of International Cultural Property of Special Protection
- establishment of control and administration body of the Convention – three options: intergovernmental, advisory and committee of experts;
- efficiency of the Convention control systems, including function of Security and Commanders;
- more severe sanctions and international enforcement;
- individual responsibility for breaking the Convention.

On November 13, 1995 there was a meeting of the party-countries of the Convention, first since 1962. Participants of the meeting (68 countries) agreed on experts' decisions and emphasized the engagement of UNO peace forces in enforcing the resolutions of the Convention. They confirmed the necessity to organize further meetings of experts about changes in the Convention.

Also, it was decided that all the party-countries of the Convention should send on practical recommendations of changes and amendments to the Convention.

In 1996 Poland send over to UNESCO its position on recommended changes and supplements to the Hague Convention. The position included the following suggestions:

- to broaden interpretation of "armed conflict";
- to supplement the concept of cultural property with "areas";
- to supplement articles 7 and article 25 of the Convention on activities in armed forces;
- to specify the concept of "military necessity";
- to specify articles 10 and 16 of the Convention on identification mark;
- to specify the concept of "sufficient distance" in article 8;
- to consider the possibility of including historical buildings and complexes on the World's Cultural Heritage list into International Register of Special Protection Cultural Heritage;
- to include in the Convention records saying that intentional damage or destruction of cultural property during armed conflicts will be considered as war crimes subjected to international and national jurisdiction;

In March 1997 in Paris, an government experts meeting was held. They discussed suggestions submitted by individual countries, including the Polish sugges-

The Convention obliges to establish and prepare a special institutional unit or a special skills team within armed forces of each country, as soon as in peacetime, whose job would be to control observance of laws on cultural property protection and cooperate with civil authorities responsible for cultural property.

Poland ratified the Convention in 1956, and thus accepted obligations to observe it and consider the requirements in its national legislation.

### **3.3. Advance in works on amendments to the Hague Convention of May 14, 1954**

The events of last thirty years, especially in Cambodia, in the Middle East and in former Yugoslavia, showed clearly how necessary it is to improve and strengthen cultural property protection in case of an armed conflict. Having this experience in mind, UNESCO verified its attitude to issues of cultural property protection in case of an armed conflict, and, in 1993, considered some changes in order to improve implementation of the Convention. UNESCO Secretary invited professor Patric Boylan as a consultant to make analysis of execution of the Convention since 1954, and to suggest practical steps to adapt it to modern conditions. The prepared study was entitled "Review of resolutions of the Convention on cultural property protection in case of an armed conflict", and it included a number of recommendations and conclusions for UNESCO, UNO, party-countries of the Convention and a lot of international organizations. It included various practical recommendations, such as changes in legislation of some particular countries, increasing rights of soldiers responsible for observing the Convention, and also establishing a body to supervise observation the Convention.

Several meetings of experts were held about the Boylan's report:

- In Hague (May 1993) representatives of all countries discussed and made comments on the recommendations in Boylan's report;
- In Lauswolt (February 1994) a small group of experts drew up a project of a new Convention, including a penalty for disobeying resolutions;
- In Paris (November-December 1994) experts emphasized a necessity to establish penalties for breaking resolutions of the Convention and a necessity to establish advisory-executive body for cooperation with UNESCO and to administer the Convention.

and its resolutions do not influence the rights and obligations of the Parties of the Convention of 1954, still, it is a semi-open agreement, in the sense that a Party of the Protocol may only be a country which had joined the convention of 1954 before. Such character of the Protocol is emphasized by resolutions of article 3, which specifies the range of its application and it is the same as in the Convention. The adopted resolution makes it groundless to say that in order to implement the Protocol it is necessary to fulfill the requirements of article 39 of the Convention. It is only the Parties of the Protocol that are obliged to take precautions within general protection, and only they may ask for a strengthened protection for their own property.

Article 3 concerns the range of application of the 2<sup>nd</sup> Protocol and it rules that apart from peacetime, it also refers to situations described in article 18, paragraph 1 and 2 of the Convention, that is to "... a declared war or any other armed conflict...", as well as to non-international conflicts, specified in article 22, paragraph 1 of the 2<sup>nd</sup> Protocol.

Article 4 draws mutual relationship between chapter 3 of the Protocol and other resolutions of the Convention. It rules that the resolutions of the chapter do not influence further enforcement of chapter 1 of the Convention and chapter 2 of the Protocol, that is general resolutions concerning protection and special protection, except for the fact that if cultural property of special protection status is given strengthened protection, it is only the resolutions concerning this very protection that can be applied to it.

**Chapter II** includes general resolutions concerning protection; paragraphs from 5 to 9

Article 5 concerns care that should be taken in peacetime by the country on which territory a piece of cultural property is located. This article specifies the resolutions of article 3 of the Convention, it provides a detailed list of activities which are to prepare cultural property to survive safely in dangerous circumstances brought by military activity.

Article 6 of the Protocol contributes significantly to strengthening the construction of cultural protection included in article 4, paragraph 2 of the Convention in the way that it allows to repeal the laws of protection by invoking categorical military necessity, only when, and as long as: "(a) A piece of cultural property became a military target because of its function and there is no other practical alternative to achieve

tions. A decision was made to draw up a document to change the Hague Convention, considering the suggestions made so far, and particular solutions worked out by experts. The project to change the Convention was developed by the office of UNESCO Secretary and it included suggestions accepted by experts. In March 1998, "Project of legal resolutions on revision of the Hague Convention of 1954" and a commentary by UNESCO Secretary was handed over to the party-countries of the Convention for final changes to be suggested.

### ***3.4. 2<sup>nd</sup> Protocol to the Hague Convention on cultural property protection in case of an armed conflict***

Between March 15–26, 1999, diplomatic conference was held in Hague on Second Protocol to the Hague Convention of 1954. The conference was called by Dutch government together with UNESCO. The inviting parties prepared a final draft of the project, which was discussed by delegations from 74 countries – Parties of the Convention – and from 19 countries outside the Convention, including China, Denmark, Japan, Great Britain and the USA.

On the last day of the conference, the participants adopted by way of consensus a modified text of Protocol and a resolution enclosed in Closing Act of the conference. Perhaps little exaggerated – the word success – seems to be an adequate evaluation of the results of the conference, if we take into account the fact that in course of ten working days participants agreed on a final text, which – after several years of preparations – became not only a product of editorial work but also a completely new content.

### ***3.5. Report on resolutions of 2<sup>nd</sup> Protocol***

**Chapter I.** Article 1 includes explanation of a number of concepts used in the Protocol.

The most important element of this article is specification of the subject of protection, which is identical to the subject of protection included in the Convention of 1954.

Article 2 settles a deep controversy about the relations between the Convention of 1954 and the 2<sup>nd</sup> Protocol; it states that the Protocol a supplement of the Convention regulations. It means that although the Protocol is a new international agreement

and administrative national centers which ensure the highest status of protection, 3. It is not used for military purposes or protection of military spots, and a Party of the Protocol, which controls such property confirms its declaration that the property will not be used for the purposes mentioned above.

Article 11 gives a procedure of assigning strengthened protection. This kind of protection (which is confirmed by putting property on the List) may be applied by those parties of the Protocol under which jurisdiction or control given property is located. Therefore, it does not have to be a country which is legally entitled to the territory on which the property is located. As the Protocol rules, this record has no legal consequences concerning territorial disputes, and the only legal result of it is ensuring immunity for some exceptional property. Care taken by countries to preserve exceptional cultural property found its way into a new procedural solution, namely the rule that a country makes decision on application. The Protocol says that, Committee, which has executive power over resolutions of the Protocol, and takes binding decisions about registration on the List, may invite -- by its own initiative or initiative or specialized non-governmental organizations -- a Party to apply for registration on the List (article 11, act 2,3,4).

Likewise International Record of Special Protection Cultural Property, while registering cultural property with strengthened protection on the List, other Parties of the protocol may put forward their reservations about the registration. Such reservations may only refer to the conditions mentioned in article 10, which means that no reservations of political character will be acceptable or considered.

Article 12 mentions special obligations accompanying the process of assuring immunity for the property with strengthened protection. The Parties restrain themselves from attacking such property or using it, or their closest surroundings, for any activities supporting military operations.

Article 13 specifies situations when property may lose its right for strengthened protection and specifies conditions which allow for attacking such property, however the basic rule of conducting a military operation against such property is that at the very moment when property ceases to be a military target, its immunity is automatically reactivated -- provided it was not removed from the List (article 14).

Article 15, act 1 includes specification of crimes considered as severe violation of the Convention and the Protocol. First two from the list of severe violations refer to acts against property with strengthened protection. Severe violation (mentioned in

military profit similar to that which will be achieved by enemy action against this target”.

Article 6 b rules that cultural property may be used for purposes which create a danger of destruction or damage of the property, by invoking to categorical military necessity described in article 4, paragraph 2 of the Convention, when, and only as long as, there is no possibility of choice between such use of the property and another method which could ensure similar military profit”.

Basically, decisions about activities invoking categorical military necessity may be taken by an officer commanding a battalion force – however, contrary to opinions of many delegations, including a Polish one supported by Hungarians and Slovenians, article 6 allows for a situation when such an important decision is taken by a commander of a smaller unit, if “circumstances do not allow otherwise”.

Article 6 d. assumes that before an attack on cultural property takes place, effective warning should come up – however, the force of this obligation is weakened by additional remarks that this requirement is in force as long as circumstances allow for it.

Having in mind development of international humanitarian law standards, the 2<sup>nd</sup> Protocol includes a concept of precautions into resolutions on care. Article 7 is about means that should be applied when conducting military operations, and article 8 is about precautions preventing possible consequences of enemy activities. A model for such decisions was to a great extent provided by resolutions of the 1<sup>st</sup> Additional Protocol of Geneva Conventions.

Article 9 is a supplement to obligations resulting from articles 4 and 5 of the Convention. It specifies prohibitions binding the country which occupies a part or the whole of other Protocol party's territory. Under this article, an occupier is obliged to prevent and prohibit “illegal export, other kind of displacement or movement of cultural property”.

**Chapter III** on strengthened protection, establishes the third – the highest – level of cultural property protection (articles from 10 to 14).

It supplements the system of convention, and stands in for the system of special protection in case of the cultural property which fulfills requirements of both systems at the same time. There are three conditions, which must be fulfilled so that a piece of cultural property could be given strengthened protection: 1. A piece of property must be of greatest significance for humanity, 2. It is protected by appropriate laws

Adopted text of the 2<sup>nd</sup> Protocol was open to signatures since the day of March 26, 1999 until the end of 1999. It will become in force 3 months after 20 documents of ratification, adoption or access are submitted. 15 countries have fulfilled this condition so far.

Polish joining the 2<sup>nd</sup> Protocol of the Convention of May 14, 1954 on cultural property protection in case of an armed conflict will bring the following benefits:

- it will improve protection of Polish cultural property of special significance in case of an armed conflict (cultural property acknowledged by the President of the People's Republic of Poland as historical monuments and registered on the UNESCO list of world's cultural and natural heritage);
- it will make it possible to implement the procedures of the Protocol in planning and institutional activities concerning cultural property protection in peacetime and in case of an armed conflict;
- it will allow for a wider presentation on international forum of legal and institutional solutions concerning protection of Polish cultural property in case of an armed conflict;
- it will supply cultural property protection in case of an armed conflict with the latest regulations in force in international law;
- it will allow for participation of Polish representative in works of Committee established by the 2<sup>nd</sup> Protocol.

The 2<sup>nd</sup> Protocol of the Hague Convention of May 14, 1954 is a supplement to existing regulations on this matter, which were ratified by Poland in 1956, and introduction of new international law instruments based on experiences of armed conflicts and destruction of cultural property so far.

In case of joining the 2<sup>nd</sup> Protocol, Poland do not take any financial responsibilities. However, the Protocol assumes in article 29 establishment of a fund on cultural property protection in case of an armed conflict, which would consist of voluntary contributions done by the parties. We may not preclude some voluntary donations for the Committee on cultural property protection in case of an armed conflict, in case if Polish representative will become a member of the Committee. The necessary means for the donation will probably be notified in the budget of Ministry of Culture.

Polish joining to the 2<sup>nd</sup> Protocol creates a demand to include the records of the Protocol into military regulations and instructions; also, it will create a demand to in-

point a) is an attack on such property, violation mentioned in point b) is using such property or its surroundings to reinforce military operations – an unprecedented possibility to accuse a defending party. Third in order severe violation is "extensive destruction or appropriation of cultural property protected by the Convention or the Protocol (point c). These three kinds of violation are governed by rules of universal jurisdiction, and – if a country do not punish perpetrators – it is obliged, under paragraph 18, to extradition. This duty is reinforced by resolution of article 20, act 1, which do not allow to consider these crimes as political crimes. The Parties are obliged to sue and punish the rest of severe violations according to their own legislation, which must include sanctions for committing the crimes specified in article 15. Also, under article 21, the Party-Countries made commitment to prosecute other violations of the Protocol. The price that must be paid for adopting the resolutions from article 16, act 1, is agreement on one exception defined in act 2 (b) under which "... members of armed forces and citizens of the country which is not a part of the Protocol, (...) are not liable under this Protocol, nor does the Protocol impose a duty upon them to establish jurisdiction referring to such individuals or obligation of extradition.

**Chapter V** including only one article 22 referring to non-international armed conflicts. The most important resolution is a record which states that the Protocol is applied to home conflicts. A compromise comes up in the statement that, in case of appearing violations specified in article 15, jurisdiction of a country on which territory such conflict is on-going is a priority.

**Chapter VI** refers to institutional matters. The Protocol establishes two bodies responsible for implementation of the resolutions of the Protocol: Party Congress and Committee on Cultural Property Protection in case of an Armed Conflict, including representatives of 12 countries – parties of the Protocol – chosen for four years. Article 27 includes a long list of functions of the Committee, among which the most important is the function to grant, suspend and deny the status of strengthened protection of cultural property. The protocol creates a special Fund (article 29), but – much to disillusionment of the Third World – most countries remained unconvinced about the necessity to introduce obligatory payments for the Fund.

In the Protocol, there are, for the time being still non-controversial, resolutions on dissemination of the Protocol, international cooperation and enforcement of the Protocol. At the end of this chapter (8) there is a resolution on liability of countries – article 39.

sically, they cooperate to specify places where cultural property is to be evacuated, transportation demands, civil defense plans.

Another legal act which influences cultural property protection during crisis and war is a decree of the Cabinet of September 28, 1993 on detailed range of activities of the Chief of National Civil Defense and chiefs of local civil defense; on rules of management, coordination, preparation and realization of civil defense tasks. According to the decree, the duties of chiefs of local civil defense are to manage and coordinate preparation and realization of civil defense undertakings (basically, securing cultural property against strikes, and evacuation of property) on their administrative area.

As far as realization of tasks of cultural property protection is concerned, a very important part is played by a decree of the Cabinet of September 6, 1993 on defense services. It specifies the range of services to be provided in peacetime and in case of dangers, including war. It makes a mayor or a local administrator responsible for drawing up a project of services, personnel and material, to be provided in case of mobilization or outbreak of war. The project is developed on the basis of proposals made by civil defense bodies concerning services for cultural property protection. Such proposals are submitted by owners or consumers of cultural property to civil defense bodies. In case there is no chance of provision of services, a mayor or a local administrator informs a concerned mover on this.

The obligation to personnel services is not imposed upon persons unfit for military service according to a decree of the Cabinet of April 3, 1993 on unfit persons and compulsory active military service in case of outbreak of war.

Ministry of Art and Culture was responsible for issuing – in accordance with the Chief of National Civil Defense – rules of cultural property protection in case of dangers, crises and war. A relevant directive was issued by Ministry of Art and Culture on May 25, 1995 on rules of cultural property protection in case of danger to the state or an armed conflict.

The directive is composed of general body and three appendixes:

- a plan to protect movable cultural property in case of danger to the country or an armed conflict;
- a plan to protect immovable cultural property in case of danger to the country or an armed conflict;

clude them into regulations on cultural property protection in force in our country, as well as into institutional, planning and educational activities.

Presently, the Protocol has been signed by 39 countries, including Belarus, Germany, Hungary, Estonia, Italy, Slovakia, the Netherlands, Spain, Sweden.

## **4. Polish law**

### ***4.1. Act on General National Defense Duty (General Defense Duty) of the People's Republic of Poland***

The basic legal act in case of a threat of state security or an armed conflict is the act of November 21, 1967 on general defense duty. It rules (article 2) that "to consolidate defense of the People's Republic of Poland, prepare people and national property in case of war, and other activities within general defense duty, it is a responsibility of all authorities and state administration, as well as other bodies and state institutions, local governments, economic entities and other organizational entities, social organizations and each citizen".

Cultural property protection in case of a war is responsibility of civil defense. It is said in article 137 of the Act, which says: "Civil Defense aims at protecting people, public utilities and cultural property, rescuing and helping victims of war, cooperating in order to overcome natural disasters, fight dangers to environment and repair their damaging effects."

On the basis of article 140 of the Act, the Cabinet issued a decree on civil defense on June 28, 1993. It specifies the tasks of civil defense, duties and rights of national administration bodies, other bodies and national institutions, local governments, economic entities and social organizations. The above decree states in chapter 1 that "the tasks of civil defense to protect cultural property during war are particularly aimed at securing cultural property". The security is organized in peacetime, and it is realized during war or natural disasters in order to secure against destruction, damage, devastation. In peacetime there are necessary planning and organizational works carried out, including training staff responsible for cultural property protection.

The responsibility to secure cultural property lies with those bodies which manage this property and cooperate with relevant local authorities on these matters. Ba-

- in consultation with government administration, ensure communication and cooperation with similar Committees in other countries and relevant international organizations;
- explain realization of resolutions of the Hague Convention to national institutions, local governments and social organizations.

The Committee is playing a very important part in fulfilling the requirements of the Hague Convention of 1954.

Considering the fact that the resolution mentioned above is a self-contained act of the Cabinet, and all legal acts need to be suited for Polish Constitution, there was a strong demand to specify function and tasks of the Committee in an act on cultural property. The demand was fulfilled by amendment to the act in 1999. The article 25 (b) says:

“1.Coordination of tasks concerning cultural property protection in case of an armed conflict is provided by Polish Advisory Committee, hereafter known as the Committee.

2. The Committee is auxiliary body of the Cabinet.

3. The Cabinet shall specify, in a resolution, the personnel of the Committee, its organization, range, mode and how it will be financed – having in mind realization of the Convention on cultural property protection in case of an armed conflict. Also, it shall specify rules of appointing and dismissal of the president, secretary, members of the Committee and their number, duties and rights, voting procedures, rules of financial cover of the Committee and duty to making reports on activity of the Committee for the President of the Cabinet”.

Presently, there is inter-departmental project of resolution of the Cabinet on function of the Committee, developed by Bureau of Defense of Ministry of Culture.

On the basis of article 8, act 9 of the act of February 15, 1962 on cultural property protection, Ministry of Art and Culture issued a resolution (February 16, 1999) on organization of provincial units of Monument Protection Service. Paragraph 6 says that “in those units there will be positions and departments created to perform tasks of defense and civil defense”. It makes it possible for Monument Protection Service to perform tasks of cultural property protection in case of an armed conflict, including development of defense projects on provincial level, supervision of works in cultural institutions, organizing training courses on cultural property protection in case of dangers.

- instruction on organization of cultural property protection in case of danger to the country or an armed conflict.

The issued decree and instruction used previous experience of cultural property protection in case of danger, but also introduced some new experience of political-economical changes.

#### **4.2. Act on cultural property protection**

Poland, considering the requirements of the Hague Convention of May 14, 1954, Paris Convention of November 16, 1972 on protection of world's cultural and natural heritage, laid legal grounds to protect cultural property against dangers of crisis or an armed conflict in act of February 15, 1962 on cultural property protection. It is reflected in article 25 (a), which says: "a relevant ministry of culture and protection of national heritage shall specify in a decree the rules of securing historical monuments against damage, devastation or loss, in case of a catastrophe, natural disaster or armed conflict, taking into account the rules of developing defense projects. Also, he shall specify forces and means to be used for security works, organization of protection on national, provincial and local level as well as within those institutions which possess historical monuments, and the tasks of granting special protection to historical monuments."

Now, General Monument Conservator is working on executive directive for article 25 of the Act, and takes into consideration the experience of 1997 flood in Poland.

In compliance with a directive of the 2<sup>nd</sup> Resolution adopted together with the Hague Convention of 1954, there is a public administration Polish Advisory Committee on cultural property protection in case of an armed conflict. The committee operating within different departments, is chaired by Ministry of Culture and was established by resolution of the Cabinet number 54/96 of May 14, 1996. The tasks of the Committee include:

- submit to government opinions on legislation, technical or military activities that should be taken in order to ensure enforcement of resolutions of the Hague convention;
- submit proposals to the Cabinet to ensure that in case of an armed conflict Polish armed forces are aware of, respect and protect cultural property on our own territory as well as other countries' territory;

ger". The project of executive resolution was developed by Ministry of Culture, and it is expected that it will be in force in 2003.

Act of June 27, 1997 on libraries, article 4 says that one of the basic tasks of libraries is to "gather, classify, store and protect library materials". The collections of special significance and value for national heritage are, as a whole or part, national library resource. The national library resource is under special protection. Article 6, act 3 says that: "*Ministry of Art and Culture, in consultation with relevant ministries, shall make a list of the libraries whose collections constitute national library resource, specifies organization of the resource, as well as rules and range of special protection*".

Ministry of Art and Culture, in a resolution of November 24, 1998 specified the above rules. A special protection of a collection, according to paragraph 5, consists of "*a plan of protection of a collection, security against destruction in shelters on the premises of library/museum, organization of appropriate protection, duplicating a collection by means of various technologies, limited access to a collection – scientific and exhibition purposes only*".

Act of August 22, 1997 on protection of persons and property specifies areas, objects and equipment under obligatory protection. Article 5, act 2 includes among these areas: "*museums and other buildings where national cultural property and state archives are stored*". A detailed list of the areas, objects and equipment is made by: President of National Bank of Poland, National Council of Radio and Television, ministries, directors of central institutions and province administrators. Registering area, object or equipment on the list is done by way of administrative decision.

Directors of organization units under obligatory protection are obliged to develop a plan of protection which must be consulted with appropriate police headquarters.

Article 6 of the act says that if there is such a motion proposed by President of National Bank of Poland, National Radio and Television Council, ministries concerned or directors of central offices – Ministry of Interior Affairs and Administration may introduce into organization units subordinate to, or supervising, the body-mover, regulations of protection enforcement of areas, objects and equipment under obligatory protection.

Such regulations are being prepared in cultural department and it will concern the units of the department under obligatory protection. There are 45 of them, for the time being.

#### **4.3. Penal code**

In Polish law, the sanctions against people who violated resolutions of the Hague Convention during an armed conflict are provided by regulations of the act of June 6, 1997 – Penal Code. Chapter 16 of the Code, "Crimes against peace, humanity and war crimes" defines liability for violating the resolutions of the Hague Convention. Article 125, paragraph 1 says: "*Whoever violates international law and destroys or damages cultural property on occupied area, or unrest area where an armed conflict is on-going, is subjected up to 10-year prison sentence.*" Paragraph 2 of this article rules that: "*If an act refers to property of special significance for culture, the perpetrator is subjected to a prison sentence, not shorter than 3 years*".

Article 126 of the act specifies penalty for illegal use of protection mark of cultural property. Paragraph 2 of article 124 says that whoever uses the protection mark of cultural property in contrary to international law during an armed conflict is subjected to a prison sentence up to 3 years.

Introduction of the above resolutions into the Penal Code satisfies demands of article 28 requirements of the Hague Convention of 1954, which obliged Part-countries of the Convention to introduce into their penal law regulations sanctions for acts which violate the Convention.

#### **4.4. Acts on museums, libraries, protection of property and persons**

Rules of cultural property protection in case of dangers found their way into other acts. They refer especially to protection of collections of museums, libraries, and protection of property and persons.

An act of November 21, 1996 on museums, article 2 specifies that one of the tasks of museums is to "store collections of cultural property in the conditions which would ensure their appropriate preservation status and security, and to store them in such a way that they are accessible for scientific purposes".

Article 5 specifies that entities which establish museums are obliged to ensure security for collections stored, and that "Ministry of Art and Culture, in consultation with Ministry of Interior Affairs and Administration shall define in a resolution rules of securing collections against fire, theft and other dangers of destruction or loss of property, as well as methods of preparing collections for evacuation in case of dan-

## 5. INTERNATIONAL TRAINING CENTRE FOR CIVIL AND CULTURAL PROPERTY PROTECTION IN CRACOW AS A FORM OF DISSEMINATION OF INTERNATIONAL HUMANITARIAN LAW

Dariusz DREWNIACKI

### 1. Introduction

Answering the question: "what one protects monuments for?" we say: "for good of all of us", because even being in somebody's own possession, the monuments belong to all of us as a *cultural property*.

Because of loss of cultural heritage, suffer not only a nation on which territory a war is waging, but also, all of us become poorer, at the very moment of annihilation of monuments.

The Preamble to the Hague Convention from 1954 regarding Protection of Cultural Property in Case of Armed Conflicts explains this problem univocally: "damage done to cultural property belonging to any nation is the same as damage to cultural heritage of mankind because each state take part in shaping world's culture".

Any person who learns a foreign language becomes even more aware of the richness and quality of his or her own language. In the same way, exposure to the diversity of human cultures allows us to appreciate even more the qualities of our own traditions and share our common humanity with us whose history differs from our own.

Consider the reaction of a Croatian journalist to the destruction of the Mostar bridge: "Why do we feel more pain looking at the image of the destroyed bridge than the image of the massacred people? Perhaps because we see our own mortality in the collapse of the bridge. We expect people to die; we count on our lives at end. The destruction of a monument to civilisation is something else. The bridge, in all its

Efficient protection of cultural property against dangers of peacetime and in case of an armed conflict calls for continuous training of people responsible for tasks in this field. Seminars, symposiums and experience exchange need to be organized.

A very important issue is to keep plans of cultural property protection up-to-date, which are developed by institutions having valuable collections, bring them up-to-date periodically according to new legal regulations. Realization of tasks in this field requires awareness, respect and observance of international agreements on cultural property protection in case of an armed conflict, in which Poland is a party. I am convinced that a scientific symposium organized in cooperation with Academy of National Defense will contribute to a better knowledge of specifics of cultural property protection regulations in case of an armed conflict, and wider implementation of these regulations into military training program of Polish Armed Forces. An important stage of implementation of regulations of cultural property protection within army structure will begin when instructions, interior regulations and directives including elements of cultural property protection on battlefield are issued. These regulations should be considered in guidelines on military training, decision games and military education. I am convinced that thanks to cooperative activities on this matter, it will be easier for Poland to fulfill requirements of international agreements and to protect cultural heritage.

- providing the complete as possible documentation on all protected cultural monuments,
- carrying out organisational preparations that will enable taking of actions in emergencies.
- educating and preparing personnel for required actions in emergencies.

The mentioned activities should be carried out by the conservation service in co-operation with the executive authority and citizens.

## **2. Documentation of cultural heritage**

Documentary evidence is the precondition for the protection, and particularly, for the preservation of cultural heritage. This precondition is important in time of peace but its significance is much greater when heritage is threatened by armed conflict. If we do not succeed in fully protecting a monument from ravages of war the documentation will enable us to renew the damaged monuments or claim the pillaged goods.

The documentation made public in time of peace will serve as a means of acquainting the broader public with the significance and value of the specific heritage. The documentation pertains to and raise the level of responsibility of every individual towards its preservation. Given that the documentation itself can be at risk in circumstances of armed conflict, it is necessary to implement corresponding measures of protection (microfilming, digitalisation and storage at various locations).

## **3. Organisational preparations for extraordinary circumstances**

In peacetime there is a need to carry out organisational preparations in order to apply special measures and procedures in emergency situations.

## **4. Training in procedures to be applies in emergency**

The human factor is decisive in the successful preservation of heritage in peacetime, and indispensable in time of armed conflict. For that reasons adequate education and training is of pivotal importance for the timely and effective implementation of

beauty and grace, was built to outlive us; it was an attempt to grasp eternity. It transcended our individual destiny".

### **1.1. Legal obligations in the scope of dissemination the rules on protection of cultural property**

Dissemination of knowledge of humanitarian law whether in times of armed violence or preventively in peacetime is a necessary precondition for respect of this law. A law unknown or not understood cannot and will not be respected.

Most of states are aware of the general provisions of humanitarian law establishing the legal obligation for States to disseminate humanitarian law as widely as possible. The obligations of states in this field applies not only in times of armed conflict, but already preventively in times of peace. What is more, the obligation applies not only to military, but also to the civil society. States are obliged under the Geneva Conventions and their Additional Protocols to include the study of humanitarian law within the programmes of military and, where possible, civilian education, so that these principles may become known to the population as a whole. (Art. 47/48/127/144 common to four Geneva Conventions).

Art. 25 of the Hague Convention (on the protection of cultural property in the event of armed conflict) of 1954 states: "*The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the text of the present Convention and the Regulation for its execution as widely as possible in their respective countries. They undertake, in particular, to include the study thereof in their programmes of military and, if possible, civilian training, so that its principles are made known to the whole population, especially the armed forces and personnel engaged in the protection of cultural property.*"

Art.30 of Protocol II to the Hague Convention of 1954 also states about the obligation to disseminate rules of protection of cultural property.

### **1.2. Elements of the system for protection of cultural property**

Regardless of all unknown factors the measures that should be undertaken in peacetime include:

tural Heritage Protection in Wartime and in State of Emergency. The conference was held in June 1996 in Cracow as a part of the Partnership for Peace programme. Poland was the first to suggest that NATO should bring the issue of cultural property protection into discussion on its forum.

During the conference discussions the Polish side tabled the initiative of creating the international training centre for central and eastern European countries to provide instruction for both civilians and the military members responsible for the protection of cultural property in case of emergency.

The initiative was welcomed by all participants of the conference i.e. by representatives of 15 states, international and non-governmental organisations. In 1997, the Minister of Culture and Arts turned to the Minister of Internal Affairs and Administration, suggesting that an international training centre should be founded.

The Chief of National Civil Defence has accepted the responsibility for creating the training centre and - in contact with the head of the National Fire Department - he has decided that the Centre will be located in the Postgraduate Firemen's Academy in Cracow where are we now.

The first training session was held from 24 to 29 of November 1997. It was participated by 27 persons, including employees of vivoideship units of the National Service of Monuments' Protection, who deal with cultural property protection in case of emergency, and defence specialists from cultural units supervised by the Ministry of Culture and Arts.

On the basis of the statement accepted by participants of the International Workshop on the Protection of Cultural Property in the emergency held in May 2001 in Cracow, the Centre of Training was turned into the International Centre of Training. The organisers invited UNESCO to take patronage over the Centre. The above mentioned statement is enclosed to your conference file.

By now the Centre trained over 500 persons.

## ***5.2. Programme of the Training Centre for Civil and Cultural Protection***

One of the main task of the Centre, apart from training in the field of civil protection is promoting and dissemination of knowledge also training specialists dealing with protection of cultural property in case of emergency in times of war and peace.

The Centre takes in the following activities:

protection and preservation measures in extraordinary circumstances. Education and training should aim at:

- providing experts in conservation services for implementing the full range of protection measures on cultural monuments (evacuation, technical protection, etc.),
- preparing officers and soldiers to follow procedures compliant with international regulations and laws of war, and particularly to restrain from any actions that could jeopardise cultural heritage,
- preparing customs officers and border police staff for preventing the illegal export of art objects and cultural goods,
- preparing tradesman and entrepreneurs for activities linked to the implementation of measures of protecting cultural heritage in extraordinary circumstances,
- acquainting state and local government officials with procedures in the event of
- emergency,
- training citizens, legal persons and particularly owners of art objects and monuments for protecting objects of art and collections in their ownership,
- preparing specialised associations (ICOMOS, ICOM etc.) for co-operation in the implementation of measures for the protection and preservation of cultural heritage.

In the course of training it is important to encompass all the mentioned groups since otherwise it will not be possible to effectively implement - due to its scope and variety - the measures of protecting and preserving cultural heritage in extraordinary circumstances.

## **5. The International Training Centre for Civil and Cultural Property Protection in Cracow**

### **5.1. History**

Protection of Cultural Property in Poland is one of the most important tasks carried out by the Civil Defence. It was on its initiative that the NATO Headquarters were presented with the Polish proposal to organise an international conference on Cul-

- implementing the Hague Convention regulations with reference to present armed conflicts,
- participation of non-governmental organisations in execution of the Hague Convention - the Blue Shield programme,
- the role of armed forces in protection of cultural property,
- social aspect in protection of cultural property,
- organisation of the system of protection cultural property in Poland in case of threats of armed conflict and in peace times,
- the system of protection of cultural property on the example of selected institution of culture,
- mastering cultural heritage of Poland, Europe and world.

### **5.3. Participants**

The programme is intended for the following participants:

- Representatives of the military, in accordance with their scope of duties resulting from international commitments;
- Voivodeships and self-government conservator of monuments,
- Directors of cultural institutions, libraries, museums and archives and their employees;
- Administrators and owners of specially valuable cultural treasures;
- Diocesan conservator of monuments, directors of museums and libraries owned by religious associations;
- Honorary tenders of cultural property, as well as representatives of social and non-governmental organisations;
- Defence specialists from museums, artistic schools, libraries and archives;
- Representatives of the National Fire Service, Civil Defence, Customs and Border Services and the Police;
- Directors and employees of Voivodeship Departments of Crisis Management.

Currently we are working on:

- creating the international programme council,
- programme assumptions for international courses,
- the Centre Statute acceptance.

- organising courses on the protection of cultural property in the event of emergency,
- organising international conferences, workshops and seminars for experts,
- promoting exchange of experience between circles dealing with the subject,
- maintaining and developing close co-operation with international governmental organisations, academic institutions and all public institutions dealing with the subject of cultural property protection,
- carrying out publication activities,
- collecting professional literature and documentation,
- initiating, supporting and participating in activities aim for influencing public opinion in order to increase interest in protection of monuments.

This year, the Programme Council of the Centre accepted the updated *Training Programme* within the scope of Protection of Cultural Property in Case of Emergency.

The programme which was acknowledged by the Commander in Chief of the State's Fire Brigades and Civil Defence comprises of the following items:

- basic knowledge about cultural heritage,
- protection against fire and life-saving,
- protection against criminality,
- protection against natural and human imposed disasters,
- protection in case of armed conflict,
- professional training established according to requirements of ministries carrying out the programme.

Organisation and realisation of the didactic process:

- the programme is carried out during five-day course - with total 40 hours,
- 30% of the time is intended as a practical training,
- 18 hours is intended as a professional training with regard to specially selected area,
- course participants receive a certificate of participation.

In the course of the programme a special attention is being focused on:

- international legal standards on protection of cultural heritage in case of emergency,

- Co-ordination of activities connected with the protection of the cultural heritage in case of natural disasters, and organised criminal activities.

Next year in the frame of Euro - Baltic Programme is going to be held an international conference on the protection of cultural property in the event of emergency.

## 6. Conclusions

Finishing my presentation I would like to repeat after Cycero: "*law is silent when weapon clangs*".

Humanity made an important step forward from the time of Cycero but there is no doubts that these words are still in time, because the horror of wars continuously accompanies us and military technique develops enormously.

Man tries to control using the weapon. We cannot forget that the best weapon is the one which limits access to it. The second kind of weapon is dissemination of humanitarian law.

According to the draft of above mentioned Statute, participants of the Centre could become:

- public and private institutions, organisations, committees engaged in idea of protection of cultural property,
- universities and scientific institutions,
- non-governmental organisations acting at the international level,
- persons with special achievements in the field of protection of cultural property,
- academic centres.

The first international course is planned for October 2003.

#### **5.4. Other forms of activity of the Centre**

Apart of training activities the Training Centre organises international symposiums and conferences. In May 2001, from the initiative of Polish Advisory Committee for the Protection of Cultural Property in the Event of Armed Conflict the International Workshop on the Protection of Cultural Property in Case of Emergency was held in Cracow.

The Workshop was participated by 130 participants including 45 from abroad. The following services were represented:

- the protection of the cultural heritage;
- rescuing and dealing with crisis management;
- preventing and fighting delinquency against cultural property;
- In the Workshop took part representatives from 13 countries: Austria, Belarus, Czech Republic, Lithuania, Latvia, Estonia, Germany, Poland, Russia, Slovakia, Sweden, Ukraine, Hungary.

The programme of the Workshop included:

- The main natural and civilised threats and losses in states of Central and East Europe;
- Legislative and organisational international co-operation in the field of the protection of the cultural property;
- States preventive measures to protect cultural heritage in case of emergency;

ships of countries, no country is able to ensure itself safety standing on its own. Ego-centrism was rejected in thinking about safety and one's own safety has become associated with safety of others and understood in complex and multi-dimensional way, in terms of politics, the military, culture and information, as well as economy and environment. Thus, the new concept of safety brings assurance of existence (by means of avoiding dangers) and development in future. It is worth realizing that safety keeps being identified rather by intuition than by revelation or scientific cognition. Safety is much like air, water, freedom or culture. We tend to appreciate their importance when we miss them. We fail to see though the need to protect them while they actually exist, but we do see it when they are gone. What a vivid issue this is now after the events of September 11, 2001 in New York and late October 2002 in Moscow. We realize that the truth about safety is not only the truth about its existence in a particular period of time but the truth about existence in the past, now and in the future. It is a process of building, creating and developing culture and civilization.

One of the most important fields which include the concept of safety, referring to individuals as well as society, is culture, especially national culture.

The process of national cultural integration is by no means a simple phenomenon. It is often accompanied by necessity to overcome autonomic, ideological, economical and political differences.

Preservation of cultural identity, in face of inevitable global integration processes, is to a great extent evidence of safety of country and – maybe more importantly – nation. Obviously, it must not become a prompt toward xenophobia, closure inside own traditions, uncritical glorification of own tradition and rejection of property of other cultures. Poland with its complex history and many century old tradition of tolerance may be an example of a country where issues of national cultural identity can be pinpointed. Huge devastation done by World War I and World War II, building up a country out of “three equal halves” after 1919, its reconstruction after 1944 with borders considerably changed and large migration which followed made it necessary to define our relation toward cultural property located on the territory of Poland which often was a product of strange and distant cultures. However, everything around us is a part of European heritage and this is worth remembering it.

Entering 21<sup>st</sup> century we more and more commonly become convinced that cultural heritage includes not only individual movables and real estate but whole complexes of historical monuments and their surroundings. Danger includes influence of

## 6. CULTURAL PROPERTY PROTECTION AS ONE OF THE BASIC ISSUES OF NATIONAL SECURITY, IMPLEMENTATION OF TASKS IN THIS FIELD IN ARMED FORCES

Ryszard BZINKOWSKI

I was prompted to take up this subject by frequent questions – also on the side of members of regular military staff – Why ever put so much energy into cultural property protection if, at the moment of danger these issues tend to recede into the background and give way to, apparently, more serious challenges of the situation? However, following my assumption that the soldier is not merely somebody who obeys orders but also a citizen, I have allowed myself to make a few remarks of rather wider character.

Nowadays, the meaning of the concept of safety covers not only political and military issues but also economical, ecological, social and ethnical aspects. In this context, cultural safety is particularly important, especially when we refer it to such issues as preservation of identity of man, local groups or whole society. Safety of culture as national value largely determines condition of a country, and therefore condition of its safety as well.

For the sake of further discussion it seems necessary to define some basic concepts.

**Culture** – the whole of material and spiritual property of humanity, gathered, preserved and enriched in course of its history, and passed from generation to generation.

**Safety** – wide concept, often difficult to define and reaching far beyond basic categories of war and peace.

In modern ages, system of basic human and citizen rights has become foundations of safety of man. Modern man assumes that today, in the age of interrelation-

used for defense purposes. The real estate is managed by Military Accommodation Agency and Agency of Military Property.

Coordination of the whole of activities in the field of dissemination of tradition, citizen training and cultural property protection, including military mementos and monuments is responsibility of Department of Education and Promotion of Defense in Ministry of National Defense. Its task is among others to disseminate in Polish Armed Forces awareness of necessity of protection of cultural property during armed activities on the country territory and abroad.

In order to conduct armed activities in compliance with regulations of international law of armed conflicts it is necessary for armed forces to follow some basic rules which include the most important one: to provide a commander who manages a given operation with appropriate information on enemy and surroundings. The information must include among others: location and character of important civilian buildings, especially protected buildings of cultural character. As a result of information gathered, appropriate precautions may be taken and appropriate decisions to ensure protection of cultural property – both during defense and attack. Fulfillment of this condition will make it possible to approach as one integral part: reconnaissance, analysis of potentials, marking targets of attack, as well as conduct of armed activities. This will exclude, or reduce to minimum, the possibility of hitting neighboring objects.

Unfortunately, it must be admitted self-critically, that appropriate records have not yet been included into combat regulations of branches of armed forces.

To sum up the remarks made so far, it should be noticed that a decisive factor in cultural property protection during armed conflicts is training and preparation in this field of commanders as well as those directly responsible for carrying orders. The basic question is: What are the possibilities of minimizing harmful effects of armed forces?

Undoubtedly, the starting point is wide knowledge of an area of armed activities. It is a task for the newly established Civil Military Cooperation (CIMIC) units. Their responsibilities include preparation and development of database on civilian environment – from local authorities, local inhabitants, international organizations, historical-cultural conditions to buildings of cultural heritage. These tasks are of specific character as their overriding purpose is to minimize inconveniences and negative effects

people and also conditions independent of man, for example natural disasters. However, it is war that has always been the biggest danger from the dawn of history. Little wonder then that cultural property protection during armed conflicts is so important in law of armed conflicts and it so important to protect cultural property against destruction or loss.

The basis for efficient system of cultural property protection is, first of all, to shape awareness of necessity of such activities. The process should be carried out on every level of education in military schools. It will shape habits of using and participating in culture, it will make it easier to understand the importance of cultural property protection. Armed forces of Poland play a double role here. On one hand, they are the owner and the user of cultural property, on the other hand they fulfill entrusted tasks in the field of cultural property protection.

In Polish Army coordination of activities in the field of protection of real estate managed by the army is done by Environment Protection and Monument Office of Department of Infrastructure in Ministry of National Defense which operates by means of Local Boards of Infrastructure Management. Generally the real estate monuments which are used by the army can be divided into two groups:

Military buildings (fortresses, forts, individual buildings, quarter complexes, places commemorating fights for independence, etc.).

Civil buildings adopted for military purposes (palaces, manors, churches, Orthodox churches, hospitals, parks, gardens of historical character, etc.)

Presently, there are 113 historical complexes used by the army, which are in conservators' care, including dozens of complexes and buildings of defense architecture. Most of them do not meet modern durability requirements set for modern forms of military architecture, which does not necessarily mean that there are no attempts being made to adjust them to these requirements, in compliance with law in force, naturally. Why such attempts are being made can be explained by the fact that Polish culture has suffered huge loss. With high expenditures by Ministry of National Defense budget several buildings and complexes were restored, for example: Czocho Castle in Leśna, complex of buildings of Cytadela Warszawska or the building of Central Archive in Modlin.

Transformation of needs of the military, particularly decrease in personnel, accounts for a vast number of military real estate being redundant or temporarily not

long tradition in restoration and reconstruction of monuments and pieces of art, seems to be fully able to prepare a group of highly qualified specialists of the line. Our experts are able to create a uniform, national team launched into area of a mission (operation) or be a part of multinational group. The area of operation can be Poland too, but these groups are mainly created with other countries in mind, on all continents. It is a result of Polish activity in peace support missions carried out as UNO mandatory missions or out of initiative of NATO member countries.

In order to enhance proper implementation of the program of cultural property protection in case of armed conflicts there is a very important scheme being realized by Department of Education and Promotion of Defense with intention to train a large number of officers and military personnel on a week course in Cracow (Cultural property Protection Education Centre ) covering these issues. There have been 120 people trained on 4 courses so far. Next year another course is being planned for CIMIC officers. These efforts are supported during programs realized by Academy of National Defense and mastery courses organized by the House of Polish Army.

Peoples Republic of Poland and its Armed Forces are very much concerned about protection of cultural property and cultural resources of the country in emergency situations. Appropriate records will be included in a project which is being prepared now of Directive of Minister of National Defense on introduction of temporary Instruction regarding Polish Army compliance with regulations in the field of cultural property protection in case of armed conflicts.

Tasks of cultural property protection are realized on many levels, primarily by means of dissemination activities. For example, publications in military journals or work done by central institutions of Ministry of National Defense such as Central Military Library or Museum of Polish Army. Considerable contribution has also been made by military garrison clubs whose offers include educational and tourist programs. We should also appreciate work of military divisions of PTTK (Polish Tourism Association) and Silesia Military Region Club in Wrocław which was the initiator of photographic and movie competition: "Defense edifices". Obviously these are only examples. We must not forget about activities of social associations, for example: Association of Friends of Fortifications which has many military men as members, or just to mention Association of Friends of "Osowiec" Fortress or Modlin Fortress – which are not exceptions by any means. It is worth making a point here that the last

of conducted military activities that may be suffered by civilian population and cultural property.

The data makes it possible for the commander of an operation to take appropriate decisions and take into account not only military aspects but also buildings and areas which should be counted out of armed activities. The tasks are realized by means of multilevel analyses done by CIMIC, choice, definition and location of military targets expected to achieve.

For these intentions to bring desired results, it is crucial to have properly trained and prepared personnel. There have been CIMIC units established on all levels of Land Force - from Land Force Command to a brigade. Officers, who make up personnel of the units, have been broadly educated and prepared, often at non-military universities. There are similar units in Air Force and Air Defense. However it must be admitted that personnel resources are far too modest in relation to current and planned needs. Therefore there is a need for supply personnel to support CIMIC units.

NATO member countries accepted the challenge to prepare teams of experts to support commands and military units. Among these countries is Poland which started running a process of creating civilian expert groups in several subject areas. Among the areas in which we train our representatives the following are included:

- public affairs;
- humanitarian help;
- culture and national heritage;
- economy;
- civil infrastructure.

There are several subject subgroups marked off within the field of culture and national heritage of our interest. They are, among others:

- reconstruction of historical monuments;
- reconstruction of buildings of cultural heritage (including monuments);
- reconstruction of collections and museums;
- inventory works on collections and monuments, including storage;
- religion, places of cult;
- historiography.

The issues outlined here, which present the area of responsibility of experts specialized in national and world's culture, seem to be absolutely right. Poland, which has

However, it must be pointed out here that there is still a lot to do. Polish joining the 2<sup>nd</sup> protocol, which is question of nearest future, will create a need for inclusion of new principles into military regulations and instructions as well as training courses and army exercises organized in line with UN peace keeping missions and undertaken activities by NATO.

Also military training programs need to take into consideration, to a higher extent that it has been done so far, issues of cultural property protection as a part of lectures on international humanitarian law of armed conflicts – not only in its theoretical aspect but also practical. It is very important to exercise skills and procedures of cooperation with local authorities and institutions responsible for cultural property protection.

It is these issues, particularly preparation of Polish Armed Forces units, headquarters and military schools for implementation of 1954 Hague Convention settlements and additional protocols, that were the main topics of a conference held in Warsaw on October 25, 2002 by Ministry of National Defense Department of Education and Promotion of Defense with cooperation of Ministry of Culture Bureau of Defense Affairs. The conference was on Polish Armed Forces activities in the field of cultural property protection in case of threats of war or in peacetime.

Director of Department of Education and Promotion of Defense invited to the conference among others: representatives of authorities of National Defense, Parliamentary Commission of Defense, Senate Commission of Defense and Public Security, National Defense Bureau, Ministry of Culture, Ministry of Administration and Home Affairs, Ministry of National Education and Sport, Fire Service Main Headquarters, Civil Defense Main Headquarters, General Headquarters of Polish Army, attaches in Poland, commanders of units of all branches of armed forces, chiefs of Provincial Military Headquarters, representatives of provincial monument conservators, employees of state organizations and associations which take care for monuments, and also media representatives. By doing this he emphasized a desire for closer cooperation of the military with all circles in the field of cultural property protection.

Among topics suggested in the conference program there are several worth mentioning:

- Legal and organization arrangements in the field of cultural property protection in case of threat to country or armed conflict;

conference in Bornem-Sulinowie was held under patronage of director of Department of Education and Promotion of Defense – Krzysztof Sikora.

Special appreciation goes to commanders of the units within which there are some historical buildings located. Having these structures in mind they were able to launch training programs, which focused on heritage of past generations.

Another important issue is ongoing construction of a database of protected buildings, which is to include their characteristics in case of an armed conflict – in form of publication as well as computer data available on commanding posts as a basis for decisions to be made a commander in the field of cultural property protection during exercises or armed activities, as well as during military training courses. So far, there have been 14 province databases created and handed over to Province Army Headquarters with cooperation of Monument Archive Center in Warsaw. Also a database was created for CIMIC purposes within NATO. It lists the most important buildings of cultural importance under protection including the following:

- Polish monuments put on the UNESCO World's Heritage List (both natural and cultural heritage – 11);
- Buildings ranked among historical monuments by President of People's Republic of Poland (16);
- Protected buildings according to Act of May 7, 1999 on protection of premises of former nazi concentration camps – Monuments of Extermination (9);
- Buildings and historical complexes included into registry of monuments operated by provincial monument conservators (there are estimated 60 000 of them today).

Also the following items of protected cultural property of Poland were highlighted:

- libraries making up for national library resource (55);
- most important cultural institutions;
- national archive resources;
- most significant archeological sites;
- historical park complexes and landscapes including cemeteries.

All these structures need to be included in military maps so as to be commonly recognized and be protected, in compliance with national and international law regulations.

## 7. PROTECTION OF CULTURAL PROPERTY IN SELECTED ALLIED ARMIES

Tadeusz KUBACZYK

For dozens of years armed forces of NATO countries have participated in peace keeping and peace restoring operations under auspices of UNO. Introducing UNO Peace Forces into unrest areas inflicted by armed or national conflicts obliges soldiers to know international law of armed conflicts. It is only knowledge and command of the law during peace operations, that makes soldiers contribute, apart from their mandatory commitments, to implementation of the Hague Convention resolutions. They also help the International Tribunal for War Crimes in Hague to fight crimes committed against cultural property.

Issues of cultural property protection have been familiar to the US Army. As early as before World War II, within the army structures there were officers responsible for historical buildings, pieces of art and archives. They were concerned with collecting information and informing commanders on cultural property which had significantly contributed to development of the world's cultural heritage. In 1944 US Land Force Command issued a handbook "Handbook of US Armed Force" (M – 357 – 17) and "The Guidelines to communication with civil authorities", which both included extensive information on historical buildings, pieces of art., and cultural institutions. Presently in US Department of Defence central institutions there are no separate cells dealing with these issues; instead, on lower levels of organization structures – both civil and military – there are legal posts whose range of responsibilities includes issues of international conventions and agreements. The legal posts play a substantial part in the process of providing national defence command and military commanders with legal surveys on planning and conducting warfare. They basically refer to the rules of engagement and targeting list. In this process, it is lawyers responsibility to inform commanders on possible impact of strikes on any structures which are con-

- Publications of Military Geography Board of General Headquarters of Polish Army;
- 2<sup>nd</sup> Protocol of 1999 to Hague Convention of May 14, 1954 as a new tool of international law;

Tasks of CIMIC specialist teams:

- Implementation of records of Hague Convention in activities of Armed Forces – training, exercises, preparation of soldiers for missions;
- Significance of education in the field of national heritage;
- Realization of tasks in the field of cultural property protection in Polish Armed Forces;
- Protection of movables and real estate in case of threats, experience of Central Military Library;
- Account of research carried out by Sociological Research Bureau on perception of issues of cultural property protection in armed forces.

On the conference a discussion was held on many issues. Yet, the issues presented are not a thorough exploration of the subject. Further activities should be supported by taking effort of organization to enhance fastest possible development of structures operating at war and in peacetime to deal with these issues. This should include training the reserve. It calls for activities on the side of Ministry of National Defense, General Headquarters of Polish Army as well as Commands of Armed Forces Branches but also civilian circles.

Without complex support for the process of solving the problem of cultural property protection and compliance with humanitarian law of armed conflicts, a commander is left to stand on his own. And if we consider how wide the range of his responsibilities is, it seems to be a task that he may not cope with by himself.

- targeting in compliance with law;
- limitations in targeting;
- rules of engagement (using troops by commanders).

Conducting operation tasks targeting list should include only military structures and objects which may influence military operation, i.e. enemy troops, defensive spots, and other structures, if their character, localisation and use may significantly influence military operation.

To avoid violation of international law regulations, commanders are required to verify systematically the character of targets chosen. A target may not be a civilian or property of civilian character:

- accidental damage;
- inappropriate use of civilian property (protected to cover military targets against attack);
- undefended spots (provided they are not inappropriately used)

A target must not be persons "outside battle", (...) "protected spots":

- buildings of religious, art., scientific, charity character, e.g. historical buildings, hospitals, etc.
- Structures for which there are no grounds to attack

In any military undertakings rules of proportionality should be followed, to make sure property damage does not exceed military benefit. Military necessity is acceptable, provided it is not banned. Any departures from objects inviolability may only occur in case of necessity to achieve military target. In such case, damage to a protected spot (property) must be limited to military benefits, the so called necessary damage. This necessity does not mean "following the line of least resistance". Any measures causing unnecessary suffering should not be used. In ant military operations it is also forbidden to use weapons causing unnecessary suffering.

In US army special attention is paid to following regulations of international law, law of war, and regulations of the Hague Convention. On all levels of command, up from brigade, there are operation legal advisors present during planning and conducting military operations. It comes from US military doctrine and directives of Ministry of Defence (DOD 510.77), which say: "all operation plans must have lawyer's opinion". Operation legal advisor is required:

- to be familiar with US war doctrine;

sidered to be cultural property, and on necessary steps that may need to be taken to protect this property.

General Legal Advisor and International Affairs are supervising compliance with international law of war on the level of US Secretary of Defence. The staff are experts on international law surveys, including law of cultural property protection. On US Armed Force ministry level there are Legal Advisors and, there are experts on international law in the office of Judge Advocate General.

Civil Affairs office is concerned with cooperation of military commanders with civil authorities, both government and non-government, home or foreign. In compliance with the directive 2000.13, US Department of Defence is prepared to perform duties in aid of civil affairs on the foreign territory, during peace and war. Civil Affairs matters fall under jurisdiction of Assistant Secretary of Defence Special Operation Low Intensity Conflict who is subordinate to State Deputy Secretary of Defence Policy. Particular part is played by Special Operation Command whose commander is responsible for assigning Civil Affairs units to Unified Combatant Command, as well as for their organisation, training and doctrine.

Civil Affairs units are present in all sorts of US Armed Forces, mainly as sub-units of the reserve and, if needed, they are assigned to commanders within Operation Commands. The biggest structural unit of Civil Affairs is battalion, on corps level. In practice, Civil Affairs sub-units are smaller groups (company, platoon, etc.). Civil Affairs staff, together with intelligence and military reconnaissance staff, take active part in the whole process of reaching decisions by commanders, and are advisors on, among others, cultural property protection.

Particular Civil Affairs units and Legal Office cooperate with organisations and institutions which, according to their charter, deal with gathering data on the world's cultural property. The information obtained are used to plan and conduct operation tasks.

In order to familiarise land force with issues of international law, particularly law of war, the US Land Force Department issued in 1956 *Handbook on conducting field tasks* (27 – 10) and *Laws of land warfare* (FM 27 – 10). In 1989 Navy Department, on the other hand, worked out *Navy Handbook* (1 – 10) and *Commander's Handbook on sea operation law* (NWP – 9).

The handbook pays special attention to:

- general rules of targeting list;

- implements ministry policy in the field of construction;
- negotiates on reconverting redundant buildings and their development by civilian environment;
- manages libraries, archives (of veteran circles), including maintenance and conservation.

It was only recently that French Armed Forces have started taking care of cultural property protection and preservation. In Denmark and Holland, on the other hand, these issues became a concern of state at the beginning of 20<sup>th</sup> century. In 1939 in the Netherlands, office of the State Inspector for Art and Science Treasures was created, to protect against threats of war. On the dawn of World War II both countries took special precautions in order to secure cultural heritage by building shelters to stock the evacuated art collections. Not only were the works carried out to protect cultural property, both in Denmark and Holland, famous in Europe, but also in the USA. The authors of a handbook for American army, drew up in 1944, wrote in chapter on cultural institutions within the Netherlands: "Citizens of Denmark cherish much of aesthetics for historical monuments and pieces of art of their past. They take great care of their old towns and are proud of their famous museums abundant in masterpieces of old masters. Dutchmen are realists and they perfectly realize how much those art treasures attract thousands of tourists to their countries and how strongly they have influenced economical power, fame and prestige of the nation. Danes, whose art tastes was largely influenced by tradition, are sensitive to artistic and cultural achievements, and there are few things that could possibly afflict them more than destruction of their favourite old towns, art collections and other significant cultural property. This is why any protection or preventive measures will be wholeheartedly welcome by Dutch society and they will make it possible to improve relations with any occupant army".

After World War II, Dutch government continued following the policy of cultural property protection and established office of Inspector on Cultural Property Protection. Each province appointed an Inspector on Cultural Property Protection. And in 1953, a position of cultural property and monuments protection officer was created in every military district of Armed Forces. Later some corrections were made and a position of cultural property protection officer was created.

Among main tasks realised by cultural property protection officer, during war and peace, are:

- to be familiar with sorts of weapons and operation methods of support units;
- to participate in work of committees on choosing targeting list;
- to give opinions on legality of use of particular sorts of weapons;
- to train soldiers and commanders on Rules Of Engagement.

General Carl Stiner's words – former commander of the 82th Airborne Division – are the best testimony to the part that operation legal advisors play during planning and conducting military operations and other operations: **"The two most important people with me during war were my lawyer and my Mass Media officer"**.

In French army there is the Board of Memory, Heritage and Archives (la Direction de la memoire, du patrimoine et des archives – DMPA) established in 1999 dealing with cultural property protection. It exists within structures of General Administration Secretary (Le Secretariat general pour L'administration) with chief being a direct subordinate to General Administration Secretary.

The Board of Memory Heritage and Archives consists of:

- education and cultural undertakings unit;
- heritage unit;
- archives and library units;
- real estate mission.

According to the Decree 99 – 945 of November 15, 1999 signed by French Minister of Defence, the Board of Memory Heritage and Archives:

- submits proposals to the Minister of Defence on cultural and educational activities within Armed Forces;
- creates educational and cultural policy of Ministry of Defence, in consultation with staffs of Armed Forces and management of services concerned;
- draws up legal acts on maintenance of museums subordinated to the Defence;
- takes care of national remembrance spots and historical monuments;
- prepares anniversary celebrations of patriotic holidays in commemoration of war and contemporary conflicts in which French soldiers have participated;
- is responsible for administration of real estate under Ministry of Defence, including managing the area, planning projects, architecture, historical monuments and **mpn**;

Military observers and monitoring staff are fully aware of aims of training. Soldiers, on the other hand, are much less enthusiastic about the lectures. Usually their attention is focused on staying alive. Nevertheless, having returned from a mission almost all soldiers admit that the training had been very important and wish to share their experiences and photos – seeing it as their contribution to the operation.

- prevention of damage or destruction of historical buildings, museums, libraries, objects of religious cult marked with blue and white labels;
- prevention of thefts of cultural property;
- preventing army from using historical structures storing cultural treasures as quarters or for any other military purposes;
- providing means of transport for possible evacuation of cultural property.

Armed Forces of Denmark frequently participate in operations launched by NATO or UNO. Because of this there have been training courses on cultural property protection systematically delivered since 1993. The purpose of the courses is:

- to bring awareness of the fact that cultural heritage may be a target of a conflict, susceptible of intentional destruction by any military means accessible;
- to make familiar with religion, culture, customs, history, cultural property of different countries as it leads to a better understanding of a particular situation, as well as to improving links between the army and society;
- to provide basic knowledge on architecture and protective markings, which will be helpful to distinguish among variety of objects.

The training courses include four groups of special topics. Group one includes monitoring of cultural heritage. Classes deliver information on Standard Operation Procedure and Cultural Heritage Monitoring Protocol of the Humanitarian Action Section ECMM.

Second group delivers announcements and reviews of basic information on history and art history, places of possible events, that is presumable area of a mission.

A vital issue is providing soldiers who leave on mission, data on holidays and days off by constitution in the country they are heading to. As it results from experiences gained on UNO operations, some holidays may provoke attack. An example is June 28 in Yugoslavia, when – in the anniversary of the Kosove Pole battle of 1389, a radio broadcast station in Sarajevo was blown up in 1995. These information are delivered within the third group of topics, the so called special days.

Training delivered in Armed Forces of Denmark on regulations of the Hague Convention of 1954, are approached very seriously and they bring measurable effects. At the end of training, commanders are given an instruction book on implementing guidelines of Cultural Heritage Protection Mission in a given area. Training groups participating the lectures consist of people of different level of awareness.

vention provides for a possibility of signing special agreements concerning any questions which (...) demand separate regulation<sup>16</sup>.

The Hague Convention, whose main purpose was to codify problems dealing with the protection of cultural property in case of an armed conflict, will never put an end to a process of developing new implementing instruments due to the changes taking place in modern warfare. Even though it is a historic point in international law, it still necessitates constant modifications and adaptations resulting from the progress of civilization<sup>17</sup>.

The events of recent years, especially those from Cambodia, the Middle East and the former Yugoslavia, have clearly demonstrated a need to develop and strengthen the protection extended over cultural property during armed conflicts as specified in the Hague Convention. As a result of these events UNESCO has revised its attitude towards protection of cultural property, and in 1992 the organization undertook actions aimed at modifying the Convention.

Poland actively joined the works on changing the Convention. Polish representatives participated in numerous expert meetings. Within the framework of the „Partnership for Peace” program, Poland's initiative led to a conference held in Cracow on 18-21 June 1996 dedicated to the issue of protecting cultural property both in war and peacetime. Participants included representatives from the departments of culture, internal and foreign affairs, police as well as armed forces from fifteen states (i.e. Belgium, the Czech Republic, Netherlands, Canada, Lithuania, Russia, Germany, USA, Hungary) in addition to international organizations such as NATO and UNESCO<sup>18</sup>.

The many year long efforts bore fruit in the form the Second Additional Protocol to the 1954 Hague Convention. Article 31 of the Protocol sets the standards for international cooperation: *in situations of serious violations of this Protocol, the Parties undertake to act, jointly through the Committee, or individually, in cooperation with*

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<sup>16</sup> M. Flemming, *Międzynarodowe prawo konfliktów zbrojnych. Zbiór dokumentów. Wybór*, Warszawa 1991.

<sup>17</sup> *Międzynarodowe konflikty zbrojne a ustalenie haskiej konwencji o ochronie dóbr kultury*, *Studia i materiały*, pod red. nauk. L. Łukaszuka, W. Śmiałka, D. Drewniackiego, Warszawa 1997, p. 33.

<sup>18</sup> For more see: K. Sałaciński, *Drugi protokół do Konwencji Haskiej z 14 maja 1954 r. jako nowy instrument prawa międzynarodowego*, [in:] *Siły Zbrojne Rzeczypospolitej Polskiej w działaniach na rzecz ochrony dóbr kultury wobec zagrożeń czasu wojny i pokoju*, Warszawa 2002, p. 57; *Metody i treści nauczania międzynarodowego prawa humanitarnego mającego zastosowanie w konfliktach zbrojnych*, red. nauk. W. Śmiałek, Warszawa 1992, pp. 38-71.

## 8. PROTECTION OF CULTURAL PROPERTY IN POLISH TREATY POLICY AFTER 1990 (TREATIES ON FRIENDLY RELATIONS AND COOPERATION)

Wiesław ŚMIAŁEK

Culture has long suffered from armed conflicts. Aside from damages inflicted as part of what is described as „military necessity” we have also observed intentional actions aimed at destroying cultural identity and the distinctive character of individual ethnic and religious groups. Such events have taken place with particular intensity in wars and regional conflicts of the second half of the XX century.

The transforming means as well as methods of combat have taken a considerable toll on the scale and the spectrum of damage inflicted upon cultural property. In many conflicts (e.g. the Balkans) cultural monuments were among main political targets. Religious objects have been attacked with particular fury (e.g. the Cashmere conflict between India and Pakistan).

All parties of the 1954 Hague Convention for the Protection of Cultural Property in Case of Armed Conflict undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility directed against such property.<sup>15</sup>

Article 18 of the Convention says as following: apart from the provisions which shall take effect in time of peace, the present Convention shall apply in the event of declared war or of any other armed conflict which may arise (...). Moreover, the Con-

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<sup>15</sup> Art. 4 point 1 of the Convention.

In addition to normalizing and expanding treaty relations with her neighbors, Poland made unprecedented progress in fostering relations with a broader circle of countries from the region as well as Western Europe by concluding treaties on good-neighborly and friendly cooperation.

A new, significant area of cooperation in Poland's treaty policy became providing adequate legal, material and other forms of protection over historical monuments and objects relevant to cultural and historical heritage of the other Party, or of both Parties, in addition to undertaking actions in order to reveal, preserve, combine as well as give access to such monuments and objects.

Scope and definition of cooperation in the field of protecting cultural property varies in individual agreements, although one is able to point out certain similarities.

From a total of nineteen treaties and agreements analyzed hereunder, only two do not mention cooperation in the realm of protecting cultural property, and three refer to a broad concept of protection and security of cultural heritage (see table 1).

Table 1

A LIST OF SPECIFIC REGULATIONS CONCERNING COOPERATION IN THE FIELD OF PROTECTION OF CULTURAL PROPERTY PRESENT IN TREATIES AND AGREEMENTS CONCLUDED BY POLAND WITH HER FOREIGN PARTNERS (by the date of signing)

No	Country	Date of signing	Article No
1	France	9.04.1991	-
2	Germany	17.06.1991	art. 28
3	Czechoslovakia	6.10.1991	art. 16
4	Hungary	6.10.1991	art. 12
5	Italy	11.10.1991	art. 18
6	Latvia	1.02.1992	art. 11
7	Estonia	2.02.1992	art. 11
8	Ukraine	18.05.1992	art. 13
9	Russia	22.05.1992	art. 13

*UNESCO and the United Nations and in conformity with the Charter of the United Nations*<sup>19</sup>.

An important factor in Poland's international cooperation was the signing of treaties on good-neighborly relations and friendly cooperation, both with neighboring as well as other countries.

Ideological preconditions played an important role in treaty policy of the Polish People's Republic (PRL). Cooperation in the field of protecting cultural property was not among the various levels of collaboration foreseen by numerous treaties on friendly relations, cooperation and mutual assistance signed by the PRL authorities<sup>20</sup>.

The reorientation of Polish foreign policy - a consequence of the 1989 political breakthrough - found its clearest reflection in the treaty policy. The regaining of full sovereignty by Poland enabled her to freely shape the country's treaty relations based on national interest<sup>21</sup>.

In a statement to the Polish Parliament made on 12 September 1989, Prime Minister Tadeusz Mazowiecki said that our foreign policy must be credible, open and reacting to changes taking place in the world from the position of our national interests<sup>22</sup>.

The decline of the Soviet empire and desire to strengthen relations with the West were among the main reasons behind Poland's, as well as other Central European states', determination to break off any formal political, economic and military ties to the USSR.

Parallel to severing old alliances, Poland began establishing new, friendly, cooperative relations with her closest as well as more distant neighbors.

As far as relations with neighbors are concerned, new aspects of Polish foreign policy were mainly based on rejecting imperial monocentrism, that backed by schematic alliance treaties within the Eastern bloc. Instead, Poland introduced current norms governing bilateral relations, adequate to the nature of partnerships binding her with surrounding states.

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<sup>19</sup> *Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict*, The Hague, 26 March 1999

<sup>20</sup> See: J. Kukułka, *Traktaty sąsiedzkie Polski odrodzonej*, Warszawa – Wrocław – Kraków 1997.

<sup>21</sup> Pawlak, *Polityka traktatowa Polski w latach 1990-1993*, [in:] *Rocznik polskiej polityki zagranicznej 1993-94*, Warszawa 1994, pp. 31-42.

<sup>22</sup> Report from the session of the Polish Parliament on 12 September 1989.

*mon undertaking in the spirit of understanding rapprochement. In Point 3 of the treaty Parties agreed to resolve in similar spirit any problems which may arise pertaining to cultural property and archives, starting from individual cases.*<sup>23</sup>

The Polish-German treaty cooperation in the field of protection of cultural property was additionally strengthened (Art. 33, Point 2) by a commitment to counter organized crime, including that concerning trafficking of art works.

In the aspect of Poland's new relations with her neighbors, an important place is held by the Treaty between the Republic of Poland and the Czech and the Slovak Federal Republic on friendly relations, solidarity and cooperation signed in Cracow on 6 October 1991. Art. 16 obliges Parties to *strive towards preserving cultural property of the other Party located on its territory*<sup>24</sup>.

A similar provision can be found in the Treaty between the Republic of Poland and the Republic of Hungary on friendly relations and cooperation concluded on 6 October 1991<sup>25</sup>.

The intention of consecutive Polish governments was to strengthen a wide scope of cooperation with Ukraine - one of Poland's major partners<sup>26</sup>.

Thus it is symbolic that the Treaty on friendly relations and cooperation with Ukraine had been signed four days prior to concluding a similar treaty with Russia. The Polish-Ukrainian agreements laid a foundation for closer relations between both states in addition to setting main areas of cooperation. Moreover, it referred to the complex Polish-Ukrainian history. Lengthy Art. 13 was dedicated entirely to the protection of cultural property. Referring to global and European standards defined by UNESCO, the 1953 European Cultural Convention as well as the CSCE documents, including the Cracow Symposium on Cultural Heritage, both Parties agreed to *provide adequate legal, material and other forms of protection over historical monuments and objects relevant to cultural and historical heritage of the other Party, or of both Parties, in addition to undertaking actions in order to reveal, preserve, combine as well as give access to such monuments and objects. Furthermore, in accordance with international law, bilateral regulations as well as other international standards, Parties will aim at revealing and returning cultural and historical objects which had*

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<sup>23</sup> Dz.U. RP 1992, nr 14, poz. 56.

<sup>24</sup> Dz.U. RP 1992, nr 59, poz. 296

<sup>25</sup> Art. 12 of the Treaty - Dz.U. RP 1992, nr 59, poz. 298.

<sup>26</sup> For more see: *Rocznik polskiej polityki zagranicznej 1993/1994*, Warszawa 1994, pp. 132-134.

No	Country	Date of signing	Article No
10	Belarus	23.06.1992	art. 22
11	Spain	26.10.1992	art. 16
12	Romania	25.01.1993	art. 14
13	Bulgaria	25.02.1993	-
14	Turkey	3.11.1993	art. 7
15	Georgia	20.04.1994	art. 11
16	Lithuania	26.04.1994	art. 18
17	Moldova	15.11.1994	art. 11
18	Uzbekistan	11.01.1995	art. 11
19	Greece	12.06.1996	art. 12

Combined by W. Śmiątek

In rest of the treaties one is able to distinguish provisions ranging from short, sentence long statements to complex articles concerning various aspects of protecting historical monuments, common cultural heritage and property.

Such differences are chiefly a result of varying historical experiences (particularly among neighbors), but also an effect of the time of conclusion of the treaties (e.g. France) or different international obligations.

The Treaty between Poland and the Federal Republic of Germany on friendly relations and cooperation signed in Bonn on 17 June 1991 was the first such treaty concluded by Poland after 1990, where protection of cultural property was considered a significant area of cooperation. In Art. 28 both Parties had agreed to *cooperate in the area of preserving and protecting European cultural heritage and to care for the protection of cultural monuments. Also, Parties. will extend special care over cultural sites and properties located on their territories that are a testimony to historical events as well as scientific and cultural achievements of the other Party, in addition to providing unlimited access to them, or will care for such access in cases where it is not in power of respective governments. The mentioned cultural sites and properties are under legal protection of each Party. Both Parties will carry out com-*

go through the process of democratic transformation following the „Spanish path”, meaning peaceful changes within the existing legal framework. Treaty between the Republic of Poland and the Kingdom of Spain on friendly relations and cooperation was signed in Madrid on 26 October 1992. In Art. 16 Parties pledged to exchange experiences and provide assistance in the realm of protection and renovation of cultural property and art works. This aspect is additionally strengthened by Art. 17 which deals with countering organized crime, including illegal transfer of cultural property<sup>31</sup>.

The overall treaty output from the period between 1990-2002 is both copious and diverse, mainly oriented on strengthening broad Polish security as well as intensifying political, economic and cultural cooperation with neighbors and regional partners.

Bilateral cooperation in the area of protecting cultural property, based on the Hague Convention and its additional protocols, holds an important place in Poland's overall treaty policy.

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<sup>31</sup> Dz. U RP 1995, no 28, poz. 84.

been lost, illegally removed, or otherwise illegally placed on the territory of the other Party. With this aim, governments of both Sides will appoint special representatives in order to handle such matters<sup>27</sup>. However, difficulties had surfaced in implementing provisions of the treaty. The Ukrainian side procrastinated with appointing its representative to reveal, preserve, combine as well as give access to historical monuments and objects of the other Party. Kiev was apprehensive of a possible tide of Polish claims. Ukrainian government called its representative into place only few months after Warsaw proceeded with a similar move<sup>28</sup>.

Following the disintegration of the Soviet Union, Poland turned to a policy of equal treatment of all the states which surfaced from this process. Relations with Russia, however, were a priority. The Polish-Russian Treaty on friendly cooperation, signed in Moscow on 22 May 1992 after arduous negotiations, is a document of fundamental importance regulating bilateral relations between the two states. Art. 13 point 3 of the Treaty reads as following: *Parties undertake to cooperate in order to provide adequate legal, material and other forms of protection over historical monuments and objects relevant to cultural and historical heritage of the other Party, or of both Parties, in addition to undertaking actions in order to reveal, preserve, combine as well as give access to such monuments and objects*<sup>29</sup>.

A will to collaborate with the aim of protecting cultural property was also expressed in treaties with Belarus, Latvia, Lithuania and Estonia.

Italy is a country with a long tradition in the area of protecting cultural property. Polish-Italian Treaty on friendship and cooperation was concluded during a visit by the Italian Minister of Foreign Affairs, Gianni de Michelis, on 11 October 1991<sup>30</sup>. In Art. 18 Parties pledged *mutual assistance in protecting and valorizing of cultural and artistic assets, as well as to strengthen cooperation between institutions responsible for protection and conservation of historical monuments, museums*. Furthermore, both Parties agreed to return to the other Side art works which may have been smuggled or otherwise illegally transferred from their territories.

Poland and Spain have much in common as far as historical, cultural, social and political aspects are concerned. Since gaining sovereignty, Poland has attempted to

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<sup>27</sup> „Zbiór Dokumentów 1992”, no 4, pp. 76-87.

<sup>28</sup> J. Kukułka, *Traktaty...*, op. cit., p. 94.

<sup>29</sup> „Zbiór Dokumentów 1993”, no 2, pp. 81-93.

<sup>30</sup> Dz. U. RP 1996, no 52, poz. 226.

Hungary's history and culture, they are not assessed to be of the same artistic values. In the past, our historic monuments fell under three headings: the properties representing the least value were considered simply as a *sight being part of the town's general view*; those representing middle level values were assessed *quasi-historic monuments*; and only the most significant ones were evaluated as *historic monuments*. These three categories generated misunderstandings in society, and, thus, in terms of requirements for subsidies and potential military defence as well. The three categories were all replaced by one single term: *historic monuments*, in 1992. Presently, when it comes to a distinction in these properties, there merely exists one aspect which is the *penalty classification in jurisdiction* for those implicated in causing damage to, or the destruction of, historic monuments. The Ministry concerned seeks to produce a list of the most significant historic monuments: the Act of our cultural heritage protection adopted in 2001 even provides an Appendix to list the individual, as well as groups of, historic monuments registered as exclusive state property. In the list included are, though not explicit in the Act, the objects to first be defended in the event of an armed conflict. At present, there are some 100 monuments in the capital and nearly 300 significant monuments in 19 counties throughout Hungary.

Another list to establish value assessment is the one called "World Heritage List", prepared by UNESCO, containing also several highly valuable Hungarian national properties. Should a warring situation occur in Hungary, the following properties are expected to impose relatively less challenges in terms of defending historic monuments: the National Park in Hortobágy, the vine-growing areas in Tokaj mountains, the village called Hollókő left intact hidden in a mountainous environment as well as the ancient Christian underground cemetery in the town of Pécs. As a result of an association of the neighbouring countries concerned, protected could possibly be Lake Fertő jointly possessed by Austria and Hungary as well as the cave system by Slovakia and Hungary. As was seen in World War II, it is a task of high priority to defend the military-wise strategically important points now registered as part of the World Heritage such as the monastery at Pannonhalma belonging to the Benedictine order, or the Castle of Buda Hill and the historic city quarter of Budapest.

The Benedictine monastery of Pannonhalma is situated on top of a hill named after Szent Márton (St. Martin) that can strategically be well utilised, located at the limit of the economically important countryside called Kisalföld (Small Plains) neighbour-

## 9. PROTECTION OF CULTURAL PROPERTY IN HUNGARY AND ITS MILITARY ASPECTS

Gyula HAUTZINGER, Attila GYÓR

### 1. The present situation from an historical aspect

In the territory of Hungary, no war has been waged since 1945. The only armed conflict that took place was the one happening in the autumn of 1956, i.e. the Hungarian nation's uprising that was overwhelmed in a bloody invasion by the Russian troops. This revolution ended up in a 3 and a half decade long occupation by foreign forces. But, happily, the militancy made no significant damage to the cultural heritage properties.

Retrospectively, it can be stated that the establishment of institutional protection of the historic monuments, i. e. the properties of cultural heritage, occurred in 1881. This institutional safeguarding, though in different forms, has ever since been sustained despite the changes in the state's territory, establishment and institutional system.

In Hungary, there exist 10,500 historic monuments currently registered as individually protected. In fact, all the objects registered as protected add up to a total well surpassing the above-mentioned figure since a considerably great number of building complexes of castles, factory sites, manors, fortress systems came to be designated as one single element in the registry. Furthermore, the yearly increase in the individual historic monuments is 50 on the average.

Apart from historic monuments currently registered as individually protected, 181 areas are declared historic environment to be safeguarded – parts of settlement sites and quarters providing for the authentic sight of highly significant, unique monuments. The historic cores as such, of 28 major towns in Hungary, are under protection. Although the ten and a half thousand historic monuments are an integral part of

1957 that erecting new houses in the "slot lots" left behind after the devastation of terraced buildings in warring conflicts, was commenced. With the designs of these new buildings to be agreed with those of the neighbouring ones that sustained and had in many cases been erected one century earlier, each of the new houses demanded individual design instead of the considerably cost-effective serial construction work. Prominent architects got down to the job, whose creations are now in the focus of the studies of the historic monument protection authorities. Several buildings as historic monuments, erected once in many a "slot lot", are now under protection<sup>33</sup>. Paradox though it may seem, wartime devastation turned out to be a stimulus for progress, one facilitating development. It still needs to be ensured, however, that jurisdiction for the protection of Hungary's cultural heritage in armed conflicts is formulated.

## **2. Jurisdictional and institutional background of the protection of Hungary's cultural heritage**

In 1956, Hungary joined the international convention of the protection of cultural properties in armed conflicts that had been created at the Hague in 1954. Hungary's joining the treaty was declared in 1957.

The peaceful period lasting for decades as well as Russia's Army's presence in Hungary, diverted us from the needs to enhance the policies stipulated in the Hague Convention. It is only the placement of Hague Convention emblem that a debate of any value took place about. Supported by aesthetic considerations, however, this initiation was finally rejected (perhaps, due to some other reason) – for the time being.

With the cessation of the Eastern Bloc and by Hungary's breaking independent while Hungary's would-be NATO membership was an encouraging factor too, the development of the legal and institutional background of the essential tasks was launched. In 1977, a decree (27/1997. MKM) was issued by Minister of Cultural Affairs to describe the civil defence tasks of the related area. Complying with the policies of the Hague Convention, the decree provides for a regulation, in details, in terms of the protection of the cultural heritage properties. As a requirement, it is in-

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<sup>33</sup> L. Pál, *Budapesti foghijbeépítések. In: A műemlékvédelem táguló körei*, (Szerk, Lővei Pál) Bp. 2000. p. 59-61 (in Hungarian language).

ing Austria. Back in 1944-45, even the Chief Abbot of Pannonhalma, though considered to have been of high societal position, could not achieve the elimination of military utilisation of the sacral complex of buildings. It was at the time the International Red Cross organisation that had actually been successful in preventing that – thus, to the monastery, only some minor damage occurred<sup>32</sup>. The monastery could then provide for even a sanctuary for Jews persecuted by the German authorities. However, the Castle of Buda Hill and the historic city quarter of Budapest did not turn out to be so lucky. The German Army headquarters of the ill-fated “Budapest Fort” was located right in the Royal Castle of Buda Hill, which resulted in the unavoidable destruction of the whole of the equipment inside and the major part of the building complex itself. After the siege staged by Russia’s Red Army, the former megalopolis was reduced to scorched ruins, exploded bridges and smoking remains of ransacked buildings.

In the aftermath of World War II, the chiefly peaceful though not undisturbed history of Hungary’s cultural heritage commenced with the compensation of the damage caused by the war. The renovation executed by specialists in the field has been successful. This has internationally been awarded with several of the World Heritage titles. And what is crucial above all is that the inhabitants of the capital as well as the tourists paying a visit to Hungary have now a chance to enjoy the view of a city restored as one authentically maintaining its historic role. In some places of the capital, memories of buildings destroyed in the armed conflicts still haunt today. As though they were a memento, the ruins of the once magnificent palace of the former Ministry of Home Defence are still to be found right in the middle of the Buda Castle Hill. Before World War II, the multi-storey building had been in good harmony with the neighbouring buildings that turned fully devastated. Nonetheless, this sad fact made it possible, in the site where those buildings used to be, for the archaeologists to launch a project that has since produced one of the most substantial group of findings in our times. A similar discovery can be attained in examining the history of the construction sites in the capital that had turned “slot lots” by the devastation of terraced buildings.

In Budapest, construction of new buildings, both detached houses and blocks in housing estates, commenced in empty areas never built in before. It was only after

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<sup>32</sup> V. Asztrik, *A Magyar Bencés Kongregáció története 1916-1996*, [in:] *Mons Sacer 1996-1996*, (Szerk.: Takács Imre) Bp. 1996. II. kötet, p. 342 (in Hungarian language).

### 3. Protection of Cultural Properties and the role of the armed forces

As it may be deducted from the above, Hungary has already achieved some results while having yet to do quite a lot more in the field of cultural property protection. We are way, way back. Our being stragglers is caused by the former Communist regime which, as we have mentioned it before, had not been supportive in handling the whole area. It is not meant to say that no development had occurred previously but, unfortunately, negative phenomena also manifested.

Two examples need to be mentioned to demonstrate how the protection of the several-century-old cultural properties was neglected. One such case was the sorrowful story of the Helikon Castle Museum and its park where an artillery unit was based for decades. It took a bold Director General (as well as the cut in military personnel after the change in the regime) that the Castle had its ancient park back, the rehabilitation of which has already started.

The other sad example was another prominent historic property of Hungary: the Grassalkovich Castle at Gödöllő, also known as Sissy Castle named after Kaiser Franz Josef's legendary wife. For decades, this place was the quarters of the Russian troops that "temporarily" occupied Hungary. The damage to these two historic properties cannot really be assessed (now only the most infamous cases have been mentioned), and their renovation takes a long time and requires extreme funds.

The approach due to the lack of sufficient knowledge in historic property protection is also miserable.

We are glad, and sort of envy too, to see the example of the neighbouring Austria where a civil organisation in the form of a national association with a brigadier general as president (which does not seem to happen by chance) was set up in Vienna to protect the national cultural property (Austrian Society for the Protection of Cultural Property). An important fact is that it has been working as such since 1980. A quotation from the organisation's mission declaration: "*In working together with similar initiatives in neighbouring countries the idea of protection of cultural property should be continuously strengthened on a broad international scale.*"<sup>34</sup>

Considering the example of that organisation in the neighbouring Austria and its valuable message that it has for us too, it is the right time for us here at this confer-

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<sup>34</sup> *Protection of Cultural Property in the Event of Armed Conflict*, Edited by E.R. Micewski, G. Sladek, Vienna, Armed Forces Printing Office, 2002. p. 159.

cluded in the decree that all organisations concerned are to have a plan, thoroughly worked out and approved, to safeguard cultural properties and, besides, are to provide sub-units to execute this mission. Stipulating the packing methods, the storage aspects and the shipping specifications of the cultural properties in emergency, the decree urges the development of further professional regulations.

Providing an excellent example for co-operation, a protocol was signed by Ministry of National Cultural Heritage, the Office for Cultural Heritage Protection and the National Directorate General for Disaster Management. Besides prevention, contact and joint professional command and control, the protocol demands that the signatories enable fast exchange of information in terms of computerised registry and processing of databases.

The participants seek to achieve this while utilising international experience adapted to the circumstances in Hungary.

Between Ministry of National Cultural Heritage and Ministry of Defence, negotiations on co-operation to protect archaeological heritage and (quasi-)historic monuments, started in 2002, which is still in progress.

According to the protocol that has been formulated, MoD would assume bolstering a more precise determination of archaeological-historic treasures by its military capabilities available in aerial imagery, space informatics and cartography. The accord would enable – while strictly complying with reticence law regulations – a cultural heritage registration or, possibly, the protection of military objects.

According to the protocol, the cultural portfolio would also bolster involvement of special tasks of military heritage property protection in the MoD preparation and training plans.

In FY 2003, a considerably high sum is appropriated from the state budget for fulfilling the personnel and equipment demands of the establishment of a database of protected historic properties to be jointly registered by Office for Cultural Heritage Protection and Ministry of Interior.

The goal of making joint databases is to provide protection against robbery of artistic properties and to facilitate a more effective crackdown on the perpetrators. Making joint databases can also contribute to salvaging several irreplaceable national treasures in the event of an armed conflict.

In our opinion, it is also relevant that, in all of the military operations, the list of important cultural heritage protection properties located in that area should be included in the records of the military operations plans as well as the military operations conducted (or planned). In fact, cultural heritage protection must become part of military operation planning.

Military-wise, it is the CIMIC organisations found in every staff today that appear to be the most suitable to execute the tasks of the sort. The CIMIC experts should participate in regular international training to be delivered, possibly, by the NATO school at Oberammergau, Germany, or any national military higher educational organisations that assume responsibility for this valuable task.

#### **4. Protection of Cultural Properties in military training**

As it has been mentioned before, we believe it is relevant that the protection of cultural heritage properties is involved in the military training system. Its first and most essential step is to introduce the protection of the cultural heritage of all nations in the national military higher education system that prepares the future commanders. The cultural heritage protection attitude should be developed with them. By us, Hungarians, this significant study is recommended for introduction at each level.

As has been mentioned before, we hereby request NATO authorities that they provide for the possibility – since they can utilise NATO training capabilities and do have the conditions needed – of launching (short, five day) seminars on cultural heritage protection every now and then, with students from NATO member states and PfP countries.

All the same, we believe it is of importance that in all types of military training, the military personnel should be prepared for cultural heritage protection, as to both the properties of the homeland and those of foreign lands. May it become a factor generating awareness on the matter!

**In military operations, cultural heritage protection is guaranteed by an effective co-operation between organisations, both governmental and non-governmental.**

As we have seen it for nearly a decade, maintaining peace extends farther than state borderlines or the boundaries of our allied nations. As for the Afghanistan operations, this might even mean distances of regions or continents to cover.

ence to proclaim our own message related to the Visegrad Treaty countries' initiation to suggest that such civil associations should be set up in all countries where no such an organisation has up to now been established. I am certain that our Austrian friends will readily share their experience of their activity started more than two decades ago.

**It is essential to make the military change in their attitude in order to protect irreplaceable cultural heritage properties.**

What military men will ever do to achieve their purposes is, basically, determined by the art of military. This could even be observed with troops acting in military operations in the past couple of years too. The image of the devastated bridge of Mostar is a tragic one never to be forgotten by any of the intelligent and civilised people in the world. That part of our World Heritage vanished, right after it had been declared, while we could be following the destruction on television as "spectators". It was some release for us, Hungarians, that as soon as the Balkans situation had let it happen, Hungarian engineer specialists launched a restoration project.

In our opinion, it is essential to make the military absolutely change in their attitude in order to protect cultural heritage properties. To achieve this, it is a must that the subject of cultural heritage protection should immediately be introduced in military higher education and all types of military training and preparation. This should cover the cultural heritage protection of our own country's properties, on the one hand, and the thorough preparation of military personnel to be deployed in peace-keeping missions that are getting more and more frequent and centrally-organised, on the other.

Military commanders must have a list of properties in their area of operation to which cultural heritage protection is to be applied. In planning their operations, the military commanders should consider the following stages and the related tasks:

- a preliminary operational planning,
- an on-the-spot study and reconnaissance of the area of operation,
- a deployment to the spot,
- doing this over the whole period of time of the military operation.

In our opinion, the cultural heritage protection properties should emphatically be involved in all of the military operation plans while no employment of these object on the part of the military should ever be involved. Receiving an order to the contrary, a commander should be obligated to warn his senior of this fact, and to include it in the military operations records.

On our behalf, we propose that the conference should please consider and approve – and, in case of positive support, extend for international use – the ideas as follows:

- In our countries (naturally, in those where no such is operative) a civil association is to be established to facilitate cultural heritage protection on the part of governmental organisations,
- Cultural heritage property protection will have to be integrated into any future military operations planning,
- Cultural heritage property protection must be introduced in military higher education and even in all types of military training and preparation. We propose that NATO authorities concerned should consider the ways to integrate cultural heritage protection into the Alliance's training system to provide for such international skills of CIMIC experts in particular, in the future.

So, the job is being done on. Now that we do have as much as that is also to be regarded as some result. We feel that the time, just more than a decade, that has passed since the toppling of the Communist regime, however, has not really been sufficient to catch up with our many, many years' backlog in the field, especially compared to our colleagues' achievements in the Western countries. We seek to do our best in this prominent field, nevertheless.

This is exactly what we seek further help in. We also want the authorities concerned to consider the proposals in our short study. May this come true according to the words of UN human rights expert Prof. Dr. Felix Ermacora of Austria: "...*cultural protection should be given the same consideration as human protection*"<sup>35</sup>.

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<sup>35</sup> *Protection of Cultural ...*, op. cit., p. 157.

A globalisation process is seen not only in the security challenges but in the responses to these as well. In this international situation, we witness more and more Combined Joint Task Force operations (or CJTF ops, for short), as they are referred to in NATO terminology. CJTF ops are demanding tasks to carry out due to the circumstances, and are sophisticated due to their being of multinational character.

In such cases, it is even a stronger demand that the organisations commanding and supporting the execution of these tasks should be co-operating.

Beyond international organisations and the governmental organisations, the role and activity of other, especially, non-governmental charity organisations is being stepped up. The involvement of the representatives of these organisations is another task of importance. By their role and influence, these organisations may many times be more effective than military commanders. From the Hungarian history of World War II a good example was the case of the monastery that is now registered as part of World Heritage – that millennium-old property of the Hungarian cultural heritage was at the time under the sanctuary of the International Red Cross organisation, thus avoiding the war destruction devastating the immediate environment.

The involvement of these organisations in the future military operations is inevitable.

## **5. Summary**

Two purposes are combined in our short summary. On the one hand, an historic review of the 120 years of the cultural heritage protection in Hungary is what we have intended to provide – the results that have been achieved up to now and the tasks we need to carry out in the near future. On the other hand, on the occasion of this conference we offer possibilities for consideration in the military aspect (in case of governmental support, for their representative experts as well).

Those announced on the part of Hungary have been personal views though by those representing governmental offices. It seems, however, that no difficulties will occur to make our authorities agree with our views and approve of our proposals (especially when this conference has come to an agreement related to this issue). An example of this could be the presence of all of us here, which, by the intentions of organisers, is a proof of the co-operation of a civil organisation and a military organisation at this significant international forum.

and capacities. Thus, it is understandable that we engaged our available knowledge from geoinformatics area to fulfill the tasks of defense, record keeping of war damages and post-war renovation projects. Building of Digital Croatia as a project whose final realization will ensure usage of easily available data of various consumers of computer maps, geocoded data bases etc. was started in the course of the war.

Apart from the renovation projects that should be prepared, financed and realized, collection of factographic materials and data systematization on the war destructions and its tragic consequences is by its scope and type, an enormous task to be fulfilled.

However, each process of renovation and reconstruction starts with study of records and damages systematization followed by developing the whole project renovation documentation and even space documentation with urban design plan. An expert approach to documentation development is especially important in the projects with international aid involvement since the World bank, UN, UNESCO and other international institutions require quality documentation as an each demand appendix for renovation projects financial support. Based on the experience it can be determined that, while collecting data, their analysis and developing renovation projects within GIS environment one should distinguish three critical detail levels:

**Macro level:** The projects are based on data for countries and regions or big cities whereas graphical data are small- scale maps such as: 1:1 000 000 to 1:50 000.

**Mezzo level:** The projects refer to some smaller towns, town parts or groups of villages whereas graphical base are scales between 1:25 000 and 1:5.000.

**Micro level:** The projects are prepared and conducted for smaller object groupings or some objects while graphic data are scales 1: 1000 to 1:1.

### **3. Post-war renovation in the Republic of Croatia**

The most serious disasters, first of all, refer to people suffering followed by damages on culture and sacral monuments, especially on churches being always very important for our catholic people.

This fact was well known by the aggressors who dedicated special attention to churches destructions. It resulted in destruction and severe damages of several hundred sacral objects in the Republic of Croatia area during their occupation. They had fun by shooting church bells in the heart of Europe at the end of the second millen-

## **10. MODERN TECHNOLOGIES IN CULTURAL HERITAGE MANAGEMENT**

Davorin KERKOVIC

### **1. Introduction**

The Second World War was followed by approx. 300 wars and larger regional scale armed conflicts. Unfortunately one of them refers to the Republic of Croatia that was forced to get rid of the aggressor by armed resistance. The war attack on the Republic of Croatia started in 1990 and resulted in suffering of people, families, villages, towns, destruction of material possessions and natural resources as well as devastation of culture and nature monuments. Croatia is now free country but with severe consequences of the war and barbarian destructions and damages that will take decades to be restored. Also, numerous facilities of the protected monumental heritage and nature should be renovated, reconstructed and repaired.

### **2. Geoinformatics support – GIS**

Computer technologies, i.e. modern informatics and geoinformatics are complex options of using technologies and abundant expert knowledge in many fields of life, science and economics. All data on artificial and natural environment are geocoded space elements organized in thematic layers whose dynamics is, within data interaction, fast and precisely analyzed by these Geographic Information System. It allows quality decisions making for processes management being of crucial importance for towns, countries and regions. The Republic of Croatia has been for years at the world achievements level in terms of the knowledge and capacities of its experts and specialist centers although we are slightly slow in application of these knowledge's

of witnesses, defenders, video and photo documentation etc. The enormous task in terms of data gathering has been fulfilled by numerous project cooperators, Vukovar experts, geodesists, town planner, defenders and others.

It was the first GIS project developed without possibility of field approach and physical data verification, direct inspection into the situation in the very Vukovar area.

This procedure yielded in thematic map 4 AO which displays post-occupation Vukovar situation entitled "War destructions of Vukovar town in 1991". It was presented to the world public as a special evidence of all that had happened, in Croatia particularly in Vukovar.

It is worth mentioning an expert article on GIS for Vukovar renovation published in, at that time, well known international review "EUROPE GIS" 1994.

The entire fund of data and project possibilities should have been preparation base of faster and more quality Vukovar town renovation. Unfortunately, it can be stated that there people in charge were not interested in the digital map and data base as well.

This first GIS project of the renovation of the town having 80 000 inhabitants is, at the same time, the first one left as archives.

It should be pointed out that this digital project documentation has been passed to an International Tribunal in Hague used in the war criminals investigation and hearing evidence in the current processes.

Furthermore, it is very interesting to say something about renovation project of Tvrđja in Osijek that was, apart from being damaged due to its antiquity, destroyed from the period of the last town occupation in 1991 when all the existing buildings were severely damaged, especially after explosion caused by dynamite, sent on the Drava float, remotely activated in Osijek town vicinity, near Tvrđja.

Pioneer work was conducted by Osijek Geodetic Department that started to design Tvrđja lay-out with all objects and graphic data at a scale of 1:5000. The first attributive data layer was an evidence of shell shots within Tvrđja area. It was followed by the preparation of the first improvement damage phase and priority buildings renovation. Numerous other layers of data regarding space, consumers, owners, inhabitants etc. were also analyzed.

Today Tvrđja is being prepared for other purposes, different from the military one it had since recently. GIS was involved in the renovation project and Tvrđja complex

nium. Requirements for systematic data gathering on demolished churches in the Republic of Croatia were imposed by these war destructions. Data should be mapped, damages estimated and renovation projects prepared as soon as possible. Apart from that, this project allowed illustrative cartographic materials to be developed instantly. They enabled this war destructions segment, occurred in Croatia, to be presented in the world public. A set of simple maps has been developed for the whole area of the Republic of Croatia. Also, destruction of the churches in the period 1991-1993 has been presented. The project was developed in cooperation with Catholic Information Agency at INA entitled «Demolished and damaged Roman Catholic churches in the Republic of Croatia from 1991 to 1993». A part of data on damages was, due to occupied area, obtained on the basis of witness evidences or via photo-documentation. Photos of some objects demolishing was also taken by the enemy's video or photo cameras. In that way he provided documentation material.

Systematized data should also be used in the renovation process as an organized base of geocoded data significant for the country.

This small project is only an example of a simple way how geoinformatic knowledge was used at the very beginning of the war in the Republic of Croatia.

This type of analytics can be categorized as a regional spatial analyses or MACRO analyses by the author's classification.

The examples of using knowledge and possibilities below represent application of geoinformatic potentials on Vukovar and Tvrđja renovation projects in Osijek. In 1993 a digital map of wider town area based on 12 cadastral sheets at a scale 1:5000 with entities as follows: coastal line, traffic roads, railways, lay-out residential, industrial, sacral and other objects, transmission lines, special- purpose polygons and many other graphic data was developed for Vukovar in INA (Oil industry), INFO, GIZIS Centre. The above mentioned should have been the bearers of the attributive data in the forthcoming project phase. Apart from the above written entities, graphic data from General Spatial Plan of Vukovar town, i.e. Land Use Plan developed immediately prior the war were also recorded.

Regardless renovation project, organized data bases should have been used in humanitarian purposes, lost and missing persons search as well as in organization of displaced persons return.

The priority layer of attributive data included estimation of the destruction degree in 1991 whereas data base was designed on the basis of the documents, evidences

Camps, settlements and accommodations were constructed for refugees and displaced persons. Thematic maps with the results of ethnic cleansing, compulsory migrations, searching for missing people etc. are also projects where GIS was used as a powerful means of analytics and quality graphic presentation.

Validity and power of the complete modern geanalytics will be soon noticed at financial recovery of a special devastation and damage types. Namely, the war consequences present numerous mine fields, still precisely neither determined nor located comprising a large part of the Republic of Croatia. Mines can be found everywhere: in fields, waterways, lakes and other various natural spaces. Gis technologies application is inevitable in cleaning all these explosive means. At the same time this is a matter of financial recovery of other harmful war consequences such as pollution and contamination of soils, waters and others which will require all available technical abilities starting from GPS, satellite images of the observed space to complex ecological GIS analyses of the whole monitored area. It should be pointed out that data of 1 cm precision level is also used while working with preparation and implementation of field mines clearing.

A special example of nature damages represents Kopacki rit which is, due to mine fields and explosion devices set under water level, partially available, making financial recovery and care impossible for this unique nature reserve.

Modern technologies application is, apart from the post war renovation, significant for Post Disaster Renovation Projects. It is an example of change of the same maps and lay-outs of Dubrovnik town in earthquake damage registration and records as well as in Dubrovnik shelling damages registration and estimation occurred in 1991.

Experiences, knowledge and digital bases are universally applied and useful for different special conditions such as: fires, inundations or ecological accidents. Knowledge and resources are always crucial no matter if it is post application or analytical potentials required for preparation, observation or some unfavorable impacts prevention in the given area. Large inundations can be prevented for sure. However, observation of, for example, oscillation of the tide wave, changes of water area arrangement and size as well as all activities related to inhabitants, possessions rescue and larger damages prevention are the main knowledge applications regardless usage of the existing and latest data on space, inhabitants, artefacts and others deserving concern.

management. We believe that this Tvrđja renovation project will be realized and multi-purpose used in both renovation and management.

Similarly, evidence of our regions and towns destruction caused by the last war was done by GIS that developed thematic destruction maps of Dubrovnik town, i.e. strait town core, being destroyed by barbarian shelling from both continent and sea during the war.

It can be said that modern geoinformatic knowledge was firstly used for precise damage keep recording and layer displays of reconstruction and improvement operations.

The above quoted renovation projects of Vukovar, Osijek Tvrđja and Dubrovnik belong to MEZZO level GIS projects.

Renovation projects of the smaller architecture and urban complexes with very large graphic data scales 1:100, 1:50, 1:10 even 1:1 are included in MICRO level domaine of geoinformatic technologies application. These last scales 1:1 are intended for treatments of architectural plastics which requires detailed developed documentation or can be designed in Geographical Information Systems environment. The project approach is complex at the beginning and sometimes expensive, but profitable since it is very often used in interdisciplinary analyses and operations in the processes of financial recovery, maintenance and in the activities of maintenance and management of these buildings.

#### **4. Other examples of using modern technologies**

Project of special cartographic presentations for analysis of the existing situation in Banjalucka diocese (Republic of Bosnia and Herzegovina) where many districts were completely displaced, sacral buildings destroyed and Catholic population of Banja Luka diocese, spreading from Posavina to Herzegovina, practically disappeared was realized ba GIS technologies. Quality and illustrative analyses were conducted in 1994, especially for the visit of pope John Paul II to the Republic of Croatia, when these unique materials were given to him.

Application of geoinformatic potential has not been restricted only to the renovation building project . Demographic image of the Republic of Croatia has been recently subjected to many changes due to migrations, compulsory ones, when hundred thousand people and families have changed their living places within few days.

tion in the given area with all elements of social, family life, production, farming, residence, education, use of natural resources, entertainments, sports, transport etc.

Intervention activities are possible to be realized by means of available data. Equipped and educated experts, from many world-wide countries, are able to prepare, in a very short time, basic graphic data and connect the existing attributive ones, being priority for the care action about the whole analytics and information relative to field. Geoinformatics should fulfill tasks regarding data gathering and processing on people, nature, infrastructure, the area itself and changes occurring within it. It also should help by its priority interventions.

In many cases graphic presentation, being a base of each visualization and analysis, is a satellite image of the given region which, even in today's commercial version, provides graphic data of such precision that things sized below 1m<sup>2</sup> can be seen. What worries is the fact that such images, often found in the archives of the big world companies, represent embargo documentation and are not available to humanitarian organizations.

While dealing with Vukovar renovation design, we tried in vain to provide Vukovar region satellite images for developing evidence of the existing state in terms of residential and other buildings. In spite of being known that such images existed it was impossible to get such documentation. Thus, the enclosed working version of Dubrovnik declaration serves as an appeal for forthcoming situations requiring space and events information for those who need, offer and organize aid. It is a contribution to humanitarian considerations on geoinformatic papers being created very fast in powerful world force systems.

Possibilities of wider usage of these modern procedures and means for data gathering and conducting complex analysis in the post-war and post-disaster projects will be discussed at professional meetings in the world. Our experience in the Republic of Croatia is very interesting for many dealing with post-war renovation and reconstruction problems. It is proved by: invitation of the Institute for renovation from Cracow for Croatian geoinformatics experts to present their papers, experience and exhibit thematic maps as well as graphic products at Symposium held in May 1998, invitation from MO Republic of Poland in 2000 and 2001 as well as invitation by Ministry of Culture of the Republic of Poland for this meeting in Cracow 2002.

A very interesting example of using top specialist knowledge for Nature park - Lonjsko Polje management requirements is developing Pilot project for tide wave monitoring in the center of the park. The river Sava inundates approx. 200 sq. km<sup>2</sup> inhabited by working people and wild animals. Twenty villages being located in this nice area are characterized by numerous arable lands and extensive horse and pig raising sites. The Nature Park Lonjsko Polje is the largest European inundated plain being known as the biggest black stock habitat in Europe. Developing and using systems for monitoring all and the slightest changes in terms of water inflow and all water sheet size oscillations was possible to be done in the pilot only by means of precise geodetic surveys and data processing by the top quality GIS software.

## 5. Conclusions

Very often complex technologies and poor technical equipment completely make impossible wider using GIS for many demands indicated as priority ones during conflicts or disasters in the war-struck countries. Thus, all activities related to humanitarian aid, inhabitant movements, traffic corridor state analysis, etc. impose application of fast possibility of analysis and geocoded data record. Possibilities of providing GIS data and technical means, depending on abilities and time available, for all operative structures of struck countries as well as humanitarian organizations have been considered. The best solution is, maybe, to realize the whole geoinformatic analytics and informatics service beyond the respective country within some relevant institution preparing all data for consumers in cooperation with experts and subjects of the respective country as well as with international organizations, LTN etc. The above mentioned could be done at least at the very beginning, except in the cases of highly developed countries.

In fact, few variants of modern geoinformatics application in post-war and post-disaster situations should be especially distinguished.

One segment are activities, humanitarian field actions, occurred immediately after events or in the course of the same one, others are variants of preparation and implementation of renovation and financial recovery, often being long-term, complex and expensive processes. So, it is not matter of financial recovery of only monumental units and buildings within protected nature but possibilities of complete life renova-

In this way sites of the war conflict or disaster are precisely analyzed by political and military experts. However, many data, images of various technical characteristics and additional analytical possibilities already exist as archives of the respective companies and government of some countries.

Sad, but detailed experiences in preparation and implementation of aid and renovation projects indicate that they make their way very slowly due to numerous justified reasons. Especially important are data required for the complete inspection of the existing status of natural resources and consequences of the destruction occurred on the artifacts in the given area. Not less important are data on inhabitants, their life and work style, traffic corridors, infrastructures etc.

Each financial recovery intervention starts with inspection of the existing situation at different levels-starting with regional via town and provincials to micro-level dealing with smaller architectonic units even with individual buildings.

Thus, data requirement scale is very wide but possibilities for expert teams to be supplied with quality data are very low since war devastated areas are completely unprepared for qualitative professional and information support of the working groups with required data or natural catastrophe destroyed and devastated regions have no resources to support renovation plans and projects.

So, in order to be able to design renovation plans as faster and better as possible, expert groups must solve the problems of resources of adequate data, maps, reports, documentation, geodesic surveys, photogrammetric data etc.

In the cases of small-territorial scale wars, situation is maybe slightly easier. However, recently, wars by the scale, type and consequences having on people, nature and their complete background are catastrophic. It can be said that renovation projects for the war destroyed countries in Europe, Russia, Asia and Africa will be tasks where humanitarian efforts of the top quality experts in the largest countries and even UN can fail. Just because of such situation, moral and material commitment of all nations and people, living in peace and welfare, is to help all the people who live or escaped or are displaced from the devastated or destroyed areas by renovation to come back to their homes.

First and capital shift in terms of renovation support all over the world is to ensure, in accordance with the Declaration for war devastated areas, already existing data gathered by satellite images and other ways, processed and stored .

### **5.1. Dubrovnik charter**

The requirements below have been declared by all signed experts involved in a complete, fast and purposeful renovation of the war-destroyed countries, regions, towns, settlements and buildings who consolidated their work in data processing on all relevant natural and artificial elements in the given area aiming at faster life renovation process:

1. Data on relevant areas, fields and situations gathered by satellite images and other modes done by other countries in various technical conditions, periods and circumstances should be available, selectively, in accordance with both vital data owner requirements and those of people and inhabitants struck by war and natural disasters;

2. Graphic and other data on war-destroyed areas should be delivered, under international supervision to international organizations and institutions or other relevant subjects aiming at as quality as possible multidisciplinary analyses of the situation and war or natural disasters consequences in the given area. It will make possible humanitarian actions to be prepared properly as well as preparation and implementation of the plans and projects relative to natural, material and social life conditions renovation.

### **5.2 . Exposition**

Experts and humanists involved in renovation of areas destroyed and devastated by war and natural disasters, aware of being not able to eliminate war and prevent catastrophes with tragic consequences for individuals, families and peoples wish, by this Declaration, to assure life renovation as faster and qualitative as possible as well as natural resources financial recovery in such areas.

One of the basic starting points in renovation plans and projects are qualitative and prompt graphic and non-graphic data on concerned area and inhabitants who used this space. Unfortunately, most of the required data are not available to experts, although they exist. Today series of countries and companies deal with satellite images of their own and foreign areas, especially in accidental, war and natural disaster dangers when all visible activities are carefully monitored by systematic observation, detection in the observed area.

**Part II**

**EDUCATION IN INTERNATIONAL HUMANITARIAN  
LAW**

It is tragic that series of required plan preparations and analyses of destroyed areas can't come into force due to shortage of adequate data whereas the same ones exist in the archives of many world companies.

All humanists are considered by dilemma: start with laborious, expensive and dangerous field work in terms of collecting data on the area and consequences of war destructions or natural disasters wasting their valuable time -a year or two, maybe five or try, in coordinated action of good will people, to get somehow the required data from the richest countries' archives.

The latter solution is, certainly, better one for the benefit of people, areas and ecosystems devastated by war and cataclysms.

It should be pointed out that all life aspects are not possible to renovate in the form they used to be. Also the fact is that war, although it is physically and operationally finished, still exists till the end of renovation, financial recovery, even maybe longer. The examples of the aforesaid are Chernobyl or mine fields in Afghanistan, Bosnia and Herzegovina.

It is not possible to prepare and realize renovation and financial recovery projects within optimal terms by standard methods of data gathering for large and population density areas and countries. Consequences of large war destructions will not be able to be financially recovered in the life time of the most signed experts without knowledge, experience and modern information technologies such as GIS, GPS, all available technologies, even the above discussed satellite images and the like in reasonable terms.

From the aspect of geoinformatics, it is especially important to know that renovation preparation and realization within GIS environment means possibility of using valuable data in spatial, administrative, economics, scientific and other analytics. This is, then, good stimulus of a new life and development for war and disasters struck countries, regions and peoples.

# 1. INTERNATIONAL HUMANITARIAN LAW OF ARMED CONFLICTS AS AN INTEGRATED PART OF THE CONTEMPORARY INTERNATIONAL LAW

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## 1. Introductory remarks

Contemporary international law has been commented as a language for international relations<sup>36</sup>. Its subject matter includes *inter-alia*: the principles of international law; means of peaceful settlement of disputes between States; conceptual and practical aspects of the codification and progressive development of; humanitarian law of armed conflicts, and new approaches to research, education and training in field of international law.

1. The codification and progressive development of international humanitarian law makes an immense contribution to its dissemination and its better understanding. Many of the recent published books offer significant views on a wide range of issues related to international law – from international law as the constitution of mankind to the role of international law in the world today and tomorrow and from human rights in general and in armed conflicts and development to the criminal responsibility of States<sup>37</sup>. Such books will contribute much to the general appreciation of both international law and humanitarian law of armed conflicts. Mixed groups of policy-makers, practitioners, international law-makers and academics, explore ways of strengthening the international law posing many practical proposals that might enable competent international bodies to contribute still more effectively to the progressive development of international law and its integrated parts as e.g. the humanitarian law of armed conflicts.

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<sup>36</sup> *International law as a language for international relations. Proceedings of the United Nations Congress on Public International Law*, United Nations Publications 1995.

<sup>37</sup> *International law on the eve the twenty-first century: Views from the International Law Commission*, E.97.V.4 United Nations Publications 1997.

**ganized international society or those who claim to represent in and States outlawed by it.** From the perspective of these two above mentioned components of the International law, international humanitarian law has been situated "at the vanishing point of international law, but is simultaneously a crucial test for international law". The nature and reality of international law is that the law governs inter-State relations even when are belligerent. Also even when the very existence of a State is suffering harm, when the prohibition of the use of force has been violated or when a government has been unable to impose its monopoly of violence within the territory of the State. In the case of a non-international armed conflict international law regulates such a situation, because this law governs human behaviour even when violence by government is used, when essential features of the organized structures of the international and national community have fallen apart. No national legal system contains similar rules on how those who violate its primary rules have to behave while violating them.

In general: international humanitarian law exemplifies the specificity and all the weaknesses of international public law. International humanitarian law sometimes have been discussed different from the rest of international law and meets some critics which have expression in basic conceptual divergences in international law and in its changing rules. There is, however the inherent inter-relation between international humanitarian law and other branches of international law. International humanitarian law, when recognizes humanitarian morality and public conscience, "can not exist except as a branch of international law, and international law must contain rules concerning armed conflicts, as an unfortunately traditional form of inter-State relations".

There is fundamental distinction between *ius ad bellum* (i.e. legality of the use of force) and *ius in bello* (i.e. humanitarian rules to be restricted in warfare) in contemporary international law. For humanitarian reasons, international humanitarian law has however to be the same for all belligerents: the one resorting lawfully to force and the one resorting unlawfully to force. From humanitarian point of view, the victims of the conflict on both sides need the same protection, and therefore international humanitarian law has to be respected independently of any argument of *ius ad bellum* or if it distinguished *ius ad bello*.

4. International humanitarian law is a branch of international law governing the conduct of States and individuals. Situations of its' application are different types:

2. Contemporary international law includes some legal restraints on violence in armed conflict<sup>38</sup>. Have been interalia discussed: classes of war and traditional humanitarian law; new developments in modern international armed conflicts and current regulation of; conduct of hostilities: means of warfare; methods of combat and means of ensuring compliance with law. As a topical issues have been presented also current regulations on internal armed conflicts. They comprise: general features of the legal regulation of civil strife; customary law and treaty law. The role of law in restraining armed violence has witnessed steady progress.

3. International humanitarian law becomes a branch of public international law. Sometimes, however, it has been discussed and located at vanishing point of international law<sup>39</sup>.

Public international law consists of the law regulating traditionally the coordination and co-operation between the members of the international society (i.e. States and organizations created by States) and the new law regulating the constitutional and administrative law of the international community. These two main components of the public international law are very useful to understand international humanitarian law. International humanitarian law has brought force as a law regulating belligerent inter-State relations. **Inter-State armed conflicts have a specified tendency to have disappear except in the form of armed conflicts between the or**

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<sup>38</sup> See: A. Cassese, *International law*, Oxford University Press, Oxford–New York 2001, pp. 325–348. See also for further readings the International Committee of the Red Cross publications: The Geneva Conventions of 12 August 1949; Protocols Additional to the Geneva Conventions of 12 August 1949; CD ROM: *International Humanitarian Law – Droit International Humanitaire*; J.L. Flores, *Repression and breaches of the law of war committed by individuals*, Extract from the International Review of the Red Cross, May–June 1991; H.P. Gasser, *International humanitarian law – An introduction*; F. Kalshoven, L. Zeveld, *Constraints on the waging of war*; F. Krill, *The protection of women in international humanitarian law*; compare: J.G. Gardam, M.J. Jarvis, *Women, armed conflict and international law*, Kluwer Law Intern. 2001; A.M. Sassoli, A. Bouvier, *How does law protect in war?* 1999; H. Seibt, *Compendium of case studies of IHL*; P. Verri, *Dictionary of the international law of armed conflicts*; *Handbook for parliamentarians*, No. 1, 1999, Respect for IHL (have been issued together with the Inter-Parliamentary Union); *27<sup>th</sup> International Conference of the Red Cross and Red Crescent*, Geneva 31 October – 6 November 1999, Resolution 1. Extract from the International Review of the Red Cross, December 1999; *Arms availability and the situation of civilians in armed conflict*; ICRC: *Answers to your questions*; *IHL: Answers to your questions*; *National measures to repress violations of IHL*, Report on the meeting of experts – ICRS Advisory Service on IHL. A very comprehensive bibliography of the binding principal instruments (universal and regional) on human rights – genocide, war crimes, crimes against humanity including – has been published in: M.G. Johnson, J. Symonides. *Preface by Frederico Mayor, Director-General of UNESCO: The Universal Declaration on Human Rights: A history of its creation and implementation. 1948–1998*, Published on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights. Human Rights in Perspective. UNESCO Publishing, Paris 1998, pp. 111–165. See also: T. Ward, *The ethics of destruction: norms and force in international relations*, Ithaca 2001.

<sup>39</sup> See: M. Sassoli, A.A. Bouvier, *How does law protect in war?*, op. cit., pp. 73–83.

It shows however, significant limits of International humanitarian law: “ – it does not prohibit the use of violence; – it can not protect all those affected by an armed conflict; – it can not distinguish according to the purpose of the conflict; – it can not prohibit a party to overcome the enemy; – IHL presupposes that parties to an armed conflict have rational aims”.

There is a need and the possibility of legal regulation of warfare. International humanitarian law as a branch of public international law leads to an awareness that humanitarian principles are common to all human communities, as to the plurality of cultures.

2. International law (*ius gentium*, law of nations) as the system of law regulating the interrelationship of sovereign states and their rights and duties with regard to one another, comprises also a series of international conventions on the laws of war – both the Hague and Geneva conventions. The Hague Conventions for the Pacific Settlement of International Disputes includes a series of agreements signed in 1899 and 1907 regulating the laws of war. They include the “Martens Clause”, which provides that circumstances not specifically dealt with in the regulations would be governed by customary law. The Hague Conventions are still in force but their provisions are often inapplicable to modern warfare. Geneva Conventions are also a series of international conventions on the laws of war, the first of which was established in Geneva in 1864. That and the 1906 convention protect sick and wounded soldiers. The Geneva Protocol of 1925 prohibits the use of gas and bacteriological warfare. The three Conventions of 1929 and the four Conventions of 1949 protect sick and wounded soldiers, shipwrecked in armed forces at sea (sailors), prisoners of war and certain groups of civilians. The Geneva Conventions are supplemented by two protocols of 1977, relating to the protection of victims of the civilian population and combatants and thus prohibits indiscriminate attacks. The First Protocol of 1977 supplements the 1949 Conventions, extending protection to wider groups of civilians, regulating the law of bombing, and enlarging the category of wars subject to the 1949 Conventions. It includes also civil wars. The 1949 Conventions are accepted (signed and ratified) by many states and are generally considered to embody customary international law that related to war. Both protocols have been not ratified by the United Kingdom.

international armed conflicts and non-international armed conflicts. This law is not applicable in situations of internal violence and tensions.

International humanitarian law defines a category of "protected persons", but the contemporary protective rules on the conduct of hostilities equally apply to all hostilities in international armed conflicts, and all victims benefit equally from them. The law of non-international armed conflict also applies equally to all persons affected by such a conflict.

Temporal scope of application of rules of international humanitarian law have been defined. However, it is difficult for humanitarian actors to plead with parties and to define the end of application of this law after end of the armed conflict.

International humanitarian law protecting individuals against the State or other belligerent authorities, also corresponds to the traditional structure of international law in that it governs relations between States. According to the treaty rules, it prescribes also rules of behaviour for individuals in armed conflicts in cases who must be punished if they violate international humanitarian law and for the benefit of other individuals.

## 2. Concept and sources of International Humanitarian Law (IHL)

1. International Humanitarian Law (IHL) becomes, i.e. grow to be "the branch of international law limiting the use of violence in armed conflicts by: a) sparing those who do not or no longer directly participate in hostilities; b) limiting the violence to the amount necessary to achieve the aim of the conflict, which can be – independently of the causes fought for – only to weaken the military potential of the enemy"<sup>40</sup>.

According to the above mentioned book this short definition can lead to the basic principles of international humanitarian law: "– the distinction between civilians and combatants; – the prohibition to attack those *hors de combat*; – the prohibition to inflict unnecessary suffering; – the principle of necessity; and-the principle of proportionality".

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<sup>40</sup> See: M. Sassoli, A.A. Bouvier, *How does law protect in war? Cases, documents and teaching materials on contemporary practice in international humanitarian law*, International Committee of the Red Cross Geneva 1999, pp. 67–71. More on the subject see also: W.G. Vitzthun (ed.), *Völkerrecht*, Walter de Gruyter. Berlin. New York 2001, pp. 603–679 (Michael Bothe, achter Abschnitt. Friedenssicherung und Kriegsrecht).

mines, and other arms, e.g. as laser – device emitting an intense narrow beam of light;

- civil wars in developing countries generate widespread clashes between opposing groups;
- the institution of neutrality gradually fell into decline, as a process which began during the two World Wars.

Initiated in 1949 legislative process to revise and update the traditional rules on warfare comprises – both the Hague Regulations and Geneva Conventions. The new law has generally elaborated and supplemented international humanitarian law, with greater clarity and precision. Upon Cassese's view: "Humanitarian law has become less geared to military necessity and increasingly impregnated with human rights values". Also both development and dissemination in the international community of human rights doctrines and rules have brought about significant changes in international law, as a whole. The "si omnes clause" has been gradually abandoned. The majority of the Hague Conventions has turned into customary law. Recent agreements explicitly apply in the case of armed conflict to the State parties irrespective of whether or not one of the belligerents is a contracting party.

#### **4. Regulation of international armed conflict**

Current regulations of international armed conflicts comprise such matters as: lawful combatants, conduct of hostilities: means of warfare methods of combat and, means of ensuring compliance with law.

1. Upon the traditional law it was in the interest of big Powers to exclude from the category of lawful combatants any person other than members of the regular army. The compromise reached by Great Powers with lesser States lay in granting the status of lawful combatant, in addition to regular armies, to militias and volunteer corps, provided the latter category fulfilled certain conditions.

According to the new law: partisans, and guerrillas have been included to lawful combatants.

The Third Geneva Convention (1949) added the category of "organized resistance movements, belonging to a party to the conflict and operating in or outside their own territory even if this territory is occupied" (Article 4.A.2). To four conditions estab-

Beside that, the UK and the United States both consider that the protocols "have [no] effect on and do not regulate or prohibit the use of nuclear weapons"<sup>41</sup>. In general: the Hague and Geneva Conventions provide many rules governing the conduct of wars and stating the rights and duties of both combatants and non-combatants during war. One can notice that, they do not deal with all aspects of warfare or all types of war. There are also some specific conventions governing particular, issues, for example a 1972 Convention on the use or possession of bacteriological and toxic weapons, a 1976 Convention on the military use of environmental modification techniques, and a 1981 convention and three protocols on cruel or indiscriminate non-nuclear weapons.

### 3. Traditional law and new developments in modern armed conflicts

1. Armed conflicts since years have been involving the whole population of contending parties, with civilians suffering no less than combatants. Traditional international law tended to favour strong and middle – sized powers at least in three major areas: means of combat, methods of combat, and devices for inducing compliance with law. One can notice that the applicability of international conventions on warfare to armed conflicts was always uncertain and precarious. According to traditional law only inter-state armed conflicts were regulated.

2. As the new developments in modern armed conflicts have been listed as follows<sup>42</sup>:

- new classes of combatants emerged in certain European countries occupied by Germany – as partisans and resistance movements;
- war developed in two opposite directions: the "war of the rich" using sophisticated weapons, and the "wars of the poor" as liberation movements in colonial or occupied territories and usually conducted by guerrillas;
- aircraft used in wars subsequently became a major instrument of combat. Technological developments led to the creation of the atomic bomb and its use and also arsenals of missiles, chemical weapons, antipersonnel

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<sup>41</sup> See: S. Bone (ed.), *Osborn's Concise Law Dictionary*, Ninth Edition, London. Swett & Macwell, 2001, p. 183.

<sup>42</sup> See: A. Cassese, *International Law*, op. cit., pp. 328–329.

mines. The prohibitions and restrictions are capable of providing normative guidance which is effective and have been respected in general in accordance to the principles of the public international law, even though there have been occasional violations.

There are also some disadvantages in the matters, discussed above. International bans have concerned only those weapons which proved to be of minor military effectiveness. Not only did bombing from aircraft fail to be prohibited, but also use of atomic and nuclear weapons. Besides, even the bans on minor weapons can be easily bypassed by new and more militarily effective and more sophisticated weapons. Nuclear weapons might be used in various different situations but treaty authorisations of the use of it are lacking. According to Antonio Cassese (p. 336) "no specific customary rule has evolved on the matter, reliance must be placed on two sets of rules: those on resort to force (these are contained in the UN Charter and have by now turned into customary law), and the principles and customary rules of international humanitarian law". First use of nuclear weapons in a conventional war, must be held to be "absolutely illegal". A retaliatory use in a conventional war would be, in contrast, lawful if it clearly met certain requirements.

3. Traditional law on the conduct of hostilities stated two major sets of rules. The first, as seems to meet the needs of all belligerents, and the second, as "were calculated to favour, directly or indirectly, the stronger States". All norms of the traditional humanitarian law "are clearly intended to introduce a minimum fair play into the conduct of hostilities and actually serve interest of all parties".

The modern international humanitarian law of armed conflicts seems to be also incomplete, and in any event obsolete. This remark concerns *inter alia* air warfare, which rendered the concept of "undefended localities" still more uncertain. The principles were clarified and given legal precision in Protocol I of 1977. For a long time the very concept of military objective was not clearly defined, and could be extended at discretion.

The protection of war victims, namely civilians, are under the Conventions satisfactory, when they are in the hands of the adversary either from the outset of the hostilities. Those who happen to be in the theatre of military operations are only protected by Protocol I. There are some reasons for the difference between the section of the laws of warfare protecting the victims of war and the other sections, such as that concerning means and methods of combat. Both areas have been in fact outweighed by military demands than by humanitarian considerations. Cassese indi-

lished in 1899 for irregular combatants, a fifth condition was spelled out, stipulating that the combatants must be linked to a party to the conflict.

The question of guerilla fighters, irregular combatants resorting to guerilla warfare within the framework of inter-State wars or wars of national liberation, during Geneva Conference debates were complex, but led to the adoption of a compromise formula: combatants "are obliged to distinguish themselves from the civilian population while they are engaged to an attack" (Article 44.3, first sentence). Member of guerrillas, if captured by the adversary, as irregular combatant not fulfilling the condition, as above, do not forfeit his status of lawful combatant and is entitled to prisoner of war treatment.

Mercenaries – as professional soldiers hired by a foreign country, special commandos, have been also discussed at the Geneva Conference (1974–7) and found official statement in the provision of article 47. Paragraph 1 states that "a mercenary shall not have the right to be a combatant or a prisoner of war". This provision also gives, in paragraph 2, a comprehensive definition of mercenary.

2. Upon traditional humanitarian law only relatively ineffective agencies of destruction, as e.g. explosive projectiles weighing under 400 grams were prohibited. The other categories as poisonous weapons, gases, and automatic submarine contact mines – very important and effective were not banned, as really inhuman. The principle: "it is expressly forbidden to employ arms, projectiles, and material calculated to cause unnecessary suffering" stated in 1899 and reiterated in 1907, was very loose and lent itself to the divergent interpretations. Another evolved general principle was that prohibiting indiscriminate weapons, which do not distinguish between combatants and civilians.

However in the new humanitarian law the above general principles have not played a significant role in recent international practice, specific bans on specific weapons have proved more useful. The arms on which there is a general prohibition upon the certain conventions are: chemical and bacteriological weapons (1925, 1972); weapons whose primary effect is to injure by fragments non-detectable in the human body by X-rays; land mines, booby traps, and other devices, when employed indiscriminately or directed against civilians; incendiary weapons when used to attack civilians or civilian objects, or military objectives "located within a concentration of civilians"; blinding laser weapons; military and any other hostile use of environmental modification techniques; the use, stockpiling, production and transfer of antipersonnel

quisition of the status of lawful combatants. Most of internal armed conflicts aim at protecting non-combatants only, however methods of combat are not regulated.

As significant body of customary rules related to internal armed forces has evolved out of a provision common to the four 1949 Geneva Conventions, i.e. Article 3.

States international practice developed after 1949 shows that Article 3 enshrines a handful of humanitarian principles proclaimed also in other contexts, e.g. the various treaties on human rights<sup>43</sup>. Some rules on the conduct of hostilities in international armed conflict have also gradually been extended to internal conflicts.

The gradual extension of general principles and rules governed inter-State conflicts to internal conflicts was strengthened by the gradual ejecting of the notion whereby war crimes can only be committed in inter-State wars. This was confirmed in 1995 by the ICTY<sup>44</sup> in the decision in Tadić (Interlocutory Appeal) set forth the view that serious violations of customary or treaty rules governing internal conflicts may also amount, subject to certain conditions, to war crimes. Also the 1999 UN Secretary General's Bulletin on Observance by United Nations Forces of International Humanitarian Law confirmed this opinion. (UN Doc.ST/SGB/1999/13, of 6 August 1999).

2. After 1949 internal armed conflicts have been regulated by a number of treaties and some of their most fundamental provisions have been included into general law. A general treaty on this matter have been stated in 1977 as the Second Additional Protocol 1949 Geneva Conventions. The Protocol covers only large-scale armed conflicts, a civil strife presenting all the characteristics of intensity, duration, and magnitude of civil wars. This legislative effort was rather limited, because of smallness quantity of the rules agreed upon, which do not cover all classes of internal armed conflicts and besides that third States tend be not to demand compliance with the Protocol when it is being violated.

There exist also some conventions regulating specific matters of internal armed conflicts<sup>45</sup>.

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<sup>43</sup> See: J. Symonides (ed.), *Human Rights: New Dimensions and Challenges*, Ashgate-Aldershot UK, UNESCO Publishing, Paris 1998, pp. 1-44.

<sup>44</sup> *International Criminal Tribunal for the Former Yugoslavia*, Decision of 2 October 1995, p. 199.

<sup>45</sup> See: Article 19, of the 1954 Hague Convention on the protection of "Cultural Property", updated by Article 22 of the 1999 Second Hague Protocol on the subject; Article 1.2. 1996 Amended Protocol to the 1980 UN Convention on certain conventional weapons (use of land mines, booby traps and other devices); Article 1. of the 1997 Ottawa Convention on Anti-Personnel Mines; the 1995 Protocol IV to the UN 1980 Convention on blinding laser weapons, which would be expected to apply to this category of conflicts.

cates (p. 340) that "it is in the interest of major military Powers to afford strong protection to war victims, while they are less concerned with prohibitions or restraints on the conduct of hostilities. On the other hand, small countries as well are interested in expanding the protection of war victims, if only for humanitarian reasons".

In the traditional international humanitarian law one can note a lack of the effective means for ensuring compliance with the laws of warfare. No neutral institution existed or any independent commission ever entrusted with the task of control the behaviour of belligerents. But, were available and used to a great extent: belligerent reprisals; criminal punishment of enemy combatants or civilians guilty of "war crimes"; and, the payment of compensation for any violation perpetrated.

The 1949 Geneva Conventions banned reprisals (as acts of retaliation) against "protected persons" – i.e. prisoners of war, the wounded, sick, or shipwrecked, and civilians who found themselves in the hands of the enemy. Reprisals against civilians were implicitly allowed in the theatre of military operations. Upon the new Conventions, serious violations of international humanitarian law may be prosecuted and repressed both by national courts and at the international level, based on principles of fair trial and impartial finding of facts and law. The new Geneva Conventions codified and improved on international practice the institution of "protecting powers for the purpose of safeguarding belligerents" interests as well as impelling the adversary to accept international law. According to the above Geneva Conventions provision of "Substitutes for the Protecting Powers", the Detaining Power was duty bound to accept: "the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross to assume the humanitarian functions performed by Protecting Powers under the present Convention" (Article 10/10/10/11, paragraph 3).

## **5. Regulation of internal armed conflict**

1. In general: the contemporary approach of international law to civil conflict remains in a specified state as an inherent clash of interests between the "lawful" government on the one side and rebels, on the other side, tending to be internationally legitimized. The rules governing the struggle between both sides do not grant rebels the status of lawful belligerents. In case if the insurrectional government comes to possess international rights and duties, this might entail for its armed forces the ac-

## 2. THE ROLE OF POLISH PUBLIC ADMINISTRATION IN DISSEMINATION OF INTERNATIONAL HUMANITARIAN LAW IN CONNECTION TO MILITARY CONFLICTS

Krzysztof PRZEWORSKI

The aim of this publication is to draw attention to the importance of the government administration in implementing international humanitarian law connected with military conflicts. It seems obvious that within this field, tutorial efforts of Polish Military Forces (including reservists and soldiers of the army) should not be the only sign of activity of the state concerning that problem. The soldiers ought not to be the only people equipped with the knowledge about international humanitarian law.

Other public institutions should take up this role on the basis of:

- Polish law that is in force (as the source of law we perceive also ratified international resolutions<sup>49</sup>),
- the duties of the ministers and the supervisors of central administration, voivodes, mayors of district, etc. in implementing the knowledge about protection of civilians citizens (Civil Defence)<sup>50</sup>,
- the range of duties of the central administration and local government connected with the protection of equipment vital in rescuing the historical sights and the civilians,
- the interests and the sake well being of the society,
- the capability of the central administrative organs to conclude resolutions with the non-government organizations (NGOs), which results in those organisation being in charge of the duties previously attached to central or-

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<sup>49</sup> *The Constitution of the Republic of Poland* (Konstytucja Rzeczypospolitej Polskiej, art. 87).

<sup>50</sup> *The law about the general duty of the defence* (Ustawa o powszechnym obowiązku obrony Rzeczypospolitej Polskiej, Dz.U. nr 21 z 2002 r., poz. 205).

However, it would be seen that a more comprehensive general regulation of civil wars will be necessary as an inherent part of the contemporary international humanitarian law.

## 6. Final remarks

International humanitarian law is very strong integrated within the contemporary international public law. It has many links to: general principles of international public law; human rights; use of force and other branches and specific matters of this law. A number of sources of the both laws are common and have similar legislative origin and structure.

International humanitarian law witnesses steady progress and relevance of the role of international law in restraining armed violence. Many of recent events witness however, that international legal control of warfare has kept pace with the developments in organized armed violence only to a limited extent. According to Cassese (...) "Major military powers have not accepted sweeping restraints, with the consequence that this body of law is beset with deficiencies, loopholes, and ambiguity. (...) Legal rules however weak and defective, do restrict the behaviour of States and introduce a modicum of humanity into utterly inhuman conduct"<sup>46</sup>.

There is a close relationship between peace and human rights and the analysis of international human rights instruments confirms the conviction of the international community, that respect for human rights and rules of the humanitarian law of armed conflicts is at the basis of peace and development<sup>47</sup>. Recently, some new mechanisms – as international tribunals – for the enforcement of international humanitarian law have been established<sup>48</sup>.

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<sup>46</sup> See: A. Cassese, *International law...*, op. cit., p. 348.

<sup>47</sup> See: J. Symonides (ed.), *Human rights: New Dimensions and Challenges...*, op. cit., pp. 1–16.

<sup>48</sup> See: D.A. Mundis, *New mechanisms for the enforcement of inter national humanitarian law*, American Journal of International Law, October 2001, Vol. 95, No. 4, pp. 934–952.

When we look closer at employees of administration such courses are not at all sufficient. It stems from the fact that there are very few grants from Polish budget for that aim<sup>55</sup>. Economizing in that field results in courses not being effectively conducted. That results in poor standards when it comes to protection of citizens and historical buildings which are often unique at the world's scale. Extremely rarely, lawyers or conservators of monuments are involved in protecting the most valuable sights.

In the face of the role and responsibility (when it comes to war threats or peace time) the administration is to handle, its knowledge and information about international humanitarian law is not sufficient. In such circumstances it seems suitable to organize in central and local organs easily available and people friendly information centres giving up-date information about ratified international resolutions connected with conflicts, protection of civilians and historical sights and possible methods of such protection. It may be justified by the need of non-governmental organizations which provide humanitarian help for countries touched by military conflicts or cooperate with churches or church-like organizations. On the base of the range of duties which belong to administrative units, such informational sites should be responsible for the CD along with organs responsible for the historical monuments protection.

This short outline of the role of Polish public administration in popularizing resolutions of international humanitarian law during military conflicts, allows one to draw conclusion that the effectiveness is very low. This process should be supported by other methods. It seems also advisable that systematic supervision of law regulations is carefully carried out. It should be also recognized that laws, within smaller territorial units than a country are on a par with international resolutions ratified by Poland.

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<sup>55</sup> In local structures of CD duties are fulfilled as commission for one citizen Polish budget (in the field of the CD) devotes 0,15\$ per year.

gans or local ones (it is stated in the Polish constitution as the rule of subsidiarity).

The new system of law, which has been in force since 1997 (the time when new constitution started to be valid) accepts ratified international agreements as one of the legal sources. The President of Poland on the grounds of those international agreements vetoed the draft of the bill which was to regulate civil preparedness and crisis management in the face of non-military crisis. The President justified his decision explaining that the bill wanted to abolish the organisation of Civil Defence (CD), which would be against the I-st Additional Protocol to Geneva Conventions from 1977<sup>51</sup>.

Careful study of that bill showed even more discrepancy between the bill and the international law. The problem lies in the way of managing the Civil Defence according to the resolution included in First Protocol, the central administration of the country appoints only one organ responsible for the organization of Civil Defence and that organ is entirely responsible for that field of duties<sup>52</sup>. In the very moment the solution which is being implemented, appoints the Chief of Civil Defence and the Main Commander of the State Fire Brigade in one person (these two organs are the central ones). Without doubt that problem is in need of careful insight from the legal angle, and the proper solution must be found as soon as possible.

The other aspect of the problem is clearly visible when we look closer at the role of public administration in dissemination of the humanitarian law in the respect to military conflicts. It is a huge problem and should not be neglected. One must bear in mind that the Civil Defence (CD) takes care of historical sights and what is the most important civilians' safety. All the people heading central and local administration are those in charge of CD duties in their territories<sup>53</sup>. The tutorial system and all kinds of courses are aimed at making those responsible acquainted with all the problems and solutions connected with international law in case of military conflicts<sup>54</sup>. There are also courses run for the members of central and local administration, covering the CD or general self-defence of civilians.

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<sup>51</sup> Dz.U. nr 41 z 1992 r., poz. 175 i 176.

<sup>52</sup> Art. 61 b I-st Additional Protocol to Geneva Conventions from 1977 (I Protokół Dodatkowy do Konwencji Genewskich z 1977 r.).

<sup>53</sup> All the supervisors of CD are responsible for historical sights, The marshal of the province (marszałek województwa) also in spite of not being in the CD structures.

<sup>54</sup> Such courses are carried out by National Defence University in Warsaw.

and directives on the methods and means whereby armed conflicts occurs. For Poland and Poles the whole area of the law has significant meaning as our historical burden makes us keep on protecting both independence and national heritage, also in a material sense, which was damaged several times during past wars.

Teaching and dissemination of the law of armed conflicts on national level as well as military level may have never had any particular priorities but, excluding periods of decreasing or even lacking concern about it, have always existed and have been reflected in studies and practical activity. Without trying to give account of this state of things on national scale (apart from the army) it should be pointed out that basically the whole material supplies of the international law of armed conflicts, i.e. first of all international agreements (their codification is diversified and is not a priority for our considerations, e.g. it concerns treaties, conventions, protocols and agreements) are accessible in Poland. It should be stressed that in almost every handbook or any publication on international public law there is a chapter on international law of armed conflicts. It is very difficult to determine ultimately which one of Polish authors on international law should be given a prior position in this field. However it seems necessary to mention publications and books by professor Alfons Klafkowski. Among other propagators of the international law of armed conflicts most remarkable are: Remigiusz Bierzanek, Marian Fleming, Teofil Leska, Julian Sutor and recently, especially in the field of military environment, Leonard Lukaszuk.

Publishers play an important role in the international law of armed conflicts dissemination. In this specific category there are three publishing houses in Poland worth mentioning: National Publishing House of Science, Ministry of National Defense Publishing House (presently Bellona) and Ossolinscy National Publishing House. The National Publishing House of Medicine has contributed to promoting awareness of the international organization of Red Cross. Also, the significant achievements of the Red Cross, including the publications of the International Humanitarian Law Dissemination Center Library cannot be overestimated.

Implementation of international obligations on humanitarian law is common within democratic countries, especially within the countries of the Euro Atlantic region.

One of the first countries to have actually implemented the acts of law of war including Geneva conventions into their law was Denmark – The Penal Law Act of 10 July 1952, The Handing Over (War Crimes Act) of 19 May 1954. In France the *Règlement de discipline générale dans les Armées* (1966) includes three chapters on

### **3. DISSEMINATION OF HUMANITARIAN LAW IN THE CONTEXT OF POLISH SECURITY**

Henryk BINKOWSKI

During each year couple of thousands regular soldiers participate in different forms of professional education. Most of these undertakings bear at least some marks of reference to teaching international humanitarian law of armed conflicts. The law is gaining on importance in face of increasing international public disapproval for any acts violating basic human rights. "Irrespectively of a fact whether someone is a member of minority or majority, human rights and fundamental freedoms of any person are sacred".

War is a social phenomenon that man has always experienced. This statement, being somewhat of a cliché, would be pointless if wars were eliminated, thanks to human knowledge about their consequences. However this is not the case and after several decades of peaceful years, Europe of 21<sup>st</sup> century is experiencing the wickedness of war. Even recently one can meet millions of victims in the Balkans so for Europe war is a painful reality.

The obvious knowledge that these are civilians who constitute majority of victims of wars and conflicts has always accompanied any activities undertaken by Polish Army. The former Chief of General Staff, while considering possibility of future conflicts, used to refer to examples of outcomes of past wars remembering that civilian loss was on a constant increase from 5% in the first World War to 90% in the Vietnam war. The author emphasized the regular increase of the number of victims in following wars.

The international law of armed conflicts is a specific tool applied to limit the power. The law includes legal regulations (and customs often of deep historical references) concerning armed conflicts (both internal and international), it makes essential orders in the fields of warfare including among others introduction of limitations

On the strength of paragraph 6 teaching law was obligatory for: regular soldiers (interior training courses), students and officers of military academies, officer schools, the Reserve junior warrant officer schools. Training centers, warrant officer schools cadets, non commissioned officer schools. Also the training was obligatory for recruits and civilian personnel.

After 1989 the priority for Poland was building a full democratic state. Process of integration with European and Euro Atlantic security structures was launched. It referred especially to armed forces. As a result a wide range accommodation program was introduced. It covered not only political, technical, economical and organization areas. For democratic countries it is democratic and political standards that are of special importance. Among the political ones the most important is the issue of democratic control over arm forces. In the area of law there is emphasis on respecting human rights. In the scope of new tasks in the area of international security, mostly European countries pay special attention to following conventions and treaties as well as humanitarian law dissemination connected to this.

Armed forces which are the object of interest of law of armed conflicts due to obligation (formal order) as well as due to internal reasons (will to carry battles according to customs and codes of honor), over recent years have been applying the regulations of the law into the process of educating cadre and soldiers. A legal – formal order is directly bound to the fact that army is a structure of a state which takes on responsibilities in the area of international law and is therefore obliged to live up to them. Reading the letter of constitutional law, it should be born in mind that in a country of law – and such is the Republic of Poland – the source of widely accepted law are the international agreements ratified by Poland. (Constitution has given the ratified international agreements a priority over than legislatures). For example the necessity to disseminate the law results directly from Geneva conventions accepted by Poland. Article 1, legislature 1 of the Additional Protocol to the four of Geneva Conventions of 12 August 1949 on protecting the victims of international armed conflicts, states that: “The parties of the agreement bind themselves to observe and make observe this protocol, in any circumstances”. Out of this obligation there comes a necessity to match regulations of law of war to those responsible for its implementation as well as for those who have a right to legal protection. Articles 82 and 83 of the Protocol 1 make clear ordinances for the parties of the Geneva conventions and bind them to disseminate them, both in peace and during war.

international law of war. In Great Britain there was The Law of War on Land (1958) introduced. The article 25 of German Constitution makes it clear that the regulations of international law incorporated by the country constitute a part of federal law. Because of that the regulations included in international law of war conventions were developed in a great number of orders and instructions. In Italy there was a Penal Law of 1941 in force at first (Codice penale militare di guerra), whose article 4 made it obligatory to follow international conventions. After ratifying the 1949 convention the system of regulations and instructions was improved. In Austria there was a regulation *Kriegsvölkerrecht fu die Truppe - Truppen- dienstfaschenbucher* introduced in 1965. In Switzerland there is Manuel de lois et coutumes de la guerre pour l'Armee in force, dated 1963. Outside Europe, in the United States of America there basic law regulations included in The Law of Land Warfare (1940 and some amendments made in 1956) and The Law of Naval Warfare (1955) in force.

In Poland, in Polish Army, the law of war dissemination took different ways. In the 1950s Military Academy of Politics (MAP) educated lawyers in the separate Military – Law faculty. In the 1960s, on the other hand, the researches on law of armed conflicts were carried out in Military Institute of Law. Faculty of State Theory and Law operating in the department of Political Science of MAP can also boast great achievements in this field. Its president, colonel professor Teofil Lesko was the author of the often re-released handbook used by several years of Junior Warrant Officers from officer schools and officers – students of military academies. Beside this, the workers of the faculty evaluated and disseminated content of basic documents on international law of war.

In the 80s teaching and disseminating law of war in Armed Forces were regulated by a Decree 64 of Ministry of National Defense (dated 23 November 1982) on improving legal awareness among soldiers and civilian workers. Law of war was only one of the elements of law culture as, according to the decree, teaching the law should ensure soldiers and army clerks with:

- general knowledge of social functions of law at home,
- specific knowledge of particular areas of law (including law of war),
- mastery of law interpretation rules useful while implementing law,
- appropriate application of law,
- practical abilities to use Books of Legislatures.

- targets may only be military,
- it is forbidden to kill or wound an opponent who surrenders or is incapable of further combat
- persons not engaged in combat and those who are not engaged directly in combat have right to respect of their lives and physical and mental integrity (they should be protected and treated in a humanitarian way in any circumstances),
- captured participants of combat (combatants) as well as civilians in power of opponents have right to respect of their lives, dignity, personal rights and beliefs (they should be protected against violation and repression and granted a right to correspondence and outside help),
- the wounded and the sick should be taken out of the battlefield and treated (the care should be provided by the party of the conflict in power of which they stay),
- protected are: medical and clergy staff, means of medical transport as well as devices and materials of medical use (the emblem of the Red Cross is also protected),
- every person is ensured with trial and court guarantees (nobody may be charged for a crime he/she did not commit; tortures and humiliating ill treating are also forbidden).

During training courses for regular soldiers there are classes on law of war held. Another subjects are realized on social education courses. Soldiers are taught basics of law of war, rules of conduct and penal liability regulations. Teaching non commissioned officers on contract is similar.

The subjects on officer training courses are: introduction to law of war and application of law of war. For warrant officers and regular non commissioned officers seminars are organized on rules of law of war and rules of conduct in combat.

Military education carries out the tasks of disseminating and teaching law of armed conflicts in different range, appropriate to needs of particular groups.

In schools for non commissioned officers under command of Land Force Command there are classes held on basic elements of laws and customs of war, protection of armed conflict victims and war crimes. The objective of the courses is to make every student know the rules of conducting combat and protecting victims of armed

The fact should be highlighted that Poland – voluntarily and without external obligations – guarantees and protects the freedom and rights of man. Even some limitations of these freedoms, due to necessary focus on state security (art. 31, legislation 3), do not deny the ultimate decree saying that: “War crimes and crimes against humanity do not expire” (art. 43). Polish legislature has created a list – according to international law of armed conflicts – of crimes and penalties in Penal Code chapter 16 (on crimes against peace, humanity and war crimes), articles 117 to 126. The crimes are most severely penalized, including the 25 year prison sentence.

A significant element of our discussion is adaptation of obligations imposed on the account of Poland being a member of the OSCE countries. Code of political-military aspects of security, in force since 1995, has set a number of regulations and rules of conduct, which were incorporated by the countries voluntarily, not by legal means of ratification processes. The document (Poland was one of the initiators and authors of them) obliged us to “make international humanitarian law of armed conflicts widely accessible at home, and to reflect this matter in military training programs and military regulations, and also to undertake steps so that the armed forces personnel became acquainted with the decisions, conventions and obligations made in the area of international humanitarian law of armed conflicts, and to make the personnel aware of its individual responsibility for actions done – following home and international legislature. Therefore there are no problematic issues, whether it is possible not to realize international regulations in the army that Poland has accepted to realize according to our national interest. Some substantive questions may be asked on how to realize the tasks resulting from the regulations of international law of armed conflicts.

In everyday training activities in the army and educating the regular cadre, on different levels, we are used to referring to basic regulations of international humanitarian law of armed conflicts, which state the following:

- the parties of a conflict and members of armed forces (combatants) have limited right to choose and apply methods and means of combat,
- it is forbidden to use some kinds of weapon and methods of combat that cause unnecessary sufferings or extensive loss in natural environment,
- the parties of a conflict should always differentiate combatants from civilians and the latter ones (including individuals) should not be a military target,

scope of international law of war in all forms of education. First of all, on daily studies at the Faculty of Land Forces and the Faculty of Air Forces and Anti Defense. But also on post-graduate studies run byof Strategic-Defence Faculty's departments as well as on various kinds of training courses. Apart from a group of full time employees, both military and civil, lecturers from other academic centers are invited to give lectures. Beside the education, the mentioned above Department is dealing with a research work within the scope of law of war. Publications of its Employees provide a wide range of examples.

In NDU the issue of humanitarian law of armed conflicts is present in the whole of education process. The greatest emphasis is put on the issue during post graduate MA studies. In all groups of officer-students of basic studies there are classes held on international public law which cover material within the area of international law of armed conflicts. This is a prevailing area of studies. The specific emphasis is put on this area of law during the course on national security – there are 120 hours of classes provided to cover the topic of law and international public law. Extra mural post graduate MA studies started in 2002 include in their program among others classes on international peace and security law. In other forms of education of professional cadre of Polish Army in NDU (post graduate studies and courses) the classes on law of armed conflicts take from 2 to 12 hours – also realized in the Board of Polish Red Cross. A significant novelty is launching in the academic year 2000/2001 Post-Graduate Stusie on International Law of Armed Conflicts. It is the first time such a professional and wide-ranged program is created to teach the students in our country (both military and civilian) international humanitarian law.

And so in the education process of the academy the students are being provided in basic elements of knowledge of, primarily, law of war and humanitarian law. The Department of International Security and Law deals with issues of international public law alongside with specific points of international security. The education process rests upon the tendency to match international law and national law (within the scope of our country defense) to the lectures on international studies. One of the assumed education objectives is teaching the students to perceive co-relations and causes, not only encyclopedic mastery of the content lectured. The exercise program "Intervention" launched in 2000 has made a large contribution to this area.

conflicts, and rules of penal liability, as well as make them take into consideration the law of war regulations while commanding a team and prepare a training on that.

The content of the training courses in military academies and officer schools were basically changed at the beginning of the 1990s. At present particular schools and training centers are preparing their own teaching programs, enjoying wide freedom to do so, especially in the area of our interest.

On Military Academy of Medicine (inspired by Department of Staff and Military Education of Ministry of National Defense – report number 8499/7, of 22 October 1997 and the report 2957, of 29 April 1998) there were lectures on International Humanitarian Law. In Military Academy of Technology the issues of law of armed conflicts are included in several subjects of academic education. The classes on Contemporary International Security include laboratories on the role of law of armed conflicts in solving security problems. The Professional Ethics class includes issue of “Moral problems of international law of war”. The Military Regulations class offers lectures on international humanitarian law. General Military Training class the issues of humanitarian law are realized in five subjects, including 9 hours of classes. Some elements from this area of our interest are also included in humanistic, economical and logistics subjects. Post graduate studies in this school include the subject of: Elements of international law of war. Academy of Navy in Gdynia there are no separate classes on international law of armed conflicts but most of the issues from this area are actually lectured there. In the academy the most emphasis is put on law, sea law. In Officer School of T. Kosciuszko in Wroclaw there are classes on international law of armed conflicts. In Officer School of S. Czarnecki in Poznan there were classes on international law of armed conflicts. The objective of the lessons was to teach junior warrant officers the rules of international law of armed conflicts during exercises carried out with participation of allied armies, at home and abroad. The training program for peace forces of international organizations organized by a center in Kielce also includes elements of humanitarian law. The fact that there is an increasing participation of Polish officers recorded in conferences, seminars and workshops at home and abroad, dedicated to the problems of international law of armed conflicts, is also important. Since 1991 officers of Polish Army have been participating in courses organized by the Foundation of Human Rights in Helsinki.

The Department of International Security and Law in National Defence University deals with tasks on international law. Its lecturers have standard classes within the

Limited freedom of a country in the area of understanding the rule of sovereignty of human rights must be accompanied by practical steps to implement international humanitarian law regulations. The traditional understanding of a country sovereignty, seen as totally authoritarian settlement of home affairs, especially if it leads to violating human rights is redefined. This kind of new comprehension of a modern country competence calls for engaging the whole authority of the biggest world organization, including almost all countries – UN and its General Secretary who emphasizes that the world has changed and range of humanitarian action is worldwide, and common interest becomes national interest. The rule of humanitarianism is the basic rule and in the century of human rights the individual is in the spotlight of public opinion, international organizations and most countries policies. Kofi Annan undertakes such an understanding of the UN Charter. The dilemma, as to whether it is a country sovereignty or individual human rights – after the experiences of Pol Pot in Cambodia, after Rwanda lessons, after Bosnia and Hercegovina and Kosovo which are called humanitarian disasters – is solved to the benefit of an individual not a country and its historically understood sovereignty.

It seems worth remembering then that international humanitarian law rests upon universal norms and cultural values of the whole world, and the so-far weakness of international penal law concerning execution of its regulations has been recently reconsidered. It is connected to the bloody events that took place in former Yugoslavia, Rwanda and Timor. Wide scale war crimes committed there as well as acts of genocide shocked international consciences. Under protection of UN there were International Penal Tribunal for former Yugoslavia (1993) and International Penal Tribunal for Rwanda (1994) created. So far there have been over one hundred defendants. A number of criminals await trials in jails, and several of them have already been sentenced.

Poland is very active on international forum as far as development of international law of armed conflicts is concerned. In 2000, 50 years after signing European Human Rights Convention, the Republic of Poland has ratified documents that created International Penal Tribunal in Rome (July 1998) intended to inflict penalties of international character.

In military academic circles there are different ideas put forward aiming at improving the level of law education. One of the ideas is the proposal of introducing a lecture on human rights and their protection. The basic objective of this would be

Bearing it all in mind, the education process is actively supported in forms of publications and constant improvement of the NDU Main Library collection of books on this subject.

Program education while being an important, is not the only one form of law of war dissemination. Apart from academies and officer schools this area of knowledge is realized in the Ministry of national Defense Department of Education and Promotion and also in General Staff. By efforts of the former Department of Social Relations of MoD a "Handbook of Law of War for armed forces" by Frederico de Moulinen was translated and published by the Bellona Publishing House. There was a basic guide on this area of knowledge published – "Law of War. A Summary for commanders". With cooperation of MoD a handbook "Defense Training" for high schools students was prepared and popularized, which includes a wide chapter on international humanitarian law. Both MoD and NDU are cooperating with the Polish Committee of Red Cross and participate in popularizing its publications and review materials. By efforts of Polish General Staff there was published a manual("Instruction of Land Forces Tactical Activity"), which advises to consider affliction of civilians while planning and being engaged in combat and to consider responsibility to protect cultural property. Outside the system of officer education, in cooperation with Polish Red Cross there have been specialist courses for doctors in army hospitals organized (in Warsaw) as well as for logistic officers. In the 90s, with participation of specialists from Switzerland and Sweden, there were several training courses organized in military areas Commands.

Identification carried out by International Red Cross inspectors and their evaluations submitted to the Department of Social Relations of Poland's MoD (now Department of Education and Promotion of Defence) are optimistic. In the opinion of the inspectors Polish armed forces are well prepared to observe law of war and armed conflicts. The inspectors drew their conclusions by watching a polish battalion working within IFOR. It should also be pointed out that the inspectors compared Polish soldiers law awareness to other armies of the Central and East Europe countries. In the light of the opinions presented Polish Army may be considered remarkably and positively distinguished comparing the armies of the region.

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living in the environment left after the armed conflict, in the environment where cultural property will certify our identity. The less the loss in cultural substance is the bigger the chances are for permanent and long period of peace in society. Even assuming that a hypothetical use of mass weapon may intervene with dissemination of Geneva and Hague conventions, it is difficult to put up with the philosophy of "nothing after us".

It does seem possible to make some bold attempts while preparing exercises, regular officer training courses in military academies. Providing training in general military areas we ought to remember that precious architecture and buildings housing cultural property can never be military used objects. If we do not remember that we make other party of a conflict free of liability to exercise the rule of non military targets. This should be taught during every training course, not only Civil Defense.

It seems also useful to remember the education and commanding cadre while their evaluation of training courses content, to pay attention to the elements referring to Hague conventions.

In every day military life it is rather common to encounter the following argumentation: the complexity of modern battlefield is so high that it makes all additional limitations intervene with the natural commanding tendency to eliminate any less significant – from the military point of view – factors of taking decision. This is nothing but a veil of military necessities. It should be born in mind that such argumentation is only acceptable when law of war allows for it. The category of "military necessity" is a problem itself, playing an important role in army training.

What is necessary is new law regulations because the so-far regulations referring to international issues settlement, as the Yugoslavia example has proven, were insufficient. Leaving the dilemma unsettled, between such values as sovereignty and natural human rights makes it difficult to disseminate international law. Any doubts on interpretation weaken execution of international law. The law impossible to execute is a dead law. Unsettled conflicts, by political and legal means, is a threat for peace.

increasing the number of class hours to 50 – 60 in all kinds of military schools. Within the framework of these classes there should be lectures and laboratories provided on: international system of human rights protection, European system of human rights protection, international law of armed conflicts, organs and procedures concerning human rights in international and national law system, military administrative law, military penal law.

Referring to the aspect of protecting cultural property I would like to remember that we are a nation which – both for historical and geographical reasons – has many a time suffered grave loss in this area. I shall think that we, Poles, due to these very reasons are remarkably determined to be extraordinarily interested in how the Hague regulations of 1954 are being implemented. Certainly there are many examples for a positive illustration of Polish achievements (to mention the national effort put on protection and restoration of numerous cultural properties lost during the World War II. There may be opposite examples, though.

As far as architecture is concerned we have statistically and comparatively less numerous group of the most precious cultural property than other signatories of the Convention of 1954. The matter of our interest needs to be considered even more conscientiously. Does this take place then? Are the Hague regulations being implemented in the area of which we are all, gathered in this room, participants?

Here allow me to refer to the already mentioned issue of education of military cadre in the area of our interest. In my opinion the answer for the question asked is positive, but is it sufficient? On the practical level we seem to strive too little, to provide the process of our armed forces education with a proper range and to make the benefits of the education applicable for military academies' graduates.

Lacking possibilities to increase the number of class hours in education process, we seem to assume a *priori* that officers, being raised in cultural environment of their nation, do know and feel what values and cultural properties need to be protected and how to do it. This seems to be a wrong assumption however. Do have a look at the situation in former Yugoslavia. To expect personal culture and basics of soldiers knowledge to be sufficient may be misleading.

What else then shall we do?

Preparing military commanders we commonly remind them that war should be treated as a way to ensure peace (*Politics* by Aristotle). Consequently, after time of war (hopefully it will not break) there will be the time of no war, the time of normal

cle 91 of Constitution stipulates the position of international law in internal legal order precisely, however the obligation to observe international law rules was formulated in art. 42 – 43.

From Geneva Conventions (articles 1, 47 and 49) and Additional Protocols I results among others the need of law of war dissemination and application. Art 83 of Additional Protocol I obligates conventions and protocols' parties not only to acquaint military forces with contents of these articles, but also to include them in military training programs. Additionally, art 80 Additional Protocols I obligated countries to make the laws and regulations aiming on correct application of Protocols rules in military forces.

Observance of International Humanitarian Law rules by military forces is also a part of chapter VIII of "Code of proceeding in military aspects of security", that likewise defensive doctrines of every democratic state imposes on the countries<sup>61</sup>, taking actively part in OSCE process, obligation to train the military forces according to the law of war rules.

Training in the scope of the law of war has obviously nothing in common with preparations to launch the war in any way, but has deeply humanitarian reasons on the other hand. It is known that armed conflicts emerge mostly along with UN Chapter violation. Launching the war charges persons connected to the state authorities as a rule, who beget full responsibility for outbreak of armed conflicts. However, every officer, soldier and civil administration official may offend the law of war rules. In this conception legal rules regulating conduct of war take on great importance.

The International Humanitarian Law rules had been correctly included into Polish internal law. This process is being continued.

In the latest years several laws came into force, to mention some of them:

- 1997 Penal Code, covering chapter XVI (art. 117 – 126) titled 'The crimes against peace, humanity and war crimes'<sup>62</sup>;
- 1993 Decree of the Ministers Council in the matter of civil defense;

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<sup>61</sup> *Security strategy of the Republic of Poland*, accepted by the Council of Ministers on 4 January 2000, *Defense strategy of the Republic of Poland*, accepted by the Council of Ministers on 23 May 2000.

<sup>62</sup> Dz.U., 1997, no 88, poz. 553 and 160, 1083.

## 4. THE LAW OF WAR IN THE POLISH ARMY. DISSEMINATION AND IMPLEMENTATION

Paweł ŻARKOWSKI

Law and customs of war awareness and implementing them during day-to-day activities are fundamental soldiers' duties coming from humanitarian law rules. This obligation results from international agreements, which obligate Parties to disseminate the awareness of war law rules among the members of its own military forces. It is generally known, that the violation of those rules during armed conflicts lead to escalation of crimes and augmentation of hatred on both sides, which makes searching for peace solution more difficult. First of ail, it begets penal responsibility towards the law offenders.

The Republic of Poland, as a Party of 1949 Geneva Conventions, that were ratified in 1954<sup>56</sup> and 1971 Additional Protocols, ratified in 1991<sup>57</sup> and "Code of proceeding in political – military aspects of security" – accepted in 4 December 1994<sup>58</sup>, is obliged to International Humanitarian Law dissemination, correct training organization, including military, ensuring wide Geneva Conventions and Additional Protocols contents awareness and appropriate formulating of commanders duties in the scope of International Humanitarian Law dissemination.

Ratifying Additional Protocols by Poland<sup>59</sup> has imposed upon our country as well as military forces obligation to accomplish rules comprised there, which in the light of Republic of Poland Constitution of 26 April 1997 are the source of law in force<sup>60</sup>. Arti-

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<sup>56</sup> Dz.U.1956, no 38, poz.171.

<sup>57</sup> Dz.U.1992 no 41, poz. 175, 176, Text [in:] M.Fleming, *Międzynarodowe prawo konfliktów zbrojnych*. Zbiór dokumentów, Warszawa 1992.

<sup>58</sup> Cz.Marcinkowski, *Kodeks postępowania w polityczno – militarnych aspektach bezpieczeństwa*. Warszawa 1996.

<sup>59</sup> Dz.U., 1992, no 41, poz. 17.

<sup>60</sup> Art. 87 and 91 *Constitution of the Republic of Poland*, of 26 April 1997, Dz.U.1997, no 78, poz.483.

The 90s has brought significant changes in the military forces structure, including military school – system. Particularly colleges began to their own solutions, the consequence of which was the change in education of junior warrant officer. As a result of aspiring to the pragmatic model of military cadre education, the theoretical education model of International Humanitarian Law was revised.

During this period of time the co-operation between our military forces and institutions and nongovernmental organizations, that are occupied with dissemination of Humanitarian Law developed. Contemporary, the Ministry of Defense cooperate the most effectively with Polish Red Cross. It is expressed among others in trainings organization and of publications and training materials dissemination. The Polish army officers are taking part in the activity of the Commission in the matter of Dissemination of Humanitarian Law on Polish Red Cross Board and also engaged into other fields of Polish Red Cross activity.

Since 1991 soldiers have also participated in the courses organized by Helsinki Foundation of Human Rights, that are aimed on preparing persons able to educate and disseminate the knowledge about human rights and freedoms and about the means to this rights protection. Experiences gained during these courses are used in military environment as well as beyond it.

In Poland, no one questions the law of war rules, both in moral and substantial aspects. So nothing stands in the way of going over the minimum obligations contained in conventions on the law of armed conflicts and striving to the achievement of the higher standards. We are going towards the construction of a coherent system of dissemination and implementation of international law of armed conflicts for military forces. Such experiences as, for example, these related to the role of legal advisors role in the army are missing. We lean towards making use of the other armies output in these domains. Intensity of lasting legislative, restructuring works and others causes prolonging this process and acceptance of final solutions are put away.

Apart from the difficulties met, notable achievements in the law of war dissemination in Polish armed forces are remarkable. In the recent years the problem of international law of armed conflicts was included to the tactics activities regulations of land troops, air troops and air defense. 'Regulation of tactic activities of Land Troops' published in 1995, Part I (tactic relation unit) orders the law of war rules application

- 1995 Disposition no. 23 of Minister of the Culture and Art in the matter of cultural property protection in case of state security threat and armed conflicts;
- 1996 Disposition of the Council of Ministers no. 54/96 about creating the Polish Advisory Committee in the matter of cultural property protection during armed conflicts;
- New laws relating to the cards and identity plates;
- Law relating to legal situation of persons who were in captivity or were interned.

Armed forces of the Republic of Poland are obliged, accordingly to the Geneva Conventions and Additional Protocols rules, to disseminate International Humanitarian Law, organise correct training ensuring wide awareness of documents mentioned above and appropriate formulation of commanders' obligations in the scope of International Humanitarian Law dissemination.

In the case of Poland it's also a moral obligation, which results from experiences of past wars, damages that Poland experienced and sufferings that become common fate of Poles. Particular coil of cruelties and their tragic consequences were caused by the Second World War. To mention only some categories we dealt with activities against civil population, cultural relics or with murders on prisoners of war. Only few were able to take advantage of benefits of the law of war rules as it was with the Polish soldiers interned in Switzerland in 1940.

Attention and respect for international rules of armed conflicts have traditions reaching out the 50s in the Polish armed forces. In 60s there were researching works undertaken on military universities on this domain of law and there were first handbooks of the law of armed conflicts elaborated, which has become educational subject in military college and schools since then.

In the 80s education and dissemination of the law of armed conflicts was regulated by the Disposition of National Defense Minister nr 64/MON from 23 November 1982 in the matter of forming soldiers and civilian employers legal awareness<sup>63</sup>.

Those days experiences to treating international law of armed conflicts as a strictly academic discipline were limited another (which was a result of military doctrine in the force), which was very hard to transform into military practice.

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<sup>63</sup> Dz.U., Rozk. MON 1982, poz. 64, and 1987, poz. 57.

- Rules of penal and dissemination responsibility of soldiers in the light of Penal Code and the Army Discipline Law;
- Ethics of military service;
- International terrorism;
- Protection of the cultural property in the time of peace and war;
- Application of International Law of Armed Conflicts on the example of the conflict in former Yugoslavia;
- Five themes for the units preparing to composing rapid reaction forces (participation in operations);
- Fundamental sources, principles, rules of the law of armed conflicts;
- Military goals according to the law of armed conflicts;
- Categories of persons and objects liable to special protection;
- International Humanitarian Law;
- International rules of combat.

Ministry of National Defense, appreciating the meaning of dissemination of the law of war thorough soldiers, systematically builds up military libraries with specialist publications on this subject. Exemplary, during last few years the following publications were published:

- International Law of Armed Conflicts – the documents, 1991;
- Fundamental principles of Geneva Conventions and Additional Protocols, 1993;
- Handbook on the law of war for armed forces F. de Mullien (edition 6000), 1995, 1998;
- The use of arms by the Polish Army soldiers in the light of Polish law in force, K. Parulski – (ed. 3000), 1998;
- The materials for teaching International Law of Armed Conflicts for non-officers and junior ranks, R. Pęksa, P. Żarkowski – (ed. 4500) 1998, 1999;
- Penal law in the army. Commander handbook, S. Przyjemski – (ed. 4500), 1998, 1999;
- The prisoners of war. Legal and historical study, M. Fleming (ed. 1000) – 2000;
- Polish version of training film prepared on commission of ICRC titled ‘ Fighting in accordance to principles’ (ed. 1000) – 2000;

during the conduct of hostilities<sup>64</sup> and mentions begetting penal responsibility for violating this norms towards all persons, no matter which party of conflict it represents. Similar rules can also be found in 'Regulations of air forces tactic activities'<sup>65</sup> published in 1996. The Polish army medical service also posses typical instruction taking into consideration modern international law of armed conflicts requirements<sup>66</sup>.

Department of Education and Promotion of Academy of National Defense appreciating humanitarian law role, especially in the field of Polish soldiers civil education, for a couple years has undertaken activities aimed proper dissemination of this domain of law, whereas values resulting from humanitarian law at managed to find the appropriate place in socio – educational activity of the army.

Te issue of international humanitarian law of armed conflicts was also taken into consideration as an element of civil education of regular soldiers and professional cadre. It is being realized according to the 'Directive for civil education in Polish Military Forces', which was introduced by Minister of National Defense decision no 149/MON of 21 September 1995. This document defines the scope of the educational problem, including among others legal and ethical problems of military service, combat and regional security.

The topic of courses in International Humanitarian Law is contained in the 'Proposals for civil education of Republic of Poland Armed Forces professional cadre in 2002' (published 2001 in Warsaw) and 'Thematic proposals for regular soldiers civil education. in the Republic of Poland Armed Forces of 1999' (published Warsaw, 1999), that consists of forthcoming themes:

- Introduction to the law of war;
- General rules of International Humanitarian Law;
- Rules of soldiers acting in the light of International Law of Armed Conflicts;
- Application of the law of war during the exercises;
- Rules of in battle resulting from International Law of Armed Conflicts;

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<sup>64</sup> *Regulamin działań takycznych wojsk lądowych cz.I – związek taktyczny, oddział*, (The regulations comprises the obligation of the law of war observance during armed conflict as follows: *The law of war observance is obligatory, comprised in the international agreements or common law, consist of the bans obliging the fighting sides. Observing them is a fundament for conducting the hostilities accordingly to the humanitarianism rules*, Warszawa 1995.

<sup>65</sup> „Zarządzenie Dowódcy Wojsk Lądowych i Obrony Powietrznej”, no 32 1 April 1996.

<sup>66</sup> *Medical service during armed conflicts*, sygn. zdr. 230/92, Warszawa 1992.

and Socio – Educational Ministry of National Defense Department. International Committee of Red Cross has offered financial and methodical help to the Ministry of National Defense in dissemination international law of armed conflicts. It had to be expressed in the common organization of specialist trainings for Polish Army officers. This proposal was accepted by the Minister of National Defense, and all of the cases connected with the co-operation with Regional Delegation. Of International Committee of Red Cross in Budapest was entrusted to the Socio – Educational Department of Ministry of National Defense.

Starting from December 1997 Socio – Educational Ministry of National Defense Department (Department of Education and Promotion of Defense – since 2002 it has continued this activity), acting in cooperation with Regional Delegation of International Committee of Red Cross in Budapest approached to organizing specialist courses of armed conflicts and peace operations law for Polish officers. The purpose of this training was to get the personnel of armed forces acquainted with resolutions, principles, conventions and obligations contained in International Humanitarian Law related to armed conflicts. Simultaneously are strives after raising among the commanding cadre individual responsibility for undertaking activities accordingly to the internal and international law. The officers from all kinds of armed forces were comprised by specialist training (including military school-system). Altogether, since 1997 there were 250 officers trained on the workshops and specialist courses.

The quantity specification of organized courses in the recent years is as follows: 1997 – 1; 1998 – 3; 1999 – 3; 2000 – 2; 2001 – 2; 2002 – 2. The next ones are planned for 2003. Within the framework of specialist courses in force, the commander management cadre, chiefs of training plans, commands kinds of armed forces, corps and military districts, academics and officer high – schools were also comprised.

For Polish Army the event of a great importance in the scope of dissemination and implementation of International Humanitarian Law issue was the agreement between Ministry of National Defense and International Committee of Red Cross (31 May 1999). The purpose of this understanding was formal co-operation asset, which has its beginnings 2 years earlier. This agreement guaranteed ongoing co-operation for both sides in the future.

Taking into account that there exist a few priority fields of Ministry of National Defense activity, which are granted funds into first place, the financial aid of International Committee of Red Cross in the scope of International law of armed conflicts

- Materials for teaching the law of war for instructors, P. Żarkowski, D. Radziwiłłowicz – (ed. 1000) – 2002;
- In the year 2003 the publication of documents collection of International Humanitarian Law is planned;
- In the regional centers there are films produced which are needed for training on the law of war issue. In 1 KPZ there was among others produced film in 1999 titled 'With God on mouth, with the hatred in heart'.

Dissemination of International Humanitarian Law is undoubtedly, a very important task. It's implementation to the training practice is also important, as well as existence of this issue in the military programs, during exercises, tasks realization connected with the peace missions etc. The point is to form attitudes and habits among professional cadre and regular soldiers that exclude behaving discordant to international law rules in extraordinary situations.

Contemporary education in the scope of the law of war proceeds in all military schools and academies. It is usually run by in the liberal arts chairs. The curriculums of the military schools, depending on their kind include the issue of humanitarian law for 6 (non-officer schools) to 12 – 16 hours (academies, officer high schools). The curriculum education in military schools and academies is the one of the many forms of dissemination the law of war in Polish Armed Forces. It is also certainly one of the highest importance in the process of preparing of Polish Army cadre in this respect.

In the scope of dissemination of the law of war a particular effort was put on professional cadre and on soldiers participating in peacekeeping missions. Because of that the issue of the law of war was included into the training curriculum of International Center for Needs of International Peacekeeping Forces in Kielce. Within the frames of fundamental training cadre and soldiers become acquainted to the definitions, notions and documents related to human rights and International Humanitarian Law. However, during the tactic training they are acquainted to the organization and rules of leading humanitarian activities, to the procedures of the exchange of prisoners of war and practical execution of mandate tasks.

Since the mid 90s of the resent century the Ministry of National Defense is in the near working contact with International Committee of Red Cross. The first working – meeting between Ministry of National Defense and International Committee Red Cross came into effect in July 1997. Representatives of Regional Delegation of International Committee of Red Cross on Middle – Eastern Europe met directors of Legal

public, Estonia, Lithuania, Latvia, Moldavia, Poland, Slovenia, Ukraine. In the second one, which regarded the issue of functioning of armed forces legal advisors, representatives of 19 countries took part. We will try to tie up the co-operation with other armies in the scope of humanitarian law dissemination and application. We will try to organize courses and another training enterprises with officers from neighboring countries and armies composing North Atlantic Treaty.

Since 1990 Polish Army has done a lot in scope of humanitarian law dissemination, human dignity respecting and coherent civil control over the army. It understands its place and role in democratic society. But there is a lot of work in front of us in the field of humanitarian law application and construction of coherent system education. Signing and ratifying the international covenant is the beginning of the way to actual its resolution observance. Conventions indicate what should not be done, but not what should be. Because of that information and education, the development of ethics and the changing of the thinking philosophy of commanders and soldiers is essential.

For not observing of the law of war rules one bears full disciplinary and penal responsibility. So, we want this rule to be main principles of proceeding every case of force use, also when they take part in UN peace operations. Nowadays, the observance of ILAC rules and international standards of human rights becomes for every army a visit card of its combat efficiency, discipline and morale, and witnesses its peaceful settlement.

Humanitarian law dissemination is an important task. Nor is its less important implementation to training practice, its appearance in school curriculums, during exercises, realization tasks connected with peace missions etc. It is here about the formation of professional cadre and regular soldiers attitudes and habits, excluding behavior, that violates international law in extreme situations. This mission is all the more harder, that in peace conditions were not always aware of the scale of this problem, of what remind us the military hostilities taking nowadays place in different parts of the Earth.

Humanitarian law dissemination is an important part of our activity. We aim at construction of a coherent system of this law in military forces, with theory and practice included. It is long term project and surely not easy. Education in the scope of humanitarian law should be seen in wide legal frames. Theoretical knowledge gained

dissemination is precious. By virtue of this agreement the participation of the representatives of Polish Army in foreign training enterprises is assured.

Apart from financial support, there must be underlined the significance of essential aid from International Committee of Red Cross Delegation in Budapest, in the scope of practical application of international law of armed conflicts during military training process. International Committee of Red Cross provides for didactic side of courses, that is - the participation of lectures – instructors for military forces and elaborates training materials used during didactic courses.

The subject matter of courses, which obliged during former international law of armed conflicts and peace operations course for officers of land troops is presented below:

- Role and task of ICRC, Movement and PRC;
- Introduction to ILAC – fundamental definitions;
- Combatants, persons and objects comprised by protection, protective signs and emblems;
- Bans and limitations on some arms application;
- Responsibility of commanders;
- Inclusion the ILAC into combat – making decisions process;
- Exercising on maps: showing operation conception, humanitarian regards, widening of group training;
- Operations of low intensity;
- Establishing rules of force use – mandate, agreements, SOFA;
- Task: critical analyses of the proposed force use rules;
- Task: establishing of soldiers force use rules (on battalion level);
- Task: practical test of force use correctness and analyses of legal cases
- Contemporary level of ILAC dissemination in Polish Army.

Apart from the training proceed in the field, Polish officers can take part in every year specialist courses of ILAC organized in Institute of Humanitarian Law in San Remo.

Within the framework of agreement Poland, cooperating with Regional Delegation in Budapest, organized two regional seminars for countries of Middle and Eastern Europe in Warsaw in 1999 and 2001, related to inclusion of ILAC to the topics of military trainings. In the first seminar the deputies of general cadre and directors of departments of armed forces of 9 countries participated: from Belorussia, Czech Re-

## 5. ROLE OF THE NATIONAL DEFENCE UNIVERSITY IN TEACHING OF THE INTERNATIONAL HUMANITARIAN LAW OF ARMED CONFLICTS<sup>67</sup>

Marek GAŚKA

Throughout thousands of years' work it was possible to create the law of war, became a powerful defence against dissolute acts of the warring, law, that if known widely, may greatly contribute to appeasing fears of the population stirred by the news of war. One who works on the law of war, who spreads knowledge of it, may be of service to a nation and the entire humanity.

These words were written in 1914 by then leading Polish lawyer, Zbigniew Cybichowski, in a work entitled *International Law of War* (Lvov 1914). How timely are these words at the break of the XX and XXI century. In other fragments of the cited work, Zbigniew Cybichowski wrote: *states practising common military service should in advance prepare military organisation of the entire population capable of fulfilling military duty, in order to provide it with the benefits of the law of war*. Conclusions coming from this thesis could had been employed during the second world war, had the leaders of the II Polish Republic not lacked the requisite knowledge and imagination. The words of Zbigniew Cybichowski were also relevant in the 1990's when we were in the process of forming foundations for a sovereign Polish defence doctrine.

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<sup>67</sup> In the here presented paper I will interchangeably use the following terms: law of war, law of armed conflicts, international law of armed conflicts, international humanitarian law. International humanitarian law of armed conflicts is the most suitable term currently employed. Such term was proposed, in the Polish science of international law, by Prof. R. Jasica, *Upowszechnianie znajomości międzynarodowego prawa humanitarnego w siłach zbrojnych*, *Zeszyty Naukowe WSO im. S. Czarnieckiego* 1997, nr 2, p. 80. This partly a result of the terminology used in numerous documents of the UN and the ICRC. According to a definition put forward by Prof. R. Jasica: *international humanitarian law of armed conflicts is the body of rules, set by international agreements or custom, with the purpose of limiting the rights of participants of international and non-international armed conflicts to use methods and means of combat, in order to protect persons and property from the effects of such conflicts*.

during the commanding-staff exercise, decision games, trainings and exercises with the participation of armed forces. Only this kind of activity may guarantee efficient settlement of the issue of the law of war in our armed forces.

concerning international humanitarian law. Moreover, Art. 83 of the I Additional Protocol obligates signatories of the Convention and the Protocol not only to familiarise armed forces with regulations of the law of war, but also to include those regulations in military and civilian training programs.

Training of armed forces according to the provisions of international law of war stems from a defence doctrine of any democratic country<sup>73</sup>. It is a duty of all the states actively participating in the OSCE process imposed by the Budapest Code of Conduct (6 December 1994) in Art. 34: ***Armed forces of the signatory states are committed to respect basic rules of international law as well as rules pertaining to the use of armed forces in a conflict in accordance with the 1907 and 1954 Hague Conventions, 1949 Geneva Conventions and their 1977 Additional Protocols, as well as the 1980 Convention on Prohibition and Restrictions on the Use of Certain Conventional Weapons which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects***<sup>74</sup>.

Obviously education in the field of law of war has nothing to do with any preparations to actually wage a war. Such training has deep humanitarian merit, due to the process of humanising inter-human and international relations<sup>75</sup>. It is well known that war is prohibited under international law as a way of resolving disputes. Still, armed conflicts erupt - clearly in violation of the UN Charter.

Violating the anti-war law (*ius contra bellum*) and unleashing a war weighs solely on persons wielding state power. However, any officer, soldier or civil servant may violate the law of war (*ius in bello*). *Rendering war illegal* - concludes Prof. S. Nahlik - *does not rule out a second line of defence in the form of legal norms regulating the way war is conducted, such an additional line is requisite even in order to better determine individual responsibility*<sup>76</sup>.

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<sup>73</sup> Uchwała KOK w sprawie doktryny obronnej RP (MP z 1990 r., nr 9, poz. 66) oraz Strategia bezpieczeństwa Rzeczypospolitej Polskiej przyjęta na posiedzeniu Rady Ministrów w dniu 4 stycznia 2000 r. i Strategia Obronności RP przyjęta na posiedzeniu Rady Ministrów w dniu 23 maja 2000 r.

<sup>74</sup> Budapeszteński kodeks postępowania w dziedzinie polityczno-wojskowych aspektów bezpieczeństwa z 6 grudnia 1994 r., [in:] *Prawo w stosunkach międzynarodowych. Wybór dokumentów*, (ed.) S. Bieleń, Warszawa 1996, pp. 289-290.

<sup>75</sup> See: L. Łukaszuk, *Międzynarodowe prawo humanitarne w systemie ochrony praw człowieka i humanizacji stosunków międzynarodowych*, AON, Warszawa 1995.

<sup>76</sup> S. Nahlik, *Grabież dzieł sztuki. Rodowód zbrodni międzynarodowej*, Ossolineum, Wrocław-Kraków 1958.

In 1995, J. Marczak and J. Pawłowski (in a work entitled *O obronie militarnej Polski przełomu XX-XXI wieku*, Bellona Warszawa 1995, pp. 243-244) wrote the following: *In the strategic defence of Poland a possibility has to be taken into account that parts of the territory may be temporarily lost, and that losses may be inflicted by the enemy, which would render impossible counteracting enemy attacks in the form of regular operations. Thus, it is necessary to include the activities of army units left in occupied areas as well as to undertake irregular actions on a large scale.* However, were the authors of this conception fully aware of the necessity to study this issue based on international law? Have we tried to initiate suitable works in the sphere of legislation and military regulations?

I wish to emphasise that our conference is taking place in the year of a dual anniversary. It was 25 years ago, on 8 June 1977, that the Additional Protocols to the 1949 Geneva Conventions were passed, and ten years since, on 23 April 1992, they came into force in respect to the Republic of Poland<sup>68</sup>.

Ratification of the Additional Protocols<sup>69</sup> by Poland has put new obligations upon our country, particularly the armed forces, in fulfilling regulations contained in the Protocols, which according to the Constitution of the Republic of Poland (adopted on 2 April 1997) constitute a source of binding law (Art. 87 and 91)<sup>70</sup>.

Obligation to respect the norms of international law have been additionally strengthened by Art. 42 and 43 of the Constitution as well as by regulations of the Penal Code, which in Chapter XVI, Art. 117-126, stipulates a detailed catalogue of crimes against peace, humanity and the law of war<sup>71</sup>.

A direct need to disseminate and apply the law of war stems from Art. 1 common to all four Geneva Conventions, Art. 47 and 49 of the I and II Convention<sup>72</sup>, as well as from the I and II Additional Protocol. In Art. 80, all signatory states have been obligated to issue domestic regulations in order to properly apply the ratified treaties

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<sup>68</sup> Oświadczenie rządowe z dnia 7 stycznia 1992 r. w sprawie ratyfikacji przez Rzeczypospolitą Polską protokołów dodatkowych do konwencji genewskich z 12 sierpnia 1949 r.: dotyczącego ochrony ofiar międzynarodowych konfliktów zbrojnych (Protokołu I) oraz dotyczącego ochrony ofiar niemiędzynarodowych konfliktów zbrojnych (Protokołu II), sporządzonych w Genewie dnia 8 czerwca 1977 r. (Dz.U. z 1992 r., nr 41, poz. 176).

<sup>69</sup> Dz.U. z 1992r., nr 41, poz. 175, załącznik.

<sup>70</sup> (Dz.U. z 1997r., nr 78, poz. 483). Until 2 April 1997, i.e. adoption of the Constitution, there was no unanimity on this subject among Polish lawyers. See: A. Ciupiński, *Upowszechnianie międzynarodowego prawa konfliktów zbrojnych w Wojsku Polskim na tle porównawczym*, [in:] *Międzynarodowe prawo humanitarne*, (ed.) T. Jasudowicza, TNOiK, Toruń 1997, p. 162.

<sup>71</sup> Dz.U. z 1997r., nr 88, poz. 553 i 160, poz. 1083 z póź. zm.

<sup>72</sup> Dz.U. z 1956 r., nr 38, poz. 171, załącznik.

lations can be found in the project of the Air Forces' tactical operations statute<sup>81</sup>. Medical services are a unique phenomenon in the Polish Armed Forces - as early as 1992 they had already possessed a timely instruction, which respected obligations imposed by the modern law of armed conflicts. These instruction was elaborated by ret. Col. Dr. M. Flemming<sup>82</sup>.

In 1991, one year after being established, the National Defence University (NDU) organised a conference on *Methods and Contents of Teaching International Humanitarian Law*. Military instructors and civilian academic scholars all participated in the conference.

In 1995, the NDU in cooperation with the Training Division of the General Staff, had again organised a conference on *International Armed Conflicts and Regulations of the Hague Convention on Protection of Cultural Property*. Representatives of the army and NDU, moreover, attended several international conferences and symposiums.

Officers from the Security and International Law Department of NDU took part in a conference, held on 19-20 February 1997 in Toruń, concerning the issue of *Human Rights in Extraordinary Situations* (including the subject of international humanitarian law), as well as in another conference entitled *Methods of Disseminating International Humanitarian Law of Armed Conflicts in Poland*, which was in turn held at the Police Training Centre in Legionowo.

These conferences resulted in publications (including, among others, papers by faculty of the Department) available in military libraries as well as in the National Library<sup>83</sup>, whereas a nation-wide publication appeared following the conference in Toruń<sup>84</sup>. It has to be emphasised that the Toruń conference constituted a certain breakthrough in disseminating knowledge of the law of armed conflicts in the Polish Army

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<sup>81</sup> Zarządzenie Dowódcy Wojsk Lotniczych i Obrony Powietrznej nr 32 z dnia 1 kwietnia 1996 r., Warszawa 1996.

<sup>82</sup> *Służby medyczne w czasie konfliktu zbrojnego*, 230/92, Warszawa 1992.

<sup>83</sup> *Metody i treści nauczania międzynarodowego prawa humanitarnego mającego zastosowanie w konfliktach zbrojnych. Materiały z konferencji naukowej*, AON, Warszawa 1991; *Międzynarodowe konflikty zbrojne a ustalenia haskiej konwencji o ochronie dóbr kultury. Studia i materiały*, pod red. nauk.: L. Łukaszuka, W. Śmiałka, D. Drewniackiego, AON, Warszawa 1997; *Metody upowszechniania międzynarodowego prawa humanitarnego konfliktów zbrojnych w Polsce. Materiały z konferencji*, Centrum Szkolenia Policji w Legionowie, 22 września 2000 roku, PCK, Warszawa 2000.

<sup>84</sup> *Międzynarodowe prawo humanitarne*, pod red. T. Jasudowicza, TNOiK, Toruń 1997.

*General Statute of the Armed Forces of the Republic of Poland*<sup>77</sup> adopted on 5 July 1994 regulates only these spheres of military life, which are not regulated by other acts of law. In consequence, this obligated the military institutions to spread knowledge of all the acts of law that concern the armed forces, including the law of war.

Furthermore, we are reminded of this duty by a statute regulating the functioning of commanding bodies in the Polish Armed Forces<sup>78</sup>, which also stipulates that it is a duty of the Military Police to control the observance of the law of war in areas engulfed by war activity as well as in areas surrounding command posts. This is additionally reaffirmed by the draft statutes of the Territorial MP and Operational Forces' MP. According to Art. 32 of the above mentioned statutes: *Military Police is obligated to gather information about persons violating the law of war, without regard to which side of the conflict they belong to. Such persons are subject to criminal liability - both ones giving orders, that violate the law of war, as well as ones carrying out such orders*<sup>79</sup>.

The order to respect the law of war was also contained in one the most important documents concerning the Ground Forces, i.e. in the tactical operations' statute<sup>80</sup>. The statute requires application of the law of war during combat: *norms of the law of war - comprised in international agreements or acknowledged by custom, binding both sides of the conflict - have to be respected. Such respect constitutes a basis for waging combat according to humanitarian principles*. Furthermore, the statute mentioned criminal liability by both sides for violating regulations of the law of war.

According to the opinion voiced in 1997 by the experts of the International Committee of the Red Cross (ICRC), it was the only military statute in Central and Eastern Europe which considered the law of war. For detailed regulations the statute referred to international treaties and the Penal Code. The statute implemented legal regulations embodied in the I Additional Protocol to the Geneva Conventions. Similar regu-

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<sup>77</sup> Syg. Szt. Gen. 1426/94, Warszawa 1994.

<sup>78</sup> Zarządzenie Szefa Sztabu Generalnego WP nr 66 z dnia 15 lipca 1996 roku, syg. SG 1471/96, Warszawa 1996.

<sup>79</sup> *Regulamin działań taktycznych Żandarmerii Terytorialnej*, cz. I, Warszawa 1995 (projekt); *Regulamin działań taktycznych Żandarmerii Wojsk Operacyjnych*, cz. II, Warszawa 1995 (projekt).

<sup>80</sup> Cz. I. Związek taktyczny, oddział (Zarządzenie Szefa Sztabu Generalnego WP nr 29 z dnia 15 marca 1994 r. - syg. Szt. Gen. 1422/94, Warszawa 1994) oraz część II (pododdziały), syg. SG 1423/94, Warszawa 1994. The statute ceased to be binding on 1 January 2001.

of war. As it is known, the main goal of these regulations is to ease atrocities of war, thus they have a deeper, humanitarian character. Many regulations - as e.g. protection of civilian population, the sick and wounded, prisoners of war, ban on attacking cultural objects which constitute national heritage - are all unquestionably binding norms. They stem from general principles of humanitarianism and do not necessitate a commander's approval. Violating these regulations brings on penal liability.

Courses like these raise students' legal awareness, develop their skills and creativity in planning military operations. The law of war does not hinder waging military actions, as it is often portrayed by some military analysts, it only defines boundaries for legally accepted activities. The law of war protects a responsible commander from committing a crime. Hence, through such courses students gain a fairly systematic knowledge, and are capable of preparing a combat (operational) order as well as an administrative-logistical order based on defence regulations and in accordance with the norms of international humanitarian law of armed conflicts. Consequently, students will not make the mistake of writing in a combat order that the Chief of the Provincial Military Staff made the decision to attack civilian objects. A person responsible for drafting such a document was clearly not capable of defining the basic rules of the law of as well as distinguishing between civilian and military objects. One could even go as far as saying that such a statement indicates a potential hazard of committing a war crime.

In order to clarify the issue, it is worthwhile at this point to quote Art. 122 of the Penal Code: *One who during combat attacks unprotected settlements or facilities, a sanitary or a neutralised zone, or in any other way engages in methods of combat prohibited by international law, is subject to the penalty of imprisonment for a period of 5 to 25 years*<sup>86</sup>.

In preparing the exercise, the lecturer has employed the skills and experience gained during a course in humanitarian law, organised by the Social and Educational Department of the Ministry of National Defence and Regional Representation of the ICRC in Budapest, held in April 1998, in Poznań.

Unfortunately, I have to conclude that due to lack of funds, the course for the officers of territorial defence forces has been suspended two years ago. As it was already mentioned, the classes had an innovative character and, in a way, were a test

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<sup>86</sup> *Ustawa z 6 czerwca 1997 r. – kodeks karny* (Dz.U. z 1997 r., nr 88, poz. 553 z póź. zm).

and police, among others thanks to a resolution, which reached the highest state authorities<sup>85</sup>.

During the mentioned conferences significant amount of time was dedicated to the issue of spreading knowledge of the law of armed conflicts. Publications, which surfaced as a result of these conferences, testify to the recognition of international humanitarian law by the military, particularly by the Naval Academy and NDU. I hope, that this conference will significantly contribute not only to spreading of international law of armed conflicts, but also instituting it in Poland's domestic legal regulations - especially military instructions.

Education in the field of international humanitarian law takes place in all military schools and academies. It is realised by legal and human sciences departments. NDU is the only military academy with a functioning Security and International Law Department. The Department's faculty conduct regular courses in the area of international humanitarian law of armed conflicts, mainly in the framework of stationary studies at the Ground Forces Faculty and the Air and Air Defence Forces Faculty, as well as in Postgraduate Strategic-Defence Studies and other postgraduate studies and courses organised by NDU. In addition to full-time military instructors, scholars from other academic centres and civilian institutions are also invited.

The fact is worth attention that in the year 2000, for the first time, classes in law of war at the Course for Officers of the Territorial Defence Forces had been conducted in a completely new framework. Twenty hours of didactic activity included lectures, seminars and a decision-making game, chiefly focused on perfecting operational military planning according to the following principles: war necessity, humanitarianism and proportionality. Thanks to this method of arranging classes, students were not only able to familiarise themselves with treaty regulations of international humanitarian law of armed conflicts, but tried also to take these regulations into account when planning military operations and to respect them in modelled military actions.

Classes conducted according to this method gave students the awareness of the need to further perfect their knowledge of the law of war in the context of actual combat situations. Students acquired essential knowledge of the basic norms of the law

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<sup>85</sup> *Uchwała konferencji naukowej w sprawie krzewienia i upowszechniania międzynarodowego prawa humanitarnego w Polsce*, Toruń 1997, [in:] *Międzynarodowe prawo humanitarne*, (ed.) T. Jasudowicz, TNOiK, Toruń 1997, s. 184–188.

military education. It has to be stated that time, energy and creativity of the faculty is irretrievably wasted, because training of legal military advisers is simply not foreseen in plans for the staff's professional training in the 2002/2003, nor the 2003/2004 academic year. It may be that in the Ministry of National Defence, an initiative is developing to educate legal military advisers at the Warsaw University, at the Faculty of Law and Administration. Nevertheless, I wish to point out that leading Polish lawyers, experts in the law of war, Prof. R. Jasica and Prof. M. Flemming, were in favour of instructing legal advisers at the NDU.

Aside from didactic work, the Security and International Law Department also conducts research focusing, among others, on the subject of international humanitarian law of armed conflicts. In 1999, Prof. L. Łukaszuk had lead a research project on modern armed conflicts, while in 2000-2001 a project entitled *Implementation of International Law of Armed Conflicts in a Domestic Legal System* was headed by Prof. S. Korycki from NDU. Faculty of the Security and International Law Department have recently published several works pertaining to this issue<sup>89</sup>.

While fulfilling their didactic and research tasks, the Department's faculty have recently participated in numerous international conferences dedicated to humanitarian law and protecting cultural property. Author of this paper delivered a lecture entitled *Protection of Cultural Property During Armed Conflict*, at a conference held in Borne Sulinowo on 4-6 October 2002. The conference was organised the under auspices of Mr. Krzysztof Sikora, Director of MoND's Education and Defence Promotion Department. At the end of October 2002 I have participated in a conference dedicated to the issue of protecting cultural property, organised by the above mentioned Department, where I delivered a lecture entitled *Protection of Cultural Property as*

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<sup>89</sup> L. Łukaszuk, *International Humanitarian Law in the Human Rights System and the Process of Humanising International Relations*, NDU, Warsaw 1995; L. Łukaszuk, W. Śmiątek, D. Drewnicki (eds.), *International Armed Conflicts and Provisions of the Hague Convention on Protecting Cultural Property*, NDU, Warsaw 1997; L. Łukaszuk (ed.), *International Law. Modern Diplomacy*, Academic Textbook, Warsaw 1997; A. Skowroński, *UN Peacekeeping Forces and Operations*, NDU, Warsaw 1997; D. Drewniacki, *International Protection of Cultural Property in Case of Armed Conflict*, Materials and Comments, NDU, Warsaw 1999; L. Łukaszuk, A. Skowroński, *International Law of Peace and Security*, Materials and Comments, NDU, Warsaw 1999; L. Łukaszuk, *European Law of Peace and Security*, Materials and Comments, NDU, Warsaw 2000; M. Gąska, *Armed Resistance Movements in Light of the International Humanitarian Law of Armed Conflicts*, NDU, Warsaw 1999; M. Gąska (ed.), *Defence in Legal Acts of the Republic of Poland. Implementation of the International Humanitarian Law. Selected Documents*, NDU, Warsaw 2000; A. Ciupiński, M. Gąska, *International Humanitarian Law of Armed Conflicts. Selected Problems*, NDU, Warsaw 2000; A. Ciupiński, J. Pawłowski, *Internationalised Domestic Conflict*, NDU, Warsaw 2001; H. Binkowski, A. Ciupiński, M. Gąska, J. Pawłowski (eds.), *Law in International Relations. Selected documents*, NDU, Warsaw 2002.

Main Board. On 1 December 2001, I have been chosen by the National Council of PRC Representatives for a new term.

The idea of spreading international humanitarian law in the Polish Army has been fulfilled through courses for the Army personnel organised by ICRC's Regional Representation and the Education and Defence Promotion Department of the MoND. These courses are also lead by faculty of the Security and International Law Department as well as by the PRC personnel and volunteers.

The Department's faculty also work at civilian academies. Among others, Lt. Col. W. Śmiałek conducts classes in the framework of the Postgraduate National Security Study at the Warsaw University, which focuses on the broad theme of security (law of armed conflicts and resolution of international disputes included). On my part, I will lead a class in the law of armed conflicts - as a part of the international security subject bloc - at the newly created Diplomatic Academy. The Academy has been established in 2002 by the Minister of Foreign Affairs. Its main task is to train apprentices to the Ministry of Foreign Affairs.

During the academic year of 2000/2001, NDU's Security and International Law Department had been training officers at an extra-mural, postgraduate study of the law of armed conflicts, with the aim of preparing officers to give legal advice to commanders in this area. Moreover, legal advisers would be obligated to lead training in organisational units of the Polish Armed Forces, fulfilling a duty imposed by Art. 82 and 83 of the I Additional Protocol.

The courses lasted for two semesters. Classes were held on nine five-day gatherings, i.e. 270 didactical units. Students had been gaining knowledge not only in international law of armed conflicts, but also in other subjects, such as: international public law, international relations, Polish legal system (including military section of the penal law), national defence, security philosophy and military sociology. During their studies, students were examined through active participation in group exercises and decision-making games. Students also took part in courses held at the Police Training Centre in Legionowo, PRC, Constitutional Tribunal, Supreme Court, Chief Administrative Court, Military Prosecutor's Office, Military Police and Office of the Civil Rights Advocate.

Unfortunately, it was only a one-time endeavour, organisationally uncoordinated with the MoND's Personnel and Military Schools Department. Based on this and on other facts, one arrives at a conclusion that the Polish Army lacks a clear vision of

ently or in the framework of the humanities departments<sup>93</sup>. Such institutes would take on the main burden of legal education. I think this is a worthwhile idea and should be considered once again.

Training in the law of armed conflicts should be looked at in a wider legal spectrum. General knowledge of law will help students to better grasp the essence, principles and regulations of international humanitarian law. Students should perfect the theoretical knowledge gained through lectures and seminars during practical exercises. In order to this, regulations of the law of war have to be taken into account when preparing exercises, decision-making games and staff training activities. In educational programs a sufficient amount of time and attention should be dedicated to the ICRC and activities of the PRC.

It is appropriate to note that recently several significant endeavours have been undertaken in the Polish Armed Forces. As an initiative sponsored by the Education and Defence Promotion Department, a work by M. Flemming entitled *Prisoners of War: Legal and Historical Study* (Bellona, Warsaw 2000) has been published. By the end of 2002 works on defining defensive norms concerning POW's should come to a conclusion. The Education and Defence Promotion Department is also preparing a new version of a compilation of main documents pertaining to international humanitarian law of armed conflicts, including:

- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 13 January 1993 (ratified by Poland);
- Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the 1980 Convention as amended on 3 May 1996; signed by Poland);
- Protocol on Blinding Laser Weapons (Protocol IV to the 1980 Convention), 13 October 1995;
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 5 December 1997 (signed by Poland);

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<sup>93</sup> W. Śmiałek, *Konwencja o ochronie dóbr kultury w razie konfliktu zbrojnego w programach studiów wyższego szkolnictwa wojskowego*, [in:] *Międzynarodowe konflikty zbrojne a ustalenia haskiej konwencji o ochronie dóbr kultury. Studia i materiały*, L. Łukaszuk, W. Śmiałek, D. Drewniacki (eds.), AON, Warszawa 1997, p. 55.

a *Permanent Element of Staff Training in International Law*. On 7-8 November 2002 I delivered a lecture, *Status of POW's According to International Law After Second World War*, at an international conference in Łambinowice-Opole. Papers and other materials from these conferences have been employed by NDU in its didactic and research activities.

When talking about the positive aspects of disseminating humanitarian law, one is also compelled to mention few problems and shortcomings. Alas, the Polish Army has not yet developed a comprehensive, coherent system of spreading international humanitarian law of armed conflicts. In order to achieve this, it is requisite for the authorities and military schools to issue proper instructions in accordance with the Geneva Conventions and their Additional Protocols as well as the Budapest Code of Conduct.

It seems appropriate to introduce elements of humanitarian law into the all-military and tactical training according to guidelines proposed by the ICRC. Such attempts were already made in the middle of 1990's by the Ground Forces' Command. Unfortunately, they have not been successful<sup>90</sup>. In order to fulfil the principles put forward by the ICRC, it is essential to elaborate a textbook for the Polish Armed Forces dealing with the law of war, as well as prepare new instructions for the branch forces referring - in matters of applying humanitarian law - to such a textbook. A handbook like this would constitute an element of an individual national doctrine<sup>91</sup>.

International humanitarian law of armed conflicts should be isolated as a separate subject in military schools and academies<sup>92</sup>. Maybe it would be suitable to go back to the idea proposed in the middle of 1990's by one of the lecturers from the Security and International Law Department's during a conference in Cracow. Namely, considering military academies and higher officers' schools as the main centres for teaching international humanitarian law in the armed forces, he had proposed to create law institutes in all the schools - institutes which could function either independ-

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<sup>90</sup> T. Jauer mentions the mistakes made during armed forces' restructuring [in:] *Restrukturyzacja i co dalej*, Polska Zbrojna nr 43, 27 October 2002, p. 21.

<sup>91</sup> Such textbooks function in other armies, e.g. in USA: *Law of war. Workshop. International and Operational Law Department*, The Judge Advocate General's School, United States Army Charlottesville, Virginia 1997, [in:] *Germany: Humanitäres Völkerrecht in Bewaffneten Konflikten – Handbuch*, Herausgeber: Bundesministerium der Verteidigung Abteilung Verwaltung und recht II 3 1992.

<sup>92</sup> It seems that such a proposition, although with minor modifications, has been put forward by A. Ciupiński (*Upowszechnianie międzynarodowego prawa konfliktów zbrojnych w Wojsku Polskim na tle porównawczym*, [in:] *Międzynarodowe prawo humanitarne*, (ed.) T. Jasudowicz, TNOiK, Toruń 1997, p. 159).

tary service is a special form of public service with its characteristic, distinguishing features. This is reflected in the military service being regulated, in most parts, by separate legal acts. The principles of subordination and discipline are the basic, fundamental features of all types of military service. Army is a hierarchic, hermetic and authoritatively ruled institution. These traits are shared by all armies. Discipline and subordination is emphasised with greater strength than it is needed in other types of public services. This may lead to violations of civil rights and liberties in the armed forces. It is considerably more difficult to defend against these violations. A fundamental way of defending against such mechanisms is to teach, as well as disseminate law in general, minding a statement by Prof. T. Jasudowicz that *a person unaware of his rights and liberties is unable to care for his own dignity and spiritual development, nor to responsibly and effectively partake in shaping of the society and the state*<sup>95</sup>. It is also fit to cite the words of a leading constitutional lawyer, Prof. A. Burdy, who argued that in a country where there is a problem the law, there is also a problem the education. I have to agree. Hopefully, the Polish Army, the Polish military schooling, will not be faced with such a correlation, meaning if there is a problem with respecting the rule of law, there is a problem with fulfilling official duties. In 1996, Robert. E. Hunter, US ambassador to NATO, stated that in order to secure a suitable role of the armed forces in a society, many factors are needed, but nine are particularly important. **First**, the constitution and other legal acts, which clearly define the responsibilities and duties of executive and legislative authorities, both in peace and wartime. **Second**, primacy of civilians in the MoND and in all the other military structures. **Third**, parliamentary supervision over the army. **Fourth**, developing a professional personnel in the parliament, familiar with military affairs, that would brief the MPs on military issues. **Fifth**, transparency of budget and defence plans. **Sixth**, developing, both in the government and outside, a civilian staff of experts on security matters. **Seventh**, educating the army about the armed forces' role in a democratic society. **Eighth**, an open, nation-wide debate preceding all important decisions concerning national security and military issues. **Ninth**, an **efficient, fair system of justice in the military - on all levels - that would set standards of conduct and discipline**<sup>96</sup>.

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<sup>95</sup> T. Jasudowicz, *Administracja wobec praw człowieka*, TNOiK, Toruń 1996, p.11.

<sup>96</sup> „Rzeczpospolita”, nr 105, 7 May 1996, p. 6.

- Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, 25 May 1993;
- Rome Statute of the International Criminal Court, 1998 (signed and ratified by Poland).

Concluding my pronouncement, I would like to emphasise that much has been done by the Polish Army since 1990 in order to spread international humanitarian law, respect for human dignity and civilian control over the armed forces. The army understands its position and role in a democratic state. Nevertheless, there is still a lot of work to be done with respect to implementing international humanitarian law and building a coherent system of teaching it. At this point I would like to quote Prof. Imbert, who, during an international lawyers' conference in Cracow, said the following: *Signing and ratifying an international convention is only the beginning of a long path to actually respecting its regulations. Conventions tell us what not to do, as opposed to what should be done*<sup>94</sup>. This is why such great importance is attached to education and information, the ethics of human rights, as well as to change in mentality of persons in power, commanders, and regular citizens - soldiers. One thing undoubtedly makes us glad: a moment has come when everybody, from an individual private to the highest ranking general, have understood that the Polish Armed Forces are unable to function properly without respecting legal regulations contained in the Constitution, international conventions and other legal acts.

Violating these norms means being subject to full disciplinary and penal liability. We wish for it to become an unshaken principle in future training of the armed forces. This principle should constitute a rule of conduct in each case of using the armed forces, also in peacekeeping missions. It is worth remembering that when restoring peace, the UN troops - willingly or not - must sometimes fulfil tasks resulting from peaceful occupation. Hence, for every army, respecting international humanitarian law and international standards in human rights, becomes a testimony to its combat proficiency, discipline, morale, and a manifestation of its genuinely peaceful attitude.

I would like to conclude my lecture, with a following initiative: to view the army not only through the prism of international humanitarian law of armed conflicts, but also from the angle of teaching and respecting other branches of law. It is known that mili-

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<sup>94</sup> „Rzeczpospolita”, nr 220, 1996.

## 6. EDUCATING OFFICERS IN THE FIELD OF INTERNATIONAL LAW

Michal RUSNAK

Dear chairman, ladies and gentleman, thank You for the opportunity to present my paper at this international conference in the beautiful town of Krakow. I am honoured to represent the Military Academy in Liptovsky Mikulas (Slovakia).

Let me first use this opportunity, to express my gratefulness to the countries, their leaders, nations and military societies for supporting my country – Slovakia, in the last, historically important, years for us and Central Europe, during the period, which had fruitfully escalated into the invitation of Slovakia into NATO. Thank You.

As I was tasked to prepare a paper on this conference with a main topic: "Dissemination of the law of armed conflicts in Central European Countries", the first thing which appeared in my mind was a theme, which was close to my Academy – the Military Academy in Liptovsky Mikulas, the theme: "Educating officers in the field of international law".

Nowadays the Slovak Armed Forces are undergoing significant reforms, called *Model 2010*, and due to this the Academy which was present in 2000 and conducted the education and training of today's and future officers will soon (September 2003) be only the past.

The new academy, the Defense Academy, which will be the child of the Model 2010, will educate and train the future Slovak leaders and of course disseminate the knowledge of international law within the Slovak officers' community. Due to the fact, that answers to many questions are still not found a detailed report about the education conducted by the Defense Academy can not be presented. But there are some facts which are known and those I will use in my presentation.

Thanks to this, my paper is more about the reform than about the very specific educational problems, but this is the situation we live in, and these are the problems

A similar opinion was expressed by Jeffrey Simon, member of faculty at the Strategic Studies Institute of the National Defence University in USA, who, in 1995, enumerated the necessary criteria for NATO membership: democratic transformation of political institutions, privatisation of the economy, effective, democratic civilian control over national security, adequate military potential and level of interoperability, and last but not least - **respect for human rights**<sup>97</sup>.

These are opinions of the experts, which should be viewed as strategic guidelines. This is why respect for the rule of law and protection of human rights is becoming a second essential factor - in addition to military potential - building our prestige inside NATO. It is not difficult to notice that respect for human rights is significantly less costly than all the other obligations stemming from the process of NATO integration.

Thus, if there is no respect for human rights in peacetime, in everyday military service, we should not have the illusion that rules of international humanitarian law will be respected during wartime. As far as the process of dissemination itself is concerned, in such preconditions it will only constitute a publicity stunt.

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<sup>97</sup> J.Simon, *Demokratyczna transformacja systemu obronnego a rozszerzenie NATO*, wyd. Adam Marszałek, Warszawa 1995, p. 3.

After the 1998 elections had been a broad governing coalition formed, which, due to its wide political spectrum, even if being a good partner for NATO and the EU, was not always successful in the domestic reform process.

The parliamentary elections in 2002, as the 1998, became a success of the regained chances to join NATO and the EU. Let us briefly summarize the results of the '02 elections.

There are 7 parliamentary parties in the 150 seats parliament remaining. The 4 coalition parties and its leaders having together 78 representatives:

- SDKU (Mr. Dzurinda), (SDKU nominated the prime minister and the defense minister)
- SMK (Mr. Bugar)
- KDH (Mr. Hrusovsky)
- ANO (Mr. Rusko)

The 3 opposition parties and its leaders having together 72 representatives.

- SMER (Mr. Fico)
- HZDS (Mr. Meciar)
- KSS (Mr. Sevc)

The effectiveness of the coalition by this composition of power was questioned, when the first rumors, that only a 4 right parties (without the party SMER) should form a coalition, had appeared. After the first votes, it became clear that the coalition is stable and its representatives are disciplined enough and the coalition will work effectively.

This means a clear way to become a good and loyal ally in NATO and a good citizen of EU. Thanks to these facts is the Slovak Republic able to: "...establish, by 2010, an **effective but affordable** Armed Forces organized and equipped to comply with the Military Strategy, modernized to be interoperable with NATO military organizations, and supported by effective and efficient supporting activities " - The reform of the armed forces - Model 2010.

In the field of Slovak military Schools this means a change from the VALM – Military Academy in Liptovsky Mikulas to the AO – Defense Academy. The change is a hard and unpopular way of numbers reductions and reorganization, but even a significant change from a technical university with many professions, to a leadership academy educating and training the future leaders with only a few professions of its cadets.

we have been facing in the last months, and I think that even, the buildup process of structures and an organization which will disseminate the law of armed conflicts should be presented and discussed at this conference.

Once willing to find the reasons and ways led to the reform process in the Slovak military, it's necessary to go back to the past.

## **1. The cold war world**

For centuries has Europe been aspired for global domination. This efforts had escalated in the two world wars. Instead of reaching this status, as a result of these wars, two non – European powers became successors of Europe in the case of global domination. For the domination had been the cold war „fighting“ by the USSR and USA. Both „enemies“ had their own visions of the future world, which differed totally. The invention of nuclear arms caused, that a possible conflict could not only destroy these participants, but the most of the world.

### **1.1. The end of the cold war**

The lack of effectiveness of the communist economy, the resources depleting war in Afghanistan, the 40 years long armament race, the economically very demanding attempts to gain influence in Africa, the Middle east and in the Caribbean regions, caused the deliberate fall of the Soviet empire.

It became a strong signal of freedom for all Central European nations. The year 1989 meant a significant change for the Poles, Czechs, Magyars and Slovaks.

As the Soviets began with moves of their forces back to the Russian territory, the basic stones for new independent states in Europe have been established.

### **1.2. Independent Slovakia**

The history of independent Slovakia begins in 1993. As a brand new state in the very beginning facing some problems. After a short “consolidation” and build up of the new state process (1993-1998), has been clear, that Slovakia remains a democratic, human rights – accepting and with neighbors good relations having country.

## **2.2. The Academy 2000 – Military Academy in Liptovsky Mikulas**

The mission of the today's Academy is to educate, train, bring up, inspire, motivate it's students for the service in the armed forces and to set a "service before self" example.

The goal of the Academy is to give the students a university masters degree level education, (fully compatible with the civilian education), to conduct career courses and to maintain scientific research.

The Military Academy is a base for the following forms of studying:

- University type education – most of all technical.
- Career type education and training.
- The Academy conducts activities which are not related to any education, but are important for "being an Academy". Under these I mean:
- Military exercises – even multi level one sided CAX, Good neighborhood etc.
- Conferences, seminars, workshops etc.
- Visits from foreign countries (Austria, Belgium, Czech rep., China, Denmark, France, Germany, Greece, Holland, Hungary, Mexico, Poland, Ukraine, UK, USA, etc.)
- Student's scientific competitions (V-4 countries)
- Student's sports competitions (V-4 countries)

## **2.3. The structure of VALM – the Academy 2000**

The Academy has four faculties:

- The ground force faculty.
- The air defense faculty.
- The faculty of logistics.
- The signals faculty.

**The ground force faculty** educating "Managers of military systems" in the specialties:

- Mech. Inf. and armored forces.
- Military intelligence and reconnaissance.
- Artillery.

## 2. The need for a reform

Since the early 1990's, it became clear, that a significant conflict in Central Europe has a very low probability. Instead of this, many other (and not less significant) threats appeared. These threats are to be faced by a rapidly deployable forces equipped and trained to flexibly deal with any problem, anytime and anywhere in the world. The huge, mostly armored and mech. Inf. forces are too heavy, and it's personnel structure with a high amount of conscripts, is simply impossible to train, to the needed level, of being capable of deployments together with our allies overseas. Accepting these facts, and giving an answer, is the Reform of the Slovak Armed Forces – the Model 2010.

### 2.1. The reform – Model 2010

As mentioned before the reform means to establish by 2010 an effective, but affordable forces organized and equipped to comply with the new Military Strategy, modernized to be interoperable with NATO military organizations, and supported by effective and efficient supporting activities. Which means very significant changes in the Slovak military.

The main goal of this paper is not only talk about the reform, but let me summarize at least some facts to demonstrate the impacts on the needs for new officers in the armed forces.

There will be three commands subordinate to the General staff. The ground force command, the air force command and the newly formed support and training command.

All of these had to undergo significant cuts in numbers. Which by the ground force means, that there will be two brigades, one regiment and six battalions remaining. The air force will have two airbases and one ADA brigade. The newly formed support and training command's main tasks will be the E-1 to E-9 training and other support missions.

To support these significant changes, the Military Academy in Liptovsky Mikulas will have to change itself. From the VALM - Academy 2000, to the AO – Defense Academy.

**The signals faculty** trains experts for the signal corps:

- Electronics and telecommunication technology.
- Military communication and IT technology.
- Military communication technology.
- Special radio systems. (EW and E-reconnaissance and intelligence)

This faculty educates and trains elite experts – IT and communication technicians, but the need in the forces calls for leaders and the training of small numbers of elite electro-technicians is very expensive.

**Career courses.** These faculties support and conduct, by using it's potentials in teachers and buildings, the career courses. The so called UK I (Purpose course I – for the planned rank of Maj), UK II, AK (Purpose course II, Academic course – for the planned rank Lt Col and Col), and VAK (The higher academic course – for the planned rank of General).

#### ***2.4. The education of international law in the Academy 2000***

At this Academy 2000 wasn't too much space for teaching international law, because of the technical university character of it. There were between 16 and 20 lessons (90 minutes each) there for the students of specific faculties. And about 20 lessons in the career courses. Having in mind that the Academy 2000 is a technical university means, that the lessons of international law were thought to be only a secondary subject.

**More deployments overseas** the officer's need for more knowledge of international law.

The membership in NATO, the global security situation and the will of Slovakia taking it's portion of responsibility on the shoulders of the Slovak Armed Forces, means a challenge and a call for an officer, when deployed in foreign countries, knowing the security aspects of the operation, in which this officer leads and motivates his men, the interests of his country and it's allies in the region, principles of international law to be able effectively and flexibly serve the interests of his nation and it's allies anytime and anywhere in the world.

The main reasons causing a need to transform the Military educational system.

The numbers of officers trained by the current system, each year, is over dimensioned, the students are not prepared enough to be inter operable on a needed level,

- Ground force ADA.
- Engineers.
- NBC defense.
- The ground force faculty trains and educates commanders as technicians, what doesn't really correlate with the real needs for future leaders. The high numbers of specialties causes major upkeep problems, especially if there is only a small need of new officers every year. Of course the fixed costs remain high.

**The air defense faculty** educating experts for the AD branch in the specialties:

- Management of ADA systems.
- Management of reconnaissance systems.
- Management of AD missile systems.
- Special electro technical systems.
- Radar systems.
- Guidance systems.
- Technical support systems.

The air defense faculty trains and educates commanders and technicians for the ADA forces, all strictly technicians and because of the many specialties, needs many experts to upkeep. By the small demand after officers in the country's AD (only one AD brigade in the active force), remains the current system too huge and expensive.

**The faculty of logistics** educating experts for the logistics branches in the specialties:

- Forces economics.
- General logistics support
- Financial service
- Armament and equipment of the ground force.
- Tracked and wheeled vehicles and mechanisms.
- Armament and ammunition.
- Engineer mechanisms and machines.
- Electronical devices for armament.
- Military transportation.

It's clear, that this wide palette of specialties doesn't correlate with visions of modern officers - leaders and would be very hard to upkeep by teachers even for a much bigger force, than the Slovak armed forces should become.

### **3.1. The NCO Academy**

The main mission of the NCO Academy is to train and educate NCO's for the planned ranks of E-5 to E-9.

### **3.2. The Defense Academy**

The main mission of the Defense Academy is to conduct university education and career courses for officers, WO's and civilians within the Armed forces. To motivate and inspire it's cadets and students for the military service and the "service before self" principle. The Defense Academy's main goals are:

- To conduct with NATO countries compatible and financially effective education of high quality.
- Scientific research.
- Training.
- To bring up the future leaders.

There will be the following forms of study at the Defense Academy:

- All three levels of university education. (Bachelor level. (Bc.), Masters degree level. (Mgr., Ing.), Ph. D. Level)
- Career courses for army professionals and civilian employees.
- Short term specific courses.
- Foreign language courses.

The structure of the education system of the Defense Academy will be as the one on the screen. This system is based on the recruited civilian university graduates, who will join the army after graduation and get significant financial benefits.

The starting points for the military education and training are:

- The military strategy of Slovak Republic.
- The Armed Forces of the Slovak Republic – Model 2010.
- The long term development plan of the Armed Forces.
- Land operations in the year 2020.
- Aerospace operations 2020.
- Maritime operations 2015.
- Officer selection.
- The contents of officers training in NATO countries.

the career education and training is not coherent enough and the numbers of personnel and financial resources needed to upkeep the current system are too high and the "not to reform the military schools" way would cause major problems in other areas of the reform.

### **3.The Concept of the military educational system**

In the context of the reform process of the Armed Forces is the reform of the military educational system one of the key areas, where it is necessary to conduct principal changes.

The completion of these is a key to conduct the reform process within the pre-planned milestones.

The goal of the Concept of the Military educational system is to identify the key areas in the Armed forces training, to set long term ways of it's development, to identify the final needed status and to identify the ways leading to the accomplishment of these goals.

The main intent is to change the traditionally understood military education and training, producing experts with a very specialized mostly technical intention to a creative military training and education with a center of gravity in activity, responsibility and abilities of the personality to creatively and progressively create a way of being of itself.

The main mission is to form the military professional in the fields of readiness and mental endurance, physical strength and the social, ethic, intellectual and cultural level of each officer for accomplishment of missions in the frame of the armed forces.

The main goal is to train military and civilian personnel on the basis of the modern tendencies of development of Art of war in the 21<sup>st</sup> century.

The final status will be the following: The military educational system is a modern, based on three basic levels of training of military and civilian personnel of the armed forces. The three levels are:

- Training schools.
- The main mission of these entities is to train and prepare the enlisted personnel for the planned ranks of E-1 to E-4.

## 7. THE *INNERE FÜHRUNG* CONCEPT AND DISSEMINATION OF LEGAL AWARENESS IN REFER TO THE ARMED CONFLICTS

Piotr GAWLICZEK

German specifics of dissemination of legal awareness referring to the armed conflicts sphere, should be considered in two aspects:

- **Leadership** most often realized the though the mental – ethical bond with the subordinates and the commanding through aims,
- The field of application the *Innere Führung* conception.

In refer to the aspect of leadership the **emotional bond** relate to the subordinate's subject, respecting his dignity and rights, including acting accordingly to ones conscience. There is expressed: the ability of leadership, sharing the risk with subordinates, taking care about them and sense of community with them<sup>98</sup>. The point of **commanding through aims** (Auftragstaktik) is to match the task resulting from them with the position which offer the best environment (where they are most likely to be fully carried out) to realize these tasks. The principal sets subordinates an univocally pinpointed task, defines the aim to be achieved and the terms of realization. Moreover, he informs about his own intention connected with the task, and the expected results of the common effort (final aim), he also distributes means and forces, that are required to the realization of the task. Subordinate uses all available means and makes decision about the task run, realization within the framework of liberty determined by the principal.<sup>99</sup> Command through aims teaches responsibility, strengthens motivation, self value, is an encouragement for searching the best solutions. Such content of interpersonal relations increases at the same time demand for mental -

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<sup>98</sup> A. E. Felber, *Das Prinzip des Führungsverhaltens in den Mittelpunkt stellen!* „Truppendienst 1991, no 2, p. 121.

<sup>99</sup> See. [http://www. Bundeswehr.de/a\\_bis\\_z/A.html](http://www.Bundeswehr.de/a_bis_z/A.html) (2002-02-14).

- The concept of the military educational system of the Slovak Republic.
- The Slovak university law.
- Other documents.

The studies at the Defense Academy will, for the high school graduates take three years where the cadet will have to gain 180 credits and take part on 2520 general lessons and 900 lessons of military training taking 24 weeks. It means, that each semester he will have to gain 30 credits and take part on 420 general lessons and 150 lessons of military training taking 4 weeks.

To be promoted to the rank of Captain, the officer will have to gain the masters degree level of education which will take further 2 years of study.

### ***3.3. The international law at the Defense Academy***

Thanks to it's non technical but leadership and management oriented character the international law training will have a higher importance than before. There are calculations and plans to have about 60 lessons of international law within the three years long course. Maybe this number will be changed, but it's clear, that much more attention will be aimed at this field in all forms of study at the Defense Academy.

Thank You for Your attention and if there are any questions, which I can answer, please do not hesitate to ask them.

Contemporary preparation of officers, non-commissioned officers and functionals demands developing their social competencies, ability to influence subordinates, enlisting them for realisation of common aims. The reflection basis which expresses the direction of educational and instructional changes is contained in the rule: *Treat everybody the way that you would like to be treated and consider carefully if the consequences resulting from your acting for others, would be acceptable for you and approved as helpful and motivating (...)*<sup>101</sup>

- General *Innere Führung* idea expresses itself in the rules:
- Citizen in the uniform as a free person;
- Citizen aware of his responsibility;
- Soldier prepared to the action;
- It exerts its influence on the whole soldiers' service and general and professional preparation of commanders, including:
  - Leading people;
  - Organization of service and training;
  - Informational work;
  - Soldierly law and order;
  - Run of service and training.

Obligatory instruction ZDv 10/1 from year 1993, titled '*Innere Führung*' consist of detailed characteristics of the inner command conception in the army. Referring this idea to a development of legal issues in the army is essential. In this process the *Centre of Innere Führung* in Coblenz plays the lead.. It has its beginnings in 1956, when the Bundeswehr's School for *Innere Führung* in Koln was funded ( *Schule der Bundeswehr für Innere Führung*). That school was removed to Coblenz, where it exists up to now, changing just a name in 1981 into *Innere Führung Centre*.

Within the framework of departmental structure of the Centre organisation, the dissemination of legal awareness problems in the scope of armed conflicts is dealt with in Department 4. It is also called – *Constitutional, International and Military Law and Discipline Department*.<sup>102</sup> During the courses there is less emphasis put on moving to do the task (die Vermittlung von Handlungskompetenzen) as in the case of

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<sup>101</sup> See. e.g.. H.A. Jacobsen, L. Souchon (red.), *W służbie pokoju. Bundeswehra 1955 - 1993*, Warsaw 1993, p. 83.

<sup>102</sup> Der Bereich 4, Verfassungs-, Wehr- und Voelkerrecht, Soldatische Ordnung.

ethical bond of a high quality between principal and subordinate. Conditions make this kind of command appropriate only for the commanders, who have an ability of thinking independently and they are ready for taking a risk. Changing conditions that contemporary German army has to act in (for example: the change of the constitution which enabled the use of forces also beyond borders) enhanced necessity of further intensification of education in the army **also in an aspect of law of armed conflicts dissemination**. The example for revaluing being accomplished can be the essence of Land Forces Inspector's directive about the conduct of operations. It is here assumed that Bundeswehr needs first of all, next to a proper structure and equipment, appropriate thinking of commanders. Only commanders who are at the same time leaders are able to match tasks that are more and more diverse. Nobody treats this task as an obvious and easy to realize. Such a hardship, according to many German military men must be undertaken, because – as one of them notices – the soldiers fight not only on account of the obedience but with dedication for their unit, colleagues and commander if only the commander is able to transform into a leader<sup>100</sup>.

Referring to application of *Innere Führung* idea, it should be stated, that it was born under circumstances constructing of a democratic state, what was caused by outer limitations of anti – nazi coalition states and a strong inner need for stable structure and state security. It not only presumes constructing modern army structure but above all formation of awareness and attitudes of the soldier. **Its task was and stays surveying tensions that may come into being by crossing individual rights of a free man with military obligations.**

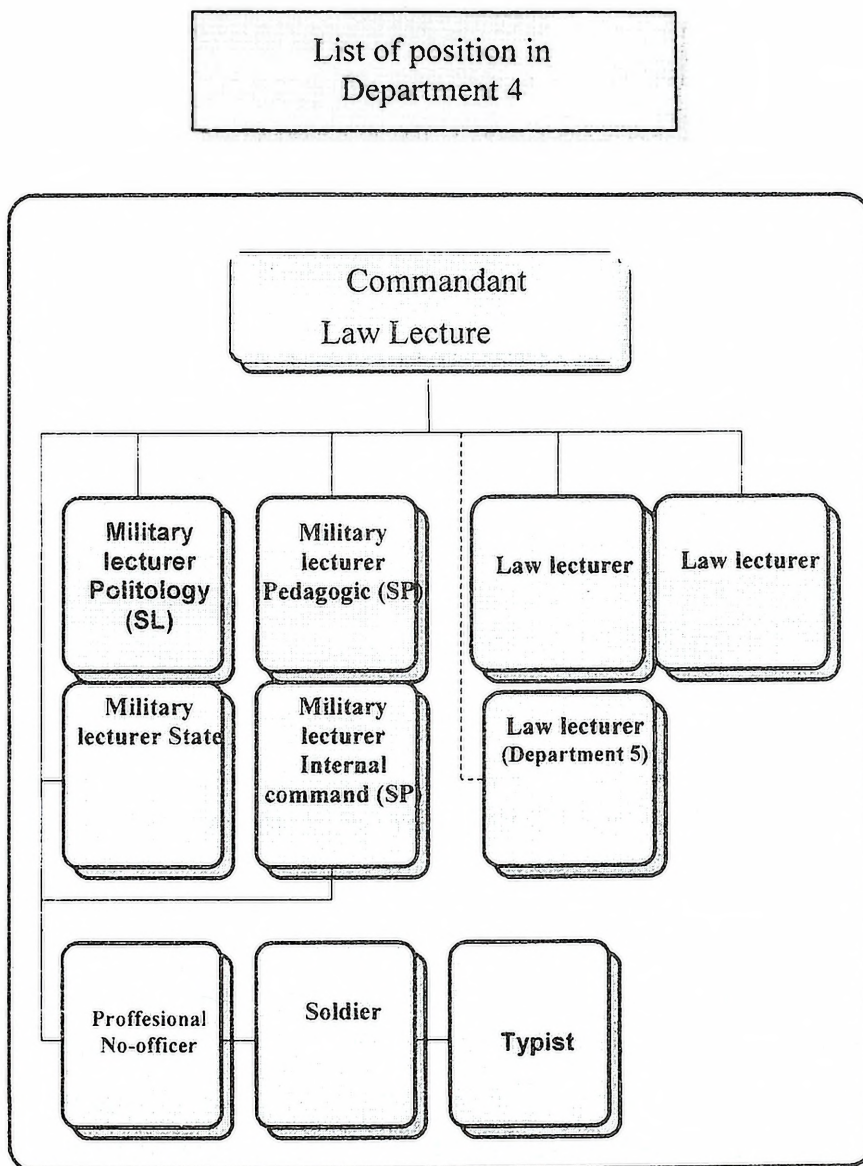
Resignation from traditional iron principles of German drill stipulates that a soldier of a democratic state should lead his conscience during his military service, not only listening and executing blindly his principal's orders. The authors of this conception (counts: Wolf von Baudissin, Johann von Kielmansegg and Ulrich de Maiziere) assumed that within its framework it's possible to unite military discipline and indispensable obedience with mental freedom and co – responsibility.

For years the *Innere Führung* idea has changed former basic of military education, its content, methods and shapes referring also to the issue of law of armed conflicts dissemination.

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<sup>100</sup> See. R. Bigler, *Der einsame Soldat*, Frauenfeld 1964, p. 249.

The organization structure is presented on picture 2.

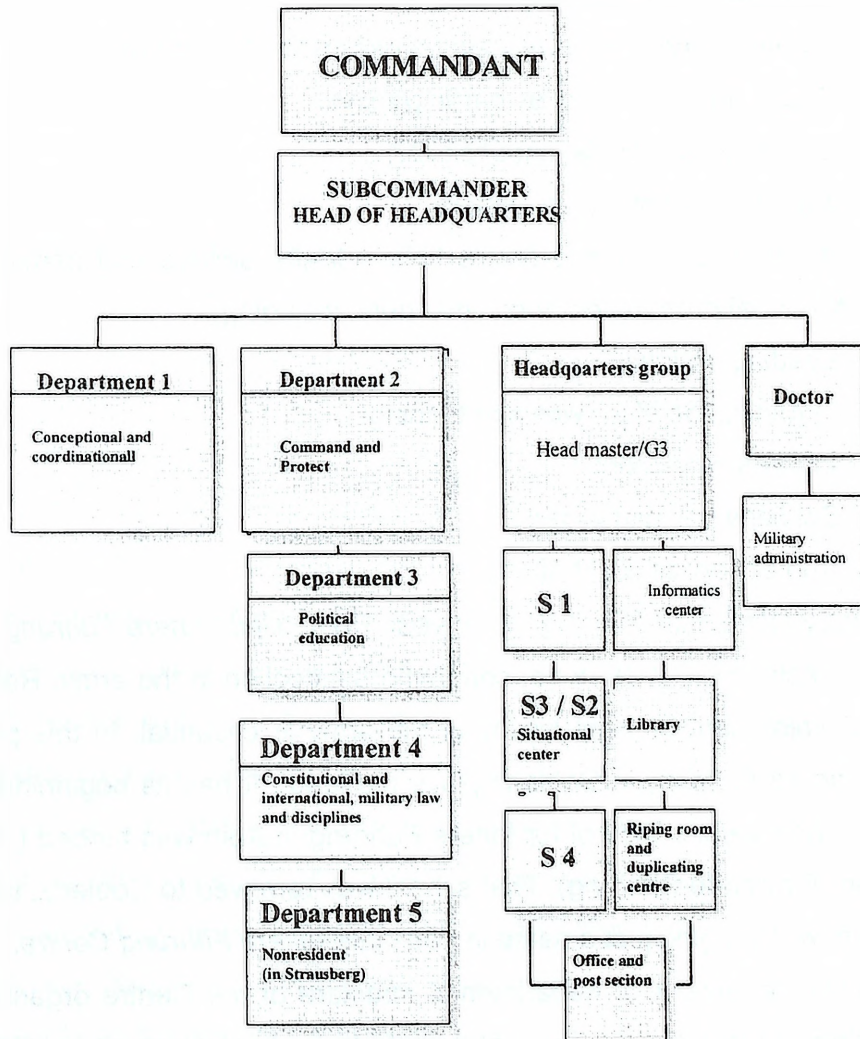


**Picture 2 Organizational Structure of Department 4**

Working fields of Department 4 was shown on picture 3.

Department 2 – *Leadership and Care*<sup>103</sup> or achieving of assumed training aims, and Department 3 *Political Education*<sup>104</sup>. Otherwise it is meaning has presentation of the cognitive knowledge. The organizational structure of *Innere Führung* Centre is showed on picture number 1.

### STRUCTURE OF CENTER



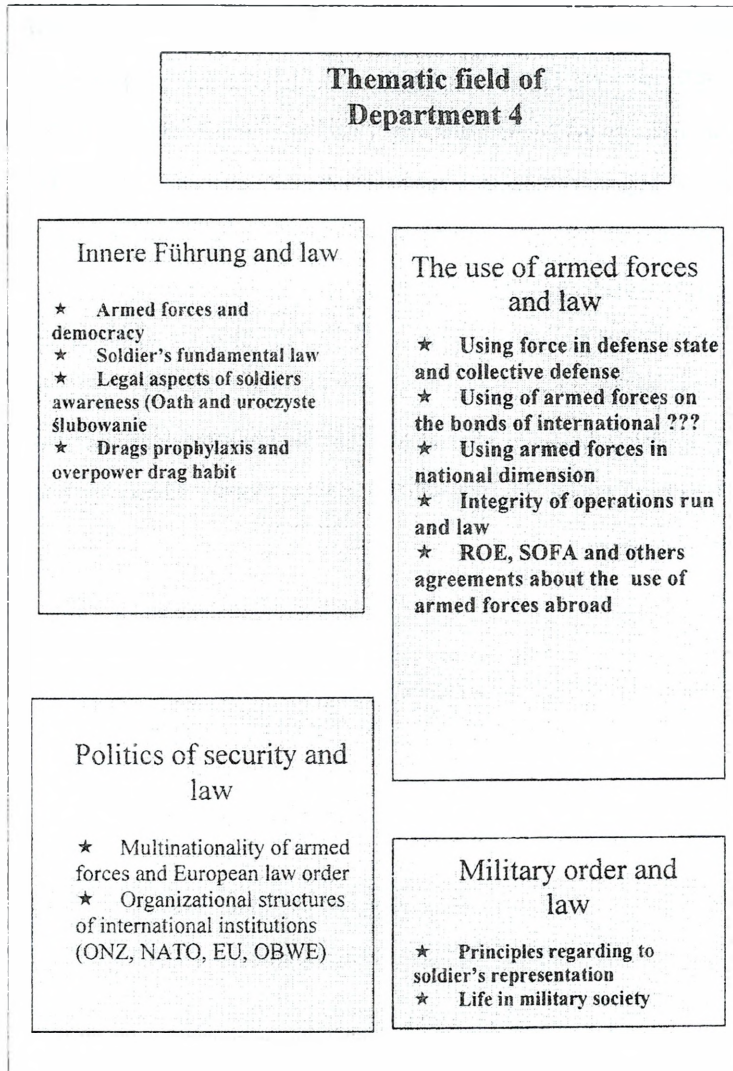
Picture 1 Organizational Structure of Innere Führung Center

Commandant heads Department 4 (he's a university lecturer at the same time), to whom are subordinated civil and military lecturers as well as auxiliary personnel.

<sup>103</sup> Commanding and Care Department (Menschenführung, Fürsorge und Betreuung)

<sup>104</sup> Political Training Department (Politische Bildung)

In frameworks of working fields there are four thematic scope, showed on picture 4.



**Picture 4 Thematic fields of Department 4**

The first field - *Innere Führung and Law* carries a practical weigh for the talks between the representatives of states that are only on the way to democracy. It's noticeable, that Department 4 and 5 realizing the task of Federal Minister of Defence, are simultaneously Bundeswehr's centres of documentation for preventing and fighting addictions.

Second field *Security Politics and Law* gains more importance on account of increasing participation of Bundeswehr in international structures. One of the most im-

**Working fields of  
Department 4**

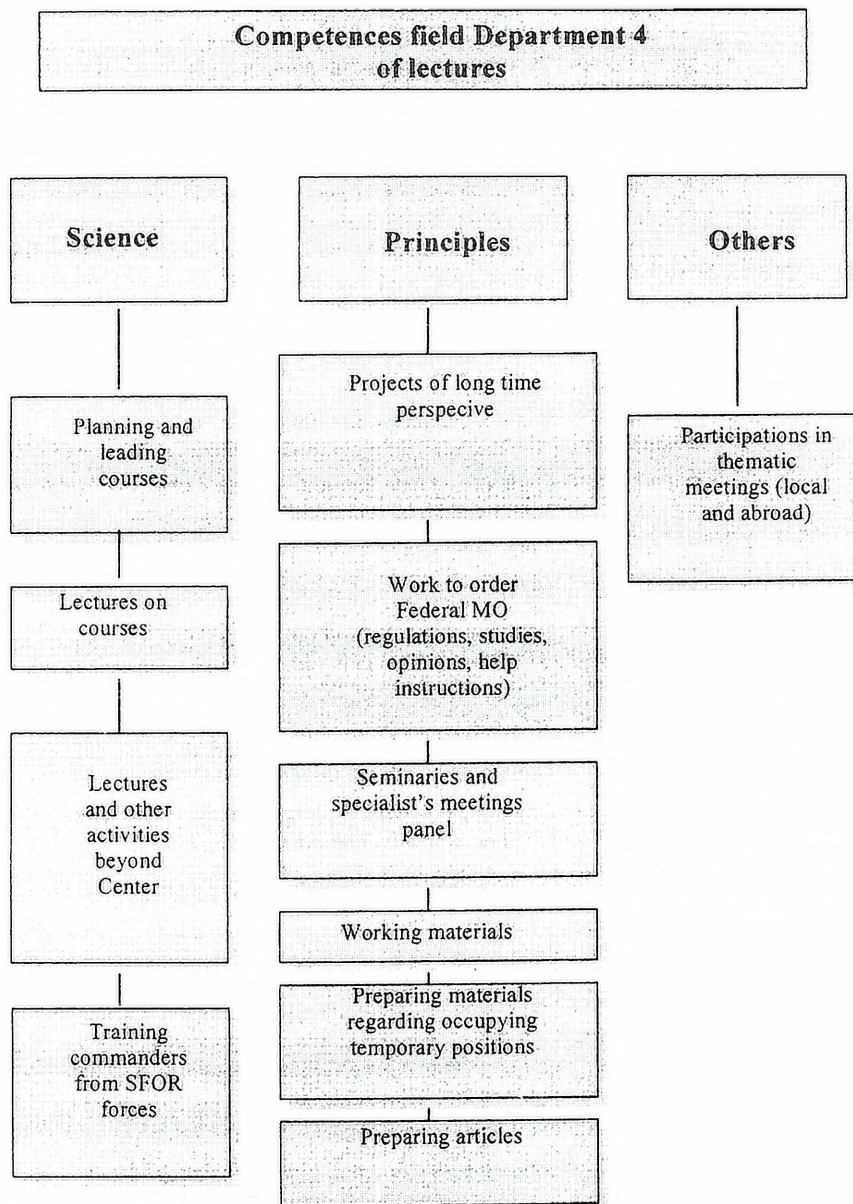
- ⇒ **Constitutional law ,**  
particularly military law
- ⇒ **International law**  
particularly international humanitarian law in  
armed conflicts
- ⇒ **Law in combat**  
including rules of engagement
- ⇒ **War law**  
including law for soldiers'  
representation
- ⇒ **Military order**
- ⇒ **Military regulations**

**Picture 3 Working fields of Department 4**

Within the framework of courses connected with constitutional law on the top of the chart, justification of conducting hostilities has particular meaning beyond German territory. It discharges during open debates referring to the legal aspects of German soldiers' participation in international operations. Legal arguments are being indicated, discussed and estimated. Great importance is attached to such a form of training since it has been decided that German air forces SP German GFR would take part in the Kosovo conflict which was handled without the UN mandate.

A relatively new field is the so called the right to use of the force (Einsatzrecht). It refers to sphere of the correct qualification rules of the force using. (Rules of Engagement – ROE) and transforming them into a practice. The fourth thematic field is the law of war (Wehrrecht) with the right to represent soldiers included. This field is gaining more importance in the military circle.

drive at of optimising educational process. It concerns especially the International Humanitarian Law field. There are special seminars and working panels organised to achieve it where different views are exchanged. Moreover, we should mention immediate works ordered by Federal Ministry of Defence. Further information about Department 4 are shown on picture 6.

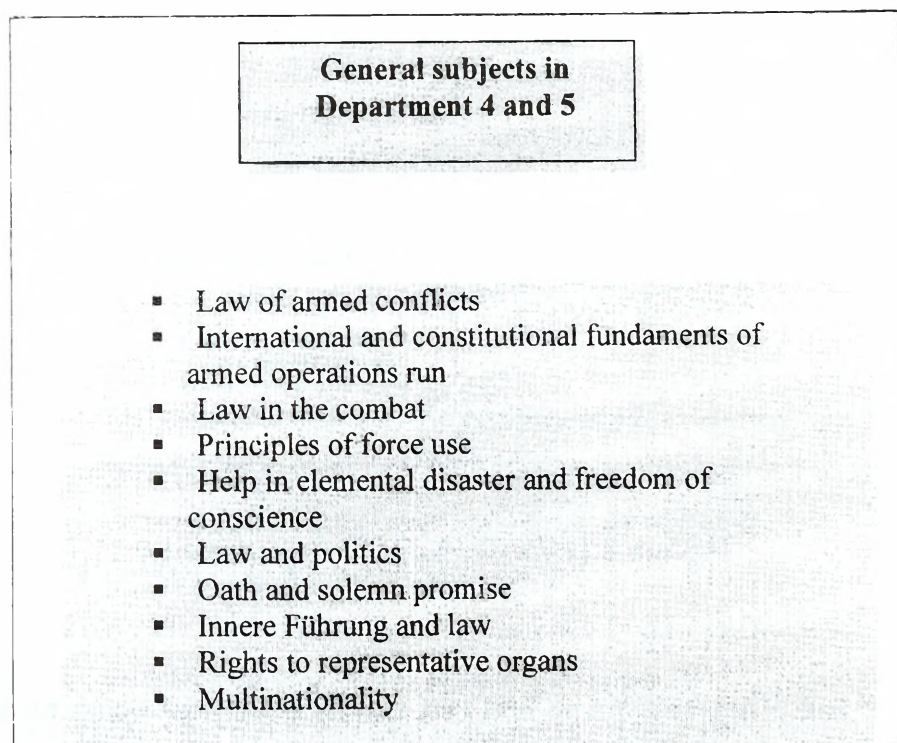


Picture 6 Competences field of lectures Department 4

portant topics is participation in international missions. In this domain Department 4 secures seminar and course needs in refer to the law in action and law to act. The fundamental general themes are: ROA, SOFA within the framework of courses for key – personnel SFOR KFOR. In this case 4 hours course is realized.

For Department 4 issue "*International Humanitarian Law of Armed Conflicts*" is of a great significance. Here appears a specific monopoly of Department 4 in education. We should also mention about processed documents, their actualisation for military needs or for the purposes of international law.

An another important point is topic – '*Entity of running operations and law*' referring to the specific sorts of military forces. In this context getting participants acquainted with the courses and seminaries with the content of two Additional Protocols to the Geneva Conventions plays an important part. More substantial issues are shown on the picture no 5.



**Picture 5 General subjects**

Practical realization of this issues takes part not only during the courses, but first of all during the basic work with soldiers. Moreover, Department 4 runs activities that

It's admitted that the *Innere Führung* conception will be still displayed and adapted to needs of Bundeswehr despite the changing inner and outer conditions. Conception of inner command since the time it was born up to now, has confirmed not only its own originality but also its usefulness for forming the law and civil freedoms in the structures of democratic country armed forces.

Further usefulness and development of *Innere Führung* conception was discussed on the conference organised by Federal Ministry of Defence Rudolf Scharping on June 29 2001. This conference, attended by foreign guests (for example Javier Solana), representatives of **kręgi opiniotwórcze** (former president Richard von Weizsaecker and the head of *Innere Führung* council professor Reiner Pommerin) representatives of particular ministries and academic centers was dedicated to a new role that German military troops will play in realization of foreign policy and security aims. Within the framework of new tasks the inner command conception must evolve and develop.

Granted that improving the command is possible the need of consequent development of command through the tasks becomes a priority. It is believed, that in the military organization like Bundeswehr the reserves in the field of creative and self-regulating group cooperation (Teamarbeit) are still existing. Therefore it is presumed that Bundeswehr will consequently and systematically develop qualifications of all levels of army commanders of all ranks in different fields of the *Innere Führung* conception operation. It is mostly related to the dimension of command, that will be extended and intensified. This guide training in this scope, as it results from the analyses of the experiences, allows to solve the problems effectively in the areas, where they emerge, which means in terms of more and more complicated daily situation. Moreover, it makes it possible to transmit scientific knowledge referring to legal awareness of issues on to the practical level.

It is estimated that a practically checked solution is the use of so called: multipliers, that is specialists trained in the Centre of Inner Command who can share gained knowledge and obtained experience. In the process of increasing commanding competences there are also respected such a didactic rules like the rule of individualisation and team. Substantial content and the run of courses organized in the Inner Command Centre are always adaptively fitted to the needs of particular groups.

Last picture shows exemplary courses and seminars which were organized by Department 4.

Except from the so called standard courses for commanders of battalions and companions, Department 4 organizes also special courses in international law and particularly international humanitarian law.

**Department 4  
Courses and seminars in 2001**

2 courses	Innere Führung with commanders
1 course	Innere Führung with commanders of subsections
2 courses	Innere Führung with szefami kompani
6 seminars	Soldier's participation in the public life
2 seminars	Law related to which soldier's representation in relation to civilian and military authorities
2 seminars	Prophylactic of addictions
1 seminar	Security politics and international law
1 seminar	Humanitarian Law of Armed Conflicts and conduct of military operations
1 seminar	Basic law regarding Bundeswehr's participation in ONZ missions
1 course	Basic course for legal advisors and law lecturers
1 seminar	Education for legal advisors and law lecturers on the field of law of armed conflicts in the sea and in the air
1 course	Security politics and state defense country for judges and prosecutor

**Picture 7 Courses and seminars**

## **8. THE LEGAL ADVISORS' ROLE IN PEACE KEEPING OPERATIONS**

Andrzej CIUPIŃSKI

### **1. The legal advisors role in peace keeping operations**

In the 90s the role of legal advisors in peace keeping operations increased. There was several reasons of that:

- firstly, the number of operations increased,
- secondly, peace operations became more complicated and multi - aspect.

Legal issues of the peace missions contain many institutional problems related to the UN structure and administrative problems referring to the host states.

Various legal arbitrates appear on the occasion of new tasks, that are more often and often transferred to the peace missions, as:

- national elections organization and protection;
- separation of fight groups during the conflicts;
- controlling national administration;
- help with shaping national identity;
- humanitarian aid partition.

### **2. Institutional issues**

The main institutional questions are contained in the legal base, that means in UN Chapter in its planning procedures and in statutes of specialized UN agendas, which may be involved in the operation. These matters are not easy because the way the operations proceed is mostly based on UN practice. A lot of institutions that were overseen in Chapter have never came into being.

The supplement to the courses in *Department of Constitutional, International and Armed Conflicts Law and Military Order* are lectures that are within the framework of political education (Politische Bildung), which belong to the competences of Department 3. An optimum solution is the situation when the soldier finishing the duty:

- is able to answer himself, why Germany needs Bundeswehr and obligatory military service,
- has the feeling that his effort was needed,
- is convicted that he was commanded in compliance with the rules of 'Citizen in uniform'.

### 3. Legal settlements on personal protection

The run of peace operations in Somalia or in former Yugoslavia made a priority of the personnel safety issue which participates in these endeavors. They more and more often had a multitask character and consist not only of classic military activities but also humanitarian aid, elections protection and such like. Not all within the tasks entrusted to peace operations are regulated by international law. The possibility of human losses, mission members detention, equipment confiscate and such like should be considered. UN are not a state so it can not be the Geneva and Hague Conventions party. Due to this, legal advisors should reach such agreements that refer to the law of armed conflicts based on these Conventions. It especially refers to four 1949 Geneva Conventions and Additional Protocol I to this conventions and 1954 Hague Convention about the protection of the cultural property<sup>106</sup>.

During the operations possible incidents of cases may appear comprised to the civil law, for example: supplies contracts, purchases, services and such like. In all of cases of such a type, help of well prepared legal advisors is necessary.

Moreover, the Peace Forces commanders daily deal with problems of a disciplinal nature of personnel submitted and offences of non-military members of mission.

Legal issue variety that refers to the peace operations conduct showed a numerous deficiency in the scope of well-skilled cadre in the UN Secretariat and in the peace operations Headquarters. The postulate is often repeated to provide peace operations with well-qualified additional legal personnel even the battalions levels.<sup>107</sup>

The obligation to educate law advisors belongs to the military forces of state-parties of 1977 Additional Protocol I to the Geneva Conventions.

In many European countries there are organized trainings and courses for commanders' legal advisors in the scope of the law of armed conflicts. In Belgium there are also organized courses for scientists in the Higher Royal Defense Institute (L'Institute Royal Sperieur de Defense)<sup>108</sup>. In these courses participate the hearers

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<sup>106</sup> *Międzynarodowe prawo konfliktów zbrojnych*, op. cit., p. 34-141.

<sup>107</sup> *Les aspects juridiques...*, op. cit., p. 83-84.

<sup>108</sup> *Cours pour conseillers en droit des conflits armes*.

In the initial phase of operation planning, the General Assembly plays a crucial role because it estimates and approves operations' budget. In the preparing period different offices of Secretariat play significant part, among which 'legal office' is the most important. All cases are being regularly consulted especially in the phase of preparing Secretary General *Report*.

Legal advisors initiate their main activity as soon as Security Council decides to begin preparations to the peace operation. The main task of legal advisors is agreements (conventions) preparation<sup>105</sup>, that UN signs with states participating in peace operations and taking over the missions. Of fundamental meaning is Statute of the Peace Forces (SOFA) consist of such elements as: operation legal fundamentals, UN Peace Forces and a host state reciprocal rights and obligations, privileges and immunities and other detailed elements.

Necessity of such a settlements follows from the fact, that treaty regulations, such as UN Convention on privileges and immunities do not predict all complicity of peace operation. It consists not only of UN personnel and military element, and more often and often non – governmental organizations (NGO's) are also joined.

During the treaties negotiations the legal advisors presence is necessary, all the more that during an internal conflict negotiations are carried not only with the government of the host state, but also with the organization which stands in opposition to it, that often has not got equal, generally legitimized political authorities but is divided into orientations, fractions and armed groups. Making agreement with these groups on the possibility of operation on the territories under their control is an extremely difficult issue. These problems are very delicate for legal advisors, but dissolving them is necessary for the sake of personnel's safety and the peace operations chances.

The conflict in former Yugoslavia provided us with many examples of situations in which UN Peace Forces (UNPROFOR) had to negotiate matters not only with government forces but also with non-government political – military groups, matters regarded to the mission functioning and humanitarian aid delivery.

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<sup>105</sup> From the point of view of the law of treaties the legal act designation (agreement, pact, convention, treaty) do not matter. Vienna Convention on the Law of Treaties (Vienna, 22.V.1969). *Prawo w stosunkach międzynarodowych. Wybór dokumentów*. opracowanie S. Bień, Warszawa 1998, p. 72-92.

We should also look at the commanders' legal advisors education from the perspective of its dissemination in the Middle and Eastern Europe countries. On basis of former co-operation with the Vysehrad Group countries it's a possibility to try for activation of common courses for another countries.

from European countries and from African ones, what enables exchange of experiences and enriches the practical side of the courses.

In Polish armed forces the courses for legal advisors are not organized, courses graduates of which would gain adequate certificates giving them the right to work in the international missions. There are possibilities of adapting contemporary educational system and profiling it into direction of legal advisors education in the scope of the law of armed conflicts. The Armed Conflicts Postgraduate Study organized in the Academy of National Defense Department of Strategy in year 2000, may be used to achieve it. Moreover, by the correct improvement of Civil-Military Co-operation courses, its graduates of may also become 'advisors'.

The need for persons, who has such a type of skills is not for strong as a rule, and do not exceed the several persons during a year.

In reference to that, the possibilities of directing officers and civilians on the courses and studies organized in another European countries may be used. But some arguments may be cited for education of military legal advisers in Poland. Officers finishing such a courses will become the basic cadre not only for contemporary peace missions, but also for operations in which more soldiers can be involved.

Now, in the framework of NATO Rapid Reaction Forces Polish units are trained for interference activities of a wider scale. This training should be highly related with many elements of legal education. Moreover, we may count among Polish units enclosure into realization of European Headline Goal. According to the Polish Ministry of National Defense there will be about 1300 soldiers directed to the UE anti-crises forces, that means approximately one brigade<sup>109</sup>.

The cadre of this brigade should be right now trained in usage of legal aspects in the anti-crisis activities (so called Petersberg missions). Some aspects of these missions (e.g. mandate, the right to weapon use etc.) are currently very complicated and controversial.

By defining legal divisions of these forces activities Polish experts should also participate. It should be taken into consideration that after the EU accession the number of Polish units directed to the anti-crisis European Forces may increase to 6000 soldiers (the number comparable with the engagement of Spain).

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<sup>109</sup> „Polska Zbrojna” 25 November 2001.

siderable involvement into this process was on the part of prime minister of that time Wilfried Martens. It was out of his initiative that Inter-department Commission was established with a task to coordinate the process of implementation of settlements made by the convention and additional protocols into all departments, including national defense department.

Among these settlements there was also a settlement concerning legal advisors in armed forces. Necessity to appoint them results directly from article 82 of the First Protocol which says that "High Agreeing Parties shall ensure that there always are legal advisors at hand, in case a need arises, who could advise military commanders on appropriate level on conducting proper training in armed forces in this field". The article settles position of legal advisors and range of their authority. As a result of direct adaptation of international law regulations into system of interior law, the legal advisor has become "institution of international law"<sup>111</sup> in Belgian legal system.

Office of legal advisor was introduced into Belgian armed forces in 1987. In the beginning, the office was located within humanitarian law department. Then in 1995, after tasks have been changed (order OG – J/797 of 1991) for advisors for law of war (*conseiller de droit de guerre* – CDG) in section JSO – H, office of advisors for law of armed conflicts (*conseiller de droit de conflits armés* – CDCA) was established which put advisors into section JSO – E. The process of implementing DCA into armed forces as well as standards achieved in this field is systematically monitored by Military Commission of Law of War (*Commission interforces de droit de guerre*).

## 1. Tasks conducted by advisors for law of armed conflicts

According to settlements by article 82 PG I, a basic task of advisors for law of armed conflicts is to perform advisory duties in the field of compliance with regulations of Geneva Conventions and Additional Protocols by military commanders on every level of command. They should do their tasks both during armed activities as well as in peacetime.

Decisions made by commanders during ongoing armed conflicts are subject to legal evaluation from the perspective of interior law as well as international law regulations. It is the activities, which make sure the decisions are made in compliance

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<sup>111</sup> Bosly H., *Revue de Droit penal militaire et de Droit de la guerre*, XXI, 1982, p.547.

## 9. EDUCATING ADVISORS FOR LAW OF ARMED CONFLICTS IN BELGIUM. EXPERIENCES OF ROYAL HIGH INSTITUTE OF DEFENSE (INSTITUT ROYAL SUPERIER DE DEFENSE)

Andrzej MAKOWSKI

In the Kingdom of Belgium, great effort has always been put taken to educate on the field of law of armed conflicts (*droit de conflits armees – DCA*). It has always been of significant importance. Such an approach was most of all a result of respect for international law regulations.

The 4<sup>th</sup> Hague Convention of November 18, 1907 obliged countries to give their armed forces instructions in compliance with "regulations on laws and habits of land war", enclosed in the Convention (article 1). It also says that a party which violates the regulations shall be condemned. The party will be responsible for every deed of personnel which is a part of its armed forces (article 3). The level of implementation of the Convention directives differs within the countries in the world. In this field of implementation of international directives, Belgium has always been in the lead. In spite of this it is commonly believed that there is still plenty to do in this field. A significant fact is that in Belgium armed forces a decision was made to establish a unified system to apply throughout the army on all levels of command in order to educate on law of armed conflicts.

As a result, since 1998 all settlements on this matter, that had been previously scattered in many regulations, instructions, training programs in military schools and training centers<sup>110</sup>, have been unified into one set of regulations.

The First Additional Protocol to the Geneva Convention (PG I) signed by Belgium on July 10, 1977, ratified in 1985 and 1986 came in force on October 20, 1986. Con-

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<sup>110</sup> Regulations A1, A2, A8, A78, IF47, IF185, G144.

them in command practice. It is the most efficient method of training and harmonizing teams in this field.

The role of CDCA in this process is to render multilevel help on preparing the process, as far as content and methodology is concerned (preparing training programs, educational means and training facilities), as well as to train instructors.

## **2. Choice and location of DCA advisors within armed forces structure of Belgium**

Advisors should be equipped with necessary abilities in law (international public law, criminal law and law of armed conflicts). However, the decisive condition for their efficiency will be to combine these abilities with perfect mastery of combat methods, means employed and possible consequences of their use, as well as with command procedures appropriate in this field.

Eventually, General Headquarters decided on the following settlements: the position of advisors for law of armed conflicts will be given to regular officers as well as officers of the reserve.

As a result of such decisions, regular officers during peace entrust these functions with the standard duties of their job. It is assumed that during an armed conflict they will be helped or replaced by specially prepared officers of the reserve who are educated in law. Their training is being carried out alongside with specialist training in peacetime.

By making such decisions, General Headquarters is taking effort to make sure that compliance with DCA rules will not become just additional element of military training but instead will be its inseparable part. There is a conviction behind this, that regulations of law of armed conflicts will be respected by commanders and officers not only out of obligations or settlements of diplomatic or scientific conferences but as a result of systematic, practical confrontation with actual problems emerging in conflicts where DCA is an integral part of military procedures and are logical for any activities performed by commanders on different levels.

In their official work, advisors perform their tasks in teams of commands and headquarters as members of appropriate sections (role of officers from operation units is particularly significant at this point). They also have functions as advisors and cooperate directly with appropriate commanders. Quality of the cooperation rests

with norms of humanitarian law, that make CDCA tasks consultative. In Belgium the role of advisors is also of preventive character. It stems from regulation records on possibility to refuse to perform an order if the order is a war crime or a crime against humanitarian law regulations, following regulations on possible criminal responsibility for consequences of performing such an order.<sup>112</sup>

However, it should be emphasized that CDCA does not have a right to veto commander's decisions. Instead, in such a case the role of an advisor is to convince a commander that consequences of his decision might be violation or infringement of humanitarian law regulations included in art 11 and 85, and also 37, 38, 54, 55 of the First Additional Protocol, specifically these on:

- rules of planning and conducting armed activities (PG I – 57, 58);
- choice of means and methods of conducting activities (PG I – 35, 42);
- giving and respecting the status of prisoner of war and veterans (PG I – 43, 47);
- protection of civilian population during armed activities (PG I – 48, 51);

Most of advisors' tasks are to be performed during armed activities. However, some of their tasks has to be done in peacetime. It is regulated by article 6/1 PG I which rules that training should be organized on settlements of the Convention and Additional Protocol in peacetime. Apart from this, article 83/1 PG obliges to disseminate settlements of these documents as widely as possible, especially to incorporate them into military training programs. Hence, the work done by advisors in peacetime should involve making preparations to implement regulations of the DCA law into armed forces. For CDCA this means activities of two kinds. The basic aim of advisors' activities in this period is organizational work in the field of awareness of law of armed conflicts. At the same time, a CDCA should be an active participants of exercises and training courses so that he can have some influence on choices made during planning stage and when decisions on means and methods of warfare are made.

In Belgium armed forces it is believed that these tasks should be performed by officers. They cannot be replaced here by specialists on humanitarian law because, most of all, it is the officers themselves who have to be convinced of necessity to employ law of war, to have master knowledge of its regulations and to be able to use

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<sup>112</sup> Book of regulations A2, article 304

exercises which should be attended by officers of the reserve who are to take office of CDCA.

The CDCA training course consists of:

1. On international humanitarian law:
  - human rights;
  - refugee rights;
2. Law of armed conflicts consisting of two basic sections:
  - law of war (Hague law);
  - humanitarian law (Geneva law);

As far as law of war is concerned there are two basic documents covered during the course:

1. On restricting means and methods of combat:
  - the Peterborough Declaration of 1868 (small gauge exploding shells);
  - the Hague Declaration of 1899 (dum-dum bullets);
  - Hague conventions of 1907 (4<sup>th</sup> Convention (laws and customs of ground war); 5<sup>th</sup> Convention (superpowers and neutral persons); 6<sup>th</sup> – 13<sup>th</sup> Conventions (sea war);
  - Geneva Protocol of 1925 (chemical weapons banned);
  - Hague Convention of 1954 (cultural property protection);
  - Geneva Convention of 1972 (bacteriological weapons banned);
  - Geneva Convention of 1977 (environment protections);
  - Geneva Convention of 1980 (restriction of indiscriminate weapons) and additional protocols;
  - Geneva Convention of 1993 (chemical weapons banned);
  - Ottawa Convention of 1977 (anti-personnel mines banned);
  - 2<sup>nd</sup> Protocol of Hague Convention of 1954 (cultural property protection).
2. On protection of victims of war:
  - Geneva Conventions of 1949;
  - Protection of wounded and sick persons;
  - Protection of wounded, sick and cast away persons;
  - Protection of prisoners of war;
  - Protection of civilians;
  - Besides, Additional Protocols of 1977 to Geneva Convention of 1949 on law of war and humanitarian law.

upon their mutual relations and confidence. Without it, the efficiency of CDCA may be close to none

Current regulations are far from being perfect and they do not cover all possible scenarios that may develop during cooperation between a commander and his advisor. It particularly refers to conflict situations. However, in the existing system a commander is being systematically informed on possible dangers which law of armed conflicts may bring to the decision-making process, and he is also supported directly by his advisor. Thus, the possibility of taking illegal actions from perspective of law is significantly reduced.

The whole spectrum of issues concerning CDCA in armed forces of Belgium has been regulated by the order of the Chief of General Headquarters on February 8, 1996 (OGJ – 797 B). It regulated the structure and duties of CDCA office, specified range of authority of advisors on all levels of command, as well as their responsibilities.

Offices of advisors for law of armed conflicts are to be located in:

- General Headquarters;
- Headquarters of respective kinds of armed force;
- Headquarters of tactical units (corps, division, brigade);
- Military schools;
- Territorial headquarters (provinces).

Since 1993, due to participation of Belgium armed force subunits in peace operations, CDCA offices were introduced on level of battalion. Considerable attention was put to requirements for special training of advisors of all levels. On the General Headquarters level and in all kinds of armed force, the officers who held this office must have university degree in international public law and international criminal law.

Responsibility to conduct training courses on law of armed conflicts for CDCA of all levels was entrusted with Royal High Institute of Defence (*l'Institute Royal Supérieur de Defense – l'IRSD*) in Brussels. The training takes four weeks. The course ends with exam, which must be passed in order to obtain a certificate. Positive score on the exam gives grounds for nomination to subsequent higher military ranks, including NCO rank.

Skills acquired during the course should be systematically improved. As far as theory is concerned – by participating in seminars and conferences organized by l'IRSD or International Committee of Red Cross, as for practice – during trainings and

### 3. DCA in Belgian armed forces

In 1996 Operation Unit of General Headquarters introduced into armed forces a directive referring to *DCA* and *RE (ROE)*. The field of education of DCA varies within different branches of armed forces and depends on specialty, military rank and responsibilities included. The education system includes:

- education of officers
- for lieutenants – training course of 11 lectures;
- for captains – training course of 6 lectures;
- for candidates on the rank of major – training course of 12 lectures;
- for candidates on offices in headquarters and General Headquarters – training course of 12 lectures.

Training for officers of lieutenant rank is provided in military schools including a course of 15 lectures on humanitarian law. Other trainings are provided by *IRSD*:

- education of NCOs:
- according to the directive training consists of 5 lectures.<sup>113</sup>

The training gives grounds for systematic training organized by CDCA in units, subunits and headquarters.

From the perspective of didactics, the orders concerning the principles of training are particularly important in the directive. It gives the following rules of organization and delivery of training:

- Training must be motivating;
- Training must be delivered by commander of individual levels;
- It should be integral part of military training;
- Training must fit participants and take into account their functions and offices;
- Training must be based on simple and clear principles characterized by humanitarianism;
- Training should be combined with outdoor exercises to a highest degree;
- Training must be permanent;
- Training must be realistic, include analysis of various and probable situations;

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<sup>113</sup> Law of war – Guide for NCOs and volunteers, IRSD

3. On human rights the following legal acts are covered:

- Convention on preventing and punishing crimes of genocide of 1948;
- Convention on eliminating any forms of racial discrimination;
- European Convention on human rights of 1950;
- Convention on status of refugees
- Convention on status of the stateless;
- International Pact of Political and Civil Rights of 1966;
- Convention on prohibition of tortures and or other forms of cruelty of 1984;
- 2<sup>nd</sup> Protocol to Pact of Political and Civil Rights concerning use of death penalty;
- Protocol to Convention on Child's Rights concerning participation of children in armed conflicts;
- Rome Statute of the International Criminal Court.

There is considerable amount of time and attention spent on teaching on normative **documents referring to armed conflicts which are in force in Belgian army.**

1. NATO documents:

- STANAG 2033: interview of prisoners of war;
- STANAG 2044: procedures of detainment and treatment of prisoner of war;
- STANAG 2060: identification of equipment and materials of medical service;
- STANAG 2084: evacuation and using documents and materials of enemy;
- STANAG 2087: using air transportation for sanitary purposes outside own air zone;
- STANAG 2074: treatment of prisoners of war during NATO activities;
- MC 362: NATO ROE (Rules of Engagement – ROE).

2. National normative documents:

- "Regulations of military court of justice";
- "Disciplinary regulations";
- "Administrative instructions for military personnel";
- "Book of conventions on law of war";
- "Combat regulations";
- "Headquarters regulations";
- "Guide for soldiers participating in peace support operations".

## 10. IMPLEMENTATION OF ARTICLE 83 OF THE ADDITIONAL PROTOCOL I TO THE GENEVA CONVENTIONS IN THE ARMY OF THE CZECH REPUBLIC

Miroslav PINDEŠ

Résumé: This contribution deals with the current situation of dissemination of the norms of international humanitarian law in the training of members of the Czech Army and it outlines the potential ways forward for the future.

International Humanitarian Law applicable in armed conflicts is codified in the four Geneva Conventions of the 12<sup>th</sup> August 1949 dealing with the protection of victims of armed conflicts and also in the two Additional Protocols of 8<sup>th</sup> June 1977.

Primary goal of the international humanitarian law in the time of its creation was to ameliorate the conditions of deprived persons in the circumstances of wartime conflicts, and if possible according to the possibilities, to amend the organization of protection and assistance provided for the victims of these conflicts.

Even in 21<sup>st</sup> century, there is a number of conflicts. Everyday we are witnessing acts of immense violence committed not only against those actively participating in the conflict, but also on those that are under the Geneva Conventions considered as Protected Persons. The number of people that have become victims of this violence is constantly increasing. One of the means to prevent this situation and also the basic pillar of protection of all victims of armed conflicts are undoubtedly norms of the international humanitarian law.

In order to fulfill the content of all four Geneva Conventions and their Additional Protocols it is necessary that these norms are embraced by all addressees, primarily those that are directly involved in the implementation of individual regulations.

From the formal perspective it is necessary to say, that dissemination of the international humanitarian law is in every state generally ensured by their publication

- Training must take into consideration special needs of participants in the field of law of armed conflicts. It particularly applies to: medical personnel, air force personnel, navy personnel, CIMIC personnel, special deployment units, MP personnel, soldiers from units expected to participate in peace missions.

Belgian soldiers have opportunity to present the results of their training on implementation of law of armed conflicts during peace missions in which Belgian forces participate in great number and spirit.

are primarily Vienna documents from 1994 and 1999, which also include so called „Code of Conduct on Politico-Military Aspects of Security. “

The Czech Republic is a country that fulfills its international obligations. However the question that remains to be controversial is the effective dissemination of accepted IHL norms among general public. Although there has been a number of measures taken in this area since 1989, situation is still not quite satisfactory. Until now there hasn't been a complex system of instruction and dissemination of norms of humanitarian law particularly in the civil domain.

The Ministry of Defence is the most important institution In the Czech Republic responsible for the instruction and dissemination of international humanitarian law in the armed forces. The systematic effort to disseminate and instruct began in the Czech Republic after 1993, i.e. after the assumption of obligations (after the former Czech and Slovak Federative Republic) originating from the Geneva Conventions and their Additional Protocols.

Primary effort is focused on improving the knowledge of law of armed conflict mainly among soldiers studying at military colleges. Besides this, the effort is also concentrated on the instruction of combatants in basic rules of behavior in the time of armed conflict. Presence and level of such instruction depends on the objective of their task. Basic rules ought to be explained primarily to the soldiers of lower ranks, primarily at the unit level. Members of the Army of the Czech Republic are provided with comprehensive education at military schools as well as in specialized military courses.

The Ministry of Defence has done a number of steps towards the implementation of training and instruction courses in the armed forces. Subject called “International Humanitarian Law” is taught at military schools, however intensity and extent vary. In 1996, scientific-educational (Department of Humanitarian Law and National Legal Branches) was established at the Military University of the Ground Forces in Vyškov. The task of this Department is, besides others, to provide the instruction at military colleges and in military professional and specialization courses.

Similar activity is also organized by the training center for future members of peace-keeping forces in Český Krumlov.

Course of International Humanitarian Law for Commanders and Legal Advisors of the Czech Army has been organized annually since 1997. This course takes approximately 30 hours and is organized within the IMET project. For those officials of

(promulgation), and this is done by formal promulgation in the appropriate Collection of Laws, or an official legal gazette with its respective name.

The army is a key player that takes part on the defense of the State and provides for the peaceful state of affairs. In case the successful peaceful settlement of disputes is absent, it is difficult to prevent a state of war. In these extreme conditions wartime (humanitarian) law is engaged. This ought to be respected to the extent provided for in the international legal norms.

Geneva Conventions and their Additional Protocols assign the following provisions in this matter:

In time of peace as in time of war, to disseminate the text of the present Convention as widely as possible; to include the study thereof in the programs of military and, if possible, civil training, so that the principles written there down may become known to the entire population as widely as possible. (Article 47 of the First Geneva Convention, Article 48 of the Second Geneva Convention, Article 127 of the Third Geneva Convention and Article 144 of the Fourth Geneva Convention, Article 83 of the Additional Protocol I. and Article 19 of the Additional Protocol II.);

In peacetime, endeavor to train qualified personnel to facilitate the application of the Conventions and their Protocol, (Article 6 of Additional Protocol I);

In time of peace as in time of armed conflict, ensure that legal advisers are available, when necessary, to advise military commanders at the appropriate level on the application of the Conventions and the Protocol and on the appropriate instruction to be given to the armed forces on this subject. (Article 82 of Additional Protocol I).

As it appears from the above mentioned information, already in peacetime, every state has to familiarize its citizens with the standards of humanitarian law. According to the mentioned provisions every Contracting Party is obligated to disseminate the norms of humanitarian law among general public, primarily by the appropriate instruction given to the armed forces on this subject in relevant military units or institutions.

The Czech Republic, or its legal predecessor adopted a series of binding norms of a political or military-political character, in addition to the mentioned standards of international law, regulating the action of military forces in case of armed conflicts. Those are primarily international treaties negotiated under the competency of Organization for the Security and Cooperation in Europe, from which the most important

also NATO School (Shape) in Obergammergeau. At these institutions it is possible to find sufficient amount of good quality information and experience for the expansion of existing professional knowledge and experience.

For further effective implementation of international humanitarian law it would be useful to create specialized military department (institution) that would be primarily responsible for preparation, training and implementation of humanitarian law, especially during the fulfillment of humanitarian task, as well as for solving the problems occurring in crisis situations or armed conflicts.

the Army, that are to serve in the NATO structures, there are certain hours in various specialization courses aimed at lectures on international humanitarian law (for example within the Conams course at Military Academy in Vyškov). Some problems with accomplishing this commitment are in the fact that instruction of humanitarian law has a certain conception only at university level. Soldiers in the compulsory military service are only minimally familiarized with this matter.

As I have mentioned, there is no complex system of instruction of soldiers in the field of IHL, yet. On the other hand, it is necessary to mention, that there is certain methodology of preparation of military personnel in the field of humanitarian law is being prepared. This is going to be a basic foundation while forming a complex system for both practical and theoretical training of the members of the Czech Army. The project being prepared offers favorable conditions for further enhancement of dissemination of IHL standards. It will be acceptable in a sense of scope not only for each rank of command but also for each branch of armed forces.

Existing information indicates that, the Czech Army doesn't pay sufficient attention to this area. Therefore, it is appropriate to deal with the situation in order to improve it.

Despite the above mentioned fact it can be said, that the Ministry of Defence is trying to face the problem of shortage of qualified instructing personnel for international humanitarian law. This is done within specialization training by sending officers and academic personnel of the Department into specialized courses, conferences, workshops and courses focused on international humanitarian law (for example participation at IHL course, that is organized by the Institute of Humanitarian Law in San Remo). Ministry also supports science and research. It also supports and organizes training of command staff and civilian personnel in the specialization courses organized within the scope of IMET, in the IHL courses prepared by the Department of Humanitarian Law and National Legal Branches in Vyškov, etc.

Another effort in this field should be focused on providing the implementation of international humanitarian law according to its stipulations. In order to evaluate the existing preparation objectively, a number of necessary analyses was carried out. Subsequent evaluation should lead towards a scientific and academic cooperation with foreign institutions, such as Institute of Humanitarian Law in San Remo, International Committee Red Cross in Geneva and its regional branches in Budapest, Institute of Henry Dunant, Asser Institute in Hague, Jagg School in Charlottesville and

The answer, on the grounds of existing international law, must be negative because a notion of war is limited to conflict between countries. It must be emphasised however that modern international law does not use the term "war" any more, and since as long as the Hague Convention of 1954 on cultural property protection, a widely used term has been "armed conflict". This notion is much wider than the original "war" and also includes cases of fighting between government, or at least one organised armed group. They should also be referred to as civil conflicts which turn into international conflict.<sup>115</sup>

## 1. The end of Westphalian Order

In Anglo Saxon countries there is an extremely popular thesis saying that the changes which have been appearing in international relations during recent years are a negation of the Westphalian Order, which was introduced by treaties signed in Munster and Osnabruck in 1648 after the 30-year period of religious wars. The treaties recognised independence of 332 German countries and cities which, although different in size and power, were to be sovereign and formally equal. The symbol of their sovereignty and the law of non-interference with their interior affairs was the legitimisation of the rule "cuius regio, eius religio" (which had already been passed earlier in the Augsburg treaty).

The thesis on the end of the Westphalian Order is put forward by Henry Kissinger, who claims the reason for this is a widespread rule of humanitarian intervention<sup>116</sup>. The thesis is shared by other Anglo Saxon political scientists and is popular in western scientific magazines.<sup>117</sup>

While Kissinger sees sources of this policy in historical trends of America which have created the most unfortunate combination of globalisation and missionary reflexes that climaxed in Clinton's "moralistic and global triumphalism", European political scientists usually attribute it to American arrogance of the only superpower, which is fully expressed in George W. Bush's presidency and his doctrine of pre-emptive war,

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<sup>115</sup> See more: *Umiędzynarodowiony konflikt wewnętrzny*, edited by: J. Pawłowski and A. Ciupińskiego. AON. Warsaw 2001, page. 14-23.

<sup>116</sup> H. Kissinger, *Does America Need a Foreign Policy? Towards a Diplomacy for the 21<sup>st</sup> Century*.

<sup>117</sup> L.H. La Rouché, Jr. A. *Boldly Modest US Global Mission*. *EIR Executive*, "Intelligence Review", October 11, 2002, s. 20-49.

## 11. TENDENCIES OF DEVELOPMENT OF INTERNATIONAL LAW BRANCHES: ANTI-WAR LAW AND HUMANITARIAN LAW

Jan CZAJA

Changes in international order in the last decade of 20<sup>th</sup> century and at the beginning of the new century, break-up of bipolar world and rising hegemony of the USA are topics of analyses and evoke different reactions in international society. An important trend of evaluations and discussions is international security in a wide sense, especially new threats and challenges (old threats, including a danger of global conflict seems to be minimised) including changes in international security system to cope with the threats. The problem which is becoming more and more apparent in this discussion is growing interrelationship of countries, and increasing importance of international non-state actors. Different aspects of globalisation are also being analysed as anti-globalisation movements grow in power and make us consider both advantages and disadvantages of globalisation.

A topic of the discussion is international law and attempts at changing it. A powerful stimulus to such considerations were the events of September 11, 2001 and their direct results. Some of the aspects of the events are difficult to seize from the perspective of international law because they were unprecedented. One may ask a question, for example, if it was well grounded to view the September 11 act as "military act" or war against terrorism, from the international law perspective. They were slogans which appeared not only in international publicity and statements of politicians (including Polish) – which is understandable – but also in comments of international law experts.<sup>114</sup>

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<sup>114</sup> See more: Ch.Greenwood, *International Law and the war against terrorism*, "International Affairs" Vol 78, No 2, April 2002, page 301-318

for example in Kosovo, on the territory of Yugoslavia). At the same time the state does not agree – from obvious reasons – on intervention as it might bring about, apart from humanitarian help, various sorts of peace operations and also introduction of sanctions in compliance with the document “An Agenda for Peace” by NATO General Secretary of June 17, 1991. Lack of permission of a country does not challenge authority of Security Council since the authority results from chapter 7 of UN Charter which imposes upon the Council responsibility to keep international security and peace and gives the Council authority to use appropriate means, including use of force, in order to restore international security and peace. Mass and heavy violation of human rights may be considered as threatening to peace and security, and Security Council upon confirmation of this fact may take appropriate decisions, including organizing humanitarian intervention.

A case most often referred to, when giving opinions on the end of Westphalian order, is humanitarian intervention without authorization of Security Council. The case is NATO intervention in Kosovo. According to Kissinger's opinion it confirms the idea of humanitarian intervention becoming universal although he strongly emphasizes the principle of historical context and place where an intervention is to be carried out. Without consideration of this principle, in spite of acting in the name of moral rights, chaos and increasing suffering are likely to occur. Also the problem is who would be to decide on launching such intervention.

The thesis of the dusk of Westphalian order is experiencing an upsurge of popularity in Western political scientist circles although European theoreticians (also some American ones)<sup>7</sup> are more concerned about other symptoms of contesting the order: the strike doctrine or pre-emptive war doctrine, a tendency towards uncontrolled wilfulness of the only superpower or – in a somewhat democratized version – wilfulness of the strong and the rich to act within NATO for example. Anxiety is raised by the prolonging USA right to self-defense, which was established as a result of September 11, which leads to rather free missile attacks, like the one to have happened in Yemen, a sovereign country at any rate (although suspected of favoring terrorism) when a missile launched from an US unmanned plane killed an alleged chief of Al-Kaida cell Saniara al. Harsi and five other, unknown people.

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<sup>7</sup> For example: L.H. La Rouche, Jr., *Continue the American Revolution. La Rouche in 2004*, “Special Report”. February 2002, pages. 9-14.

his tendency to make his own decisions on what is right and what is not. Clinton's human rights policy, strengthened by the feeling of triumph over the Soviet Union and communism (which had already been fought for human rights by Jimmy Carter – maybe naively) took a shape of doctrine as a new interventionism against mass violation of human rights in different corners of the world, especially in Yugoslavia (Bosnia, Kosovo).

Although critical of it, Kissinger thinks that this principle has become universal. At the same time he sets four conditions-principles to be fulfilled by an intervention of this kind:

- doctrine of humanitarian intervention should be applied universally,
- actions undertaken must have approval of American public,
- must have approval of international public,
- must refer to "historical context" – i.e. local conditions.<sup>5</sup>

As a matter of fact, the necessity of humanitarian intervention by international community is also admitted – under several conditions – by Holy See. Vatican – influenced by cruelties and homicides committed in Bosnia in July 1992 – emphasizes this responsibility and remembers canon 2309 of catechism of the Church in force, and says that: "damage done to a nation (ethnic group or community of nations) by an aggressor should be permanent, hard and proven beyond doubt".

Undoubtedly, in face of mass cruelties towards population, homicide and genocide, there has been a growing pressure laid on politicians to stop these cruelties (in the name of the law of civilized nations and public conscience), allowing for intervention irrespective of it being compliant or not with international law.<sup>6</sup> The basic responsibility of international community in such conditions is to prevent acts of cruelty and ensure compliance with human rights.

However, irrespective of actual conditions, there is a legal problem. What matters here is condition of a state under authority of which a given territory lies. If a state is desintegrating and incapable of legal actions (technically it means government actions) or administrative actions, intervention may be started by initiative of UNO Security Council or regional organizations. Problem arises when a state remains capable of legal actions and is guilty of mass violation of human rights and cruelties (as

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<sup>5</sup> Kissinger's views are discussed and argued [in:] „Tygodnik Powszechny” by R. Kuźniar in his article: *Odpowiedzialność, wizja, rozmach* (nr 32, August 12, 2001).

<sup>6</sup> *Umiędzynarodowiony konflikt wewnętrzny...*, J. Pawłowski, A.Ciupiński, op.cit., s. 141.

lead to a similar consensus about the legal questions raised by US reaction to them. The main controversy relates - or related - the question of US right of self - defence and the status and treatment of prisoners held by Americans at the naval base at Guantanamo.

The events of 11 September undeniably constituted a crime under US law and international law, a crime which could be tried in US courts or in the courts of another state. The question arises, however, whether the characterisation of those events as crimes means that they could not also amount to acts of war, armed attacks or threats to the peace, which might give rise to a right to use force. It has been suggested by some commentators that the fact that 11 September attacks were criminal acts means that they could not also be the justification for military action, whether under the enforcement powers of United Nations or under the right of self defence<sup>11</sup>.

The question arose because criminal act came from non state actor. When UNO was in the state o creation, at that time the concept of "threats to the peace", was limited to threats of military force emanating from a state. However recently, when the challenge from terrorism grew up, the Security Council has had no hesitation in treating acts of terrorism as threats to the peace, as it were in the cases of Libya's failure to demonstrate renunciation of terrorism, president Muborak assassination attempt or the attacks on the US embassies in Dar-es-Salaam and Nairobi.

As a matter of fact Security Council adopted two resolutions related 11 September events, first on 12 September 2001 (1368) and 28 September, recognised the act *"like any act of international terrorism..., a threat to international peace and security and went on to impose a requirement on all states to take various measures against the perpetrators and states suspected of assisting them."*

The point was however whether the terrorist attacks constituent an armed attack because according the Article 51 of UN Charter, the inherent right of individual or collective self - defence depends on that. NATO, setting in motion art 5, had the other problem: the question whether the terrorist attack occurred from inside or outside of United States. There is no doubt that terrorists acts by a state can constitute an armed attack and thereby justify a military response<sup>118</sup>. Taking into consideration the

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<sup>11</sup> As for instance: G. Robertson, *These is a legal way out of this*, "Guardian" 14. Sept. 2001.

<sup>118</sup> As for instance International Court of Justice Stated in its Statement in the "Nicaragua" case in 1986, considered that covert attacks by state could classified as an armed attack if they were of sufficient gravity.

## 2. Pre-emptive war doctrine

The pre-emptive (or preventive) war concept which president Bush and his hard-liners from Pentagon have launched in September 2002, might be questionable from principles of existing International Law and treaties to which United States is a party. All above it denies the rules and spirit of UN Charter. It is enough to quote the Preamble and articles 1-2 of Charter.

The concept of such a war - let say the war without provocation - contains in itself the threat to use the force what is totally against the principles of UN Charter and introduced after the Second World War and still existing international order. One has to remember that both Nazi and Japanese leaders justified their launching of aggressive war on the grounds that the countries attacked posed a threat to them.

Rising number of American and Western European lawyer express opinion that pre-emptive war doctrine vilettes also so called Nuremberg principles, especially that what was said in the first categories of offences - "crimes against peace", namely planing, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances. The same relates to Charter of the International Military Tribunal for Far East (Tokyo) in 1946.

American opponents of pre-emptive war doctrine underline also that any attempt of its realisation may fullfill the clauses of definition of aggression<sup>8</sup>, especially article 1<sup>9</sup>, as well as art. 2 and 3<sup>10</sup> One has to remember, they say, that the principles of law declared in the Nuremberg Charter are binding on the United States not only as a matter of natural law, but as a matter of positive law expressed by treaty and agreement between sovereign nations.

## 3. International law and the war against terrorism

There is no dispute that terrorists attack and atrocities perpetrated in the United States 11 September 2001 were plainly illegal, bat the illegality of these acts did not

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<sup>8</sup> E. Spannaus, *Launching Aggressive war is Nuremberg.... Crime*, EIR Executive Intelligence Review, Oct. 18. 2002, p. 32-33.

<sup>9</sup> Doc. adopted by General Assembly. Dec. 4 - 1974

<sup>10</sup> Art. 1 says: *Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State or in any other manner inconsistent with the Charter of United Nations as set out in this Definition*

war were applicable, at least for Taliban soldiers. The problem was, time to time, that there was unclear who is the soldier. After some time American began holding significant numbers of what it described as "battlefield detainees" at Guantanamo Naval base in Cuba. The initial US position was that these detainees were not entitled to prisoner of war status, because they were "unlawful combatants"<sup>119</sup>.

On 7 February 2002 the United States changed its position and decided that captured members of the Taliban armed forces would be treated in accordance with the Third Convention but would nevertheless not be considered as prisoners of war.

#### 4. Summary and conclusions

Effects of changes that occurred in Europe and in the world in the last decade of 20<sup>th</sup> century come up to light in different forma and aspects. In the field of international relations the most commonly discussed are: globalization, its good but more often bad sides, new situation of international security – on the one hand, a decrease in danger of possible nuclear confrontation, on the other hand an upsurge of new threats and local, ethnical, religious conflicts and terrorism. Positive changes are corresponded by negative phenomena, as if to keep things balanced. Increasing democratization and number of democratic states is balanced by a certain number of states, which violate all international principles of life, and are known as the "axis of evil". At the same time there has been an unprecedented and inevitable rise in number and kinds of actors of international relations, some of which act legally and other are completely lawless and violate international law. The point is that this law and its principles were created in history for the purposes of national state – hence it is inadequate to a situation in some cases, and sometimes totally powerless. This is why, according to Anglo-Saxon lawyers, we deal with a crisis of Vestphalian Order which, introduced by the Treaty of 1648, sanctioned two principles: state sovereignty and non-interventionism into interior affairs.

An example of switch from these principles is usually a humanitarian intervention doctrine according to which in some cases of mass violation of human rights (for example genocide or mass murders) international community might have a right to in-

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<sup>119</sup> Ch. Greenwood, *International Law and the war...*, op. cit., p. 315-317. A term which has long been used to describe combatants who are not entitled to take part in conflict, but who do so.

gravity of terrorists attack, of 11 September and huge scale of atrocities, the control of any state is capable of causing death and destruction comparable with that of regular military action by a state. So it would be a strange formalism which regarded the right to take military action against those who caused such consequences as dependent upon whether their acts could somehow be imputed to a state. That was the point of view of UN Security Council and the references to self - defence in respective resolutions.

The exercise of this right however requires no prior authorisation from the Security Council. But that is not the end of legal problems. The requirement of necessity in self - defence means that it is not sufficient that force is used after an armed attack: it must be necessary to repel that attack. The use of force in response to an armed attack which is over and done does not meet that requirement and looks more like a reprisal, rather than a genuine action in self - defence.

The second question consists in fact that US and its allies involved extensive military operations on the territory of Afghanistan without the consent of the local regime. Although Afghanistan was not internationally responsible for the attacks of 11 Sept. That - was the line of argumentation of Taliban regime - had undoubtedly violated international law in permitting Al - Qaida to operate from its territory. We can say that when a state allows terrorists organisations to mount concerted operations against other states from its territory and refuses to take the action required by international law to put a stop to such operations, the victims of those operations are entitled to take the actions against terrorists.

But where a state is entitled to resort to force, its conduct of ensuing hostilities must also comply with international law. There are two separate elements to this requirement. First, action taken in self - defence must be proportionate or it ceases to be self - defence. Secondly the conduct of hostilities must comply with international humanitarian law, let say the law of armed conflict. The degree of force employed by USA and its allies was certainly extensive, but given the scale of the threat, it was not disproportionate.

International humanitarian law is designed principally for application in armed conflicts between states. Another, rather more restricted, body of rules is applicable in an armed conflict within a state. Fighting between the US and Al - Qaida however, appears to fit neither of these moulds. Armed conflict between Afghanistan and USA changed the situation and the provisions of the Geneva Convention au Prisoners of

including the principle of non-referring to threats of use of force or use of force itself in international relations.

Issues evoked by international terrorism, which threatens security of nations and countries, should be discussed from the perspective of international law. They are, among others: attempts or acts of terrorism and the question of "casus foederis" in pacts and military treaties; the question of treatment of persons captured in combat or terrorist activities from the perspective of humanitarian law (status of prisoners of war); the question of the right to self-defense, e.g. pursuit for terrorists.

tervene with other countries' interior affairs, including military intervention – even without authorization of UN Security Council – in order to put an end to such incidents, e.g. NATO intervention in Kosovo. Another example of non abidance to principles and spirit of UN Charter is a doctrine of pre-emptive war (or strike). In various circles of lawyers and politicians, also in the USA, it is often emphasized that the doctrine is contrary to principles of Norymberg and Tokyo Tribunals.

The events of September 11, 2001 were a shock not only for America and the world but became a reference ground for international security and threats to it. They also showed some inadequacies within international law. It refers to such fundamental matters as interpretation of article 5 of the Washington Treaty (*casus foederis*) by NATO, subject matter and range of right to self-defense, concept of war from the perspective of international law (even if this is officially banned by the law), question of how captured terrorists should be treated: as prisoners of war or common criminals.

Strong doubts and emotions are raised in media, among politicians and also in specialist scientific periodicals by a possible US intervention (with or without cooperation of allies) in Iraq, in case it occurs without authorization of UNO Security Council. These issues, as well as many other mentioned above, call for thorough scientific discussion, also among lawyers and specialists on international security, in periodicals, meetings and international forums. The questions that must be answered by international community are as follows:

Are the foundation-principles of United Nations Declaration and UNO still valid and do they do their job? Does the situation not need changing UN Charter and organization itself. The same goes to OBWE, in regional field.

Do ideas and principles of rights of nations like state sovereignty or non-intervention still have absolute meaning and should be treated as “*ius cogens*”, or is intervention with interior affairs, including military intervention, sometimes justified? Who – if UNO Security Council is unable to do so – is to make such a decision and what the threshold of its “universality” is supposed to be when it comes to take it.

Should not attempts be taken for the sake of better integration of NATO and UNO on the basis of modified Chapter 7 of the UN Charter in face of NATO enlargement and transformation into a system of security of beyond-regional character.

US accepting doctrine of pre-emptive war may start erosion of anti-war law (starting from Briand-Kellog Pact, to the whole of UNO system) and its basic principles,

**Part III**

**ADDITIONAL MATERIALS**

# 1. INTERNATIONAL ARMED INTERVENTION IN KOSOVO

Jerzy STAŃCZYK

From the perspective of time we notice that NATO armed intervention in Kosovo carried out in 1999 brought many substantial changes in international relations. Censure that defines certain turning point in life of international community is ushering of so called humanitarian intervention in a large scale and of a huge consequences. It has begun a new role of NATO in practice, which the Organisation was searching after the 'cold war'. The consequences of conflict may be objectively estimated only after years, when the distanced view is possible and all consequences come out. But debate is still lasting.

The NATO intervention critics argue for the thesis that this operation happened with the international law violation<sup>120</sup>:

- UN Security Council agreement required by virtue of UN Chapter art. 24., was missing;
- The sovereignty of internationally recognized subject was infringed;
- The operations was handled as an armed attack because former Republic of Yugoslavia had not attacked other international subjects previously;
- So, resolutions of Washington Treaty art. 5 legitimizing NATO military activities in case of the attack on its members were violated;

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<sup>120</sup> Moreover, in the context of critic it was argued that:

- The NATO's intervention happened without member states parliaments approval;
- The rule of defensive character of NATO was violated;
- The change of the character of NATO military doctrine from defensive to intervene one happened during the intervention (NATO Summit in Washington 23 -- 24 IV 1999);
- Decision about aerial bombardments can not be attributed to international community because Russia and China was missing (being permanent members of UN Security Council in addition);
- The agreement finishing the NATO – FRY conflicts is null and void, because it was obtained by force (the argue is risen up that by virtue of FRY constitution nobody has the right to sign capitulation act).

M.D. Luković, *Kryzys kosowski oczyma Serbów. Bezpośrednie przyczyny, korzenie historyczne, przebieg i konsekwencje*, Todra, Belgrad 2000, p. 85.

- 1948 Convention on the Prevention and Punishment of the Crime of Genocide;
- Universal Declaration of Human Rights – UN Convention from 10<sup>th</sup> December 1948;
- 1949 Geneva Conventions;
- International Pacts of Human Rights accepted by UN on 16<sup>th</sup> December 1966<sup>123</sup>;
- OSCE Final Act on 1<sup>st</sup> August 1975;
- The declaration of Prime Ministers of UN Security Council members (January 1992) of the human rights protection even when it may bear the infringement of state's sovereignty committing human rights and freedom violations;
- the European Parliament resolution of 20<sup>th</sup> April 1994, permitting active actions of states in favors of elaborating humanitarian intervention rules, making up for the gaps in UN Chapter rules and the imperfection of UN Security Council functioning.

The resolution admits humanitarian intervention when:

- the situation is extraordinary;
- the paralyze of UN is holding;
- all trials of conflict prevention have ended in failure;
- UN do not condemn the operation.

In the Serbs opinion NATO military intervention against former Republic of Yugoslavia was caused by many premises among which the humanitarian aspect was not determining at all.<sup>124</sup> Omitting the most abstract ones, referring to the conspiracy theories, most often formulated justifications may be called, though controversial, may be examined from the logical point of view:

- satisfying the needs of US military – industrial complex (the examination of weapons not being tested in the tactical conditions since the 1991 'Desert Storm' operation in the Persian Gulf, winning new commissions for military industry, reserves renewing);

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<sup>123</sup> Interventional Covenant on Civil and Political Rights and IC on Economical Social and Cultural Rights.

<sup>124</sup> M.D. Luković, *Kryzys kosowski...*, op.cit.

- The resolutions of Washington Treaty art. 6 defining territorial reach of the North Atlantic Treaty binding (supposing the permissible territorial scope of intervention) were violated;
- The Washington Treaty art. 7 presuming the UN Chapter respect and the special responsibility of UN Security Council for maintaining international peace and security, was violated;
- The Geneva Conventions prohibiting the attacks on civil populations were violated.

An announcement of NATO reaction on the crisis situation in Europe (taking responsibility for European security and the Treaty structures rebuilding and creating its new, more mobile formations) was already assumed in strategic conception accepted in Rome in Nov. 1991. On ground of this (and with UN Security Council authorization) NATO's bombardments of Serb positions in Bosnia and Herzegovina came off. The UN IFOR (Implementation Forces) and SFOR (Stabilization Forces) were formed mainly with support of NATO forces.

It should be noticed that art 6 of Washington Treaty presumes that military actions of the Treaty are carried out on defense purposes and on the strictly defined territory: the territories of member states, including the islands under their jurisdiction settled on the transatlantic area and north of the Tropic of Capricorn. They may also be undertaken in defense of armed forces (vessels, airplanes) of the Treaty High Contracting Parties being on their own territories, above or under them or on another European territory...

In the new Alliance strategic conception accepted on the jubilee summit in Washington on April 1999, instead of the formula of 'global mission' proposed previously by USA, occurs formulation 'Euroatlantic area' and the possibility of NATO reacting to threatening this area, that can be of outer origin.<sup>121</sup>

However, there are appeals (except from politic – moral regards) among the argues for the legality of proceeded armed intervention, to following legal justifications<sup>122</sup>:

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<sup>121</sup> Geographical criterion of NATO security sphere of interests underwent another widening after the September 11<sup>th</sup> 2001. After the beginning of US anti-terrorist operation in Afghanistan (that NATO's allied agreed to) this criterion is becoming more and more blurred.

<sup>122</sup> Rudolf Scharping, *Das Transatlantische Bündnis auf dem Weg in das XXI Jahrhundert*. „Bulletin des Presseamtes der Bundesregierung“, 21 April 1999, pp. 186-195.

be temporary), thereby we cannot say about assassination on FRY territorial integrity<sup>125</sup>. The fact of using the force against the sovereign state (its airspace infringing and bombardments) is more difficult to explain and very controversial.

In this day and age, international public opinion constitutes the force able to enforce decisions about military resistance to humanitarian brutalities, even if the action was inappropriate to the international law.<sup>126</sup> In the globalization age international circulation of information due to the modern medias which contributed to internationalization trends and correlation rise, affecting also the decisions related to the international security.<sup>127</sup>

Internal affairs interference by the force use what is more, proved the superiority, that in contemporary world human rights and freedom has gained<sup>128</sup>. It proves the revaluing of the values hierarchy that are the foreground and causes new custom law forming in the international relations, and thereby former legal rules on which the international order after Second World War was based on are losing their force<sup>129</sup>.

As a contemporary international practice demonstrates, grave breaches of human rights and freedom refer to the UN Chapter's chap. VII (art. 7) and matters in the context of international peace and security. By virtue of appellation to chap. VII of UN Chapter regional organizations, striving to international peace and security maintenance may be involved in human rights and freedom protection. So far there are no

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<sup>125</sup> In 1991 Commission of Badiner that was acting on behalf of the European Community, had also such an opinion. It was then accepted that only republics would be treated as a parts of Yugoslavian Federation. Stefan Troebst, *Conflict in Kosovo: Failure of Prevention? An Analytical Documentation, 1992-1998*. European Centre for Minority Issues. Flensburg 1998, p. 48.

It happened in the opposition to Yugoslavian Federation constitution, that defined Kosovo and Vojevodina as autonomic districts in the frames of Federation, not in the frames of Serbia (although they are territorially placed there). J. Stańczyk, *Przeobrażenia międzynarodowego układu sił w Europie na przełomie lat osiemdziesiątych i dziewięćdziesiątych. Analiza uwarunkowań i mechanizmów w kontekście bezpieczeństwa międzynarodowego*. Instytut Studiów Politycznych PAN. Fundacja im. Frirdricha Eberta, Warszawa 1999, pp. 131-136.

Thereby it should be assumed that Kosovian Albans among their independence aspirations after the collapse of SFY had fundamentals for determining their own autonomy. Noel Malcolm, *Kosovo: A Short History*. Macmillan. New York University Press. London – New York 1998, pp. 264-267. Compare another point of view: H. Clark, *Civil Resistance in Kosovo*. Pluto Press. London – Sterling, Virginia 2000, p. 159.

<sup>126</sup> S.J. Solarz, M.E. O'Hanlon, *Humanitarian Intervention: When Is Force Justified*. "The Washington Quarterly", Autumn 1997; N.J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*. Oxford University Press. Oxford 2000.

<sup>127</sup> M. Hudson, J. Stanier, *War and the Media: a random searchlight*. Sutton Publishing. Stroud 1997.

<sup>128</sup> T. Dunne, N.J. Wheeler (eds), *Human Rights in Global Politics*. Cambridge University Press. Cambridge 1998.

<sup>129</sup> K. Booth, *Human Wrongs and International Relations*. "International Affairs", vol. 71, no. 1, 1995, pp. 103-126.

- winning the part of the strategic territory in Europe, in addition rich in mineral deposits (among others the largest deposits of pit coal in Yugoslavia, the largest zinc and lead mine in Europe, possibly large petroleum layers), and that may become in the future geostrategical bridge joining Balkans with Middle Asia (what may restrain Chinese influences);
- ensuring control over the possible petroleum oil pipe run from its rich deposits over Caspian Sea to the Western Europe;
- Russian influences weakening;
- stabilizing US domination in Europe (attempts at weakening actions undertaken by Europe in favor of its emancipation).

Serbs underlined at the same time that maintaining Kosovo within the composition of FY was of a high significance for them. Beyond the sentimental aspect of 'sacred land' (that this province has for them in the state building meaning) following arguments are pointed:

- eventual secession of Kosovo would cause decomposition of Yugoslavian state;
- in effect it would bring breaking of co – operation with Montenegro, that would tear Serbia of Adriatic Sea;
- it would cause huge geostrategic problems for Serbia, related to its security threat and stability and security of the whole region of Balkans;
- the loss of Kosovo would also mean renewal of Turkish influences on Balkans;
- Serbia attracts attention, that military intervention defending human rights was conducted with omission of the international law procedures in force.

It should be admitted that intervention was undertaken against the sovereign state omitting the UN Security Council consent (UN Charter violation). The exception to the rule of selfdefense is not applicable here. Also violated was Art 7 of Atlantic Charter, that acknowledges UN Security Council fundamental responsibility for maintaining international peace and security. The doubt was cast on the rules consisted in the 1975 OSCE Final Act referring to the respect of sovereignty, territorial integrity, renouncing force use and nonintervention in internal affairs of states. It ought to be remembered that international community did not question membership of Kosovo in the Yugoslavian federation (its sovereign status was not mentioned, it was strived to restore its autonomy, it was also assumed that an international protectorate would

that may take activities according to the chap. VII of UN Chapter, being interference into internal affairs of these countries consent to the international law.

Moreover, according to the 7<sup>th</sup> rule, on the purpose of international peace and security protection, UN may undertake actions towards non – member states.

Accepting new humanitarian intervention rules is in the opposition to thus inevitable rules of sovereignty, noninterference into internal affairs or non-use of the force in the relations between countries.<sup>135</sup> Humanitarian intervention doctrine, protecting the civil communities terrorized by their authorities, may be dangerous for fundamentals, on which hitherto existing international order is based.<sup>136</sup> The accusations against this new doctrine reduce to the conflict between order and justice (the individual rights protection would lead to the dangerous violations of sovereignty principle) in the situation, when the consensus to the moral fundamentals among international community is missing. It enables stronger countries to realize by the force use and under the banners of morality their particular interests<sup>137</sup>.

The humanitarian intervention opponents use arguments, that:<sup>138</sup>

- Decision to intervene may be undertaken recklessly, under society's pressure, created by mass media relating the events insufficiently objective or just on the contrary tendentious;
- Armed action (especially air – operation) may cause the losses in the local population;
- The cases of humanitarian law violation by intervene forces occur;
- In the country where intervention proceeds its received as an aggression, as a sovereignty violation, as a symptom of superpower bosses on weaker states;

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<sup>135</sup> F.K. Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention*. Kluwer Law International. The Hague. Boston 1999, p. 35.

<sup>136</sup> W. Verwey, *Humanitarian Intervention in the 1990s and Beyond: an International Law Perspective*, [in:] J.N. Pieterse (ed.), *World Orders in the Making: Humanitarian Intervention and Beyond*. Macmillan. London 1998, p. 200.

<sup>137</sup> H. Bull, *Conclusion*, [w:] H. Bull (ed.), *Intervention in World Politics*. Oxford University Press. Oxford 1984, p. 193; I. Brownlie, *Thoughts on Kind-Hearted Gunmen*, [in:] R. Lillich (ed.), *Humanitarian Intervention and the United Nations*. University Press of Virginia, Charlottesville, Va 1973, pp. 147-148.

<sup>138</sup> *Umiedzynarodowiony konflikt wewnetrzny...*, op.cit., pp. 141-142.

legal mechanisms for carrying out humanitarian intervention without a previous UN Security Council authorization.<sup>130</sup>

In this context the debate on legal – international legality of humanitarian intervention has started. In this debate took also part UN General Secretary, who during 54<sup>th</sup> General Assembly session in Sept. 1999, cast doubt on postponing the international intervention in situation of genocide, if the fast Security Council authorization is missing<sup>131</sup>. Contradiction between legality and justness of such activities become visible<sup>132</sup>. On one hand the humanitarian intervention followers (even with the force use) lacked strong arguments based on UN Chapter articles. On the other hand it is known, that UN Security Council was unanimous that FRY was committing culpable and systematic human rights violations in Kosovo what threatened international peace and security and was expressed in the next three resolutions that called to cease the violence, and accepted accordingly to the chap. VII UN Chapter res. 1160 – 31 III 1998, res. 1199 – 23 VIII 1998, res. 1203 – 24 X 1998. Only considering the expected China and Russia veto, Security Council was not able to accept resolution authorizing NATO operation.<sup>133</sup>

In the broader legal-international context it should be noticed, that the most controversial of UN rules inserted in art 2 of UN Chapter – the 7<sup>th</sup> rule identified with absolute of the sovereignty (a ban to meddle with states internal affairs) do not allow in fact for such far coming interpretation<sup>134</sup>. Absolute of noninterference rule cannot exist there because:

- all obligations and international rules accepted by states do not belong to the sphere of their internal competences any longer,
- activities threatening international peace and security undertaken by states within their internal policy may cause UN Security Council reaction,

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<sup>130</sup> *Umiędzynarodowiony konflikt wewnętrzny*. Edited by J. Pawłowski, A. Ciupiński, AON, Warszawa 2001, p. 141; G. Robertson, *Crimes Against Humanity. The Struggle for Global Justice*. Allen Lane, the Penguin Press, London 1999.

<sup>131</sup> *Secretary's General Annual Report to the General Assembly*. Press Release, SG/SM7136GA/9596, <http://srch1.un.org:80/plweb-cgi/fastweb>, 20 September 1999. Compare: "Newslines". Radio Free Europe/Radio Liberty, vol. 3 no. 59, 25 March 1999.

<sup>132</sup> R. Kuźniar, *Prawa człowieka, prawo, instytucje i stosunki międzynarodowe*, Scholar, Warszawa 2000, p. 293.

<sup>133</sup> N. J. Wheeler, *Reflections on the Legality and Legitimacy of NATO's Intervention in Kosovo*, [in:] *The Kosovo Tragedy. The Human Rights Dimensions*. Editor Ken Booth. Frank Cass. London – Portland, Or 2001, p. 145.

<sup>134</sup> R. Kuźniar, *System Narodów Zjednoczonych*, [in:] *Stosunki międzynarodowe: geneza, struktura, dynamika*. ed. by E. Halizaka i R. Kuźniara, WUW, Warszawa 2000, pp. 354-355.

towards international action with the force use and the adequacy of this action to the actual international peace and security threat and the affectivity of lending help in the scope of humanitarian rights and freedoms<sup>142</sup>.

The critics of this attitude object that such a action would presume that international legal order in force is valid and would encourage to its violation according to minimum humanitarian standards defense<sup>143</sup>.

It would also allow treating of law free enough in these and another cases, what must lead to the international legal order erosion and threats to international security<sup>144</sup>. Which Kosovo lesson may have a discouraging influence on UN SC in the scope of estimating international peace and security threats, especially resolutions that recall to the chap. VII of UN Chapter, which may be used for humanitarian intervention without previous UN SC authorization. These experiences show its weakness in solving the fundamental contemporary problems.

These facts illustrate, how far the universalism of (UN system) law deviates from the contemporary western world standards. It is obvious that if the military intervention against Serbia in the UN SC was put to the vote, the motion would be vetoed by Russia and China. In this situation the interrupting of mass ethical pogroms in the

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<sup>142</sup> Broad: G. Zimmer, *Rechtsdurchsetzung (Law Enforcement) zum Schutz humanitärer Gemeinschaftsgute. Zur Theorie und Praxis der „Intervention“ im zeitgenössischen Völkerrecht*, Aachen 1998, p. 53-199.

Among the most often mentioned particular conditions that should appear for humanitarian intervention undertaken without former UN SC mandate, should be pointed:

- The necessity of dramatic breaches of human rights and freedoms on the mass scale, corresponding the characteristic of crimes against humanity (the violations of basic rules and norms of international law, especially in the UN Universal Declaration of Human Rights),
- Wearing out all peace methods,
- Necessity of indispensable help,
- UN SC disability of interrupting humanitarian catastrophe,
- Disability or unwillingness of state responsible for the crimes against humanity taking place on its territory,
- Forming the decision about intervention by the regional organization on the ground of chap VII UN Chapter, that means in defense of international peace and order,
- Force use proportional to the intended humanitarian effect and consent with international law of armed conflicts,
- The limitation of intervention aim to interrupt humanitarian law violations and constructing new social – political order maintaining security for people,
- The conformity of activities undertaken with UN purposes in the scope of maintaining international peace security and human rights and freedoms,

Although it is subject of different intellectual debates, in practice the international law system is not undermined.

<sup>143</sup> W. Verwey, *Humanitarian Intervention in the 1990s ...*, op.cit., p. 200.

<sup>144</sup> N.J. Wheeler, *Reflections on the Legality and Legitimacy of NATO's Intervention in Kosovo*, [in:] *The Kosovo Tragedy...*, p. 152.

- Using the humanitarian intervention as a means of abiding of law enforcement may politicize and simply militarize international law, what violates the international humanitarian law assumptions;
- Humanitarian intervention may harm fundamental rules of IHL (impartiality, neutrality and non - engagement).

According to the opinion of humanitarian intervention followers the action in Kosovo served the only to defending international law in force and do not construct any new standards in this scope. It is cast in doubt, because the putting in motion military action procedure without UN Security Council authorization is a new proceeding standard, leading to new common law<sup>139</sup>.

The humanitarian intervention legality is, by followers, watched in the UN Chapter articles that refer to the human rights protection and in the international common law. They indicate the UN legal obligation in the scope of co-operation for human rights protection and promotion resulting from UN Chapter articles and art 1(3), art 55 and art 56, according to that, these issue is a priority on the values hierarchy of UN, next to the international peace and security matters<sup>140</sup>.

Such was the character of the report of Danish Institute of International Affairs was elaborated, admitting states' actions not fully consistent with legal articles, aiming on genocide, mass homicides and ethnical cleansing prevention. In these extreme cases humanitarian intervention would be indispensable and justified from the moral and political point of view, even without UN Security Council authorization<sup>141</sup>. The conditions of carrying this action might be the 'highest necessity state' leaning

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<sup>139</sup> M. Finnemore, K. Sicking, *International Norm Dynamics and Political Change*. "International Organization", vol. 2, no. 4 (1998), p. 895.

<sup>140</sup> N.J. Wheeler, *Reflections on the Legality and Legitimacy of NATO's Intervention in Kosovo*, [in:] *The Kosovo Tragedy...*, op.cit., p. 147-148.

<sup>141</sup> *Humanitarian Intervention: Legal and Political Aspects*. Danish Institute of International Affairs. Copenhagen 1999, p. 128.

Earlier in October 1998, with the common thesis came forward British Foreign Ministry in the document sanctioning the possibility of the beginning of military intervention even without former UN Security Council authorization, which was sent to its NATO partners: *UN Security Council resolution would be on implicate legal basic for NATO action, and would be politically desirable as well (...) But the force many be also justified without UN SC approval considering the irresistible compiling of humanitarian necessity. Following criteria have to be applied:*

1. *that convincing obviousness exists, accepted generally by the international community as a whole, about the extreme humanitarian misfortune on the large scale, demanding immediate and rapid help.*
2. *that it's objectively clear that there is no practical alternative of force use, if the human beings are to be protected.*
3. *that the proposed force use is indispensable and proportional to the purpose (humanitarian aid indispensable) strictly limited in time and in the scope to this aim.*

It is wondered how much time is needed, for Kosovo (and rather apprehending, in its region) to regain the peace. All achieved is an armed peace, do not giving the fullness of security. The situation in Kosovo is still far from normality. Its international protectorate fortified by strong presence of international armed forces. For peace realization initiation of civil society idea is needed – a development of local authorities based on free elections and representative participation of all national groups within it. To achieve it the return of refugees and post – war reconstruction must follow.

Nevertheless a sad reflection remains: Hate takes hate. It will be a difficult peace.

Kosovo territory would not have been possible - that's the fact (similarly to this, that extermination actions were not spontaneous but prepared with awareness).

The international incidents reported that the articles of Washington Declaration<sup>145</sup> of the North Atlantic Treaty, ensuring the attachment to UN Chapter aims and principles, do not have to be automatically referred to its all particular articles, including the decision making procedures<sup>146</sup>. It may be thereby accepted that NATO would undertake military action against FRY preventing UN Chapter violation, but offending the mechanisms there accepted (necessity of UN SC authorization). In this situation it is hard to decide unambiguously and the critics of NATO operation didn't acquire satisfactory legal settlement.

During the very Yugoslavia bombardments, on May the 10<sup>th</sup> 1999 FRY put forward complaint to the International Tribunal of Hague (the highest UN court) against 10 countries participating in military operation: US Canada, GB, Germany, France, Italy, Holland, Belgium, Spain, Portugal. There were charged on aggression committing against FRY, UN Chapter, Geneva Conventions and fundamental principles of international legal order violation and war crimes. Tribunal did not pass sentence upon NATO committing crimes against Yugoslavia<sup>147</sup>. FRY simultaneously denied to recognize jurisdiction of International Tribunal for War Crimes in former Yugoslavia on its citizens<sup>148</sup>. Moreover this Tribunal accused the main authorities concentrated around president Slobodan Milosevic of crimes against humanity<sup>149</sup>.

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<sup>145</sup> „Przegląd NATO – Dokumentacja”, Lato 1999, p. D5-D7.

<sup>146</sup> G. Kostrzewa-Zorbas, *Początek – czy koniec epoki? Wojna o Kosowo, Stany Zjednoczone, NATO i bezpieczeństwo europejskie*, [in:] *Świat po Kosowie*. Edited by Agnieszka Magdziak-Miszewska. Centrum Stosunków Międzynarodowych. Warszawa 2000, p. 17.

<sup>147</sup> The fact of cluster bomb use will remain controversial. The question of missiles of a impoverishment uranium is not so controversial, but the responsibility to remove them remains. The Balkan Task Forces inspection didn't show that as a result of intervention in Kosovo catastrophe of the natural environment appeared. *The Kosovo Conflict: Consequences for the Environment and Human Settlements*, UNEP. UNHCR/Habitat, Balkans Task Forces, Geneva, 1999.

<sup>148</sup> The Tribunal was being openly criticized in the Western countries, the *Thames* publication on 17<sup>th</sup> June 1999 is exemplary. The Tribunal was charged to be in the opposition to the UN Chapter sovereignty rule, it allows the double judgment for the same offence, is illegal due to the lack of UN Chapter authorization of SC to construct the institution having over national authority, that the jury and appellation institution is missing. *The anomalies of the International Criminal Tribunal are legion*. “The Thames”, 17<sup>th</sup> June 1999, p. 24.

<sup>149</sup> According to art. 5 of the Tribunal statute it will be prosecuting for offenses committed against the humanity, committed during the international or non-international armed conflicts, directed against the civil population, as follows: a) murders b) exterminations c) slavery d) deportations e) detention f) tortures g) rapes the political, racial religious oppression and another non- humanitarian acts. Tim Dunne, Daniela Krolsak, *Genocide: Knowing what it is that we want to remember, or forget, or forgive*, [in:] *The Kosovo Tragedy...*, p. 45

Every person should have the right for legal lawsuit in case he/she commits a crime against occupant authority. Nobody is to be sued for a deed which he/she has not committed. Nobody is to be tortured, either physically or psychologically, given corporal punishment, cruel or humiliating treatment.

Persons left out from the battlefield (the wounded and the sick), and those who do not directly participate in combat should be taken care of and protected. They should always be treated in a humanitarian way, without making any differentiations to their disadvantage.

The wounded and the sick ought to be gathered and taken care of by the party of a conflict in which custody they are found. Also, medical personnel, medical equipment and materials should be under protection. The red cross sign (red crescent) is a protective sign and ought to be respected.

International law of armed conflicts regulations are derived from general principles of humanitarianism and are commonly binding. Respect for them needs not approval of a commander. And violation of them brings criminal responsibility.

International law of armed conflicts is the second defence line that professor Stanislaw Nahlik was relating to so convincingly. Therefore, it is worth quoting these words: "Due to political realism only few – apart from political doctrinaires – put forward seriously the thesis that to outlaw a war precludes existence of <<the second defence line>>, i.e. legal rules, which regulate conduct of war. This line is necessary, even to find out more easily those to be hold responsible"<sup>150</sup>

Criminal responsibility for violation of regulations of international humanitarian law of armed conflicts outlines the main development trend of the law in 20<sup>th</sup> and 21<sup>st</sup> centuries. Thus professor Teodor Leško is right in that he sees development of law of war as inextricable from historical development of armed conflicts. According to him, "the regulations on warfare (*ius in bello*) and rules of neutrality in war were created first. Next, the rules of humanitarian protection were created, and only as late as in the 20<sup>th</sup> century international rules preventing a war and international criminal responsibility rules came into being."<sup>151</sup> Legal regulations, being a response to use of armed force in armed conflicts, are confirmed in *Budapest Code of conduct in the*

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<sup>150</sup> S.E. Nahlik *Plunder of pieces of art. Origins of international crime*. Ossolineum, Wrocław-Kraków 1958, s. 385.

<sup>151</sup> T. Leško, *Międzynarodowe ograniczenia w prowadzeniu konfliktów zbrojnych*, PWN, Warszawa 1990, s. 29.

## 2. CONCEPT OF „ARMED ACTIVITIES OPERATION LAW” IN RUSSIAN LAW THOUGHT

Kazimierz MALAK

The basic purpose of regulations of the law of war is to diminish cruelties of war; hence their character is humanitarian. Many of them, for example principal regulations ensuring protection of civilians or the wounded and the sick, are unconditionally binding, and should be given full attention by members of armed forces.

Basic regulations of the law of war are as follows:

A war is a relation between countries, not between populations of the countries engaged in an armed conflict.

The parties engaged in an armed conflict do not have unrestrained right to choose means of enfeebling their enemy. Conducting armed activities they are not allowed to use the weapons or methods which cause unnecessary suffering and excessive loss.

The basic purpose of a war is to defeat an opponent country and impose one's own will upon it. Therefore, the combat means of hurting enemy should be limited to achieving this very aim.

Armed activities should be aimed against the enemy armed forces. Civilian population, individual civilians as well as cultural property may not be an object of attack.

One may not kill enemy soldiers who surrender.

Captured combatants have the status of prisoners of war, and may not be repressed in any way. They should be ensured with the right to mail their families and to the right to help.

Persons in custody of the opposing party have the right to respect their lives, dignity and personal believes. They ought to be protected against violence and repression.

tions of keeping prisoners, and other related questions. The documents do not answer the following questions:

- what the conditions of transporting and keeping prisoners should be
- what the conditions in prisoner camp should be
- what are the standards of locating prisoners of war
- what are the duties of commanding officer and the rest of camp staff

It seems all the more surprising when we realise that the 2<sup>nd</sup> World War . Russian experiences in this field are very negative. Prisoners of war taken captive by Red Army found themselves under control of NKWD (USSR Interior Affairs Commissariat Council for Prisoners of War) – body created for this specific purpose – which was a violation of International Humanitarian Law and caused a significant outcry from abroad. All of this brings to our minds the ordeal and extermination of Polish officers interned in 1939 and moved from Poland in the years 1939-1945.

What we may infer from this is that basic documents on commanding units and operation armed forces are not of too high an importance. They are not a part of Russian legal system because they are not legal acts and do not have force of presidential or governmental decrees, nor are they registered in Ministry of Justice of Russian Federation as normative acts. Some part of the documents is approved by Minister of Defence, other by vice-ministers, and yet another by appropriate chiefs and commanders. Also, in the course of ongoing analysis of this issue, it turned out that most lawyers do not consider these documents to be a source of law as they include social regulations of practical character, not legal regulations.

It is not a matter of chance then that issues of regulating armed activities are not reflected in Soviet and Russian military law. The law, traditionally enough, has dealt with issues of legal status of soldiers, conscription, discipline and military service, army management, delivery, finances, discounts, obeying law in armed forces.<sup>155</sup> It is because it was thought that law should not be an instrument of shaping martial art, setting standards of conducting military operations on tactical, operational and strategic level at sea, in the air and on land. Many Russian commanders and military experts find it very true. They claim that martial art is influenced by many factors: pro-

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<sup>155</sup> See: G.A. Kabakowicz, I.I. Kotljarow, F.M. Rajanow, *Wojennoje prawo*, Moskwa 1999; *Sprawocznik po zakonodatelstwu dlja oficerow Sowietsoj armii i Wojenno-Morskogo Flota*, Moskwa 1988; *Prawowaja zaszcita zertw wooruzjonnych konfliktow*, pod red. Ju. Ł. Szewczenko, Moskwa 2000.

*field of political-military security aspects* of December 6, 1994 (chapter VIII, art. 34).<sup>152</sup>

The ideas and guidelines of International Law of armed Conflicts mentioned above do not always find their way into military conduct and military training of Russian Federation. Russian legislation applies the law only in two cases:

"The Regulations of Armed Forces of Russian Federation" include a duty to "know and follow international rules of conducting warfare, handling the wounded and the sick, victims of sea catastrophe and civilian population within areas of armed combat, as well as prisoners of war" (art. 19). The Regulations also specify methods of taking prisoners of war and their treatment (art. 20)<sup>153</sup>.

The decree of Ministry of Defence of Soviet Union of February 16, 1990 orders to implement Geneva Conventions and Additional Protocols. It outlines their basic guidelines and assigns function of legal-advisors to officer-lawyers for the period of warfare. The decree orders to follow International Law of Armed Conflicts during exercises, drawing up documents on all levels, including army regulations and decrees.

According to Russian army specialists' estimation, the documents of the Ministry of Defence on methods of using armed forces (rules, combat regulations, instructions, etc.) were designed without taking ILAC into consideration. The following order is an example: every town, especially a city with its build-up areas, offers favourable conditions for defence and can be turned into a fortress to stop enemy attack. A city also gives opportunity to carry out defensive actions within its boundaries for a long period of time, even when enveloped. This is why every town should be included into a defence object system. Buildings are prepared for fight, and those which are not occupied by army are mined and set ready for destruction.

However International Law of Armed Conflicts<sup>154</sup> obliges to organise defence primarily outside populated areas.

The documents on using Russian units and operation armed forces in fight do not include such limitations. Also, they hardly cover such topics as: legal system of occupation, CIMIC rules both on own territory and occupied territory, rules and condi-

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<sup>152</sup> *Prawo w stosunkach międzynarodowych. Wybór dokumentów*, opracowanie S. Bieliń, Warszawa 1996, s. 289-290.

<sup>153</sup> *Ustaw wnutriennej służby Woorużonnych Sił Rossijskoj Fiedieracii*, Moskwa 1994, s. 18.

<sup>154</sup> See: *Protokół dodatkowy do konwencji genewskich z 12 sierpnia 1949 r. dotyczący ochrony ofiar międzynarodowych konfliktów zbrojnych (Protokół I)*, Genewa, 8 czerwca 1977, [w:] E. Mulinen de, *Podręcznik prawa wojennego dla sił zbrojnych*, Warszawa 1998, s. 136-137.

tions.<sup>158</sup> From article 356 of the Penal Code of the Russian Federation it cannot be affirmatively inferred in which case criminal responsibility should be born: whether for all violations, or only for the severe violations. It does seem that Russian lawyers refer criminal responsibility only to the severe violations of the law of armed conflicts. To top it all, the regulations of International Law of Armed Conflicts have, for this part, merely assessing function, and while they ban or restrict some activities they admit various exceptions to the rules referring to such terms as "military necessity", "extreme necessity", "absolute necessity".

These issues need to be specified within state legislation as it stays beyond all doubts that a commander will not be able to find the right way around among all these legal nuances. Besides, he will not have time for this when it comes to circumstances of an armed conflict. Hence, it is necessary to have a competent legal advisor in the staff and to create a new kind of legal supervision of armed activities.

Russians think – following the example of Western countries – that it is necessary for the law of war to permeate the martial art, and it is a sign of the lawful state. Before the second stage of war activities in Chechnya was launched, it had been thought that in a democratic society every military operation will be questioned by media or parliament, there will be interviews and investigations carried out in parliament, etc. This is why there should be appropriate state bodies prepared to convince the public that activities of armed forces are not unlawful and contrary to accepted regulations of international code of conduct. The arguments should be so apt as to make parliament and press not only support aims and tasks of a military operation, but also acknowledge that the means used to achieve them are acceptable, effective and economical. Only then is it possible to have enough social support for the army, which strengthens morality and psychology, and guarantees smooth supply of material and financial resources.

Western specialists<sup>159</sup> look over the reasons why it is necessary to legally regulate armed activities. Next to moral and humanitarian aspects, legal principles corre-

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<sup>158</sup> See: *Protokół dodatkowy do konwencji genewskich z 12 sierpnia 1949 r. dotyczący ochrony ofiar międzynarodowych konfliktów zbrojnych* (Protokół I), [w:] *Międzynarodowe prawo wojenne, Zbiór dokumentów. Wybór i oprac.*, M. Flemming, Warszawa 1985, s. 211-278.

<sup>159</sup> F. Berman, *Ensuring Compliance with the Law of War: some Policy Consideration. International symposium on the Law of War. The 125-th anniversary of the 1868 Declaration of St. Petersburg*, Geneva 1994.

duction level and resources for warfare, geographical conditions, historical and national character of a country, etc. Martial art has dynamic character and should not be restricted by strict legal regulations<sup>156</sup>.

On the other hand, some experts think that there may be at least three arguments put forward to argue for the necessity to shape martial law with consideration of law regulations:

- First, obligation to conduct armed activities in such a way that they do not conflict with obligations resulting from international agreements signed by the Russian Federation.
- Second, there may be some formalised functions precisely distinguished on operational and tactical level which are not a part of martial art in itself, but require actions to be carried out following a set algorithm. The law will undoubtedly strengthen such processes, more precisely specify the issues that must be analysed during a process of planing, preparing and conducting a combat operation. On the basis of normative acts, a commander should know that under no circumstances can he do what he is not allowed to do. This will make it easier for him to take a decision. Also, he will be sure that in spite of the fact that his actions brought a lot of victims and destruction, including civilian structures, there was no other alternative in this situation. In fact, what he did manage to do was to take into consideration at least minimum of regulations of the law of armed conflicts, and thus he did not commit a crime.
- Third, Russian Penal Code, in force since 1997, introduced responsibility for using means and methods (including mass destruction weapons) in an armed conflict which are banned by international agreements.<sup>157</sup> However, if a list of banned means of conducting armed activities is detailed, it is rather difficult for a commander, and even for a lawyer, to asses strictness of the ban. The point is that regulations of International Law of Armed Conflicts divide the banned methods into two groups. One group includes severe violations and war crimes, and the other includes the rest of viola-

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<sup>156</sup> A.A. Gurwicz, J.J. Sokowych, *Prawo i wojennoje iskustwo: nieobchodimost' i priediely prawowogo riegulirovaniaja bojowych dejstwij*, „Wojennaja musi”, 1997, nr 6, s. 67.

<sup>157</sup> See: *Ugotownyj kodeks Rossijskoj Fedieracii*, Moskwa 1997, art. 356.

control, basic rules of planning, preparing, conducting operations (combat), general command duties, rules of soldier conduct in combat, etc. This law ought to be a ground for modernising the present (or designing new) normative acts in all instances of troops employment.

It is suggested that operation law includes the following principles:

- operation law as a code of soldier conduct in combat,
- managing crisis situations (definition of peace, internal tension, riots, armed conflicts of different intensity, principles and range of force employment in such, legal principles and rules of armed forces employment in non-international and international armed conflicts of different characteristics),
- armed conflict: concept, kinds, its development (escalation, de-escalation and cessation), control over armed conflict and means taken to settle it, proxy and agenda of mediators (of protective powers, International Red Cross Committee, and others),
- persons and structures in operation law (basic categories of persons and structures, military and civilian persons and objects under special protection, persons associated with peace forces, war victims, their rights and duties, conditions of terminating protection of structures and persons, identification of persons and structures, documents confirming identity of persons, identification marks and signals),
- duties and responsibility of soldiers in armed conflict (general duties of soldiers, duties of commanders and chiefs on different levels, concept and kinds of law of war violation, responsibility of commanders and chiefs, and individual soldiers, criminal issues, level of knowledge of international humanitarian law among different categories of soldiers, methodology of training on operation law),
- legal command principles (order and proportions of force employment, range of military necessity, exceptions and common military and citizen authority, cooperation with civil authorities, also on occupied territory).

spond to the most effective and economical ways of carrying out armed activities. For example, as it is known, attack against non-military targets gives no military advantage because it involves expenses which may be used to bring greater benefit.

No country can afford to disregard its own and the world's public opinion. Hostility of public opinion may lead to unfavourable climate, loss of social support, and may weaken fighting spirit in armed forces. Therefore, it is in every country's interest to take only such actions which would not give reasons for complaints. Hence, violation of the law of armed conflicts should be prevented.

If the requirements of the law are not weighed in plans of war activities it will make it far more difficult for the commanders to carry out armed activities.

In Russian army-lawyers' opinion, the operations and war activities carried out by Russian armed forces operational and tactical units definitely need to be legally regulated and serviced.

In order to achieve this, it has been suggested to create a so-called "operation law" (of armed activities) as one of the branches of international law of armed conflicts. It is expected to be a link between international law of armed conflicts and its implementation in armies without which it is much hindered to realise resolutions of international law.

Operation law should permeate into all stages of designing and conducting operations, it should take into account their characteristics in different branches of armed forces and special troops, it should be relevant to reconnaissance, logistics, transportation, and answer the straightforward questions: who, when, what and how should do to realise army activity plans flawlessly from the perspective of law principles.

This law should be a back-up for taking decisions by commanders, especially when military necessity comes up. The only thing (and as much as this thing) that needs to be done is to precisely specify the "bottom line" of commander's sovereignty. It is thought that the following ought to stay excluded from legal regulation: analysis of operation situation, evaluation of combat readiness, working on details of future operations, using non-standard tactical tricks, war risk, etc.

Operation law ought to rest upon uniform system of normative legal acts on different levels – a quintessence of military wisdom and law thought. It should be preceded by a federal act – "Principles of armed forces participation in armed conflicts", which should set rules of employing armed forces in armed combat, range of civil

predicted the events at the end of the 80s.<sup>161</sup> This was no surprise, as 82% of the officers were at that time members of the communist party. The problem during the transformation of the military under the newly built regime was that the habits acquired from the functioning of the military under the totalitarian regime consequently influenced also the view of the military elites about the optimal way of engaging the military into the democratic regime. Also the re-activated soldiers of the Obroda organization and especially its military parts were in the past loyal soldiers of the communist regime although most of them in the period after invasion of Warsaw Pact changed their political views and preferences. Also significant is the fact that their qualifications were dated, as during the course of the 1970s and 80s the ČSLA had modernized in some areas, although the basic operation procedures remained unchanged. With respect to implementing democratic control over the military, the lack of agreement within the Obroda organization proved to be problematic, which limited its potential when enforcing changes in the military. **It seems rather suitable not to overestimate the above mentioned historical circumstances favorable for implementation of democratic control over the military.**

The November Events in the ČSSR [Czechoslovak Socialist Republic] in 1989 and the following disassembling of the communist system took place under the direction of the Civic Forum. Although in our lands there was not a tradition of interference of the military into the political arena, part of the public, and at that time the new political elite, were concerned with the possibility of misusing the military. In spite of the intentions on the part of some within the communist elites to use the military to turn back the political developments, the military was not misused for this purpose and the military gradually turned its loyalty, or at least its indifference, toward the new democratic change. Z. Barany thinks that this situation was caused on the one hand by a realistic evaluation of the political situation in the communist party headquarters (ÚV KSČ) and on the other hand by the conservative attitude of the top military leaders to this process.<sup>162</sup> We can, however quite successfully controvert the second part of this opinion since, on the basis of investigating the missions *Norbert*, *Vlna* (Wave), and *Zásah* (Intervention), which were military missions prepared and implemented by the communist regime in order to stay in power, there are indications that there was

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<sup>161</sup> For more on this problem see: S. Chrástil, *Normalizace československé armády na počátku 70. let*. Habilitační práce. Brno 2000.

<sup>162</sup> See: Z. Barany, *East European Armed Forces*. East European Quarterly 1/1992.

### 3. TRANSFORMATION OF THE CIVIL-MILITARY RELATIONS IN THE PERIOD OF POST-COMMUNIST CZECHOSLOVAKIA

Zdeněk KRÍŽ

The fall of Communism in Central and Eastern Europe started major changes in these societies which quite logically hit the military as well. A. Rašek states that out of the countries in transition, Czechoslovakia had the best conditions for ensuring democratic control over the military. To defend his theory, he uses the following arguments: 1. the Democratic tradition of Czechoslovakia between 1918 and 1938, 2. the influence on the military by society: the reformatory climate of the 1960s showed up in the military structures as well, 3. the existence of a group of military experts thrown out of the military after 1968 and brought together in an organization called Obroda (Revival) whose services the new regime could utilize, and 4. the existence an institute for solving problems of the position of the military in a democracy which was established soon after the change of the political regime: The Military Institute for Social Research.<sup>160</sup> From a certain point of view, Czechoslovak society found itself in a better position than other countries of Central Europe trying to build a democracy. It could draw upon the First Republic tradition of a democratic regime even in the sphere of the engagement of the military into a democratic society among 1918 - 1938. From this point of view, the historical situation of post-November-1989 Czechoslovakia was more favorable than in Poland or Hungary, because in the period between the first two world wars these countries were authoritarian regimes, that to a degree relied on the military for support. But on the other hand, the officer corps of ČSLA [The Czechoslovak People's Army] was loyal to the regime, when no one

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<sup>160</sup> A. Rašek, *Význam civilní kontroly armády. Její historie a budoucnost*, Vojenské rozhledy 4/2001.

had not been involved in army structures for more than twenty years. Basically indeed they were joined with the communist regime during their active service.

At the beginning of 1990 (although there was general helplessness and no conception of army affairs) the new political elites understood very well that it was a necessity to disentangle the army from political influence of the Communist Party as soon as possible and to subordinate it to the state authorities. The first significant step on the way to democracy and to the incorporation of the army into democratic policies in a way compatible with democracy, was the abolishment of the leading position of Communist Party, which was done by the parliament restored by co-optations. There was a pressure on the army to achieve political neutrality of the army because of this step, as there was no axiom for the existence of a revolutionary political elite with a monopoly on leadership, which is the foundation-stone of the totalitarian way of army incorporation into a political regime. The pressure towards an achievement of political neutrality was manifested by the abolishment of the leading political administration, political departments, the political workers functions in troops and by a prohibition of the activities of all political parties in army (especially the Communist Party in fact). In this way they stopped the state from, using the army as the instrument of political doctrine and using it as a means to educate the new socialistic man. When speaking about this it is necessary to state that political activities in the army ceased as early as 15.12. 1989 and from 15.3. 1990 all political activities in the army were forbidden to professional soldiers and conscription soldiers. After 40 years the army was again subordinated to the government and parliament, which began to supervise the army, including an audit of the budget, its real budget was published in 1990. Defense expenditures in the next development for the whole existence of ČSFR in contrast to the period of socialistic Czechoslovakia, dropped in real terms by as much as 20% compared to the year 1989.

The assurance of political neutrality of the army by breaking its ties with the Communist Party happened due to the big pressure of newly formed democratic political elites in the in Civic forum. The result was adopted in to the law (n. 361/1992), which forbade soldiers most political activities and especially from membership in political parties. Nevertheless the soldiers did not stay totally out the politics because they still could vote for political parties in both national and municipal elections, even though they were not members of any political party In fact their franchise remained untouched - both active and passive. The soldiers were removed from military ser-

an active and initializing role by part of the top command of the Czechoslovak People's Army, which offered the communist party headquarters a forceful resolution of the political developments at the time. Overall, when evaluating the role of the military, we can agree with the hypothesis of A. Rašek that *"it is not possible by any means to evaluate its role in the November [1989] Events better than as neutral. A number of soldiers serving their mandatory service, and especially students of university military departments behaved in a more radical way, but it had no decisive effect on the reaction of the military"*<sup>163</sup>.

Some indirect evidence on the relationship of the army to proceeding political changes has also been suggested by the research of the history of the military educational system. The authors of "The history of military academy in Brno" S. Chrastil, M. Markel a V. Vondrášek mention that: *"the school as an institution remained in support of the communist regime in the environment of Brno universities and is the only institution where the actions against the demands of striking students are evident, and that shows us that the school was under the control of the political department until the intervention of superior authority."*<sup>164</sup> However the total historical research of this problem still waits for its researcher. Only after the break up of the regime, as is mentioned by P. Paducha and M. Purkrábek, the loyalty of the military elite to the democratic regime slowly started to solidify<sup>165</sup>.

Newly founded Czech political elite close to the Civic forum had to operatively start solving the problems of the transition of military - civil relationships and the way of military integration into the society from the totalitarian type to the democratic one. We have to state beforehand, that the elites were not properly prepared either theoretically or practically.<sup>166</sup> These new political elites kept at their disposal only the limited number of politically trustworthy experts on army matters and on security policy matters, because the former regime wanted the experts to be joined with the communist authority. Only some former ex-servicemen of ČSLA who were sacked in consequence of the purges after 1968, constituted a certain exception. However they

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<sup>163</sup> A. Rašek, *Dědictví a šance pro novou českou a slovenskou armádu*, *Vojenské rozhledy*. Mimořádné číslo 1992, p. 12.

<sup>164</sup> S. Chrastil, M. Markel, V. Vondrášek, *Dějiny Vojenské akademie v Brně 1951–2001*.

<sup>165</sup> P. Paducha, M. Purkrábek, *K předpokladům pro rozvoj vojáků – občanů budoucí české armády*. *Vojenské rozhledy*, Mimořádné číslo 1992, p. 22.

<sup>166</sup> For more on this problem see: J. Cvrček, *Vzájemné vztahy společnosti a armády*, Praha 1992, p. 145.

the troops on the basis of an initiative of the Association.<sup>170</sup> The inspiration here was a model used in troops of Bundeswehr. Its sense should have been to contribute to improvement of better communication between conscription service soldiers and their unit leaders. The unwillingness of army structures caused by the natural inertia of a bureaucratic institution, proliferated bureaucratic and created patterns of behaviour incompatible with the attitude of "soldier - citizen in uniform" lead to the disposal of the certificated instrument of the sui juris citizen army in conditions of a democratic state (specifically Federal Republic of Germany). Dealing with social pathological phenomena in ČSFR army (thefts of property, drug distribution, vexation) was a significant area of co-operation of the Association with political decision-making system authorities.<sup>171</sup> The Association created several projects to deal with these matters, whose realization and financing was the part of Ministry of Education grant. **However a large majority of professional soldiers in this particular period quit political activity and learnt to keep conventions of political neutrality quite successfully.**

The attitude of newly formed democratic political elite towards the army developed gradually. As it is mentioned by M. Purkrábek, „*the army of that time was perceived as a potential danger both by population at large and the military commission of Civic Forum, and even by Defense and Security Parliament commissions*”.<sup>172</sup> The part of these political elites distrusted the army and made such radical suggestions as the abolishment of the army and the establishment of a new one, which was to be professional without the participation of former career officers. It is obvious that these suggestions were similar to the suggestions of extreme right-wing party. There was distrust of the army and of professional soldiers in some parts of Civic Forum as well. The new political elites usually distrusted experts joined with an old regime, with the exception of a general and later Secretary of Defense M. Vacek, who was gradually partly trusted by the president V. Havel and the government representatives of that time. New political elites, which lacked military matters specialists not joined with the last regime, did not have another possibility than to rely on some of the communist regime military experts in the first period of the army transformation. M. Vacek, who

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<sup>170</sup> Ibidem, p. 132.

<sup>171</sup> For more on this problem see: R. Blažek, *Sociálně-patologické jevy na začátku XXI. Století v naší společnosti, jejich odraz a prevence v AČR*, Sborník VA v Brně, zvláštní číslo 2000, p. 173-182.

<sup>172</sup> Purkrábek, M.: Percepce armády jako činitele demokratického státu a česko-slovenských vztahů v názorech obyvatel. *Vojenské rozhledy* 8/1992, p. 12.

vice for the period of their service in office. There were two active regular soldiers at the top level of politics in the period 1990-1992 and after the elections in 1992 there were six soldiers.<sup>167</sup> It is obvious in this situation that regular soldiers preferred left-wing parties during active political participation in the period of the existence of CSFR. This view is also supported by the fact, that before the election in the year 1990 communists were preferred by 41% of regular soldiers according to research. It can be inferred that the political preferences changes further, as in 1991 only 13% of regular soldiers supported the Party<sup>168</sup>.

The most important category of special-interest organizations for defending interests of professional soldiers are the profession associations. Because the system of law made the association of soldiers in special-interest organizations of "apolitical" character possible, there were two soldier special-interest organizations soon Svaz vojáků z povolání (Association of Regular Soldiers) and Svaz vojenské mládeže (Association of Military Youth). At the beginning of 1990 the best-major profession organization of regular soldiers came into being in the particular period of time, Svaz vojáků z povolání. The effort of perfection of social security of soldiers is the most important from its programmatic point of view, which reflects in annually modify social program. During its realization the association very nearly co-operated with a military health insurance company and a military open pension fund.<sup>169</sup> The general partner of this organization in addition to a government and a Department management they are high command of AČR (Czech Republic military) above all. The second significant organization from this is Svaz vojenské mládeže, which started its activity in January 1990. In contradistinction to above-mentioned organization its programmatic extent was much varied. At the beginning of the 1990s it especially engaged a lot in the programs of changes of conscription services, to correspond to proceeding qualitative change of the society, which formed a democratic regime. When solving these problems the association communicated intensively with the Department of Defense. From 1.1.1991 the introduction of a conscription service soldier speaker occurred in

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<sup>167</sup> O. Pick, Š. Sarvaš, S. Stach, *Demokratická kontrola bezpečnostní politiky a ozbrojených sil*, Praha 1996, p.18.

<sup>168</sup> A. Rašek, *Demokratizace, humanizace, armáda: zkušenosti čtyř let*, Vojenské rozhledy 10/1993, p.13.

<sup>169</sup> M. Balabán, *Nevládní organizace a armáda*, [in:] Š. Sarvaš a kolektiv, *Bezpečnost a armáda v moderní společnosti*, Praha 1997, p. 135.

Communist Party) and 18,5% retired from the job.<sup>175</sup> The second stage of leaving was a negative phenomenon from the point of view of personnel composition of the army since, in contrast to a riddance of mostly politically compromised staff, in this second stage more capable officers (mainly younger) left for civil professions in the period of insecurity in the army. As it is pertinent stated by A. Rašek: "*Many of those who were to stay left and those who were to leave stayed.*"<sup>176</sup> Surveys done at the time suggest, that the belief in better position outside the army low financial assessment of military services, bad work organization bad and progressively deteriorating relationships, a long-term separation from a family, an impossibility to freely express an opinion and criticize, little social security, inadequacies in material and technical provisions, a limitation of freedom of movement and a low social army prestige were the main motives of the second way of withdrawals.<sup>177</sup> It is a question of another survey, how much the formalized democratically political elites wanted to pay for the army toleration to proceeding political changes by seizing the office of the Secretary of Defense by a qualified and competent soldier, however jointed with the communist authority according to all available assessments in military revolting affairs, eventually up to what point the elites wanted to irritate relationships with the Soviet union in the period of dealings of displacement of its Soviet army from ČSFR and the Warsaw pact transformation. In any case, some sections of Civic Forum a priori did not agree with appointment of the Secretary of Defense Vacek and the sections were in permanent conflict with him. This relatively big disharmony between the Secretary and Civil forum occurred e.g. in the discussion concerning the further existence of functionaries of the Communist Party apparatus in the armed forces. Civic Forum and especially the Military commission as its part imputed the Secretary of Defense Vacek that he only changed the name of the administration for Administration of the Education and Culture and also only shifted the majority of political apparatus staff of the Communist party there. Also some special - interest groups disputed with the Department of Defense and explicitly with the Secretary Vacek, this groups aimed to make purges in army and get rid of politically unreliable officers. Svobodné legie (Free Legions), which associated especially ex - servicemen sacked from the army

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<sup>175</sup> J. Obrman, *The Czechoslovak Armed Forces: The Reform Continues*, FRE/RL Research Report, 41, 1993, p. 37-38.

<sup>176</sup> Ibidem.

<sup>177</sup> J. Vltavský, *Proč odcházejí mladí vojáci z povolání?* Vojenské rozhledy 8/1992, p. 32.

was a pre-revolutionary Chief of General Staff of the army and the Secretary of Defense from 3.12.1989 to 17.10.1990, speaks about the relationship as follows "I would like to detachedly, in the name of truth, even today confirm, that I felt an important president V. Havel support, the support of a federal government chairman M. Čalfa and also both chairmen of national governments - P. Pithart and V. Mečiar. As long as I dealt with these constitutional officers, I do not remember, that anyone of them would disapprove or even refuse my suggestions. However I myself can say that I did not know about any unfair dealing with them. As long as I did not agree with what they wanted me to do I always said it to them in good time, understandable enough I hope, without the intention to omit anything".<sup>173</sup> At present, it is common for democratic regimes to have a civil and political person in the office of Secretary of Defense, which is the expression of army control by legitimate political elites. However as it is mentioned above, it was not like this, at the first period of creating democracy in Czechoslovakia after 1989. It is necessary to take into consideration the opinion of A. Rašek when analyzing the causes of this phenomenon in CSFR, who mentions that "There are to be civilians in the decisive positions in the department leadership. „It is not possible without certain compromises in the transitory period of post-communist countries."<sup>174</sup> M. Vacek was replaced (in October 1990) by L. Dobrovsky – after many decades the first civilian Defense Secretary coming from newly formed political elite. It was only after the pressure of the part of the political elite, which wanted the officers who had had important army functions and had mostly joined with the Communist Party to leave the Communist Party.

In the course of 1990 a partial purge in the army began even if there were dissents between the Secretary of Defense Vacek and new political elites. The aim of the purge was a riddance of unreliable officers connected with the communist regime, 15% of the whole body of officers (9640 officers) left by the end of September, but only 5,5% of them left because of the disability. The purge had a fundamental impact on army generality, 50% of which left the army. As it is mentioned by J. Obrman out of the number of officers, who left the army, 52% left on their own request, 24% did not sign a new oath (which did not include the loyalty to socialism and the

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<sup>173</sup> M. Vacek, *Na rovinu. Bez studu a bez příkras*, Praha 1994, p. 178.

<sup>174</sup> A. Rašek, *Význam civilní kontroly armády. Její historie a budoucnost*, „Vojenské rozhledy“, 4/2001, pp. 48–49.

the Czechoslovak political system compatible with democracy was stated. If we simplify the whole problem, it is possible to state that we can not speak about the absolute application of all democratic principles and procedures in a priori autocratic army institution in the process of army democratization. M. Purkrábek, when speaking of the relationship to politics states: *"the army democratization in this area is aimed to canceling objectively all unjustified limitation of regular soldiers and conscription service soldiers civil rights, legally and practically."*<sup>178</sup> The preparation and education of a soldier as a responsible democratic state citizen, humanization of atmosphere in the army institution and the improvement of service conditions, were the principles in other dimensions of democratization process. However these objectively necessary changes inside the army institution were basically uncontrolled and in many cases caused chaos in units in its initial period after the regime changed. The commanders were not prepared for new social conditions, were uneducated in social sciences and having lost the support of the governing communist authority, they were in many cases under the influence of proceeding events, and democratization was often identified with anarchy. Given the a priori reserved attitude towards the conception of democracy of the majority of communist military elites and general ignorance of the way how to involve the army into modern democratic states, it is no wonder that the situation in the units often reminded one of anarchy. Subordination and discipline, two inevitable attributes of every army institution regardless of political regime, which they are created for, slowly ceased to exist and the army began to disintegrate from the inside. This state caused the problems in the attitude of military elites to democratic measures. J. Sedlák assesses these processes in this way: *"They started with the democratization processes and humanization of our army soon after November 1989. The things stopped to be political and communist - this is a positive thing on the democratization. However, the negative side of it is that the democratic control was not fully implemented. Some humanization of conscription services soldiers' life was a positive point of the humanization. The negative consequence of the humanization, in my opinion, was a particular decline of army military character."*<sup>179</sup> Not until the year 1992 the situation stabilized, and army democratization process began to develop along the lines intended by its authors. The army, being the most powerful

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<sup>178</sup> M. Purkrábek, *Demokratizace armády – pojem a proces*, Vojenské rozhledy 2/1992, p. 50.

<sup>179</sup> J. Sedlák, *Jaký ministr? Jaká demokratická kontrola? Jaké ministerstvo?* [in:] Z. Kříž (ed.), *Civilní řízení a demokratická kontrola ozbrojených sil*, Brno 1997, p. 22.

after 1968 and reactivated after the fall of the communist regime were among these groups. Svobodné legie badly criticized the Secretary of Defense M. Vacek, they imputed him that he protected communist staff in the army and they called for extreme purges especially among high ranking of officers. The activities of Svobodné legie were prohibited in the army by the M. Vacek's successor in the office of the Secretary of Defense. Revival, the second pressure group associated ex - servicemen withdrawn in the setting of purges after Soviet invasion in the year 1968. Obroda (Revival), in contrast to Svobodné legie, took part in the officer's body purges of the most politically unreliable officers very notably; however its influence became less and less powerful as a result of inner political differentiation. While the above mentioned pressure groups were established because of the participation of former regular soldiers, sacked from of the army after Soviet invasion, another relevant pressure group was created on the base of the national principle. At the beginning of 1991 Asociace slovenských vojaků (Association of Slovak Soldiers) was established by the Slovak National Party, this Association is the instrument of Slovak national party which tries to intervene into the federal army and revive Slovak nationalism. In this context it is necessary to point out that the Czechoslovak army in the period of communist regime was created as the federal institution and its political apparatus, promoted federalist thoughts and thoughts of Czech - Slovak reciprocity up to a particular point, except for the communist ideology doctrine. While the army purge was the subject of the above - mentioned pressure groups, Association of Slovak soldiers profile was to ensure Slovak defense. The association called for the establishment of parallel armed body - militia, in this context. Its influence in Slovakia was not insignificant in this particular period. Svobodné legie, Obroda and Asociace slovenských vojaků were not classical profession associations as Association of Regular Soldiers and Association of Military Youth. They were rather special - interest groups that were part of the pressure groups or lobby groups.

The withdrawals of the officers joined with communist establishment proceed as the background of wide multidimensional operations, which are called "army democratization" by the people acting at that time. The reform of the law system, which stated the position of the army in society was one of the parts of democratization. Basically, it is possible to state that the fundamental legal system, which modifies the army activities, was gradually created during the initial years after the change of the regime - by adopting a new law governing the military, in which the army position in

**the way of their implementation.** Perhaps rather paradoxical combination of both phenomena influenced very negatively the conditions of federal and later the Czech Army. It managed basically to gradually detach political leading of the department incumbent on the Department of Defense and commanding the army of the position of generality in spite of interference and misunderstandings among political and military elites. The sections of strategic and economic management and sections of social and humanitarian affairs were established as the part of civil - administrative authorities during the year 1990. A. Rasek makes the conclusion that: *"The army command itself was under certain civil control, especially since the time when the civilian became the Secretary of Defence."*<sup>182</sup> **It is necessary to point out in this context, that the boundary between political and military responsibility is changeable and its exact determination is the object of permanent continuous redefinition by political and military elites in the stabilized democracy states.** Nevertheless during the 90s the attitude of the Czech public and the political elites to the army changes gradually. The Original fears of possible army misuse by the communists and lump a priori criticism of army functions slowly changed into criticism of the state army. As it is mentioned by M. Purkrábek *„the perception of the army as the relict of the communist army becomes less common in the view of the population at large. People begin to put emphasis on such aspects as economic costs, the army efficiency and its readiness, became to promote gradually. The army begins to be partly considered as a security guarantee of democratic standards."*<sup>183</sup> Purkrábek further states, *"that it is partly possible to state when taking into consideration the army relation to the public, that the army isolation is gradually overcome, that the inhabitants recognize the role of the army in the present situation, and more than 50% of inhabitants trust it after some decline in 1991 and 1992."*<sup>184</sup>

At the beginning of 90s the establishment of General Army Supervisor office in ČSFR, subordinated to Parliament, was discussed on the basis of German model. The main tasks of the role of a general army supervisor were the control, inspection tours, submitting the conclusions to the Federal assembly and national councils. We can speak about a little bit different conception of the office, than it was in the period

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<sup>182</sup> A. Rašek, *Demokratizace, humanizace, armáda: zkušenosti čtyř let*, Vojenské rozhledy 10/1993, p. 25-26.

<sup>183</sup> M. Purkrábek, *Percepce armády jako činitele demokratického státu a česko-slovenských vztahů v názorech obyvatel*, Vojensko rozhledy 8/1992, p. 12.

<sup>184</sup> *Ibidem*, p. 13.

body in every state, is usually in the center of interest of political authorities in the period of radical political changes and is an object of arguments of new and old political elites. It was not like this in the Czech Republic at the beginning of the 90s. The army reform is a marginal political problem after the detachment of the army and the Communist party. It had its influence on defense - security committees which were orientated on intelligence services.<sup>180</sup> V. Havel was the only prominent politician who was partly interested in army problematic in the initial period of creating democracy in Czechoslovakia after the end of communist regime, however on the other hand his interest in the army did not reach the level of the interest of the founders of Czechoslovak state in the period after foundation in year 1918. The general lack of interest of the political elites in the army transformation and in army incorporation into the democratic regime paradoxically caused that *"the boundary between political and military - revolting authorities and the responsibility was not exactly defined, and political elites often intervened in exclusively military affairs and interfered with the professional autonomy of soldiers' at the beginning of the 90s. O. Pick, Š. Sarvaš, S. Stach mention that in some case, the political representation penetrate deep into the army structure, and this representation had an influence negatively there. A special survey was replaced by a political access in this situation, which resulted in not only discontent among military professionals but also negative influence upon the relations of the public and the army. The cause of this state was a fact that the principles of seizing political and non - political offices by civil workers were not definitely stated in the initial stages of the army transformation above all, which would definitely define competences connected with political decision making on one hand and professional expertise on the other hand."*<sup>181</sup> The creation of country security policy by political elites and setting the political tasks to the army were secured on one side, which is an important general principle of western model of democratic control of the army, however on the other hand inevitable profession autonomy for military experts, when elaborating political orders into concrete military – expert solutions, was not secured. **The army was negatively influenced by political interference into specialized military affairs, however it was also influenced in many cases by the absence of adequate security policy, giving the army general tasks and goals, including**

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<sup>180</sup> See: P. Jégl, *Parlamentní kontrola ozbrojených sil v ČSFR a ČR*, Vojenské rozhledy 10/1993, p. 3-4.

<sup>181</sup> O. Pick, Š. Sarvaš, s. Stach, *Demokratická kontrola bezpečnosti ...*, op.cit., p. 23.

4. The reduction in the number of soldiers in connection with the obligations resulting from the Agreement on the Reduction of the Conventional Forces.
5. The radical reduction of military expenditure, which in 1992 amounted in CSFR to 20% of the real defense expenditure of 1989.<sup>186</sup>
6. The society demilitarization a reduction of arms capacities.
7. The transformation, translocation and reduction the total size of equipment of technology and staff in connection with signing the Agreement on reduction of Conventional forces in connection with the creation of the new security environment.<sup>187</sup>

On the basis of above mentioned general trends concerning the army transformation and its position in the society its quite reasonable to assume that the **version of western model of democratic control over the military was promoted in Czechoslovakia after the revolution, which can called as subjective when using the terminology of S. Huntington.** The stress was put on the maximum possible transfer of the democratic regime elements into the army institution, than on strengthening the military professionalism. **The transformation from the totalitarian way of army involvement in the political regime to a democratic way, which is rather to use the procedure used in Germany than in the USA.** In any case it is obvious even on the basis of an unfinished survey so far that even if there were the above mentioned inadequacies, obstructions in the integration process and problems connected with army involvement into the democratic regime<sup>188</sup>, the basis of democratic control over the military was stated in the period of ČSFR. At the end of this essay we have to state that the process of the separation of the federation, of its army and the creation of two new independent states the Czech Republic and the Slovak Republic, influenced the processes the introduction of civil control and democratic oversight of the military, which did not differ from general trends in transitory countries in Central and Eastern Europe and basically was the basis for democratic con-

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<sup>186</sup> H.J.Giessmann, U. Schlichting, (Hrsg.), *Handbuch Sicherheit. Militär und Sicherheit in Mittel- und Osteuropa*, Baden-Baden 1995, s. 373.

<sup>187</sup> O. Pick, Š. Sarvaš, S. Stach, *Demokratická kontrola...*, op.cit., p.13.

<sup>188</sup> For more on this problem see: J. Cvrček, *Vzájemné vztahy společnosti a armády*, Praha 1992, p. 143–156.

of pre - Munich existence of ČSR.<sup>185</sup> The relevant legislation, proposed by military commission of Civic forum, was adopted by military sections of Obroda, but the office was never used and this institution was not accepted into the political system of the Czech Republic after the separation of federation.

The acceptance of ČSFR military doctrine by federal parliament in March 1991 was the most important thing of the first stage of the army transformation and its adaptation both to the democratic regime and the new security environments in the world. In May 1990 Council for State Defense decided to create new military doctrine of Czechoslovakia, taking into consideration the political changes at the end of the 80s and at the beginning of the 90s. The document was based on the fact that Czechoslovakia did not have any specific enemy and supposed the defense in all directions. In fact, it was the symbolic termination of Czechoslovak political and military subordination to the Soviet Union. The document was further elaborated by these conception documents: The Strategy of State Defense adopted by the Security Council of CSFR, The System of Czechoslovak Army Development Aims until the Year 2005 adopted by the committee of the Department of Defense and the Program of Czechoslovak Army Professionalism adopted by the Council of CSFR defense.

If we globally assess the whole transformation process of army integration into the democratic regime we can state that there are characteristic features of it in the ČSFR existence period from 1989 to 1992, especially:

1. The changeover of the political army leadership by means of a legitimate, that is elected, political elite's by subordinating the army to the government, the president, the parliament and relevant security committees.
2. The army's separation from the communist party, its general political neutralization connected with a partial purge in the officer corps, and cessation of the practice of using the army as a tool for political indoctrination of people. The effort to establish the army, in which the political education is done in a similar way as in the German army.
3. The initiation of creating a parliamentary control and supervision especially through military budget and an Defense and Security Committee. The adoption of the CSFR military doctrine by the parliament on the 20. 3. 1991 was one of the most important practical demonstrations.

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<sup>185</sup> See: P. Jégl, *Parlamentní kontrola ozbrojených sil v ČSFR a ČR*, *Vojenské rozhledy* 10/1993.

## 4. STATUS OF REFUGEES - THE CHALLENGE TO THE DEFENCE OF HUMAN RIGHTS

Agnieszka LEGUCKA

**“Much of the history of Poles is the history of refugees”**

Aleksander KWAŚNIEWSKI

Warsaw, 2 September 2001

According to the Geneva Convention of 1951 on the status of the refugee, a refugee is a person who "(has) a substantive base to fear being persecuted because of his/her race, religion, nationality, social origin or political views and thereby is staying outside his/her homeland, and cannot or does not wish to stay under protection of this country". A refugee is a specific kind of man, who unjustly stays out of the legal protection of his/her country. A refugee deserves legal protection because it is not granted by the country of which he is a citizen. The refugee is the international problem that haven't been solved in years, although new human rights organizations are being continually created. Refugees are victims of uncontrolled events: persecutions, armed conflicts and violation of human rights. Their influence on national safety and world politics is more and more often realized.

The Geneva Convention on the status of the refugee of 1951 has laid grounds for international care for the persecuted. Those individuals have been given a chance to apply for the status of the refugee by means of the international regulations. It differs from the political asylum as it is a country's own interior business whether to grant the latter or not. About that time the United Nations Refugee Office was created. It provides a definition of a refugee as well: Thanks to a long term activity of UNHCR

trol over the military of succession states.<sup>189</sup> The federal army was divided in a 2:1 ratio, which was the beginning of the establishment of the army of the Czech Republic and its incorporation into the society and a political system of a new state. The finalization of democratic control over the military after the foundation of independent Czech state is however a topic for another essay.

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<sup>189</sup> A. Bebler, *The Evolution of Civil-Military relations in Central and Eastern Europe*, NATO Review, 4/1994. Dále k dalším transformujícím se zemím: Z. Pecze, *Civil-Military relations in Hungary: 1989-1996*, Groningen 1998, S.A. Grytsenko, *Civil-Military relations in Ukraine: A system emerging from chaos*, Groningen 1997.

give a status of the refugee to a person who has become or is afraid to become a victim of such persecution. The refugees who are given the status of the refugee because they belong to a group of victims of civilian rights' violation in a civil war are the

The notion of a war refugee, a civil war refugee is present in the German law. Now, if decided by the highest state authorities in Germany, victims of ongoing armed conflicts or civil wars may be given a permission for a temporary stay (exceptional lease to remain). This permission may be given to foreigners who did not apply for the status of the refugee (asylum). A war refugee can only live in a place assigned to him/her. The law obliges the refugees to leave Germany within 4 weeks from the time their stay permission expires.

There is a similar way of protection in EU, known under the name of temporary protection. Polish law has also included this legislation. Because of introducing the EU directive about temporary care, it should be assumed that the care for war refugees will be common within the area where the European law functions. The document does not mention the term "war refugee" literally.

## **1. International refugee protection**

UNHCR gives help and support to refugees all over the world. It is one of the most important humanitarian agendas, sited in Geneva and represented in 122 countries. More than 80% from the team of 5000 people works out-office, often alone and in hazardous conditions. The UNHCR was awarded twice with the Nobel Prize for Peace.

In recent years UNHCR has had to go beyond its strict mandatory regulations and help other people who live their lives much like refugees. They are people who have been granted protection of common trust or because of humanitarian reasons, but have never been officially acknowledged to be refugees. They may also be internal refugees (Internally Displaced persons) – people who left their homes but never crossed their country borders. More and more often they are victims of civil wars. UNHCR also helped people from the cities under attack, e.g. Sarajevo during the war in former Yugoslavia.

According to its mandate UNHCR should act in a humanitarian and non-political way. He takes care of refugees, having their future situation and possible problems in

not only the rules of an international refugee system were shaped but also this particular category of people have found a lawyer. It was granted then, that protection of the refugee is a universal rule, the foundation of which is a respect for human dignity.

Since the end of the Cold War there have been two tendencies noticeable as far as the protection of the refugee is concerned. On the one hand, international stability has caused shutting national borders against them, who indirectly are victims of the past interior conflicts.

As a result the rules of protecting the refugee has been devaluating. Countries decided to take on a new interpretation of the Geneva Convention of 1951 and to avoid the aspect of human rights in migration and ethnical pogroms. On the other hand a discussion was started on expanding the definition of a refugee so that it covers victims of interior conflicts too. In some regions, e.g. Latin America, the definition was in fact expanded. In 1985 the General Forum of American Countries Organization accepted its Declaration together with the definition. This obliged the member countries to introduce as soon as possible the decisions made into their national legislature. The fact that the Declaration accepts the regulations of Geneva Convention means expanding these very regulations on "persons who left their countries because their lives, safety or freedom were endangered by violence, foreign aggression or interior conflicts, mass violation of human rights or other circumstances gravely disrupting public order. The question is, can we take care of a refugee who becomes a displaced person as a result of an interior conflict?

The answer, at least that made on grounds of the Geneva Convention, is no. Armed conflicts are not a sufficient reason to acknowledge a victim of the fighting sides to be a refugee in a sense established by convention. On the other hand military steps on large scale or civil war – religious, ethnical, racial or political – may be qualified as a mass violation of human rights, provided that the participants of the armed conflict give up the protection of civilians intentionally.

It is the conflicts of the new kind (where most victims are civilians) that are the greatest danger for human rights. Such conflicts bring on drastic violation of human rights, homicide, ethnical pogroms, mass rapes (in former Yugoslavia about 30 – 50 thousand women were raped; in Rwanda it is estimated that during the 1994-1995 period all the women aged 15 – 60 were raped). The repression known from former Yugoslavia (Kosovo, Bosnia – Hercegovina) or Cecehnia are systematic, mass persecution of civilians by soldiers or paramilitary groups. In this case it is possible to

## 2. National refugee protection

European countries regulate the issue of refugees in different ways.

### Great Britain

A temporary protection in this country was given to a group of the Albans from Kosovo, hosted on the premises of the Humanitarian Evacuation Program ran by UNHCR in 1999. The Albans were given a temporary stay permit (exceptional lease to remain); after four years they can apply for a permanent stay permit, and after another five for the British citizenship. They have right to work, apartment and social welfare and education on equal base with the British citizens.

### France

Exceptional lease to remain is offered for a one year period (possibility to prolong). People who were granted such a lease (e.g. the Albans from Kosovo) have right to work, apartment in a refugee center, a right to social welfare and education; they are also free to choose the place of their stay. French lessons are offered to them as well.

### Germany

The status of tolerance is usually granted there. It needs to be renewed every six months. Groups of refugees are also taken in on the premises of humanitarian status for limited period (e.g. refugees from Bosnia or Kosovo majority of who were sent back to their countries of origin as soon as the conflicts died and the situation was considered to be safe).

Foreigners with "the status of tolerance" have right to social welfare, apartment, work (strictly specified tasks) and health care. They do not have a right to learn language, education or free choice of the place to stay. The people with the humanitarian status do have the freedom of moving.

### Sweden

The rights of refugees in the sense provided by the Geneva Convention and the rights of people under other kinds of care are hardly different. Both groups have right to social and medical care, apartment (which is given to a refugee as soon as he/she

mind. It is called "international protection" and serves as help to secure basic rights of refugees, especially to make sure that no one is forced to return to the country of persecution. It is the so-called non-refoulement rule which forbids expelling those who are applying for the status of the refugee and refusing their entering.

The changing character of refugee movements in recent years has changed the work of UNHCR. The outcome is that UNHCR gives help and support to large groups of refugees – not individuals themselves – escaping persecution, conflicts and mass violation of human rights. Also recently authorities of countries, UN General Secretary and UN Security Council have asked UNHCR to help not only the refugees crossing international borders but also internal refugees staying within borders of their country. In 1991 for example the General Secretary appointed UNHCR to be a leading humanitarian agency in former Yugoslavia where 3.5 million refugees, IDPs and other people afflicted by war were helped. The potential of UNHCR was used to help almost whole population of Bosnia and Hercegowina, including people who were neither refugees nor displaced. On the strength of the peace agreements from Dayton, UNHCR was appointed to handle the mission to organize the return of the refugees and the displaced persons to Bosnia and Hercegowina. Presently UNHCR deals with refugees and repatriated persons in Kosovo.

UNHCR was also helping during the war in former Yugoslavia. He was present during the conflict in Caucasus or Palestine, where about 3.2 million people were registered by UNRWA. A re-appearing issue is the recovery of Afghanistan where near 2.7 million Afghan refugees are still staying in Pakistan, Iran, India and Commonwealth of the Independent States countries, in spite of the fact that during past eight years about 4 million refugees were repatriated. The situation of the so called Vietnamese "boat people" fleeing to Hong Kong is also considered with care. UNHCR also helped refugees in Sri Lanka and African Corner. He dealt with the largest stream of refugees from the Rwanda and Burundi crisis. In 1996 some of them returned to their countries because of the war in Democratic Republic of Congo. Still tens of thousands of Rwandese people are dispersed in the neighboring countries like Tanzania, for example, where over 220 thousand refugees from Burundi are located.

They can also be given help in form of apartment, maintenance and medical care (the legislation does not make such help obligatory, though).

Poland have accepted the legislation on foreigners to in compliance with the agreements of EU. Immediately there were questions asked about interpretation as the term "safe country" may not be in accordance to the Geneva Convention. The legislation defines the "safe country of origin" as a homeland of a foreigner where, with regard to legislation and political relations, there is no racial, religious, national or social persecution, and any non-governmental international agencies are free to act in favor of human rights. The legislation also mentions the "third safe country", which means a country that is not a homeland of a foreigner, which ratified and applies the Geneva Convention and the New York Protocol. The controversies arise when a foreigner who intends to apply for the status of the refugee came from a "safe country" and thus he/she need not declare his wish to be acknowledged a refugee any more. Over many years Poles has used different methods, often finding loops in legislature to keep emigration applications not considered hoping for the conflicts to be solved. It was because the legislation refuses the possibility to consider an application if that application was submitted by a foreigner who:

- came to Poland from a third safe country to which he had a right to return
- re-applies for the status of the refugee in Poland without giving substantive reasons to do so.

## **5. Attitudes of Poles towards refugees (OBOP poll)**

As the polls of 2000 showed, majority of the interviewed people has defined the term refugee correctly: near two thirds (64%) find refugees to be people who left their countries for fear of being persecuted and three fifths (60%) find refugees to be those escaping the areas of military conflicts. According to the one third (34%) refugees are people emigrating due to economical reasons. 16% of Poles associates a refugee with the Poles from the East. Only few think refugees are members of national minorities living in Poland (5%) or Gypsies seen in Polish streets (4%).

is granted with a stay permit in Sweden), education and Swedish lessons. Foreigners have also a right to learn their own language, elementary and intermediate level. After five years in Sweden they can apply for Swedish citizenship.

### **3. Alternative protection in Poland**

Poland has ratified the Geneva Convention and the New York Protocol on 2 September 1991. Another steps to protect refugees in our country were: the legislation of 25 June 1997 and the update of 11 April 2001. The latter guarantees, next to possibility of gaining the status of the refugee, two forms of protection: a stay permit because of humanitarian reasons (a situation similar to the "humanitarian status" in other countries) and temporary care. Organs responsible for refugees have been created.

#### **3.1. Humanitarian protection (*stay permit in Poland*)**

It is defined by the article 19 of the legislation. This kind of protection may be applied, among others, by people who were not granted with the status of the refugee but cannot be expelled from Poland because it would violate the regulations of the Convention on the protection human rights and basic freedoms declared in Rome in 1950 (article 53, of the legislation on foreigners). The stay permits are given by Voivodes on application.

The drawback of this kind of protection is lack of social welfare for a foreigner – he/she may only be given a right to stay in Poland and does not have rights of the refugee: the right to work, education and social welfare.

### **4. Temporary protection**

"The foreigners emigrating their country due to foreign invasion, war, civil war, ethnical conflicts or grave violations of human rights may be granted with a temporary protection in Poland (article 51A of the legislation on foreigners). Foreigners who are granted with the temporary protection in Poland have a right to stay.

The program assumes different possible scenarios of the situation, especially the fact that movements of population in Afghanistan go in several directions – within the country boundaries, to neighboring countries and from neighboring countries into Afghanistan. The key role in the UNHCR activities should be played by local personnel, including women who were excluded from public life by the Tallibs up to now.

There were some spontaneous returns noticed in the region, on small scale though, both from Iran and Pakistan. Probably this tendency will increase in spring when the political situation is expected to be more stabilized. It calls for preparing a plan of repatriation action and help for those who return. Finally, there is a chance to normalize the situation in Afghanistan. As UNHCR Ruud Lubbers said "*the return of millions of refugees and displaced persons is a key to stabilize, rebuild and to develop Afghanistan*".

## 8. Sum up

Protection of the rights of a man who was forced to leave his homeland is very difficult, both by international or national agendas. Regulations are not always proving to be successful and appropriate for contemporary reality. The Geneva Convention was introduced in the fifties and some of its regulations cannot be applied to reality of today. It concerns particularly the expansion of the definition of a refugee over a person who is not only endangered by persecution but also the one who leaves a country where a civil war is going on or a person who does not leave the homeland but cannot to his/her original place of living. Poland opts for understanding the term refugee in a narrow sense, which is much like the European standards approach it. Most refugees, especially during mass crises, seeks for shelter in the nearest safe area – within their own country borders or in neighboring countries. All too often the host countries suddenly have to help hundreds of thousands, or millions of incoming refugees – while suffering troubles or being poor themselves. International help meanwhile depends on political context and the appreciation of a country in the world.

Afghanistan is an example. From millions of the refugees majority stayed in neighboring countries, especially Iran and Pakistan, which run their open-door policy. In the climax of the event Iran hosted 1.4 million Afghan and 600 thousand Iraq refugees. Only small part of them – 25.000 people – stayed in camps; majority became

## **6. The Afghanistan crisis**

Discussing the issues of the refugee protection it is hardly possible to miss the Afghan problem. They keep on flowing to many countries of the world – also in Poland they are applying for the status of the refugee. However over 4.6 million people have returned to their homes now. Recently, the region has suffered the draught, biggest ever, worsening the humanitarian situation. At the time being, there are 3.6 million Afghans outside the Afghanistan territory, and about 1 million are IDPs.

Military activities undertaken by the USA after the events of 11 September have brought about another crisis of the refugees in Afghanistan – fearing for their own safety people were escaping. At first any help for Afghanistan via land routes was stopped. After the Northern Alliance had taken over most of the Afghan territory, it was possible to re-launch help supplies. The peril of humanitarian disaster, which would have inevitably happened if the military activities had not been stopped before winter, was reversed.

On 27 November 2001 UNHCR put forward the program of activities in the region, including the help for the needy as well as some long-range solutions of the longest refugee crisis in the world. The program points at four main areas of humanitarian activity in the region. They are:

- systematic help for the Afghan refugees staying in neighboring countries, due to the crisis that emerged after 11 September as well as some earlier events;
- keeping the state of emergency in neighboring countries as long as there is a risk of another displacements;
- protecting and supporting IDPs (especially helping to return) and other Afghans needing help within the country with close cooperation with the UN agendas.

## **7. Preparing a voluntary repatriation of refugees**

Until the middle of 2002 the activities of UNHCR are expected to include 880 thousand people, including 500 thousand IDPs and 380 thousand people who left their homes after 11 September (300 thousand in Pakistan and 80 thousand in Iran).

**NATIONAL DEFENCE UNIVERSITY**  

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**STRATEGIC-DEFENCE FACULTY**

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**Warsaw 2003**

integrated with Iran population. It meant a serious burden for Iran economy – helping a refugee in Iran makes it 2\$ a day, whereas international help equals barely 12\$ a year. However it took very long until it finally came because after the first stream of refugees had flowed in, Iran did not ask for international help. It resulted from the tension between the West and Iran after the Iran revolution of 1979.

During the last crisis on the other hand, local population of Iran was reluctant towards Afgan refugees seeing them as economical burden for the country and being afraid of outbreaks of violence in border areas.

## 1. GOALS AND TASKS

The goal of studies is to prepare officers for being legal advisers of commanders in law of war field – according to international conventions currently in force and NATO standards.

As a result of implementing the programme, student should be able to explicate and observe law of war and explain basic terms in the field of public international law as well as criminal law, human rights law, constitutional, administrative, criminal and environment law of the country.

Above-mentioned goal is reaching by implementing following didactic tasks:

- Acquainting students with genesis and development of international humanitarian law and human rights law,
- Acquainting students with Poland's constitutional regulations, especially constitutional range of Poland's chief authorities competence,
- learning law of war sources,
- learning disarmament process and arms control principles,
- learning humanitarian law being in force during international conflicts and military missions,
- learning organisation and operating principles of Polish Red Cross, International Committee of the Red Cross and another humanitarian organisations,
- learning legal criminal responsibility for breaking law of war,
- learning the state administration and ministry of Defence,
- learning people protection, national goods and natural environment protection, as well as civil defence principles in Poland,
- learning civil-military co-operation principles (CIMIC, HNS).

The goals are achieved by didactic efforts – lectures, seminars, group and individual studies, during a group exercise and a decisive game.

Lectures are thought as an introduction to individual studies on certain issues. Individual studies are a basic method of achieving didactic goals. The characteristic issue is unlimited exchange of thoughts on topics determined by a scholar. Lecturers running individual subjects approve a minimum list of books and articles that should be read. The list is introduced to students during the first meeting.

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  - Selected elements of law
  - Law of war
  - National defence
  - Security philosophy and sociology of armed forces
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#### 4. HOURS OF DIDACTIC ACTIVITIES BY THEIR KINDS

Convention No	1	2	3	4	5	6	7	8	9
Lectures, seminars	28	24	26	14	30	24	26	2	
Exercise "Intervention"								24	
Decisive game "Conflict"						6			
Group and individual studies		6		6			4		
Tests, credits			4	8					
Examinations				2				4	
Final examination									24
Sum	28	30	30	30	30	30	30	30	24

All together: 262 hrs

#### 5. HOURS OF STUDIES BY SUBJECTS

Subject	Number of hours									
	Conventions									
	1	2	3	4	5	6	7	8	9	sum
International public law	10	8	6	2	-	-	-	-	-	26
International relations	4	10	2	2	-	-	-	-	-	18
Selected elements of law	4	-	8	6	6	8	10	2	-	44
Law of war	8	6	8	10	16	10	8	28	-	94
National defence	2	4	6	6	8	8	6	-	-	40
Security philosophy and sociology of armed forces	-	-	-	-	-	4	6	-	-	10
Consultations on written thesis	-	2	-	4	-	-	-	-	-	6
All together	28	30	30	30	30	30	30	30	-	238

## 2. ORGANISATIONAL ISSUES

The condition to be enrolled for part-time post-graduate studies on law of war is to have Master of Arts or Master of Science studies completed. Also military academies graduates are able to enrol for this studies. Most welcome are officers who have completed law of war courses at Budapest Regional branch of International Committee of the Red Cross or the courses organised in Poland by Ministry of National Defence.

National Defence University scholars as well as civil academies and universities lecturers, high rank officers of the General Staff and Ministry of National Defence employees run all academic activities. The programme includes activities at the Police Training Centre in the town of Legionowo, General Department of the Polish Red Cross and at the home place of General Administrative Court.

To complete the studies, attendees have to work out written thesis. The topics to be covered are approved by the Strategic Defence Faculty Dean. During the course students have to pass a row of tests and examinations. They also are obliged to attend an exercise and a decisive game.

Studies last one academic year, which means 270 lessons. The number of students is up to 30 persons. Didactic process is divided into nine five-day lasting units (conventions). During the third convention students should determine what topics they will work out as their written thesis.

The condition of completing the course is passing all examinations including the final one as well as winning a positive note on the written thesis.

The last mentioned work students have to hand over to the Strategic Defence Faculty Dean not later than it is marked in the studies regulations. After fulfilling all conditions and passing the final examination, students are granted with diplomas.

## 3. HOURS OF STUDIES

Kinds of activities	Number of hours
Starting and closing remarks	8 hrs
Didactic activities	262 hrs
Sum	<b>270 hrs</b>

Selected elements of law:

- Sources of law. General description of constitutional law. (lecture – 2 hrs)
- Civil liberties, rights and duties according to Poland's constitution. (lecture – 2 hrs)
- State authorities competence within defence sphere. (seminar – 2 hrs)
- Armed forces in a democratic state. Armed forces – Poland's constitution regulations. (seminar – 2 hrs)
- State functioning in extreme situations. (lecture – 2 hrs)
- Citizens' legal status during extreme situations. (lecture – 2 hrs)
- General and military courts. Organisation and character. (lecture – 2 hrs)
- Test – Constitutional law. (2 hrs)
- Criminal law. General and military chapters. (lecture – 2 hrs)
- Criminal law – cont. (lecture – 2 hrs)
- Crime against state security and defence. (seminar – 2 hrs)
- Military law enforcement forces. (seminar – 2 hrs)
- Responsibility for offences against law of war according to Poland's legal regulations in the period of 1918 – 1997. (lecture – 2 hrs)
- Responsibility for offences against humankind according to Poland's Penal Code. (lecture – 2 hrs)
- Responsibility for offences against law of war according to Poland's Penal Code. (seminar – 2 hrs)
- Administration. Administrative law sources. (lecture – 2 hrs)
- National defence administration – legal aspects. (seminar – 2 hrs)
- Classified information protection system. (lecture – 2 hrs)
- Foreign armed forces residence within Poland's territory. (seminar – 2 hrs)
- Legal status of refugees according to international law and Poland's legal system. (lecture – 2 hrs)
- Test – administrative law. (2 hrs)
- Examination – Selected elements of law. (2 hrs)

**All together: 44 hrs**

## 6. DETAILED SYLLABUS

### International public law:

- International law sources and basic terms. (lecture – 2 hrs)
- State: definition, classification, and foreign organs. (seminar – 2 hrs)
- United Nation system. (seminar – 2 hrs)
- International agreement according to national legal system. (lecture – 2 hrs)
- War-preventing law. (lecture – 2 hrs)
- Peaceful solving international conflicts. (seminar – 2 hrs)
- International system of human rights protection. (seminar – 2 hrs)
- European Union Common Law. (lecture – 2 hrs)
- Air and outer space law (lecture – 2 hrs)
- Diplomatic law. (lecture – 2 hrs)
- Consular law. (lecture – 2 hrs)
- Test – International public law. (2 hrs)
- Examination – International public law. (2 hrs)

**All together: 26 hrs**

### International relations:

- Theory of international relations – basic terms. (lecture – 2 hrs)
- Globalisation problems influence on international relations. (lecture – 2 hrs)
- European Union security policy. (lecture – 2 hrs)
- Ecological security. (lecture – 2 hrs)
- Military alliance and national defence. (lecture – 2 hrs)
- Disarmament process – conventional arms. (seminar – 2 hrs)
- Confidence building measures and military security. (seminar – 2 hrs)
- International relations and the right to intervention. (lecture – 2 hrs)
- Credit – International relations. (2 hrs)

**All together: 18 hrs**

- International aid for war victims. (seminar – 2 hrs)
- Armed conflicts management. Commanders' responsibilities. (seminar – 2 hrs)
- Neutrality according to law of war. (lecture – 2 hrs)
- Use of biological and chemical weapons according to law of war. (seminar – 2 hrs)
- Legal, political and military aspects of the convention of mines elimination (5<sup>th</sup> December 1997). (seminar – 2 hrs)
- Legal status of soldiers outside the homeland. (lecture – 2 hrs)
- Humanitarian law dissemination in selected NATO countries. (lecture – 2 hrs)
- Elimination of war damages. War indemnification. (seminar – 2 hrs)
- International law of naval warfare. (lecture – 2 hrs)
- Nuclear weapons and international law of war. (lecture – 2 hrs)
- Terrorism – basic terms, motives and examples. (group studies at the Police Training Centre – 2 hrs)
- Legal aspects of combating terrorism around the world and in Poland. (group studies at the Police Training Centre – 2 hrs)
- Conditions of use of police and military forces – danger to the state security, public order and while natural disasters. (group studies at the Police Training Centre – 2 hrs)
- International law of war and mass media. (lecture – 2 hrs)
- Decisive game "Conflict". (6 hrs)
- Exercise "Intervention". (24 hrs)
- Examination – Law of war. (2 hrs)
- Test – Hague regulations. (2 hrs)

**All together: 94 hrs**

#### National defence:

- Poland's security, defence and military strategies. (lecture – 2 hrs)
- Contemporary state defence systems. Assumptions for Poland's defence system. (seminar – 2 hrs)
- Contemporary armed conflicts nature. (lecture – 2 hrs)
- Use of military forces in non-war operations. (lecture – 2 hrs)

### Law of war:

- Introduction to international law of war. Dissemination legal basis. (lecture – 2 hrs)
- Law of war – genesis, sources and development. (lecture – 2 hrs)
- International and non-international armed conflicts. (lecture – 2 hrs)
- International human rights protection system and international humanitarian law in armed conflicts. (lecture – 2 hrs)
- Basic categories of people and facilities under protection of international humanitarian law. (seminar – 2 hrs)
- Distinctive emblems of humanitarian organisations and their protection. (seminar – 2 hrs)
- Combatants and non-combatants. Prisoners of war status. Military targets. Reprisals. (lecture – 2 hrs)
- War victims – prisoners of war and internees treatment. (seminar – 2 hrs)
- War victims – the dead treatment. Military wills as legal declarations. (seminar – 2 hrs)
- Military occupation according to law of war. (lecture – 2 hrs)
- Prohibited methods of fight. (lecture – 2 hrs)
- Protected zones: sanitary, neutralised, and demilitarised. Undefended towns. (lecture – 2 hrs)
- Secure zones created on United Nations Security Council resolution. (seminar – 2 hrs)
- Polish branch of International Committee of the Red Cross: goals and day to day work. Polish Red Cross co-operation with another humanitarian organisations. (group studies at Polish Red Cross HQ – 1 hr)
- Polish branch of ICRC – National Office of Information. Co-operation with Ministry of National Defence. (group studies at Polish RC HQ – 1 hr)
- International Humanitarian Law Dissemination Commission. (group studies at Polish RC HQ – 1 hr)
- Implementation of international humanitarian law. Permanent Court of International Justice. (group studies at Polish RC HQ – 2 hrs)
- Red Cross and Red Crescent activities for international humanitarian law development and implementation. (group studies at Polish RC HQ – 1 hr)

TOPICS OF WRITTEN THESIS PREPARED IN ACADEMIC YEAR 2000/2001

1. Political and legal aspects of humanitarian interventions.
2. Interning civilian people according to international law and Poland's legal regulations.
3. Anti-personnel mines according to international law.
4. Legal responsibilities for war crimes.
5. Cultural heritage protection during armed conflicts.
6. Legal basis for public administration bodies in selected crisis situations.
7. Humanitarian law in training process of Poland's tactical military units.
8. Civilian population legal status in armed conflicts.
9. Refugee legal status according to international and Poland's legal regulations.
10. Military and civilian medical service during armed conflicts.
11. Environmental threats during wars.
12. War crimes according to the status of Permanent International Criminal Court.
13. Right to use force and arms in United Nations peacekeeping missions.
14. Legal status of non-international armed conflicts attendees.

- Contemporary art of war assumptions. (lecture – 2 hrs)
- Planning for extreme threats situations. (lecture – 2 hrs)
- Territorial defence forces command and control system. (lecture – 2 hrs)
- Host-nation role. Civil-military co-operations. (lecture – 2 hrs)
- Territorial defence in Poland and in other selected countries. (lecture – 2 hrs)
- Civil defence in Poland and in other selected European Union countries. (seminar – 2 hrs)
- Poland's armed forces mobilisation system. (lecture – 2 hrs)
- Material and personal services for the state defence. (seminar – 2 hrs)
- Arms trade tendencies. (lecture – 2 hrs)
- Selected European armed forces. New weapons. (lecture – 2 hrs)
- Reconnaissance, electronic and psychological warfare in a state's defence system. (seminar – 2 hrs)
- Geostrategic aspects of Poland's security. (lecture – 2 hrs)
- Information society – chances and threats. (lecture – 2 hrs)
- History of military thoughts. (lecture – 2 hrs)
- Armed forces tasks. (lecture – 2 hrs)
- Test – National defence. (2 hrs)

**All together: 40 hrs**

#### Security philosophy and sociology of armed forces:

- Security philosophy. (lecture – 2 hrs)
- Security philosophy according to art of war. (lecture – 2 hrs)
- Tendencies in contemporary armed forces – sociological analysis. (seminar – 2 hrs)
- Military sociology – main spheres of interests. (group studies – 4 hrs)

**All together: 10 hrs**

#### Consultations on written thesis:

- Methodology (2 hrs)
- How to prepare written thesis. (4 hrs)

**All together: 6 hrs**

- Flemming M., *Międzynarodowe prawo konfliktów zbrojnych. Zbiór dokumentów. Wybór*, Warszawa 1991.
- Gardam J.G., Jarvis M.J., *Women, armed conflict and international law*, Kluwer Law Intern., 2001.
- Gasser H.P., *Międzynarodowe prawo humanitarne. Wprowadzenie*, PCK, Warszawa, 2000.
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- Humanitäres Völkerrecht in Bewaffneten Konflikten – Handbuch- Herausgeber*, Bundesministerium der Verteidigung Abteilung Verwaltung und recht II 3, 1992.
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- Klafkowski A., *Prawo międzynarodowe publiczne*, Warszawa 1964.
- Kostrzewa-Zorbas G., *Początek – czy koniec epoki? Wojna o Kosowo, Stany Zjednoczone, NATO i bezpieczeństwo europejskie*, w: *Świat po Kosowie*. pod red. Agnieszki Magdziak-Miszewskiej, Centrum Stosunków Międzynarodowych, Warszawa 2000.
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- Kuźniar R., *Prawa człowieka, prawo, instytucje i stosunki międzynarodowe*, Scholar, Warszawa 2000.
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# Publikacje Akademii Obrony Narodowej

do nabycia w Wydziale Wydawniczym AON  
al. gen. A. Chruściela 103, bl. 2  
00-910 Warszawa,  
tel. 681 40 55, tel./faks 681 37 52

- S. Bartosiewicz, M. Mróz – Zaopatrywanie jednostek wojsk lotniczych i obrony powietrznej w techniczne środki materiałowe techniki naziemnej – 7,00 zł
- Bezpieczne niebo. Materiały z konferencji naukowej – 14,00 zł
- J. Bieńkowski, R. Stępień (red.) – Edukacja pedagogiczna w wyższej uczelni wojskowej – 16,00 zł
- H. Binkowski (red.) – OBWE w procesie umacniania bezpieczeństwa europejskiego – 16,00 zł
- A. Bujak – Praca w terenie na szczeblach taktycznych według standardów NATO – 10,00 zł
- W. Chojnacki – Socjologiczne aspekty tendencji instytucjonalno-organizacyjnego rozwoju wojska – 16,00 zł
- R. Chrobak i in. – Działania bojowe dywizji – 15 zł
- M. Cieślarczyk, P. Krawczyk, Z. Korulczyk – Poradnik metodyczny autorów prac kwalifikacyjnych – 8,00 zł
- M. Cieślarczyk, M. Chojnacki, A. Radomyski – Współpraca cywilno-wojskowa (CIMIC) w siłach zbrojnych (SP) RP – 13,00 zł
- M. Cieślarczyk (red.) – Metody, techniki i narzędzia badawcze oraz elementy statystyki – 13,00 zł
- A. Ciupiński, M. Zając (red.) – Wybrane problemy walki z terroryzmem międzynarodowym – 17 zł
- A. Ciupiński (red.) – Dyplomacja wielostronna – 25,00 zł
- A. Ciupiński – Podstawowe elementy polityki bezpieczeństwa i obrony RP – 15,00 zł
- A. Ciupiński, R. Białoskórski – Wczesne ostrzeżenie i zapobieganie współczesnym konfliktom zbrojnym w strategii Sojuszu Północnoatlantyckiego – 7,00 zł
- A. Ciupiński, H. Binkowski, A. Legucka – Bezpieczeństwo w stosunkach międzynarodowych – 30,00 zł
- T. Compa – Zarządzanie przestrzenią powietrzną – 10,00 zł
- J. Czaja – Stolica apostolska wobec integracji europejskiej – 15,00 zł
- K. Czajka – Użycie artylerii w obronie oddziału – 8,00 zł
- P. Daniluk – Radiostacje pola walki – 10,00 zł
- A. Dawidczyk – Nowe wyzwania, zagrożenia i szanse dla bezpieczeństwa Polski u progu XXI w. – 9,00 zł
- P. Dela, J. Wolejszo – Wsparcie komputerowe ćwiczeń wojskowych 16 zł
- Dowodzenie lotnictwem sił powietrznych w działaniach wojsk lądowych (praca zbiorowa) – 15,00 zł
- W. Drażczyk – Logistyka sił powietrznych w działaniach wielonarodowych – 9,00 zł
- A. Fellner – Zautomatyzowane systemy kontroli ruchu lotniczego przestrzeni powietrznej – 20,00 zł
- M. Flemming – Międzynarodowe prawo humanitarne konfliktów zbrojnych – 45,00 zł
- P. Gawliczek, J. Pawłowski – Zagrożenia asymetryczne – 14,00 zł
- M. Gąska, A. Ciupiński – Międzynarodowe prawo humanitarne konfliktów zbrojnych – 21,00 zł
- A. Glen, W. Marud – Kontrola przestrzeni powietrznej w czasie kryzysu i wojny – 18,00 zł
- J. Gotowała – Lotnictwo XXI wieku – 11,00 zł
- J. Groskrejc – Antropologiczne i aksjologiczne aspekty edukacji oficerów – 10,00 zł
- J. Halik – Metodyka opracowania pracy magisterskiej i studyjnej – 15,00 zł
- J. Halik, J. Wolejszo – Ćwiczenia wojskowe sił zbrojnych RP w aspekcie interoperacyjności w ramach NATO – 14,00 zł
- M. Huzarski (red.) – Taktyka ogólna wojsk lądowych – 21,00 zł
- K. Jałoszyński – Terroryzm antyizraelski – 12,00 zł
- K. Jałoszyński – Terroryzm czy terror kryminalny w Polsce? – 12,00 zł
- K. Jałoszyński – Zagrożenie terroryzmem w wybranych krajach Europy Zachodniej oraz w Stanach Zjednoczonych – 12,00 zł
- J. Janczak – Zakłócanie informacyjne – 12,00 zł
- Cz. Jarecki – Użycie wojsk raketowych i artylerii w operacji – 13,00 zł
- T. Jemiolo – Globalizacja. Szanse i zagrożenia – 8,00 zł
- T. Jemiolo, K. Malak (red.) – Bezpieczeństwo zewnętrzne Rzeczypospolitej Polskiej – 25,00 zł
- A. Józwiak, Cz. Marcinkowski – Wybrane problemy współczesnych operacji pokojowych – 18,00 zł
- M. Juszczyk – Wsparcie działań przez państwo gospodarza – 14 zł
- L. Kanarski, P. Gawliczek – Przywództwo w armiach NATO – 9,00 zł
- L. Kanarski, B. Rokicki (red.) – Teoria i praktyka przywództwa wobec wyzwań edukacyjnych – 24,00 zł
- J. Kardas, K. Loranty – Wybrane problemy bezpieczeństwa i obronności państwa w opiniach pracowników administracji publicznej – 12,00 zł
- J. Kardas, K. Loranty – Instytucjonalizacja przygotowania obronnego kadr administracji – 15,00 zł
- J. Karpowicz, Z. Chojnacki – Bezpieczeństwo lotów – 10,00 zł
- J. Karpowicz, E. Cieślak – Lotnictwo wsparcia w sojusznicznych działaniach powietrznych – 17 zł
- J. Karpowicz, K. Kozłowski – Bezzałogowe statki powietrzne i miniaturowe aparaty latające – 18 zł
- J. Karpowicz – Współczesne konstrukcje lotnicze – 20,00 zł

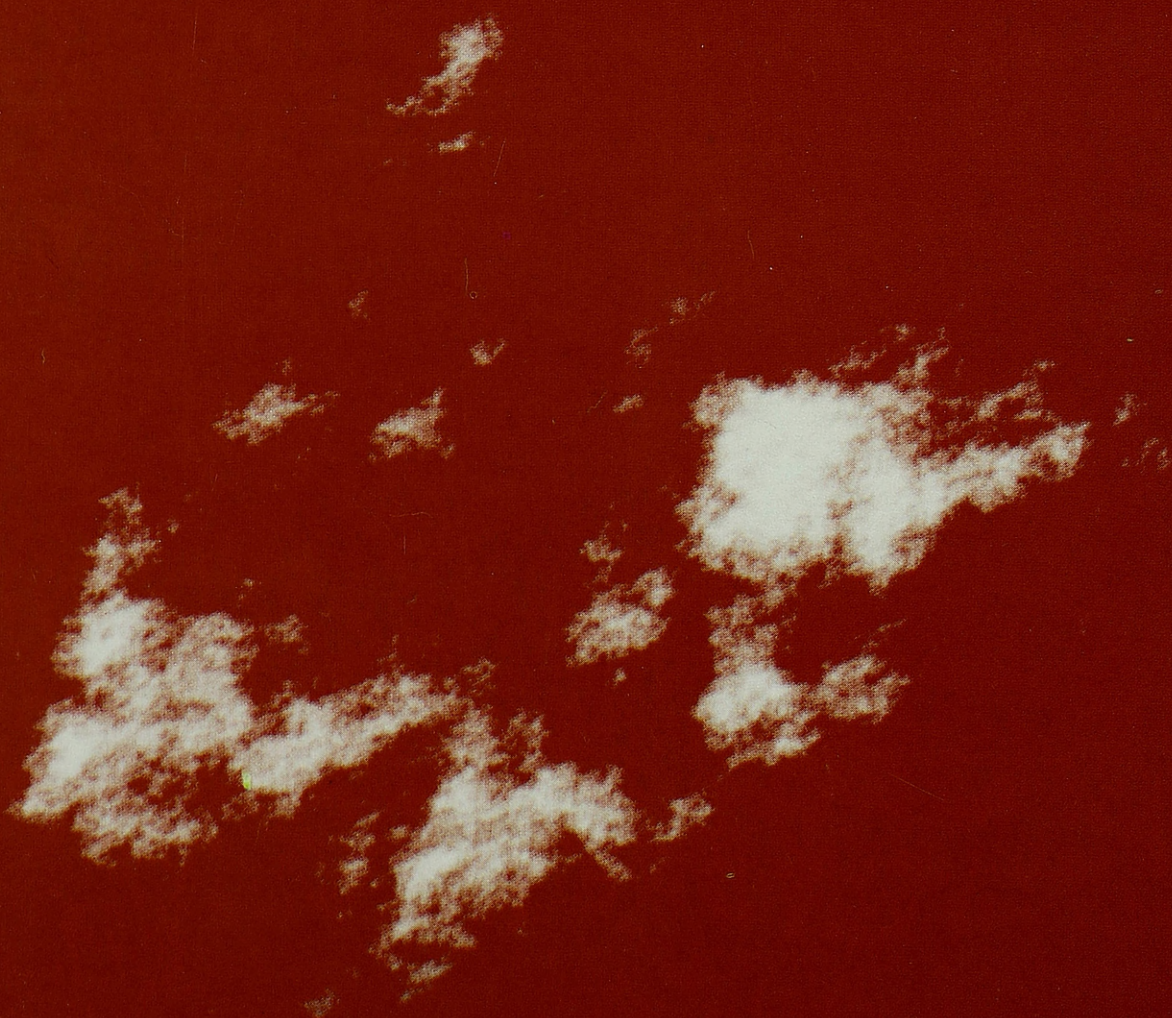
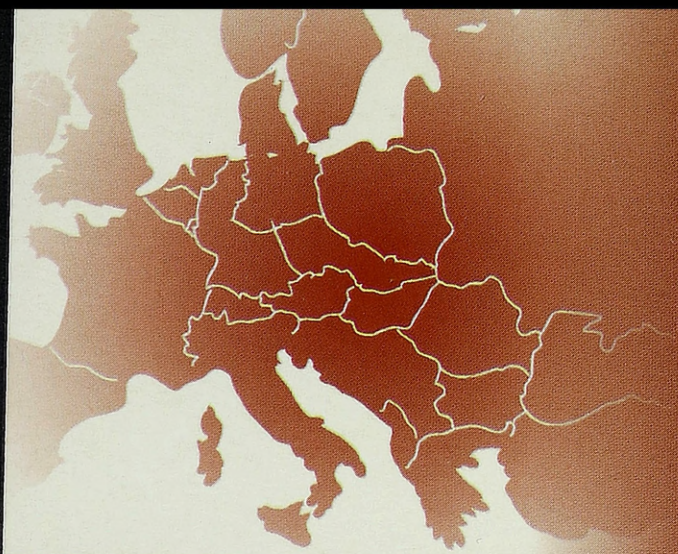
- J. Skrzyp, Z. Lach – Informator geograficzny. Państwa członkowskie NATO – 20,00 zł
- Z. Skwarek – Powietrzne systemy wczesnego wykrywania i powiadamiania – 13,00 zł
- K. Staboń – Sytuacja jeńców wojennych w konflikcie iracko-irańskim (1980-1988) – 10,00 zł
- Słownik terminów z zakresu bezpieczeństwa narodowego (praca zbiorowa) – 15,00 zł
- Słownik terminów z zakresu psychologii (praca zbiorowa) – 10,00 zł
- Słownik pojęć sojuszniczej obrony powietrznej (praca zbiorowa) – 12,00 zł
- H. Spustek – Wybrane zagadnienia badań operacyjnych i modelowania liniowego – 8,00 zł
- Z. Stachowiak – Metodyka i metodologia pisania prac kwalifikacyjnych (licencjackich, magisterskich i podyplomowych) – 9,00 zł
- Z. Stachowiak, J. Płaczek (red.) – Wybrane problemy ekonomiki bezpieczeństwa – 30,00 zł
- R. Stępień (red.) – Edukacja w wyższych szkołach wojskowych – 21,00 zł
- M. Strzoda (red.) – Wybrane terminy z zakresu dowodzenia i zarządzania – 7,00 zł
- M. Strzoda – Słownik nazw, skrótów i akronimów państw, instytucji, dowództw, jednostek organizacyjnych i osób funkcyjnych – 8 zł
- J. Suwart – Zarys obrony cywilnej w Polsce w latach 1920–1996 – 30,00 zł
- R. Szpyra – Powietrzna sztuka operacyjna wybranych państw – 15,00 zł
- Środki dowodzenia (praca zbiorowa) – 12 zł
- E.A. Wesołowska, A. Szerauc (red.) – Patriotyzm – Obronność – Bezpieczeństwo – 20,00 zł
- J. Wolejszo – Wybrane problemy procesu planowania i rozliczania działalności szkoleniowej na szczeblach taktycznych w SZ RP – 16 zł
- J. Wolejszo – Trening sztabowy dowództw szczebla taktycznego SZ RP – 17,00 zł
- J. Wolejszo – Wybrane aspekty projektowania struktury organizacyjnej zespołu dowodzenia stanowiska dowodzenia brygady zmechanizowanej – 11,00 zł
- J. Wolejszo – Wybrane problemy przygotowania i realizacji ćwiczeń sojuszniczych NATO – 16 zł
- J. Wolejszo, Z. Fiołna – Dowodzenie brygadą zmechanizowaną (pancerną) w obronie – 12,00 zł
- J. Wolejszo, Z. Fiołna – Dowodzenie brygadą zmechanizowaną (pancerną) w marszu – 15,00 zł
- Wojskowe wsparcie władz cywilnych i społeczeństwa. Materiały z seminarium – 20,00 zł
- Wojsko wobec polskiego października'56. Rezolucje, uchwały, listy (wybór, wstęp i opracowanie: E. J. Nalepa) – 30,00 zł
- J. Wojtasik (red.) – Studia z dziejów polskiej techniki wojskowej od XVI do XX wieku – 27,00 zł
- J. Wojtasik (red.) – Od Żółkiewskiego i Kosińskiego do Piłsudskiego i Petlury. Z dziejów stosunków polsko-ukraińskich od XVI do XX wieku – 20,00 zł
- M. Wrzosek – Działania rozpoznawcze na obszarze kraju – 10 zł
- M. Wrzosek – Organizacja pracy taktycznej komórki rozpoznania – 17 zł
- Wsparcie informacyjne obrony powietrznej. Materiały z sympozjum naukowego – 18 zł
- Wydział Lotnictwa i Obrony Powietrznej AON – Ewolucja dla postępu. Materiały z konferencji – 18 zł
- E. Zabłocki – Współczesne siły powietrzne – 13,00 zł
- S. Zalewski – Służby specjalne w państwie demokratycznym – 11,00 zł
- Założenia operacyjne do doktryny zasadniczej sił powietrznych (praca zbiorowa) – 10,00 zł
- L. Zapala – W rembertowskiej Alma Mater. Wspomnienia – 18,00 zł
- B. Zdrodowski, M. Marszałek – Operacje pozawojenne sił powietrznych – 16,00 zł
- J. Zieliński (red.) – Podstawowe założenia dydaktyki sztuki operacyjnej – 14,00 zł
- J. Zieliński – Wojska lądowe jako rodzaj sił zbrojnych – 14 zł
- J. Zuziak – Dzieje Instytutu Józefa Piłsudskiego w Londynie 1947–1997 – 25,00 zł

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**Zamówienia przyjmujemy telefonicznie lub pisemnie**

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- Cz. Kącki – Siły wielonarodowe do misji pokojowych – 15 zł
- Cz. Kącki – Izrael. Jego wpływ na rozwój sytuacji w regionie Bliskiego Wschodu – 15,00 zł
- Kierowanie mobilnymi systemami łączności wojsk lądowych (praca zbiorowa) cz.I – 14 zł, cz.II – 8 zł, cz.III. – 12 zł
- W. Kitler (red.) – Obrona cywilna (niemilitarna) w obronie narodowej III RP – 25,00 zł
- W. Kitler – Obrona narodowa III RP. Pojęcie. Organizacja. System (rozprawa habilitacyjna) – 24,00 zł
- W. Kitler – Obrona narodowa w wybranych państwach demokratycznych – 14,00 zł
- Z. Klawitter – Rola i zadania zespołu wsparcia personalnego na stanowisku dowodzenia BZ/BPanc – 7,00 zł
- T. Kočański – Logistyka międzynarodowa – 12,00 zł
- T. Kočański – Logistyka jako koncepcja zintegrowanego zarządzania – 18,00 zł
- T. Kočański, S. Kurek – Konkurencyjność przedsiębiorstw – 15 zł
- M. Koziński – Umowa offsetowa i inne formy udziału państwa w międzynarodowym obrocie gospodarczym – 10,00 zł
- M. Kozub – Lotnictwo w operacjach połączonych – 7,00 zł
- M. Kozub – Lotnictwo wojsk lądowych w operacjach połączonych – 8,00 zł
- M. Kozub – Lotnictwo w bojowym poszukiwaniu i ratownictwie – 8,00 zł
- J. Kręcikij – Współczesne kierowanie wojskami. Proces dowodzenia – 12,00 zł
- J. Kręcikij – Metodyka pracy sekcji dowodzenia oddziału i związku taktycznego – 13,00 zł
- J. Kręcikij – Wybrane problemy kierowania zgrupowaniami wielonarodowych sił połączonych – 14,00 zł
- R. Kwečka, M. Gryga – Siły specjalne w kontekście współczesnych zagrożeń – 15,00 zł
- K. Kubiak – Transport wojsk i ładunków wojskowych drogą morską przy użyciu statków handlowych – 12,00 zł
- L. Łukaszuk – Międzynarodowe prawo pokoju i bezpieczeństwa – 20,00 zł
- L. Łukaszuk – Dyplomacja współczesna a problemy prawa i bezpieczeństwa międzynarodowego – 20,00 zł
- L. Łukaszuk – Europejskie prawo pokoju i bezpieczeństwa – 20,00 zł
- T. Majewski – Ankieta i wywiad w badaniach wojskowych – 9,00 zł
- T. Majewski – Kierownik – dowódca w organizacji – 12,00 zł
- T. Majewski – Miejsce celów, problemów i hipotez w procesie badań naukowych – 8 zł
- T. Majewski i in. – Planowanie w organizacji – 9 zł
- K. Malak – Polityka zagraniczna i bezpieczeństwa Białorusi – 18,00 zł
- J. Marczak (red.) – Samoorganizacja społeczeństwa na rzecz bezpieczeństwa powszechnego. Samoobrona powszechna III RP – 20,00 zł
- M. Marszałek – Siły powietrzne w operacjach ewakuacyjnych (według poglądów amerykańskich) – 13 zł
- M. Marszałek, A. Radomyski – Metodyka pracy zespołów funkcjonalnych na stanowisku dowodzenia brygady raketowej sił powietrznych – 25,00 zł
- Z. Maślak – Podstawy teorii informacji obrony powietrznej – 10,00 zł
- Z. Maślak (oprac.) – Informacje w obronie powietrznej – potrzeby, wymagania, zagrożenia. Materiały z sympozjum naukowego – 17,00 zł
- M. Michalec (oprac.) – Kierunki rozwoju rosyjskiej myśli teoretycznej i praktyki w zakresie użycia lotnictwa w walce – 14,00 zł
- J. Michniak (red.) – Projektowanie struktury organizacyjnej dowództwa brygady zmechanizowanej (pancernej) – 12,00 zł
- J. Michniak – Stanowiska dowodzenia w wojskach lądowych – 10 zł
- G. Nowacki – Informacja w walce zbrojnej. Materiały z sympozjum naukowego – 17,00 zł
- G. Nowacki – Strategiczne siły jądrowe wybranych państw – 14,00 zł
- G. Nowacki – Rozpoznanie satelitarne USA i Federacji Rosyjskiej – 8,00 zł
- G. Nowacki (red.) – Militaryzacja kosmosu – 17,00 zł
- A. Nowak – Działalność rozpoznawcza na szczeblach taktycznych – 12,00 zł
- E. Nowak – Gospodarowanie zasobami majątkowymi – 15,00 zł
- M. Obrusiewicz – Wielonarodowe połączone siły zadaniowe CJTF – 12,00 zł
- M. Obrusiewicz – Geneza i prognoza kooperatywnych stosunków wojskowych końca XX i początku XXI w. na tle bezpieczeństwa europejskiego – 15 zł
- J. Pawłowski, A. Ciupiński (red.) – Umędzynarodowiony konflikt wewnętrzny – 20,00 zł
- M. Pelc, M. Juszczyk – Matematyka – 25 zł
- J. Płaczek – Ewolucja polskiej myśli obronno-ekonomicznej w latach 1976–2000 – 20,00 zł
- J. Płaczek (red.) – Gospodarka obronna Polski w końcu lat dziewięćdziesiątych. Szanse i zagrożenia – 25,00 zł
- Podróż studyjna w systemie edukacji oficerów w AON. Materiały z sympozjum naukowego – 17,00 zł
- A. Polak – Wybrane zagadnienia obrony wybrzeża w Polsce (1920–2002) – 16,00 zł
- A. Polak – Teoria grup operacyjnych w polskiej sztuce wojennej okresu międzywojennego – 30,00 zł
- Prawo w stosunkach międzynarodowych. Wybór dokumentów (praca zbiorowa) – 35,00 zł (dwa tomy)
- K. Przeworski – Ewakuacja jako sposób ochrony ludności – 7,00 zł
- Pułk przeciwlotniczy w działaniach operacyjnych (praca zbiorowa) – 20,00 zł
- A. Radomyski – Metody i treść pracy zespołu OPL na stanowisku dowodzenia dywizji zmechanizowanej – 18,00 zł
- A. Skrabacz – Kobiety w obronie narodowej Polski u progu XXI w. – 15,00 zł
- J. Skrzyp (red.) – Informator geograficzny o państwach kandydujących do Sojuszu Północnoatlantyckiego – 14,00 zł



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