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**ASSUMPTIONS FOR THE PROTECTION OF COMBATANTS, PRISONERS OF WAR,  
CIVIL POPULATION AND REFUGEES DURING ARMED CONFLICTS**

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**Abstract.** This paper is devoted to the assumptions of the protection of combatants, prisoners of war, civilians and refugees during armed conflicts. It describes the legal regulations for the protection of combatants and prisoners of war, the norms of international law relating to the protection of civilians, and prohibited means and methods of military operations. The content of this chapter was intended to outline the legal status of persons protected in armed conflicts. The phenomenon of war is very often connected with the problem of human rights violations. Increasingly, during armed conflicts, the civilian population is disadvantaged alongside the armed forces of the fighting parties. Bearing in mind the above, international organisations have taken a number of initiatives to protect human life and health. However, a reflection arises that the legal standards in the field of international humanitarian law of armed conflicts and human rights are not properly respected during wars and armed conflicts.

**Keywords:** combatants; civilians; armed conflicts; legal protection; prisoners of war; prohibited means of combat

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## **1. Introduction**

Bearing in mind that military operations should only be conducted with regard to the enemy's armed forces and military objectives, it becomes particularly important to define the boundary between the armed forces and the civilian population. Protection of civilians is currently one of the most important dilemmas faced by international humanitarian law of armed conflicts. According to statistics, about 80-90% of all victims of armed conflicts are civilians. Considering the above, however, one must not forget, especially during contemporary armed conflicts, the need to provide adequate protection to combatants and prisoners of war, who are very often treated in an inhumane manner when put under the authority of the enemy. An effective solution for ensuring protection of all participants in armed conflicts developed on the basis of international humanitarian law seems to be the application of restrictions on the use of specific means and methods of conducting military operations.

This paper presents considerations aimed at obtaining an answer to the second detailed problem, expressed in the form of a question: What standards of international public law apply to the protection of combatants, prisoners of war, civilians and refugees in armed conflicts? In order to find an answer to the research question posed above, it seems justified to present legal regulations in the field of the protection of combatants and prisoners of war, standards of international law relating to the protection of civilians, and prohibited means and methods of military operations.

## 2. Legal regulations for the protection of combatants and prisoners of war

The situation of prisoners of war was regulated for the first time in the so-called The Lieber Code of 1863, where in art. 56 it was emphasised that they are not subject to punishment, they cannot be subjected to retaliation, suffering, imprisonment, deprivation of food, death penalty and barbaric treatment. Subsequently, these issues were sanctioned in the Hague Conventions of 1899 and 1907, the Geneva Convention of 27 July 1929 on the treatment of prisoners of war (Convention, 1929), the four Geneva Conventions of 1949, their 1977 Protocols Additional and the norms of customary international law (Flemming, 2000). As a rule, the status of a prisoner of war is granted only to participants in international armed conflicts. However, it may also be used in exceptional cases during internal national liberation conflicts (Protocol I Additional, 1977). In order to determine the status of a prisoner of war, it is first necessary to establish whether the individual is a combatant, i.e. a person authorised to participate in armed conflicts granted by individual states. The categories of individuals who may benefit from the status of a prisoner of war in international armed conflicts include, but are not limited to: (III Geneva Convention, 1949).

- members of the armed forces of a party to the conflict, as well as members of militias or volunteer corps forming part of such armed force;
- members of the regular armed forces who claim to answer before a government or an authority not recognised by the detaining state;
- Individuals belonging to the armed forces of the occupied country, if the occupying state decides, even after their initial release, that their internment is necessary;
- members of other militias and members of other volunteer corps, including those of organised resistance movements, belonging to a party to the conflict and operating in or outside their own territory, provided that they are commanded by a person responsible for his/her subordinates, have a fixed distinctive sign recognisable at a distance, they carry arms openly and they conduct their operations in accordance with the laws and customs of war;
- Individuals accompanying the armed forces (civilian crew members of military aircraft, war correspondents, suppliers, members of labour divisions or services appointed to look after the military, provided that they have been authorised by the armed forces they accompany);
- members of a crew of merchant ships (masters, pilots and apprentices, members of the crews of civil aircraft of the parties to the conflict, unless they are entitled to more favourable treatment under other provisions of international law);
- population of unoccupied territory resisting enemy invasion, whose form of organisation is different from that of the armed forces (*lavée en masse*).

The scope of protection of a prisoner of war begins when a combatant becomes unable to fight and falls under the authority of the enemy. During military operations, combatants should wear uniforms, distinctive signs and weapons in a visible manner (Protocol I Additional, 1977). This is because it allows them to be distinguished from the civilian population (non-combatants), who cannot be the target of armed attacks (Protocol I Additional, 1977). It should be noted here that the parties to armed conflicts should make every effort to ensure that children under the age of 15 are not recruited to the armed forces or take part in military operations (Convention, 1989).

When a prisoner of war remains under the custody of the opposing party, he /she is obliged to reveal his/her personal details (full name, military rank, date of birth and military record number) during the interrogation (III Geneva Convention, 1949). However, he/she cannot be imprisoned indefinitely. Such behaviour may be treated as a violation of the human rights law. After being taken prisoner, prisoners should be released or placed in prison camps (III Geneva Convention, 1949) located on the mainland or in a place allowing for maintaining appropriate conditions of personal hygiene and not posing a threat to health. Such places should be far from the battlefield at such a distance that they do not constitute a danger or threat to people staying in them. The *sine qua non* of a state towards detained prisoners is also to provide them with decent living conditions, which are as favourable as the conditions in which the armed forces of the detaining party reside in the same area (III Geneva Convention, 1949). Detainees should be provided with appropriate clothing, underwear and footwear as well

as access to sanitary facilities, and, if necessary, the right to medical care. The III Geneva Convention of 1949 also guarantees prisoners of war freedom of religion and religious practice and the possibility of educational, entertainment and physical activities. Detainees may also not be deprived of the right to contact with the outside world, which, however, can be subject to certain control measures. In the event of the death of a prisoner of war, he/she should be buried with due respect and, if possible, also in line with his/her religion.

The treatment of prisoners of war in the Polish Armed Forces was regulated by Decision no. 105/MON of the Minister of National Defence of 1 April 2011 on the approval and introduction of standardization documents related to state defence and security (Decision, 2011). Currently, the following defence standards apply in this regard: NO-02-A020: 2010 Procedures for dealing with prisoners of war, acquired equipment and documents of the enemy (setting out the rules for dealing with prisoners of war and their property, and establishing template documents needed to keep records of prisoners of war, their personal and military property); NO-02-A036:2010 Interrogation of prisoners of war (indicates the procedures for dealing with prisoners of war during their interrogation, rules for dividing prisoners of war into particular categories (subject to available information) and the division of units interrogating prisoners of war); NO-02-A042:2001 Military exercises - Rules for dealing with persons pretending to be prisoners of war (it defines procedures enabling the acquisition of appropriate habits in the field of dealing with prisoners of war).

As a rule, the status of a combatant prisoner of war is not granted to participants in non-international armed conflicts. A practical approach to this problem could be observed in Afghanistan during the ISAF/NATO mission. Members of Haqqasi's and Gulbuddian Hekmatyar's forces captured by the International Security Assistance Force did not obtain the status of a prisoner of war. Instead, they were treated as unprotected civilians, who could become the target of hostilities. The concept of an unlawful combatant (Ex parte *Qurin* 1942) was developed on the basis of common law, but it was not transferred to the international humanitarian law of armed conflicts, which still divides the participants of military operations into combatants and non-combatants (civilians). Therefore, many difficulties arise when determining the status of people taking an active part in the internal conflict, because they cannot be considered as the so-called legal combatants, and they are criminally liable for violations of the applicable national law.

Bearing in mind the above, the question arises how to deal with detainees in non-international armed conflicts. This issue has been regulated, among others, in art. 9 of the Universal Declaration of Human Rights and art. 9 of the International Covenant on Civil and Political Rights. These provisions clearly show that no one may be subjected to unlawful arrest or detention. Also art. 5 of the European Convention on Human Rights (Convention 1950), art. 7 of the American Convention on Human Rights of 22 November 1969 and art. 6 of the African Charter on Human and Peoples' Rights of 27 June 1981, states that everyone has the right to liberty and personal security.

The European Court of Human Rights referred in its jurisprudence also to the relationship that occurs between international humanitarian law and human rights in the *Al-Skeini* ruling, which shows that in the event of occupation by the armed forces of another state, the occupying state is obliged to respect human rights in the area under its control and is liable in the event of any violation (Judgment of the ECtHR, 07.07. 2011). The extraterritorial nature of human rights is also indicated by the judgment in the case of *Titina Loizidou v. Turkey*, ground-breaking in terms of the return of refugees, who had to leave because of the occupation of a given area, to their previous place of residence (ECtHR judgment, 23.03.1995). A similar jurisprudence of the European Court of Human Rights can also be found in the judgment in the case of *Issa et al. v. Turkey and Ivançoc et al. v. Moldova and Russia* (ECtHR judgment, 15.11.2011), where it was found that the jurisdiction of a country that arose as a result of decisive influence on local authorities is not limited to states that are parties to the European Convention on Human Rights. The judgments cited above indicate a uniform line of jurisprudence of the European Court of Human Rights, because it is unacceptable that states take steps to punish perpetrators of human rights violations on their territory, and when they themselves commit such violations on the territory of a foreign state, they do not take legal measures aimed at taking responsibility for non-compliance with the provisions of humanitarian law.

### 3. Standards of international law relating to the protection of civilians in armed conflicts

The issue of the protection of civilians in international armed conflicts was regulated in the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 and the Protocol Additional to the Geneva Conventions relating to the protection of victims of international conflicts. In the event of non-international armed conflicts, civilian protection is guaranteed by art. 3 common to all four Geneva Conventions of 1949 and part IV of the Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol Additional II, 1977). According to the negative definition in art. 50 para. 1 of Protocol Additional I, the category of civil persons includes individuals who are not:

- members of the armed forces of the parties to the conflict and of the militia and voluntary units that are part of them;
- members of the regular armed forces who claim to answer before a government or an authority not recognised by the detaining state;
- members of other militias, voluntary units and organised resistance movements belonging to one of the parties to the conflict operating within or outside their own territory;
- participants of the mass mobilization.

It should be emphasised that in the event of difficulties in determining the status of a given person, he/she should be recognised as a civilian and subject to protection in the event of a declaration of war or armed conflict and the occupation of a given territory (VI Geneva Convention, 1949). International humanitarian law of armed conflicts provides special protection for women and children. In armed conflicts, women should be especially respected and protected against rape, forced prostitution and other forms of indecent procedures (Protocol I Additional, 1977). The provisions relating to ensuring special respect and protection against attacks also apply to children, relating to their morals (Protocol I Additional, 1977). Moreover, they cannot be evacuated to a foreign country, with the exception of temporary evacuation, necessary for reasons related to the implementation of medical activities or ensuring their safety (Protocol I Additional, 1977). The parties to the conflict should also take the necessary measures to avoid abandoning children under the age of 15 who have been orphaned or separated from their families as a result of armed actions, and to facilitate in all circumstances their maintenance, religious practice and education (VI Geneva Convention, 1949).

The general protection provided for the civilian population in international armed conflicts also applies to journalists who perform dangerous professional missions in armed conflict zones, provided that they do not act contrary to the status of civilians and without prejudice to the right of war correspondents allowed to use the status of a prisoner of war (VI Geneva Convention, 1949).

Every foreigner staying in the territory of one of the parties to an armed conflict has the right to leave it (the foreigner may leave the territory at the beginning or during the armed conflict), provided that his/her departure is not contrary to the interests of such state (VI Geneva Convention, 1949). The application for repatriation should be considered as soon as possible and the process itself should be carried out in safe and hygienic conditions. If, for various reasons, the foreigner cannot be repatriated and remains in the territory of a state in armed conflict, he/she has the right to: receive individual or collective assistance intended for him/her, medical and hospital care if required due to his/her health condition (medical assistance must take place under the same rules as in the case of citizens of a given country), perform religious practices and benefit from clerical assistance, and right to be transferred from the territory particularly vulnerable to military operations (VI Geneva Convention, 1949).

The scope of protection of the civilian population during armed operations has been regulated in art. 48-49 and art. 51 of the Protocol I Additional. During this time, it is forbidden to use offensive and defensive acts of violence, threats to intimidate the civilian population and carry out military attacks without distinction. These provisions are addressed mainly to commanders of the armed forces, who should take the required precautions when planning a military attack (Leško, 1990) and exercise due diligence to prevent undesirable consequences and losses of civilian population or civilian goods.

During the occupation, military administration and civilian officials are obliged to treat civilians in a humane manner, and in particular to respect their dignity and religious beliefs and practices (Protocol I Additional, 1977). Moreover, they are strictly prohibited from using collective punishments, attacks on life, health, physical or mental balance (murders, physical and mental torture, corporal punishment and mutilations) and personal dignity (humiliating and degrading treatment, forced prostitution, attacks on decency). They also must not take hostages, deport or displace civilians from the occupied territories, unless there is a need to evacuate from the immediate danger zone. The civilian population in the occupied territory also has the right to protect property, conduct correspondence on family matters (Convention, 1907) and file complaints and appeals against decisions of the occupation administration. The occupation authorities should also provide the population with food and medicines (VI Geneva Convention, 1949). and, as far as possible, guarantee the functioning of institutions, medical and hospital services, as well as public health and public hygiene (VI Geneva Convention, 1949). The national associations of the Red Cross, Red Crescent, Red Lion and Sun and the civilian population may not be prohibited from caring for and collecting the wounded, sick and shipwrecked in the occupied areas. This activity cannot constitute grounds for harming, prosecuting, or convicting and punishing them (VI Geneva Convention, 1949).

Pursuant to art. 43 of the Regulations concerning the Laws and Customs of War on Land (1907), upon the authority of the legitimate power having passed into the hands of the occupant, the latter shall respect the laws in force in the country. It should be remembered that the occupation is temporary in nature, therefore it cannot change the status quo in the occupied area. The exception to this rule are situations in which the legal norms in force may constitute an obstacle to ensuring order and social life in the occupied territory and the implementation of the provisions of the 4th Geneva Convention. The occupying power may, in such a case, issue regulations of an administrative nature that will not act retroactively in accordance with the *lex retro non agit* principle. It is also permissible for security reasons to apply to the civilian population a precautionary measure in the form of restriction of freedom by designating a compulsory place of residence or internment in a camp (Leško, 1990). All persons who were detained, interned or imprisoned in connection with the ongoing armed conflict, should be released as soon as possible or the circumstances giving rise to their detention cease to exist (Randzio-Sajkowska & Sajkowski, 2006). If the detention is related to a crime committed in an international armed conflict, the accused individual is entitled to legal proceedings on the basis of generally recognised principles, expressed in the form of the right (Protocol I Additional, 1977):

- to be promptly notified in writing on the details of the alleged offense;
- to all entitlements and resources necessary to defend the accused individual;
- for the proceedings to be conducted as quickly as possible;
- to presumptions of innocence until proven in accordance with the law;
- for the case to be considered in the presence of the accused individual;
- to ask questions or to have the prosecution witnesses questioned and to bring in and question the defence witnesses under the same conditions as the prosecution witnesses;
- to public announcement of the judgment;
- to be instructed on judicial and other remedies available to him/her and on deadlines to use them.

In the event of a violation of the criminal law, the accused individual may be referred to a military court of the occupying state. That court, in turn, should rule in accordance with the domestic law or international public law in force at the time when the offense was committed. It is also permissible to order the death penalty for crimes committed intentionally, espionage and serious sabotage crimes that resulted in the death of at least one person, if the internal law in the occupied territory provides for such a penalty. However, the above form of punishment cannot be imposed on persons protected under the international humanitarian law of armed conflicts, who were under the age of 18 at the time of committing the prohibited act (Randzio-Sajkowska & Sajkowski, 2006).

However, the IV Geneva Convention provides for cases in which the civilian population may be deprived of the rights and privileges provided for civilians as defined by international humanitarian law of armed conflicts. These will include, in particular, situations in which a civilian is rightly suspected of engaging in an activity

harmful to the security of the state in which he/she is located, or where such activity is actually found in relation to him/her, as a result of his/her detention in the occupied territory as a spy or saboteur. Despite the above-mentioned circumstances, civilians cannot be deprived of the right to humane treatment, and in the event of legal proceedings being instituted against them, the right to a fair trial (Protocol I Additional, 1977). Loss of rights and privileges guaranteed by international humanitarian law is tantamount to a situation of direct participation in military operations, and thus the possibility of becoming a legitimate target of a military attack.

#### **4. Prohibited means and methods of military operations**

The regulations concerning forbidden means and methods of military operations constituted the basis for the creation of international humanitarian law of armed conflicts. In line with international custom, it is assumed that restrictions and prohibitions on the permissible forms and means used in armed conflicts should be formulated in the form of international conventions. On the basis of humanitarian law, a catalogue of rules concerning the issue of prohibited means of combat has been developed. These include, among others: the principle of not causing excessive suffering, the principle of differentiation, the principle of environmental protection and the principle of proportionality (Żeligowski, 2014).

Art. 35 of the Protocol I Additional obligates the parties to the armed conflict not to use weapons, missiles and materials that could cause unnecessary suffering or cause widespread, long-term and severe damage to the natural environment. Humanitarian law, however, does not clearly define what we can understand as a means of warfare. In the doctrine of international law, this concept includes weapons, weapons systems and platforms used to transport them, which, when used in an armed attack, may cause death and injury to the civilian population or destruction of civilian structures (Żeligowski, 2014).

Within the framework of international humanitarian law, we can distinguish three types of regulations relating to the means of military operations. The first prohibits the possession, use, purchase, sale and research of weapons and the destruction of previously possessed resources of a given means of warfare. It therefore refers to the weapon that poses the greatest threat to humanity. This includes mainly chemical weapons (poisonous warfare agents), biological weapons (viruses, bacteria, toxins), mines and traps (Protocol, 1996 & Convention, 1997), cluster munitions and nuclear weapons (Treaty 1968). The second legal regime prohibits the use of certain measures in armed conflicts. Therefore, it mainly concerns weapon systems that use technical solutions for peaceful purposes, therefore restrictions in the field of research into new technologies would be detrimental to social life. This category includes small calibre exploding rounds (incendiary ammunition, general purpose ammunition with a calibre not exceeding 30 mm - bullet Raufoss Mk 211 cal. 12.7), projectiles that expand easily in the human body (military rifle bullet, dum-dum bullets) (Declaration, 1899), fragments not detectable by X-rays (Protocol, 1980), laser blinding weapons (Protocol, 1995) and poisonous weapons. The third type is the least restrictive. It only introduces limitations related to the possibility of using certain categories of means of combat. These are weapons and ammunition allowed to be used in armed conflicts with the observance of certain safety rules, i.e. incendiary weapons (Protocol, 1980). However, this type of weapon cannot be used in connection with attacks on civilians and civilian structures, on military facilities located in places of concentration of civilians using aviation incendiary weapons, as well as on forests and other vegetation. This provision does not apply where it is used to disguise or conceal soldiers or is a military objective.

It should be emphasised at this point that the system of prohibited means of conducting military operations described above is not complete and exhaustive. The main reason for this is the continuous technological progress and the archaization of international humanitarian law of armed conflicts. In my opinion, it should also be extended to tumbling ammunition, ammunition with a high initial velocity, flechettes, projectiles with a core made of depleted uranium and incapacitating weapons (non-penetrative ammunition, crowd control, stun guns, testers, devices using microwaves and sound waves).

Normative standards regulating the methods of conducting military operations are of particular importance both for commanders and for soldiers constituting the armed forces. They indicate their rights and obligations

in the conduct of military operations and define the criteria according to which the entire process of a military attack should be carried out. International humanitarian law prohibits the use of methods of combat that cause excessive suffering to the civilian population (Protocol I Additional, 1977). Moreover, it is prohibited to kill, injure or capture an adversary by resort to perfidy (Protocol I Additional, 1977). Perfidy shall be understood as acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence. Such activities will include, in particular, pretending to be a protected individual (prisoner of war, member of the medical staff, clergy, civil defence representative, wounded, sick, shipwrecked person), unlawful use of international protection signs, feigning of an intent to negotiate under a flag of truce or of a surrender, the feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other States not Parties to the conflict (Protocol I Additional, 1977).

It is also forbidden to conduct total war (Protocol I Additional, 1977), to use the “scorched earth” method (Convention, 1977), to use starvation as a method of fighting (Protocol I Additional, 1977), depriving civilians of goods necessary for survival (Protocol I Additional, 1977), conducting military operations in sanitary, neutralized and demilitarized zones, attacking special objects, attacking parliament and persons excluded from combat (Convention, 1907), not sparing life (not giving pardon), committing murders, injuries and atrocities, abusing recognizable signs, robberies and deliberately destroying property, protecting military positions with people excluded from combat, forcing citizens of a hostile state to serve in foreign armed forces, exceeding the framework of self-defence, war necessity, reprisals (Bierzanek, 1978), use of propaganda of violation of international law (Geneva Conventions, 1949), propaganda of aggression (International Covenant, 1966), propaganda of genocide (Roman Statute, 1998), propaganda of war crimes (Protocol I Additional, 1977) and propaganda encouraging to serve in the enemy army (IV Geneva Convention).

## Conclusions

The basic functions of a democratic state include guaranteeing its citizens and all other persons under its jurisdiction a sense of security and protection against threats. This obligation results directly from legal and customary norms aimed at creating conditions conducive to ensuring elementary human rights, in particular the right to life and its protection. The tragic experiences of two world wars formed the basis to shape the current standards of humanitarian law. They were an impulse for the legal sanctioning of the principles of protection of prisoners of war, combatants, civilians and civilian facilities, and for the introduction of restrictions on the means and methods of military operations. They were to prevent the occurrence of further armed conflicts on a global scale. However, a reflection arises that the regulations contained in the Hague and Geneva law are not properly adapted to the specificity of armed conflicts that occur and may occur in the 21st century.

The fall of communism, the development of civilization, the progressive process of globalization, popularization of the Internet and international terrorism changed the approach to the building of a safe environment. Bearing in mind the above, it is necessary to redefine the problem of protection of civilians during armed conflicts. The international humanitarian law of armed conflicts is in danger of collapsing like it has never been before, due to the deregulation of its provisions, which do not keep up with the technological revolution.

Contemporary armed conflicts will most likely take the form of asymmetric civil wars and polarized conflicts. Especially the latter seem to be a huge threat to universal human rights, which require special protection. This issue is especially important during non-international armed conflicts, as ethnic cleansing or the destruction of certain social groups is a very common practice of military operations. Another major problem seems to be the aspect of dealing with detainees during armed conflicts, who, despite the guarantees under the Geneva Conventions, continue to be treated in an inhumane manner.

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