



Journal
of Danubian
Studies
and Research

Compliance with International Obligations Regarding Refugees, the Civilian Population and Prisoners of War

Stefan Gheorghe¹

Abstract: The provisions stipulated by the Hague Convention obligatorily imposed on all belligerent parties the observance and application of the articles provided by the text of the convention. In parallel, an important role will be played by the principles and regulations of the Geneva Convention, adopted in 1929 regarding the status of prisoners of war, which represented the essence of international humanitarian law, from the point of view of international law, and constituted legal obligations that had to be respected only by the signatory states of that act. Compared to the first international act adopted in 1864 in Geneva, under the name of the First Geneva Convention², which limited the conduct of war, the text had been modified in 1906 and later in 1929³ for a clearer definition of the status of prisoners of war. The merit for the adoption of the 1939 Geneva Convention on the status of prisoners of war goes to the Swiss authorities who, at the initiative of the International Committee of the Red Cross, recommended the adoption of a new convention from 1921 on the treatment of prisoners of war.

Keywords: war; states in conflict; international relations

In the relationship between international law and the field of international relations, there has always been, as is natural, a relationship of causality, of mutual conditioning that takes into account both the observance of the provisions of international law in force by all third countries and the establishment of new standards in the matter of law with the aim of regulating, in the best way, the relations between the states of the world. The interest in the emergence and creation of new legal norms derives from the continuous transformation of society that adapts to new requirements and that seeks to strengthen some rights and freedoms provided previously or to acquire new ones. In this process, the relations between law, in

¹ Associate Professor, PhD, Danubius University of Galati, Romania, Address: 3 Galati Blvd., 800654, Galati, Romania, Corresponding author: stefangheorghe@univ-danubius.ro.

² https://www.academia.edu/10293812/Protectia_prizonierilor_de_razboi.

³ <https://www.mae.ro/node/1514>.

general, and communities in particular, are also conditioned by social, technological progress and the political evolution of human communities. The process of modernizing the law consists, therefore, in capturing the dynamics of the collective interest to seek, reflect and have effective mechanisms for correlating legal relations with social and political ones in the highest way, according to the aspirations and interests of those concerned, respectively of members of different communities. A good example is the Laws of the Twelve Tables in ancient Rome, the Reforms of Solon and Cleisthenes in Athens, or the Code of Hammurabi in Mesopotamia.

The effectiveness of the establishment of rules of law in interpersonal relationships, between communities or states of the world, has been proven since the beginning of history through various written notes that took into account both land and maritime space or, later, air space. The prohibition of the use of force, of threats/intimidations with its use, has been a constant concern of all those attracted by a progressive policy in interpersonal relations, or between states, whether we are talking about lawyers, politicians, diplomats or economists alike. In classical Greco-Roman antiquity, the scientific arguments that could have stopped the path of war in international relations were insignificant, on the contrary, religious motivations conferred sufficient reasons in addition to political, military or economic ones to the leaders of that time in the desire to impose their own interests at the expense of the other states and peoples.

There were, however, numerous opinions blaming the war as a means of resolving differences between people, and here we should remember philosophers, such as Plato, Aristotle, or historians such as Thucydides, Polybios or Titus Livius, etc. They defined and described, in their works, war as something unnatural to humans and their attempts to explain and define the causes of conflicts sought to draw attention to the harmful causes on the population that wars between states had. All those in conflict should not have been allowed, if it were possible, the exaggerated use of force in the war with the aim of awarding victory at any cost. The need to respect some principles of international humanitarian law in the relationship between states in conflict (eg the principle of humanity, of necessity) has been identified since early on. The regulation of armed conflicts will gradually constitute a set of rules and legal obligations for all states at war.

Humanity's attention was focused more and more on this aspect, forced to endure the destructive actions of the armies of the various leaders whose ambition was to conquer as many peoples and territories as possible. Even under such conditions, both the Greeks (Zorin, Semionov, Skazkin & Hvostov, 1962, p. 52) and the Romans

considered that the war must be waged according to certain rules that entailed either the prohibition of the use of poisons, or attacking neighbors without a declaration of war, the necessity of granting an armistice for the burial of the dead, conditions considered *sine qua non*, without which you couldn't be part of the civilized world and not respecting them could be interpreted as acts of barbarism (Closca & Suceava, 1992, p. 11)!

In the medieval period, the difficulty of the means of communication between the different regions of the globe, the lack of commercial ties constituted a setback in what could be considered as a performing system of medieval international relations, of the type and level of the one existing in antiquity. The great migrations, the sporadic contacts at the economic, political and cultural level, the social and political disorganization after the collapse of the Roman empire delayed the emergence and formation of legal relations between the different states of the world in Europe and Asia, especially. The almost permanent state of war attracted the attention of certain thinkers, whether secular or Christian, who condemned the war in their writings, campaigning for the establishment of a permanent peace, especially between Christian states. (Saint Augustine, Thomas Aquinas, etc.). Under the leadership of the high Christian prelates, both Catholic and Orthodox, of the various crowned heads of some European states and for various political and economic interests, numerous holy wars, the crusades, were fought in order to defeat those who were not of the same faith.

The different plans were initiated for the regulation of wars and the peaceful resolution of conflicts or the application of specific, much more humane rules for the conduct of war, among which we mention arbitration as a solution in international relations. Among those who have been concerned with this aspect, we remember Thomas Morus in his work *Utopia*, Erasmus from Rotterdam with the work *Querela pacis* and Hugo Grotius with the work *On the Law of War and Peace*. regarding the conduct of war, many of which are now stipulated in international conventions and treaties. Many of these are maintained today and are the basis of those existing in the contemporary period;

- Notification of the state of war through a declaration of war;
- Prisoner of war regime;
- Treatment of the sick and wounded;
- Regime of enemy public properties;

- The conclusion of the armistice and the conditions of capitulation in war;
- Establishing the rights and obligations of neutral states vis-à-vis belligerent states in the field of maritime trade

In the case of the civilian population on enemy territory under the control of a third party, international rules were subject, until the 19th century, to some norms related to customary law and considered the fact that they should not be killed, wounded, seized or taken to captivity if he does not actively participate in military operations. The fact that it naturally opposed a passive resistance to some regulations imposed by the occupying power, without being related to the pressing needs of the war, could not be legal grounds for repression. On the other hand, the civilian population can be involved in military actions to support the front, without constituting themselves in military units as stipulated by the rules of international law. The condition¹ was that the weapons had to be carried in sight, and to respect the laws and customs of war. Also, with the appearance of non-combatants on the front, journalists, war reporters, etc., the rules stipulated that they should not be killed or injured. Regarding the medical and sanitary personnel, they must also be protected and respected in any circumstances. Thus, non-combatants had the right to a treatment similar to that of prisoners of war.

An important step in international relations at the end of the 19th century will be the Convention of July 29, 1899 from The Hague, regarding the laws and customs of war on earth. This was replaced by the Hague Convention² on the Laws and Customs of War on Land, dated October 18, 1907.

Therefore, the first world conflagration had as its international legal framework, for some of the belligerent states, the provisions of the convention in question which, having given the global character of the conflict, they brought a certain responsibility in the conduct of the war for the forces in conflict. The articles of the convention clearly state that they have no value unless the parties in a conflict were also signatories of this convention, for which each belligerent power would have been obliged to present the relevant instructions to its armed forces regarding to the laws and customs of war, in the event of a military conflict. At the same time, the invitation is addressed to all the other non-signatory states to adhere to the principles provided in the text of the Hague Convention of October 18, 1907.

¹ Cf Art 2 of the Regulation annexed to the Hague Convention of 1907.

² The Romanian state became a party to the convention after the ratification on March 1, 1912 by royal decree no. 442/February 1, 1912.

Neither the importance nor the role of the states in Asia, namely China, but not only, in the provision of assistance should be omitted here humanitarian, protecting the civilian population in war zones or respecting minimum rights in the case of refugees or prisoners of war. The signing, by it, of the Hague Convention of 1899 and joining the club of Western states represented a first step in the avoidance by the Chinese state of attracting an international stigma that would have prevented China from not complying with these standards! Unlike Western countries, in Chinese society, the provision of humanitarian assistance has been the responsibility of the state for thousands of years, not being a recent activity!

The Anglo-British wars, from the end of the 19th century and the beginning of the 20th century, drew the attention of the international public opinion on the aid that must be given to the civilian population in times of war. In this sense, we can recall the fact that a special situation, which at the time aimed at the protection offered to people of African origin, whether civil or military, was a modest one, with all the international support and sympathy enjoyed by the Burians in the conflict with the Great Great Britain, and despite the presence of numerous representatives on the ground of the National Red Cross Societies in Europe, but not only. The efforts of the international community to regulate the situation of war victims have contributed to the initiation and signing of international agreements such as:

- August 22, 1864 Geneva Convention for the amelioration of the condition of the wounded in land armed confrontations;
- 1867 International Conference of National Societies for the Care of War Victims;
- July 29, 1899 Declaration from The Hague regarding the prohibition of certain types of bullets and harmful gases;
- 1906 Geneva Convention for the improvement of the situation of the wounded and sick in armed campaigns;
- October 18, 1907 The Hague Convention for adapting the principles of the Geneva Conventions to maritime warfare; regarding the laws and customs of war on land; to the rights and duties of neutral powers and persons in case of war on land; regarding the bombardment by naval forces in time of war; to some restrictions on the exercise of the right of capture in war at sea; regarding the transformation of merchant vessels into war vessels; to the rights and duties of neutral powers in war at sea; regarding the start of hostilities;

The text of the Hague Convention regarding the rights and duties of neutral powers and persons in case of war on land will therefore represent a new standard in terms of compliance with the laws of war and will make precise references to the situation and status of interned belligerents and the wounded cared for by neutral¹. Thus, Chapter II of the aforementioned convention specifies: The neutral state that received military troops belonging to the belligerent forces on its territory will have the obligation to intern them, as far as possible from the front, in the camp or even lock them in fortresses and other places specially prepared for this purpose. Its right will also be applied in the situation in which it will decide whether the officers can be released, on their word of honor, taking the commitment not to leave the neutral territory without authorization. Without being signatories to another special convention, neutral states will provide the interned with clothing, food, medicine and all the aid required by humanity, specifying that, at the conclusion of the peace, compensation will be made for all the expenses incurred with all the interned. An extremely important provision referred to the situation of escaped prisoners of war. The neutral states that were faced with such a situation had to let them go free and if they accepted them, they also had the obligation to grant them a residence. A similar situation was stipulated by the text of the Hague Convention in the case of prisoners of war, brought by the military troops, who take refuge on the territory of the neutral power. Very important, for the signatory powers, were the provisions regarding the transport of the wounded and sick belonging to the belligerent states. Neutral states had the right to authorize the passage through their territory of trains with wounded and sick, belonging to states in a conflict, specifying that they should not transport personnel or war material. In order to avoid such situations, the state in question could dispose of any kind of safety and control measures necessary for the fulfillment in good conditions of the obligations of the convention regarding the wounded and sick. At the same time, the latter, once they arrived on the territory of the neutral state, regardless of which of the belligerent armies they belonged to, had to be guarded in such a way that they could no longer participate in military operations, favoring in one way or another the fate of the war. The signatory states of the Hague Convention will introduce an express provision aimed at the wounded and sick interned on the territory of neutral states, namely, the applicability of the Geneva Convention, from 1907, regarding the situation of the wounded and sick.

¹ The Hague Convention regarding the rights and duties of neutral powers and persons in case of war on land, art 16, Chapter II, states: The nationals of a state that takes part in the war are considered as neutral persons.

References

- Bercan, Gh. & Ciachir, N. (1984). *Diplomația europeană în epoca modernă/ European diplomacy in the modern era*. Bucharest.
- Buzan, Barry & Little, Richard (2009). *Sistemele internaționale în Istoria Lumii/ International systems in World History*. Iasi: Collegium Polirom.
- Closca, I. & Suceava, I. (1992). *Dreptul internațional umanitar/ International humanitarian law*. Bucharest: Sanasa Publishing House and Press, p. 11.
- Goodwin-Gill, Guy S. (2021). *The Refugee in International Law*, ed. III. Oxford: Oxford University Press.
- Gray, Colin S. (2010). *Razboiul, Pacea și Relațiile Internaționale, o introducere în istoria strategică/ War, Peace and International Relations, an introduction to strategic history*. Iasi: Polirom.
- KISSINGER, Henry (2003). *Diplomația/ Diplomacy*. Bucharest: All Publishing House.
- Waltz, Kenneth, N. (2006). *Teoria Politicii Internaționale/ Theory of International Politics*. Iasi: Collegium, Polirom.
- Zorin, V.A.; Semionov, V.S.; Skazkin, S.D. & Hvostov, V.M. (1962). *Istoria diplomatiei/ The history of diplomacy*. Bucharest: Scientific Publishing House.
- https://irido.ro/irido/pdf/754_ro.pdf.
- https://irp.md/uploads/files/2014-04/1396950800_culegere-de-acte-internationale-in-domeniul-justitiei-penale-vol-i-1.pdf.
- https://www.academia.edu/10293812/Protectia_prizonierilor_de_razboi.
- <https://www.icrc.org/en/document/european-humanitarian-forum-2023>.
- <https://www.icrc.org/en/war-and-law/protected-persons/prisoners-war-detainees>
- <https://www.juridice.ro/681254/migratia-climatica-potentialitate-sau-actualitate.html>.
- <https://www.mae.ro/node/1514>.
- <https://www.mediafax.ro/externe/crucea-rosie-isi-intreupe-operatiunile-in-ucraina-din-motive-de-securitate-21229467>.
- https://www.ugb.ro/Juridica/Issue7RO/3._Protectia_refugiatilor_potrivit_reglementarilor_internationale.Ramona_Paraschiv.RO.pdf.