

PRAVNI I EVOLUTIVNI ASPEKTI OGRANIČENJA I ZABRANA RATOVANJA

Doc. dr Željko Petrović¹

Sažetak

Međunarodno humanitarno pravo ima za cilj da ograniči destruktivne efekte oružanih sukoba. Ovaj rad ukazaće na određene načine ratovanja koji su zabranjeni i ograničeni po međunarodnom humanitarnom pravu ili bi trebali biti odnosno na razvoj njihovih zabrana i ograničenja. Problem ovog rada jesu ograničenja i zabrane načina ratovanja po međunarodnom humanitarnom pravu, odnosno njihovi pravni i evolutivni aspekti. Međunarodno humanitarno pravo ima za cilj da ograniči destruktivne efekte oružanih sukoba, da se patnje i razaranja svedu na samo neophodnu mjeru. Posmatrano kroz istoriju već prva pravila ove grane prava bavila su se pitanjem dozvoljenosti odnosno nedozvoljenosti načina ratovanja, dok je vremenom to pitanje bilo sve aktuelnije zbog sve većih destruktivnih efekata ratovanja i nepotrebnih razaranja u oružanim sukobima. Predmet istraživanja obuhvata prvenstveno period od Haških konvencija usvojenih 1907. godine kao jednih od prvih ugovornih zabrana iz međunarodnog humanitarnog prava, pa sve do stanja u međunarodnom humanitarnom pravu danas.

Ključne riječi: Rat, konvencije, način ratovanja, istorija, ratno pravo, sukobi.

¹ Sveučilište Hercegovina, Mostar, e-mail: petrovicz@yahoo.com

UVOD

Međunarodno humanitarno pravo uređuje odnose između država u toku trajanja oružanog sukoba, prije svega kako bi se zaštitili civili, ratni zarobljenici, ranjenici, ali i sva druga lica u cilju humanizovanja ovih odnosa koliko je to moguće, jer rat sam po sebi predstavlja zlo i negaciju svega humanog.

Takođe cilj je da se zaštite i određeni objekti od destruktivnih efekata oružanih sukoba, tako da se uvode određene zabrane i ograničenja sredstava i načina ratovanja. Prije svega te zabrane i ograničenja zasnivaju se na Ženevskim i Haškim konvencijama, sudskoj praksi i međunarodnom običajnom pravu, ali i na nizu drugi međunarodnih konvencija koje su države zaključile. Te zabrane i ograničenja su tekovina savremene međunarodne zajednice i stvaranja svijesti da oružani sukobi ugrožavaju cijelo čovječanstvo.

Ograničenja i zabrane u oružanim sukobima postojala su još u antičkim vremenima, dok međunarodno humanitarno dobija karakter kakav danas ima u 19. vijeku. Osnova ovih pravila jeste pokušaj stvaranja ravnoteže između ratnih nastojanja i načela humanosti. Prvi i Drugi svjetski rat pokazali su koliko oružani sukobi mogu biti destruktivni, a tome je posebno doprinjeo kasniji pronalazak nuklearnog i termonuklearnog oružja i njegovo usavršavanje do neslučenih razmjera u toku Hladnog rata. Tako su države zaključivale određene međunarodne sporazume kojima su se uvodila izvjesna ograničenja i zabrane u pogledu sredstava i načina ratovanja uz mogućnost preduzimanja određenih sankcija prema onim koji ih ne poštuju. Rat i dalje postoji i države mu pribjegavaju kada drugim sredstvima ne mogu da ostvare određene ciljeve, dok se međunarodnim humanitarnim pravom pokušavaju ublažiti patnje koje on proizvodi, te zaštititi prije svega određeni krug lica u čemu posebnu ulogu imaju pravila koja se odnose kako na sredstva ratovanja tako i načine ratovanja.

U radu će se ukazati na posljedice primjene određenih načina ratovanja koji su zabranjeni ili ograničeni ili bi trebali biti po međunarodnom humanitarnom pravu imajući u vidu strahovita stradanja koja ona prouzrokuju, kao i trenutno stanje u međunarodnom pravu u pogledu njihove zabrane i ograničenja.

Rad treba da doprinese razvoju međunarodnog humanitarnog prava, ukazujući na potrebe humanizacije, koliko je ona moguća kod same primjene načina ratovanja. Treba da se ograniči dozvoljeno od zabranjenog i ukaže potreba boljeg poznavanja ove oblasti međunarodnog humanitarnog prava, kao i da se doprinese njegovom razvoju.

OGRANIČENJA I ZABRANE NAČINA RATOVANJA

Kroz čitavu istoriju ljudske civilizacije države su nastojale da usavrše takve načine ratovanja kojima bi u oružanim sukobima ostvarile sto lakšu pobjedu nad neprijateljem. Države su pribjegavale upotrebi raznih načina ratovanja koji su često bili zasnovani na ideji cilj opravdava sredstvo. U tom pravcu korišteni su razni načini ratovanja koji su imali cilj nanošenje što većih gubitaka neprijatelju. Oni su često bili nehumani i kao takvi još kod starih naroda bili su osuđivani i zabranjivani.

Sa razvojem nauke, tehnologije i samim razvojem cjelokupnog ljudskog društva, došlo je do otkrića novih oružja koja su imala strahovitu destruktivnu moć i predstavljala opasnost ne samo po pripadnike neprijateljskih oružanih snaga već i cijelu okolinu, a danas njegovim usavršavanjem i cijelo čovečanstvo. Primjetilo se da određena sredstva ratovanja nanose nepotrebne patnje što je bilo protivno zakonima humanosti. Takođe, vremenom ratovi su gubili dozu viteškog koja je često i pored svega bila protkana kroz međusobne oružane sukobe država (Tofler, 1998).

Međutim, ograničenja i zabrane koja su činjena u ovom pravcu nastajala su jako sporo, zbog nespremnosti država da se odreknu ratne tehnike koju su usavršile i koja predstavlja značajan činilac za pobjedu u oružanom sukobu. Vremenom su uvedene zabrane i ograničenja i taj proces je i danas u toku. 20. vijek predstavlja vijek u kome su otkrivena i usavršena strahovita oružja koja su u stanju uništiti čitavo čovječanstvo. Uporedo s tim činjeni su strahoviti zločini nad civilnim stanovništvom i došlo je do sukoba neviđenih razmera u kojima niko nije bio pošteđen.

Rat karakteriše izbijanje na površinu najprimitivnijeg i najgrubljeg nasilja. Kada države ne mogu ili neće da nesuglasice i razlike riješe putem mirne diskusije, progovara oružje. Rat neminovno ima za posljedicu neizmjernu patnju i stradanje ljudi, te ogromne štete na objektima. Rat je po definiciji zlo, kao što je i Nirnberški sud postavio u svojoj osudi najvećih ratnih zločinaca Drugog svjetskog rata. Niko ni danas ne može opravdati rat i sve patnje koje nanosi, kao cilj samom sebi. Ipak, države nastavljaju da vode ratove i često krše osnovna pravila međunarodnog humanitarnog prava, ne birajući ni način ni sredstvo da postignu vojni uspeh. Takvo postupanje je neprihvatljivo i osuđeno od strane međunarodne zajednice. Kao što je Žan Žak Ruso sumirajući osnovne principe na kojima počiva međunarodno humanitarno pravo istakao, da svrha ratničkog napada nikad ne smije biti fizičko uništenje neprijatelja i da je rat odnos između država, a ne čovjeka i čovjeka i da su pojedinci u njemu neprijatelji samo slučajno (Ruso, 1949).

Rat predstavlja karakteristiku i pratilac je savremene međunarodne zajednice, tako da je potrebno bar ga donekle humanizovati, ako je to uopšte moguće.

Tačnije, potrebno je ograničiti sukobljene strane u pogledu izbora sredstava i načina ratovanja, što treba da bude opšte prihvaćeno u eventualnim oružanim sukobima.

Ipak, istorija je pokazatelj da u starim vremenima gdje god su izbijali sukobi između država, plemena, klanova, ti sukobi nisu imali rezultat borbu do kraja, uništenja, nego se pojavljuju pravila, koja su često i nesvjesna, sa svrhom ograničavanja posljedica nasilja. Takva pravila preteče današnjeg međunarodnog prava mogu se naći u svim kulturama.

Samo međunarodno humanitarno pravo ima za cilj da ograniči destruktivne efekte oružanih sukoba. Postoji stalno nastojanje da se patnje i razaranja svedu na samo neophodnu mjeru. Već prva ugovorna pravila međunarodnog humanitarnog prava bavila su se pitanjem dozvoljenosti odnosno nedozvoljenosti načina ratovanja. U međunarodnoj zajednici postoji stalna težnja da se odnosi u ratu donekle humanizuju, da primjenjeni načini ratovanja što manje nanesu patnju i izbjegnu se nečovječna postupanja. Danas je naročito aktuelan ovaj problem zbog sve većih destruktivnih efekata sredstava ratovanja i nanošenja nepotrebnih razaranja u oružanim sukobima. Kroz cjelokupan proces uvođenja ograničenja i zabrana načina ratovanja nastojao se naći nužan kompromis između vojne potrebe i zahtjeva humanosti. Postoji potreba da se ustanove granice dozvoljenog od nedozvoljenog po međunarodnom humanitarnom pravu, kao i da se utvrdi domašaj zabrana i ograničenja načina ratovanja i njihovo poštovanje u praksi. Treba da se utvrde i sami ciljevi zabrana i ograničenja načina ratovanja i njihov domašaj u budućnosti. Pod načinima ratovanja podrazumjevaju se postupci i metode koje sukobljene strane koriste u vođenju oružanog sukoba. Pod međunarodnim humanitarnim pravom podrazumjeva se dio međunarodnog javnog prava koji uređuje odnose između država u oružanom sukobu i povodom oružanog sukoba. Ono je kompromis između vojne potrebe i zahtjeva humanosti koji ne spriječava vojničku pobjedu već zahteva da se ne nanose suvišne patnje i razaranja.

Međunarodno humanitarno pravo predstavlja dio međunarodnog javnog prava i kao takvo obuhvata skup pravnih pravila kojim se uređuju odnosi, odnosa prava i obaveze zaraćenih strana, kao i odnosi između njih i neutralnih strana u toku rata.

Posljednjih decenija učinjeni su veliki naponi u međunarodnoj zajednici u pogledu ograničenja i zabrana načina ratovanja. Postoji tendencija u međunarodnom humanitarnom pravu sve većih ograničenja i zabrana sa jedne strane i sa druge strane sve grubljih kršenja istih na međunarodnom planu. Treba da se ograniči dozvoljeno od zabranjenog i ukaže potreba boljeg

poznavanja ove oblasti međunarodnog humanitarnog prava, kao i da se doprinese njegovom razvoju.

U međunarodnoj zajednici postoji potreba humanizovanja odnosa između sukobljenih strana kroz načelnu zabranu upotrebe određenih načina ratovanja, kao i njihovu konkretizaciju. Ograničenja i zabrane načina ratovanja predstavljaju kompromis između članica međunarodne zajednice kojima takva pravila nisu išla u korist i onih koje su na njima izričito insistirale. Potrebno je naglasiti da međunarodno humanitarno pravo štiti civile i civilne objekte i sve druge objekte koji nisu vojni, kulturna dobra, sanitetske objekte i transportere, objekte i instalacije koje sadrže opasne sile i prirodnu okolinu.

Što su sredstva ratovanja savremenija, ratna razaranja su ubojitija, a gubici u ljudstvu, naročito na strani civilnog stanovništva, veći su i pogubniji. U savremenom ratu nema kao nekada, jasnog razgraničenja između fronta i pozadine, ratom je obuhvaćena ne samo oružana sila, već cjelokupno stanovništvo, privreda i teritorija. Savremena vazduhoplovna tehnika i softicirani raketni sistemi mogu da dejstvuju stotinama, pa čak i hiljadama kilometara u dubinu teritorije protivnika tako da savremeni rat ima totalan i opšti karakter (Vujković, 1998). To se već vidi i na primjeru dosadašnja dva svjetska rata, ali i današnjim ratovima koji se vode. U Prvom svjetskom ratu učestvovalo je 38 država sa 1,5 milijardi stanovnika, vođen je na prostoru od 4 miliona km², mobilisano je 70 miliona ljudi i završen je sa 9 miliona žrtava. Drugi svjetski rat obuhvatio je 58 država sa 2,1 milijardi stanovnika na prostoru od 30,5 miliona km², mobilisano je 110 miliona ljudi, a završen je sa 37 miliona žrtava. U oba rata veliki broj lica je stradao od oružja za masovno uništenje koje ne pravi razlike ni u pogledu prostora ni kategorije lica.

Klasična pravila međunarodnog humanitarnog prava uređuju tri cjeline: rat na kopnu, rat na moru i rat u vazduhu. U tom smislu postoje određena pravila, odnosno konvencije. Međutim u savremenim uslovima postojanja oružja za masovno uništenje i drugog savremenog oružja ova pravila nisu strogo odvojena i zasebna već u nedostatku drugih, shodno se primjenjuju u svim slučajevima. Ta podjela gubi na značaju jer moderno oružje dejstvuje multikompleksno i kombinovano u vazduhu, vodi i na kopnu.

Politika sile i pribjegavanje sili u prošlosti imala je za cilj ostvarivanje jedne pretenzije, teritorijalne ili ideološke, određene koristi ekonomske ili političke. I kroz neposredne te koristi određivala su se mjerila na osnovu kojih se pribjegavalo sili. U današnjoj svjetskoj politici zasnovanoj na mogućoj primjeni nuklearne sile taj elemenat faktičke koristi otpada. Eventualni nuklearni rat bi bio rat sveopšteg uništenja, rat bez pobjednika i poraženog. Zato su i velike

sile nastojale da minimiziraju pribjegavanje sili u svojim spoljnim politikama, ali se nerado prihvataju ograničenja u tom pogledu.

Veliki napredak u razvoju ratne tehnike poslednjih decenija doveo je do fundamentalnih promjena u načinu ratovanja. U ratne tehnologije uvode se savremeni elektronski uređaji, računari, radari, laseri, oružja sa teledirigovanom energijom itd., što je imalo za posljedicu automatizaciju ratnih operacija. Smanjen je obim ljudskog angažovanja, a daje se primat nauci, tehnici, visoko osposobljenom i profesionalnom osoblju. Razvoj ratne tehnike išao je ispred pravnog regulisanja, dovodeći tako do pravnog vakuma. Sredstva ratovanja su se brže razvijala nego pravni poredak. Savremeno međunarodno ratno pravo nije u mogućnosti da reguliše sve slučajeve, što je prije svega rezultat nespremnosti mnogih razvijenijih država da se povinuju novim ugovornim zabranama ili ograničenjima u tom pogledu. U pogledu humanizacije rata, učinjeni su veliki naponi, ali taj se proces odvijao jako sporo i uz stalnu izgradnju kompromisa između onih kojima takva pravila nisu išla u korist i onih koji su na njima izričito insistirali. Međutim naprijed navedeni osnovni principi međunarodnog humanitarnog prava, kao i *De Martensonova klauzula* dovoljno su snažna podloga za procjenjivanje spornih pitanja. Ta pravila imaju neprolazan značaj i u njihovim okvirima treba cijeniti dozvoljenost, odnosno nedozvoljenost primjene određenih načina ratovanja.

PRAVNI I EVOLUTIVNI ASPEKTI OGRANIČENJA I ZABRANA NAČINA RATOVANJA

U dosadašnjem razvoju međunarodnog humanitarnog prava postoji tendencija ograničavanja i zabrane određenih načina tj. postupaka i metoda u vođenju rata. Kao što strane u sukobu nemaju neograničeno pravo izbora sredstava ratovanja, tako nemaju pravo izbora načina ratovanja. Od davnina se poštovalo načelo da se data riječ u ratu mora poštovati, bez obzira što je ona data neprijatelju, naročito ako je u pitanju uslovna predaja, prekid vatre i sl. Ratna pravila su istakla zabranu ratovanja koja se kose sa vojničkim moralom i časti. Mnoštvo drevnih tekstova, kao što su Mahabarta, Biblija, Kuran, sadrže pravila koja pozivaju na poštovanje neprijatelja. Tako Vikajet spis sačinjen krajem 13. vijeka, na vrhuncu arapske vladavine Španijom, sadrži kodeks pravila ratovanja.

I stara običajna ratna pravila su zabranjivala ratovanje na način suprotan moralu i časti ratnika i svaki prekršaj ovih pravila se oštro kažnjavao. Morala se data riječ ispoštovati i prema neprijatelju dok su se suprotni postupci smatrali perfidijom (vjerolomstvom). Perfidije kao postupci u ratu su bile zabranjene još

u stara vremena kao i danas po međunarodnom humanitarnom pravu. Perfidijama su pribjegavale mnoge vojske u međusobnim sukobima, tako da skoro nije bilo rata u kojem ovi načini rata nisu korišteni. Kroz čitavu istoriju, države se koriste raznim perfidijama i ratnim lukavstvima da ostvare vojnu pobjedu. Kad su međusobno zaratile kineske države Vu i Jui, država Vu je kao prethodnicu poslala tri hiljade razbojnika da bi na protivnika ostavila utisak svoje vojne dezorganizovanosti i tako namamila državu Jui da prva napadne. Neki robijaši su pobjegli, a neki se predali, vojska države Jui se borila protiv njih, da bi kasnije pretrpjela poraz od vojske države Vu. Kao što je pisao stari kineski ratnik i filozof Sun Cu „Kad ste blizu neprijatelja, trudite se da ostavite utisak kako ste daleko, kada ste daleko, trudite se da ostavite utisak kako ste blizu. Uvucite neprijatelja u borbu u kojoj imate dobre izgleda da pobjedite. Glumite nered u svojim redovima, a potom udarite na neprijatelja i iskoristite njegovu zbunjenost“ (Sunc Cu, 2022).

Ratna lukavstva se redovno koriste u ratnim operacijama i sami vojnici se obučavaju za njihovu primjenu. Veliko ratno lukavstvo koje je po nekima dalo saveznicima odlučujuću prednost u Drugom svjetskom ratu, bilo je kada su prevarili Nijemce 1944. godine da će se iskrcati u Pade Kaleu, a iskrcavanje je bilo planirano i ostvareno u Normandiji (Perazić, 1966).

Kako stoji u nekim starim zapisima, još je Muhamed govorio da je ratno lukavstvo ponekad korisnije od pomoći kakvog plemena, a arabljanski pisac Ibn Kaldun je u svojim „Istorijskim Prolegomenama“ zapisao: „U ratovima pobjeda obično zavisi od moralnih uzoraka koji utiču na duh i na maštu: množina vojske, izvrsnost oružja i junaštvo u napadu dovoljno su ponekad da se dođe do pobjede, ali su ta sredstva od mnogo manjeg dejstva negoli moralni utisci. Stoga je upotreba ratnog lukavstva najkorisnija, jer ona vrlo često donose pobjedu“. Gracijan i Sveti Toma Akvinski takođe su potvrdno govorili o zakonitosti pribjegavanju lukavstvu i ratnom varanju, kao i kasnije u srednjem vijeku veliki broj pravnika i filozofa (Nis, 1987). Vlade zaraćenih država na početku Drugog svjetskog rata su se obavezivale da će poštediti civilne objekte koji su zaštićeni po međunarodnom humanitarnom pravu. Ruzvelt je 1939. godine uputio poziv vladama Francuske, Velike Britanije, Njemačke, Italije i Poljske koje su se na osnovu njega javno izjasnile, da ako budu uvučene u rat, da će voditi vojne operacije tako da zaštite civilno stanovništvo, kao i civilne objekte. Međutim, Drugi svjetski rat je bio klasični primjer velikog stradanja civila i ogromnih razaranja civilnih objekata, koji su imali za cilj slabljenje morala stanovništva i pritisak na vlade drugih država da popuste pred drugom ratujućom stranom (Perazić, 1966). Kroz čitavu istoriju ratovanja može se primjetiti da su se zaraćene strane koristile raznim ratnim lukavstvima, metodama, načinima ratovanja kako bi ostvarile ratni uspjeh, tako da je postojala potreba ograničavanja i zabrane određenih postupaka koji bi se

smatrali nedozvoljenim, a sve u cilju dovođenja određenog reda u sam rat i zaštite određenih lica kao i objekata. Tako su sama ratna pravila vodila računa o poštovanju nekih ljudskih prava prije nego što su ona i zagarantovana na opšti način. Za tim samim postoji potreba zbog izuzetne situacije u kojoj se nalaze ljudi koji su u ratu izgubili zaštitu svoje države i u vlasti su protivničke države, koja se prema njima često ophodi kao prema „neprijateljima“ (Dimitrijević, Račić, 2007).

Određena ograničenja u pogledu načina ratovanja su uvedena još Pariskom pomorskom deklaracijom iz 1856. godine. Ona zabranjuje gusarenje i zapljene neutralne imovine pod neprijateljskom zastavom. Posebna ograničenja uvode Haške konvencije iz 1907. godine, a kasnije i Ženevske konvencije iz 1949. i 1977. godine. Sva ova pravila koja se odnose na ograničavanja i zabrane načina ratovanja, kao i pravila koja se odnose na sredstva ratovanja imaju krajnji cilj humanizaciju rata koliko to dopušta vojna potreba.

Haškim pravilnikom o zakonima i običajima rata na kopnu iz 1907. godine je zabranjeno:

- vjerolomno ili perfidno ubijanje ili ranjavanje lica koja pripadaju oružanim snagama protivničke strane, kao i njihovih građana. Vjerolomno ubijanje podrazumjeva svaku radnju koja u sebi sakriva podmuklost sa ciljem ubijanja neprijatelja. Takav slučaj npr. predstavlja obustava otpora jedne ratujuće strane, kako bi se druga strana prevarila i prišla na poziv radi pregovora, pa se na nju otvori vatra iz oružja. Takođe, slučaj kada se pripadnik oružanih snaga pretvara da je mrtav ili ranjen pa mu se neprijatelj približi da provjeri ili da mu pomogne ako je ranjen, a ovaj na njega otvori vatru iz oružja. Ali ako vojnik ovo čini da bi izbjegao zarobljavanje to nije perfidija, nego ratno lukavstvo koje je dozvoljeno;
- objavljivanje da se nikome neće poštediti život. Zabranjeno je to činiti i prema ratnim zločincima, kao i jedinicama koje su opkoljene, te koje bi se na taj način prinudile da se predaju;
- uništavanje ili pljenidba neprijateljske imovine, osim u slučajevima kada bi to nalogala vojna potreba;
- prisiljavanje državljana protivničke strane da uzimaju učešće u ratnim operacijama usmjerenim protiv njihove zemlje i slučaju ako su oni bili u njihovoj službi prije početka rata;
- ubijanje ili ranjavanje neprijatelja poslije polaganja oružja ili ako je ostao bez sredstava za borbu, te se bezuslovno predao;

- upotrebljavanje protivno pravilima znaka parlamenta, državne zastave neprijatelja, neprijateljske vojne oznake, neprijateljske uniforme i međunarodno poznatih znakova kao što su znak Crvenog krsta itd.;
- napadanje ili bombardovanje bilo kojim sredstvima nebranjenih gradova i drugih nebranjenih mjesta kao i svako namjerno bombardovanje civila;
- pljačkanje odnosno prepuštanje pljački gradova i ostalih mjesta,
- pljenidba ili uništavanje podmorskih kablova koji vezuju okupiranu teritoriju sa nekom neutralnom teritorijom, osim ako drugačije ne zahtjeva vojna potreba;
- prisiljavanje stanovništva okupirane teritorije na davanje podataka o vojsci druge zaraćene strane, njenim odbrambenim sredstvima ili prisiljavanje stanovništva na polaganje zakletve neprijatelju.

Konvencija o pravima i dužnostima neutralnih sila i lica u slučaju rata na kopnu iz 1907. godine zabranjuje sledeće postupke:

- prevođenje preko teritorije neutralne sile trupa ili konvoja, sa municijom ili opremom od strane zaraćene strane;
- instaliranje na teritoriji neutralne sile radio-telegrafskih stanica ili bilo kojeg drugog uređaja namjenjenog da služi kao sredstvo veze sa zaraćenim snagama na kopnu ili moru;
- upotrebljavanje bilo kojih uređaja koji služe kao sredstvo veze, a uspostavljeni su prije rata na teritoriji neutralne sile isključivo u vojne svrhe, a koji nisu bili otvoreni za službu javnog saobraćaja;
- osnivanje od strane zaraćenih strana na teritoriji neutralne sile boračkih jedinica ili kancelarija za vrbovanje.

Konvencija o bombardovanju od strane pomorskih snaga u vrijeme rata iz 1907. godine zabranjuje:

- bombardovanje nebranjenih luka, gradova, sela naselja ili zgrada;
- prepuštanje pljački grada ili mjesta, čak iako su zauzeti na juriš.

I neke druge konvencije donesene na Drugoj mirovnoj konferenciji u Hagu 1907. godine sadrže klauzule o zabrani određenih postupaka u pogledu načina ratovanja od strane zaraćenih ili neutralnih sila. Međutim i posle donošenja ovih pravila povrede su bile jako česte u svjetskim ratovima, a tako i u ranijim ratovima. U Južnoj Africi od 1899. do 1900. godine u ratu sa Burima, Englezi su više puta pribjegavali upotrebi znaka crvenog krsta i bijele zastave. Sličnih

postupaka je bilo u ratu Rusa i Japanaca od 1904. do 1905. godine. Takođe Nijemci su u Prvom svjetskom ratu upotrebljavali znak crvenog krsta. Oktobra 1912. godine, Turci su podigli bijelu zastavu istočno od Skadra, te su Crnogorce koji su im prišli zasuli vatrom i savladali na taj nedozvoljen način. Iste postupke su Nijemci koristili u Belgiji, Francuskoj i Italiji da bi savladali neprijatelja. Austrougarski vojnici su koristili uniforme italijanskih vojnika u Prvom svjetskom ratu, a takođe neprijateljske uniforme su koristili i Bugari 1917. godine. Rusi su u ratu sa Japanom 1904. i 1905. godine, koristili uniforme treće strane, tačnije kineske vojske. I u Drugom svjetskom ratu Nijemci su 1944. godine koristili američke uniforme. Uz sve ovo treba naglasiti da se ženevskim znakom crvenog krsta izjednačava znak crvenog polumeseca, crvenog lava i crvenog sunca (Perazić, 1966).

Ženevska konvencija iz 1949. godine i dopunski protokoli iz 1977. godine sadrže nova ograničenja i zabrane u pogledu načina ratovanja. Protokol iz 1977 godine, je jedna od konvencija koja pripada tzv. Ženevskom pravu. Haško pravo međutim postaje pravi zakon o vođenju rata, samo kroz Protokol. Iz datog slijedi da se haško pravo i ženevsko pravo spajaju u Dodatnom protokolu. Razlika između dva grada, kao mjesta gdje se pravo razvijalo i mjesta koja pojedinačno simbolizuju veliki doprinos međunarodnom humanitarnom pravu, je sada samo akademska (Gaser, 1999)

Ovi propisi zabranjuju:

- nečovječno postupanje sa ranjenicima, bolesnicima i brodolomnicima pripadnicima oružanih snaga protivnika, kao i ugrožavanje njihovog života i ličnosti;
- nečovječno postupanje sa ratnim zarobljenicima i svaki postupak koji može da dovede do njihove smrti ili ozbiljnog narušavanja njihovog zdravlja;
- napade na civilno stanovništvo i pojedinačne kategorije civila, uključujući i napade bez izbora ciljeva, napade na civilne objekte, napade na mjesta i zone bezbjednosti koji koriste se za njihovo stavljanje van domašaja ratnih dejstava, fizička i moralna prinuđavanja na davanje podataka, mučenje gladu, kolektivno kažnjavanje, zastrašivanje, terorisanje, pljačkanje, uzimanje talaca, ubijanje, izlaganje represalijama, mučenje, nečovječno postupanje, prouzrokovanje velikih patnji i prouzrokovanje ozbiljnih povreda tijela i zdravlja, progonstvo i preseljavanje na drugu teritoriju, prinuđavanje na služenje u tuđoj vojsci itd.;
- perfidije;

- napade na vojne i civilne sanitetske jedinice, bolnice, sanitetske Transporte i sredstva tih transporta (vazduhoplove, brodove i kopnena sredstva prevoza) i sanitetsko osoblje;
- zloupotrebljavanje znaka raspoznavanja Crvenog krsta, Crvenog polumjeseca, Crvenog lava i Crvenog sunca i drugih amblema, znakova i signala utvrđenih konvencijama iz 1949. godine uključujući zastavu primirja, znak raspoznavanja UN, osim onako kako je odobrio UN;
- korištenje zastave, vojnih amblema, oznaka i uniformi neutralnih i drugih država koje nisu strane u sukobu, odnosno protivničke strane za vrijeme napada ili sa ciljem odbrane, podsticanja, zaštite ili ometanja vojne operacije;
- izricanje naredbi da ne smije biti preživelih ili prijetnje protivniku i vođenje neprijateljstava na toj osnovi;
- napade na osobe koje iskaču padobranom iz vazduhoplova koji je u nevolji, dok se spuštaju na zemlju;
- napade bilo koje vrste na neprijateljske spomenike kulture, umetnička djela ili hramove koji čine kulturno ili duhovno naslijeđe naroda, korišćenje ovih objekata za pomoć vojnim akcijama;
- vojne akcije koje za imaju cilj ili od koji se može očekivati oštećenje prirodne okoline, štetne po zdravlje ili opstanak civilnog stanovništva;
- napade na nebranjena mjesta i demilitarizovane zone i dr.

Ženevske konvencije opravdale su svoje postojanje primjenom u oružanim sukobima. Njihova praktična primjena, spremnost država da ih poštuju i njihovo nastojanje da se izbjegnu povrede pravila, prihvatanje i angažovanje predstavnika međunarodnih organizacija, a posebno delegacija Međunarodnog komiteta Crvenog krsta i UN, ukazuju na stepen njihovog kvaliteta i zaštite humanitarnih načela i principa. Primjena ovih pravila, samo njihovo poštovanje i nepoštovanje, znatno je uticalo na međunarodne odnose i njihove ukupne promjene. Prvi put se u istoriji međunarodnih odnosa dogodilo da pravo direktno utiče na složena kretanja u međunarodnim odnosima. Međunarodne organizacije su budno pratile primjene Ženevskih konvencija, što je omogućilo da se uoče njihovi nedostaci i nejasnoće, te sagledaju pravci daljeg usavršavanja i samog pristupa reformi pravila (Jončić, 2003).

Međunarodno humanitarno pravo uvodi uglavnom bezuslovne zabrane načina ratovanja, dok u određenim slučajevima te zabrane su uslovljene zahtjevima vojne potrebe. Vojna potreba predstavlja jako važno pitanje u teoriji i praksi

međunarodnog humanitarnog prava. Ona predstavlja posebne osnove za neprimenjivanje nekog međunarodnog pravila u cjelini ili djelimično, koji mogu nastati kada bi neka strana u sukobu utvrdila da bi njena primjena bila iz političkih, vojnooperativnih ili drugih sličnih razloga, otežana ili onemogućena.

Zabrane koje se odnose na načine ratovanja prvenstveno imaju za cilj da zaštite:

- civile i civilne objekte;
- sve druge objekte koji nisu vojni;
- kulturna dobra;
- sanitetske objekte koji nisu vojni;
- objekte civilne zaštite;
- objekte i instalacije koje sadrže opasne sile;
- prirodnu okolinu.

Poznati izraelski pravnik Joram Dinštajn između ostalog navodi da se ovim zabranama posebno treba pružiti zaštita:

- sanitetskog i vjerskog osoblja, sanitetskih jedinica i vozila, sanitetskih ustanova, zgrada, materijala, brodova, bolnica i sanitetskih vazuhoplova;
- civila zatečenih na okupiranoj teritoriji;
- civila koji su pogođeni neprijateljskim vojnim operacijama, civilnih objekata, objekata nužnih za opstanak civilnog stanovništva, instalacija koje sadrže opasne sile;
- organizacija za civilnu zaštitu;
- Međunarodni komitet Crvenog krsta, nacionalna društva Crvenog krsta i druge humanitarne organizacije;
- oznaka Crvenog krsta i drugih sličnih znakova;
- kulturnih dobara i vjerskih objekata;
- prirodne okoline.

PERFIDIJE I RATNA LUKAVSTVA

Jedno od tradicionalnih „viteških“ pravila ratnog prava je zabrana perfidija, tj. korištenja vjerolomnih načina da bi se protivnik ubio ili onesposobio. Perfidnim aktima se podrazumjevaju svi akti kojima se zloupotrebljava protivnikovo povjerenje, kao što su npr. pretvaranje da se žele pregovori, simuliranje povrede ili bolesti, neovlašćeno korišćenje znakova humanitarnih organizacija ili UN.

Haški pravilnik iz 1907. godine zabranjuje perfidije i tako zabranjuje vjerolomno ubijanje ili ranjavanje lica koja pripadaju neprijateljskom narodu ili vojsci ili upotrebljavanje zastave parlamentara ili zastave, vojnih oznaka i uniforme protivnika. Haški pravilnik ipak ne daje definiciju perfidije.

Protokol I uvodi dopune i daje definiciju perfidija. On perfidije definiše kao akte kojima se uliva povjerenje protivniku da ga navede da vjeruje da ima pravo ili da je obavezan da prihvati zaštitu po pravilima međunarodnog prava koja se primjenjuju u oružanom sukobu, s namjerom da se iznevjeri to povjerenje. Pod perfidnim postupcima se smatraju:

- pretvaranje da se namjerava pregovarati pod zastavom primirja ili predaje;
- pretvaranje da je neko nesposoban zbog rana ili bolesti;
- pretvaranje da je neko civil, odnosno da ima status neborca;
- pretvaranje da se ima zaštićen status korišćenjem znakova, amblema, uniformi UN ili neutralnih i drugih država koje nisu strane u sukobu. Ovde se podrazumjeva i upotreba znakova Crvenog krsta, Crvenog polumjeseca, Crvenog lava i Crvenog sunca, kao i zaštitnog amblema kulturnih dobara, zastave, vojnih znakova, oznaka i uniformi protivnika.

Svako korištenje znaka za koje međunarodnim humanitarnim pravom nije dobijeno izričito ovlašćenje predstavlja njegovu zloupotrebu.

Postoje tri vrste zloupotrebe:

- imitacija koja predstavlja korištenje oznake koja svojim oblikom i/ili bojom može izazvati zamjenu sa znakom;
- uzurpacija koja predstavlja korištenje znaka od neovlašćenih lica ili organizacija (komercijalnih firmi, farmaceuta, privatnih ljekara, nevladinih organizacija, drugih pojedinaca, itd.), ukoliko lica ovlaštena da koriste znak to ne čine u skladu sa pravilima Konvencije i Protokola, to takođe predstavlja uzurpaciju;

- perfidija koja predstavlja korištenje znaka u vreme sukoba sa ciljem da se zaštite borci ili vojna oprema; perfidno korištenje znaka može predstavljati tešku povredu međunarodnog prava ili drugim rečima ratni zločin.

Zloupotreba znaka u zaštitne svrhe u vrijeme rata ugrožava sistem zaštite ustanovljen međunarodnim humanitarnim pravom. Zloupotreba znaka u svrhu raspoznavanja potkopava njegov ugled u očima javnosti, te prema tome umanjuje njegovu zaštitnu snagu u vrijeme rata (Oberson, 2002).

Ratna lukavstva su nasuprot perfidijama dozvoljena po međunarodnom humanitarnom pravu. Ratno lukavstvo je jedna od karakteristika rata i ono se stalno koristi u ratnim operacijama. Još u stara vremena ona su bila dozvoljena kao način ratovanja. Pod njima se podrazumijevaju razne prevare, kamuflaže, lažno povlačenje, lažno davanje signala itd., a koje imaju za cilj da se savlada protivnik.

Haški pravilnik u članu 24. određuje da su ratna lukavstva dozvoljena, ali ih nije definisao. Protokol I je definisao ratna lukavstva kao radnje koje su namjenjene da obmanu protivnika ili da navedu da se ponaša bezbrižno, ali koje ne krše nijedno pravilo međunarodnog prava koje se primjenjuje u oružanom sukobu i koje nisu perfidne jer ne ulijevaju povjerenje protivniku u pogledu zaštite na tom pravu.

Nekada je teško napraviti razliku između perfidije i ratnog lukavstva jer i jedna i druga su u suštini varka protivnika sračunata radi njegovog savladavanja. Međutim iz definicije ratnog lukavstva koju daje Protokol I može se jasno postaviti razlika između njih.

RATNI PLIJEN

Haški pravilnik o zakonima i običajima rata na kopnu iz 1907. godine uslovno dozvoljava ratni plijen. On zabranjuje da se uništava i plijeni neprijateljska imovina, osim u slučajevima kad bi uništavanje i zaplijenu imperativno nalogala ratna neophodnost. Ova zabrana je uslovljena vojnom potrebom. Plijeniti se mogu sva javna pokretna dobra, a prvenstveno sredstva i dobra namjenjena vojnoj svrsi. Ta dobra moraju biti zatečena na bojištu. Pod tim pokretnim dobrima se uglavnom porazumijevaju: oružje, municija, vojna oprema, sredstva prevoza, dokumentacija, hartije od vrijednosti protivničke strane i dr., ali i ne lične i porodične stvari poginulih boraca i zarobljenika. Savremeno je shvatanje da se ne može zaplijeniti novac iz specijalnih namjenskih fondova, kao što su fondovi za isplatu penzija, invalidnina itd. Takođe ni novac koji se nalazi deponovan u bankama, a ne pripada neprijateljskoj državi. Plijeniti se ne može

državna imovina, a jedini izuzetak od toga predstavlja ako se ona odnosi direktno na porijeklo i način vođenja rata. Ne smiju se plijeniti istorijski spomenici, umjetnička i naučna djela (Avramov, Kreća, 2001).

Predmeti koji ulaze u ratni plijen postaju vlasništvo države i oni moraju biti skupljeni i predati nadležnim državnim organima, a ne pojedincima. Predmeti koji ulaze u ratni plijen mogu se odmah koristiti u ratne svrhe, što znači da imaju značajnu ratnu prednost, pogotovo ako je riječ o vojsci koja je nedovoljna naoružana, kao što su razne oslobodilačke i revolucionarne vojske.

Izvjese sličnosti postoje između ratnog plijena i pljačke u ratu i nekada ih je vrlo teško razlikovati. Haški pravilnik članom 28. zabranjuje da se pljački prepusti „grad ili mjesto na juriš zauzeto“. Ratni plijen treba razlikovati od pljačke. Pljačkom se podrazumijeva lično prisvajanje tuđe imovine javnog ili privatnog karaktera. Takođe pljačku zabranjuje i Konvencija o bombardovanju od strane pomorskih snaga u vrijeme rata iz 1907. godine.

U praksi često dolazi do pljačke pod opravdanjem da je u pitanju ratni plijen. U Drugom svjetskom ratu dolazilo je često do kršenja ovih pravila od osovinskih oficira i vojnika. Njemački oficiri i vojnici su sa Istočnog fronta slali svojim porodicama razne umjetničke predmete i druge stvari koje su lično pljačkali po raznim galerijama i privatnim stanovima.

Od ratnog plijena treba razlikovati rekvizicije i kontribucije (Degan, 2011). Rekvizicije podrazumijevaju davanja u naturi za potrebe neprijateljske okupacione vojske. To su davanja u životnim namirnicama, odjeći, prevoznim sredstvima kao i davanje u vidu usluga tj. stavljanje na raspolaganje radne snage. Haški pravilnik u članu 52. postavlja tri uslova za rekvizicije: mogu biti zahtjevane samo za potrebe neprijateljske okupacione vojske, one moraju biti u srazmjeri sa ekonomskom snagom zemlje i ne mogu u sebi sadržavati obavezu za stanovnike da uzmu učešće u ratnim operacijama. Rekvizicije moraju biti plaćene u novcu, u pravoj vrijednosti, a ukoliko to nije moguće učiniti, onda se izdaju priznanice. Kontribucije predstavljaju davanja u novcu koja se mogu zahijevati samo na osnovu pismenog naređenja glavnog komadanta neprijateljske okupacione vojske na određenom području i moraju biti u srazmjeri sa bogatstvom zemlje. One ne predstavljaju sankciju i Haški pravilnik u članu 50. konstatuje da „nikakava kolektivna kazna, novčana ili druga, ne može biti naređena protiv stanovništva zbog individualnih djela za koja oni ne bi mogli biti smatrani kolektivno odgovornim“.

Ratni običaji iz vremena moći Rimske imperije dozvoljavali su rimskoj vojsci zapljenu ne samo predmeta koje je koristio protivnik nego i samog protivnika, što se objašnjava činjenicom da je rimsko pravo tuđince smatralo bespravnim

licima. Plijen (*praeda*) je u jednom ili drugom obliku predavan državi, a dijelimično dijelio se između vojnika. Međutim tadašnja pravila dopuštala su mogućnost pljačke (*dispertio*), od koje su korist imali jedino vojnici i vojni zapovjednici koji su pljačku i dozvoljavali. U jednom djelu antičkog perioda pljenjena su i nepokretna dobra, ali kasnije se sa takvom praksom prekinulo, pa su se pod ratnim plijenom smatrala samo pokretna dobra. U srednjem vijeku ratnom plijenu davan je veliki značaj, s obzirom na stanovništvo da rat treba da bude koristan za onoga ko ga pokrene. Zadržana je praksa podjele ratnog plijena između vojnika koji su došli do njega, ali postojala je obaveza da ratne sprave, životne namirnice i municiju predaju vladaru. Vojni poglavnici nekih država uveli su i neka ograničenja u vezi sa ratnim plijenom, koja su zabranjivala vojnicima da idu u potjeru za ratnim plijenom bez prethodnog odobrenja, odnosno da vrše zaplijenu posle završene bitke. Ugovorima o predaji gradova često se pobjednik obavezivao da neće plijeniti povelje, državne hartije i javne isprave. U nekim državama su i uspostavljeni bili sudovi nadležni da rješavaju sporove pripadnosti plijena stečenog u ratu na kopnu, dok je nadležnost za utvrđivanje pripadnosti plijena stečenog u pomorskom ratu pripadala admiralitetu (Nis, 1987). Tada je prihvaćeno načelo da onaj koji zaplijeni nema vlasništvo nad plijenom dok mu nadležni sud, odnosno admiralitet to ne odobri.

ATENTATI

Međunarodno humanitarno pravo posebno ne reguliše atentat na pojedine vojne i političke ličnosti neprijateljske države u toku rata. Međutim iz opštih pravnih načela i ostalih pravila međunarodnog humanitarnog prava može se zaključiti da atentat koji izvrši pojedinac ili grupa ljudi na bilo koji način i bilo pod kakvim rukovodstvom nije pravno legitiman čin pod sledećim uslovima:

- da je izvršen potajno;
- da do momenta izvršenja ubistva atentator nije primjećen;
- da atentator nije nosio određene oznake i uniformu ili je nosio lažnu uniformu.

Takav stav treba izvući i iz načela da se rat ne vodi protiv pojedinca, pa ni visoke ličnosti neprijateljske države, već protiv oružane sile neprijatelja. Ako atentator bude uhvaćen u takvoj akciji, sila koja ga uhvati ima puno pravo da ga izvede na sud i najstrožije kazni. Ali ako neka visoka ličnost neprijateljske države izgubi život u akciji komandosa, koji zakonito ratuju, onda je takav čin legitiman.

UCJENE

Ucjena u oružanom sukobu predstavlja akt koji ima za cilj da se za novac ili drugu nagradu određena vojna ili civilna lica uhvate živa ili izvrši ubistvo nekog vojnog ili političkog funkcionera političke strane. Obično su takve ucjene objavljivane preko novina ili radija. Ovakav postupak je sa stanovišta međunarodnog humanitarnog prava nelegitiman jer je i protivan načelu humanosti, predstavlja nehuman postupak jer se pojedinci podstiču na zločin iz koristoljublja. Takođe javno oglašavanje da se određenoj ličnosti oduzme milost, protivno je međunarodnom humanitarnom pravu jer se rat vodi protiv vojne sile neprijatelja, a ne protiv pojedinih lica.

IZAZIVANJE POBUNA

Izazivanje pobune predstavlja akt koji se sastoji u tome što jedna zaraćena strana podstiče, pomaže ili organizuje pobunu kod druge strane na vjerskoj, političkoj, nacionalnoj ili drugoj osnovi. Kojim se metodama koristi podstrekač bez značaja je za međunarodno humanitarno pravo. Cilj pobune je da se druga strana oslabi i stvori atmosfera nesigurnosti radi lakšeg savladavanja protivnika (Vučinić, 2006).

Ako je stanovništvo jedne teritorije spremno da ustane protiv okupatorske ili svoje vlasti, druga ratujuća strana putem podsticanja na borbu, može pomoći i politički na određen način rukovoditi takvom borbom (Perazić, 1966). Ako bi se ove akcije podsticale i pomagale u mirnom periodu, to bi predstavljalo mješanje u unutrašnji život druge države, odnosno intervenciju koja je nelegitimna po međunarodnom humanitarnom pravu, dok se isti postupci za vrijeme rata smatraju legitimnim.

PSIHOLOŠKI RAT

Psihološki rat za vrijeme oružanih sukoba obuhvata primjenu svih načina plasiranja informacija, koje jedna strana usmjerava protiv druge sa ciljem slabljenja njene vojne moći. Najčešće su to razne vijesti koje imaju za cilj dezinformisanje vojske i naroda. Koristi se od starih vremena, a danas je naročito u širokoj upotrebi, zahvaljući savremenim načinima plasiranja informacija koji su široko dostupni.

Informacije koje se plasiraju na internetu, televiziji, radiju, novinama predstavljaju u današnjem globalnom selu i društvima komunikacijskog izobilja glavni uticaj na javno mnjenje. Postoje razrađene metode kako da se pojedine informacije prezentiraju javnosti preko sredstava informisanja, a da psihološki efekat i praktični rezultat budu što povoljniji. Postoji posebna veza između onih koji upućuju informaciju u svom cilju i medija, što neki autori upoređuju sa „*previše harmoničnim, ali dugotrajnim brakom*“ (Danilović, 2007).

Drugi svjetski rat pokazao je veliko savršenstvo ove metode ratovanja, tako da su postojale i posebne vojne jedinice i struktura organa za propagandu. U kasnijim ratovima to će postati standard postupanja kojim su se koristile zaraćene strane.

ZAKLJUČAK

U pogledu načina ratovanja savremeni rat kao da je okrenuo leđa humanosti i pretvorio se u veliki uništilački poduhvat. I pored impresivnog broja međunarodnih propisa koji u ovom pogledu uvode zabrane, njihovo nepoštovanje je stalno. Potrebno je i na unutrašnjem planu raditi na jačanju svijesti pripadnika oružanih snaga i diskriminirati sve ove nehumane postupke u oružanim sukobima koji su zabranjeni međunarodnim pravom. Postoji potreba stalnog osposobljavanja svih učesnika u oružanim sukobima kako da postupaju, da pored ratnih vještina poznaju i ovu stranu rata. I Sun Cu je isticao, „*rat je od suštinskog značaja za državu, to je područje smrti i života, staza opstanka i propasti i stoga se mora što bolje proučiti*“.

U periodu posle usvajanja Ženevskih konvencija iz 1949. godine, svijet je doživio alarmantan broj oružanih sukoba koji su pogodili skoro svaki kontinent i veliki broj država. Ženevske konvencije i njihovi Dopunski protokoli iz 1977. godine obezbjedili su određene zaštite koje su predstavljale veliki korak naprijed. Međutim i pored toga došlo je brojnih povreda ovih ugovora, koje su imale za posljedicu samo patnje i smrt, a koje su mogle da budu izbjegnute da je međunarodno humanitarno pravo bolje poštovano.

Može se zaključiti da i danas posle svih ugovorenih zabrana nije obezbjeđeno da se zaraćene strane dosljedno pridržavaju pravila međunarodnog humanitarnog prava, jer i staro rimsko pravilo kaže: „*silent legus inter arms*“ tj. da u ratu čute zakoni, jer sam rat predstavlja nasilje, a nasilje je nespojivo sa zakonom i zakonitošću. Ipak međunarodno humanitarno pravo propisuje minimume humanosti, koje je veliki broj država ugradio u svoja unutrašnja zakonodavstva, a uz to su se obavezale multilateralnim konvencijama na primjenu tih minimalnih pravila. Sva ta pravila imaju za cilj da obuzdaju nasilje u ratu, tako

što će se zaraćene strane ponašati u skladu sa dva osnovna načela ratovanja: načelom vojne potrebe, koje dozvoljava upotrebu nasilja u minimalnom obliku i intezitetu koji su potrebni za postizanje ratnog cilja i načelom humanosti, koje je usmjereno na zaštitu života i zdravlja ljudi. I pored prihvatanja ovih načela od strane skoro svih država svijeta pokazalo se, nažalost da te standarde mnoge države različito i na svoj način tumače, što nekad dovodi do teških zloupotreba i grubog i nepopravljivog kršenja međunarodnog humanitarnog prava.

Logika rata, prije svega na strani agresora, produbljuje i intezivira spiralu nasilja koja često izmiče kontroli, a ponekad i sama sebi postaje cilj. U svim ratovima vođenim do sad mnogi učesnici su lako prelazili liniju koja razdvaja vojne mjere i dejstva u ratu od ratnih zločina i upotrebe prekomjerne vojne sile, a sve na štetu civilnog stanovništva, vojnika, ranjenika, parlamentara, privatne i druge imovine itd. Takve postupke bi trebala međunarodna zajednica spriječiti svim raspoloživim instrumentima, sve do krajnjeg dovođenja krivaca pod udar međunarodnog prava i sudske pravde.

Takođe možemo se nadati da će i UN, kao glas međunarodne zajednice u budućnosti poklanjati više pažnje poštovanju međunarodnog humanitarnog prava i oduprijeti se svim izazovima sa kojima se susreće. Svaki napor u ovom pravcu vrijedan je truda jer cilj je opstanak ljudi u ratu i zaštita ljudskog dostojanstva.

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LEGAL AND EVOLUTIONARY ASPECTS OF WARFARE LIMITATIONS AND PROHIBITIONS

Assistant Professor Dr. Željko Petrović¹

Abstract

International humanitarian law aims to limit the destructive effects of armed conflict. This work will point to certain ways of warfare that are prohibited and restricted by international humanitarian law or should be, that is, to the development of their prohibitions and restrictions. The problem of this work is the limitations and prohibitions of the way of warfare according to international humanitarian law, that is, their legal and evolutionary aspects. International humanitarian law aims to limit the destructive effects of armed conflicts, to reduce suffering and destruction to only the necessary measure. Observed throughout history, the first rules of this branch of law dealt with the issue of permissibility or impermissibility of warfare, while over time this issue became more and more relevant due to the increasing destructive effects of warfare and unnecessary destruction in armed conflicts. The subject of the research includes primarily the period from the Hague Conventions adopted in 1907 as one of the first treaty prohibitions from international humanitarian law, up to the state of international humanitarian law today.

Key words : War, conventions, method of warfare, history, law of war, conflicts.

¹ University of Herzegovina, Mostar, e-mail: petrovicz@yahoo.com

INTRODUCTION

International humanitarian law governs relations between states during an armed conflict, primarily to protect civilians, prisoners of war, the wounded, but also all other persons in order to humanize these relations as much as possible, because war in itself represents evil and the negation of everything humane.

The goal is also to protect certain objects from the destructive effects of armed conflicts, so that certain prohibitions and restrictions on the means and methods of warfare are introduced. First of all, these prohibitions and restrictions are based on the Geneva and Hague Conventions, judicial practice and international customary law, but also on a number of other international conventions concluded by the states. These prohibitions and restrictions are the result of the contemporary international community and the creation of awareness that armed conflicts endanger all of humanity.

Restrictions and prohibitions in armed conflicts existed in ancient times, while international humanitarianism acquired the character it has today in the 19th century. The basis of these rules is an attempt to create a balance between war efforts and principles of humanity. The First and Second World Wars showed how destructive armed conflicts can be, and this was especially contributed to by the later invention of nuclear and thermonuclear weapons and their improvement to unimaginable proportions during the Cold War. Thus, states concluded certain international agreements that introduced certain restrictions and prohibitions regarding the means and methods of warfare with the possibility of undertaking certain sanctions against those who do not respect them. War still exists and states resort to it when they cannot achieve certain goals by other means, while international humanitarian law tries to alleviate the suffering it produces, and above all to protect a certain group of people, in which the rules relating to both the means of warfare play a special role as well as ways of warfare.

The paper will point out the consequences of the application of certain methods of warfare that are prohibited or limited or should be under international humanitarian law, bearing in mind the terrible suffering they cause, as well as the current state of international law regarding their prohibition and limitations.

The work should contribute to the development of international humanitarian law, pointing out the needs of humanization, as far as it is possible in the application of the method of warfare itself. It is necessary to limit what is permitted from what is prohibited and to point out the need for better knowledge of this area of international humanitarian law, as well as to contribute to its development.

RESTRICTIONS AND PROHIBITIONS ON METHODS OF WARFARE

Throughout the entire history of human civilization, states have tried to perfect such ways of warfare that would enable them to achieve a much easier victory over the enemy in armed conflicts. States resorted to the use of various methods of warfare, which were often based on the idea that the end justifies the means. In this direction, various methods of warfare were used with the aim of inflicting the greatest possible losses on the enemy. They were often inhumane and as such they were still condemned and banned by ancient peoples.

With the development of science, technology and the development of the entire human society, new weapons were discovered that had tremendous destructive power and posed a danger not only to members of the enemy armed forces but also to the entire environment, and today, with its improvement, to all of humanity. It was noticed that certain means of warfare caused unnecessary suffering, which was contrary to the laws of humanity. Also, over time, wars lost the dose of chivalry that was often, despite everything, interwoven through armed conflicts between states (Tofler, 1998).

However, the restrictions and prohibitions that were made in this direction were created very slowly, due to the reluctance of states to give up the war technique that they have perfected and which represents a significant factor for victory in an armed conflict. Bans and restrictions were introduced over time and this process is still ongoing today. The 20th century represents the century in which terrible weapons were discovered and perfected, which are able to destroy the entire humanity. At the same time, terrible crimes were committed against the civilian population and there was a conflict of unprecedented proportions in which no one was spared.

War is characterized by the emergence of the most primitive and crudest violence. When states cannot or will not resolve disagreements and differences through peaceful discussion, weapons speak. War inevitably results in immense human suffering and suffering, as well as enormous damage to buildings. War is evil by definition, as the Nuremberg Tribunal stated in its conviction of the biggest war criminals of the Second World War. Even today, no one can justify war and all the suffering it causes as an end in itself. Nevertheless, states continue to wage wars and often violate the basic rules of international humanitarian law, choosing neither the way nor the means to achieve military success. Such behavior is unacceptable and condemned by the international community. As Jean-Jacques Rousseau, summarizing the basic principles on which international humanitarian law rests, pointed out that the purpose of a military attack must never be the physical destruction of the enemy and that war is a relationship between states,

not between man and man, and that individuals in it are enemies only by chance (Rousseau, 1949).

War is a characteristic and a companion of the contemporary international community, so it is necessary to humanize it at least to some extent, if this is at all possible. More precisely, it is necessary to limit the conflicting parties in terms of the choice of means and methods of warfare, which should be generally accepted in eventual armed conflicts.

However, history is an indicator that in ancient times, wherever conflicts broke out between states, tribes, clans, these conflicts did not result in a fight to the end, destruction, but rather rules emerged, which were often unconscious, with the purpose of limiting the consequences of violence. Such The rules that are the precursors of today's international law can be found in all cultures.

International humanitarian law itself aims to limit the destructive effects of armed conflicts. There is a constant effort to reduce suffering and destruction to only the necessary measure. Already the first contractual rules of international humanitarian law dealt with the issue of permissibility or impermissibility of warfare. In the international community, there is a constant desire to humanize relations in war to some extent, to use methods of warfare that cause as little suffering as possible and to avoid inhumane treatment. Today, this problem is particularly relevant due to the increasingly destructive effects of the means of warfare and the infliction of unnecessary destruction in armed conflicts. Through the entire process of introducing restrictions and bans on the way of warfare, an effort was made to find a necessary compromise between military necessity and the demands of humanity. There is a need to establish the boundaries of what is permitted and what is not permitted under international humanitarian law, as well as to determine the scope of prohibitions and restrictions on the way of warfare and their observance in practice. The objectives of the bans and restrictions on the way of warfare and their scope in the future should also be determined. The methods of warfare are the procedures and methods used by the conflicting parties in conducting an armed conflict. International humanitarian law refers to the part of international public law that governs relations between states in armed conflict and on the occasion of armed conflict. It is a compromise between military necessity and the demands of humanity that does not prevent military victory but requires that unnecessary suffering and destruction not be caused.

International humanitarian law is a part of public international law and as such includes a set of legal rules that govern the relations, rights and obligations of warring parties, as well as relations between them and neutral parties during war.

In recent decades, great efforts have been made in the international community regarding restrictions and prohibitions on methods of warfare. There is a tendency in international humanitarian law towards ever greater restrictions and prohibitions on the one hand and ever more serious violations of them on the other hand at the international level. What is permitted should be limited from what is prohibited. and highlights the need for better knowledge of this area of international humanitarian law, as well as to contribute to its development.

In the international community, there is a need to humanize relations between the conflicting parties through a principled ban on the use of certain methods of warfare, as well as their concretization. Limitations and prohibitions on the way of warfare represent a compromise between the members of the international community who were not benefited by such rules and those who explicitly insisted on them. It should be emphasized that international humanitarian law protects civilians and civilian objects and all other objects that are not military, cultural property, medical objects and transporters, objects and installations that contain dangerous forces and the natural environment.

The more modern the means of warfare, the more murderous the destruction of war, and the greater and more fatal the losses in manpower, especially on the side of the civilian population. In modern war, there is no clear demarcation between the front and the background, as in the past, the war covers not only the armed forces, but the entire population, economy and territory. Modern aviation technology and soft rocket systems can operate hundreds and even thousands of kilometers deep into the opponent's territory, so that modern war has a total and general character (Vujković, 1998). This can already be seen in the example of the two world wars so far, but also in the wars that are being fought today. 38 countries with 1.5 billion inhabitants participated in the First World War, it was fought on an area of 4 million km², 70 million people were mobilized and it ended with 9 million victims. The Second World War encompassed 58 countries with 2.1 billion inhabitants in an area of 30.5 million km², 110 million people were mobilized, and it ended with 37 million victims. In both wars, a large number of people were killed by weapons of mass destruction, which make no difference in terms of space or category of people.

The classic rules of international humanitarian law regulate three units: war on land, war at sea and war in the air. In this sense, there are certain rules, or conventions. However, in the modern conditions of the existence of weapons of mass destruction and other modern weapons, these rules are not strictly separated and separate, but in the absence of others, they are applied accordingly in all cases. This division is losing its significance because modern weapons act multi-complex and combined in the air, water and on land.

The politics of force and resorting to force in the past had the goal of realizing a pretension, territorial or ideological, certain economic or political benefits. And through these immediate benefits, the benchmarks were determined on the basis of which force was resorted to. In today's world politics based on the possible use of nuclear force, this element of factual use is wasted. An eventual nuclear war would be a war of total destruction, a war without a winner or a loser. That is why the great powers have tried to minimize the use of force in their foreign policies, but they are reluctant to accept limitations in this regard.

Great progress in the development of war technology in recent decades has led to fundamental changes in the way of warfare. Modern electronic devices, computers, radars, lasers, weapons with remotely controlled energy, etc., were introduced into war technologies, which resulted in the automation of war operations. The scope of human involvement has been reduced, and priority is given to science, technology, highly trained and professional personnel. The development of military technology preceded legal regulation, thus leading to a legal vacuum. The means of warfare developed faster than the legal order. Modern international law of war is not able to regulate all cases, which is primarily the result of the unwillingness of many more developed states to comply with new treaty prohibitions or restrictions in this regard. Regarding the humanization of war, great efforts were made, but this process took place very slowly and with the constant building of compromises between those who did not benefit from such rules and those who explicitly insisted on them. However, the above-mentioned basic principles of international humanitarian law, as well as *the De Martenson clause*, are a sufficiently strong basis for assessing the disputed issues. These rules have an enduring significance and within their framework the permissibility or impermissibility of the application of certain methods of warfare should be assessed.

LEGAL AND EVOLUTIONARY ASPECTS OF LIMITATIONS AND PROHIBITIONS OF WARFARE

In the current development of international humanitarian law, there is a tendency to limit and prohibit certain ways, i.e. procedures and methods in the conduct of war. Just as the parties to the conflict do not have an unlimited right to choose the means of warfare, so they do not have the right to choose the way of warfare. Since ancient times, the principle that a word given in war must be respected, regardless of whether it was given to the enemy, especially if it is a question of conditional surrender, ceasefire, etc. The rules of war emphasized the prohibition of warfare that conflicts with military morals and honor. Many ancient texts, such as the Mahabarta, the Bible, the Koran, contain rules calling for respect for enemies. Thus, the Vikajet document, written at the end of the 13th century, at the height of Arab rule in Spain, contains a code of rules of warfare.

And the old customary rules of war forbade warfare in a manner contrary to the morals and honor of warriors, and any violation of these rules was severely punished. The given word had to be respected even towards the enemy, while the opposite actions were considered perfidy (treason). Perfidy as an act of war was prohibited even in ancient times as it is today under international humanitarian law. Many armies resorted to perfidy in mutual conflicts, so that there was hardly a war in which these methods of warfare were not used. Throughout history, states have used various perfidies and war tricks to achieve military victory. When the Chinese states of Wu and Jui went to war with each other, the Wu state sent three thousand bandits as a vanguard to give the enemy the impression of its military disorganization and thus entice the Jui state to attack first. Some prisoners escaped and some surrendered, the army of Jui State fought against them, only to later suffer defeat from the army of Wu State. As the ancient Chinese warrior and philosopher Sun Tzu wrote, "When you are near the enemy, try to give the impression that you are far away; when you are far away, try to give the impression that you are near. Engage the enemy in a fight in which you have a good chance of winning." "Fake disorder in your ranks, and then strike at the enemy and take advantage of his confusion" (Sun Cu, 2022).

War tricks are regularly used in war operations and the soldiers themselves are trained to use them. The great war trick that, according to some, gave the Allies a decisive advantage in the Second World War, was when they deceived the Germans in 1944 that they would land in Pade Kale, and the landing was planned and realized in Normandy (Perazić, 1966).

As stated in some ancient records, Muhammad also said that war cunning is sometimes more useful than the help of a tribe, and the Arabian writer Ibn Khaldun wrote in his "Historical Prolegomena": "In wars, victory usually depends on moral patterns that influence the spirit and imagination: the large number of troops, the excellence of weapons and heroism in the attack are sometimes enough

to achieve victory, but these means are much less effective than moral impressions. Therefore, the use of war cunning is the most useful, because it very often brings victory." Gratian and Saint Thomas Aquinas also spoke positively about the legality of resorting to cunning and war deception, as did a large number of lawyers and philosophers later in the Middle Ages (Nis, 1987). At the beginning of World War II, the governments of the warring states committed themselves to sparing civilian objects that were protected by international humanitarian law. In 1939, Roosevelt sent an invitation to the governments of France, Great Britain, Germany, Italy and Poland, which based on it publicly declared that if they were drawn into the war, they would conduct military operations in such a way as to protect the civilian population as well as civilian objects. However, the Second World War was a classic example of great civilian suffering and massive destruction of civilian buildings, which were aimed at weakening the morale of the population and putting pressure on the governments of other countries to yield to the other warring party (Perazić, 1966). Throughout the entire history of warfare, it can be observed that the warring parties used various war tricks, methods, ways of warfare in order to achieve war success, so that there was a need to limit and prohibit certain actions that would be considered illegal, all with the aim of bringing a certain order to the war itself and protecting certain persons as well as objects. Thus, the rules of war themselves took care of the respect of some human rights before they were guaranteed in a general way. There is a need for this because of the exceptional situation in which people find themselves who lost the protection of their state during the war and are in the power of the opposing state, which often treats them as "enemies" (Dimitrijević, Račić, 2007).

Certain restrictions regarding the way of warfare were introduced by the Paris Naval Declaration from 1856. It prohibits piracy and the seizure of neutral property under enemy flags. Special restrictions were introduced by the Hague Conventions from 1907, and later by the Geneva Conventions from 1949 and 1977. All these rules that refer to the limitations and prohibitions of the methods of warfare, as well as the rules that refer to the means of warfare, have the ultimate goal of humanizing war as far as military necessity allows.

The Hague Regulations on the Laws and Customs of War on Land from 1907 prohibited:

- treacherous or perfidious killing or wounding of persons belonging to the armed forces of the opposing party, as well as their citizens. Treacherous killing implies any act that hides insidiousness with the aim of killing the enemy. Such a case, e.g. represents the suspension of resistance by one warring party, so that the other party is deceived and comes to the call for negotiations, so that they open fire with weapons. Also, the case when a member of the armed forces pretends to be

dead or wounded and the enemy approaches him to check or to help him if he is wounded, and the latter opens fire on him with a weapon. But if a soldier does this to avoid capture, it is not perfidy, but a stratagem of war which is permitted;

- announcement that no one's life will be spared. It is forbidden to do this towards war criminals, as well as units that are surrounded, and that would be forced to surrender in this way;

- destruction or confiscation of enemy property, except in cases where military necessity dictates it;

- forcing citizens of the opposing party to take part in war operations directed against their country and if they were in their service before the start of the war;

- killing or wounding the enemy after he laid down his arms or if he was left without means of fighting and surrendered unconditionally;

- using contrary to the rules the emblem of parliament, the national flag of the enemy, the enemy military insignia, the enemy uniform and internationally recognized symbols such as the Red Cross emblem, etc.;

- attacking or bombing by any means undefended cities and other undefended places, as well as any intentional bombing of civilians;

- looting, i.e. surrendering to looting of cities and other places,

- confiscation or destruction of submarine cables connecting the occupied territory with a neutral territory, unless otherwise required by military necessity;

- forcing the population of the occupied territory to provide information about the army of the other warring party, its defense means, or forcing the population to swear an oath to the enemy.

The 1907 Convention on the Rights and Duties of Neutral Powers and Persons in Case of War on Land prohibits the following actions:

- transfer across the territory of a neutral force of troops or convoys, with ammunition or equipment by the belligerent party;

- installation on the territory of a neutral power of a radio-telegraph station or any other device intended to serve as a means of communication with belligerent forces on land or sea;

- the use of any devices that serve as a means of communication, and were established before the war on the territory of a neutral power exclusively for military purposes, and which were not open to the service of public transport;
- the establishment by warring parties on the territory of a neutral power of veterans' units or recruiting offices.

The 1907 Convention on Bombardment by Naval Forces in Time of War prohibits:

- bombing of undefended ports, cities, villages, settlements or buildings;
- allowing a city or town to be plundered, even if it is taken by storm.

And some other conventions adopted at the Second Peace Conference in The Hague in 1907 contain clauses prohibiting certain actions regarding the way of warfare by belligerent or neutral powers. However, even after the adoption of these rules, violations were very common in world wars, as well as in earlier wars. In South Africa from 1899 to 1900, in the war with the Boers, the British repeatedly resorted to the use of the sign of the red cross and the white flag. There were similar actions in the war between the Russians and the Japanese from 1904 to 1905. The Germans also used the red cross sign in the First World War. In October 1912, the Turks raised the white flag east of Shkodër, and the Montenegrins who approached them were showered with fire and defeated in that illegal way. The Germans used the same procedures in Belgium, France and Italy to defeat the enemy. Austro-Hungarian soldiers used the uniforms of Italian soldiers in the First World War, and enemy uniforms were also used by the Bulgarians in 1917. In the war with Japan in 1904 and 1905, the Russians used the uniforms of a third party, namely the Chinese army. Even in World War II, in 1944, the Germans used American uniforms. In addition to all this, it should be emphasized that the Geneva sign of the red cross is equated with the sign of the red crescent, red lion and red sun (Perazić, 1966).

The Geneva Convention of 1949 and the Additional Protocols of 1977 contain new restrictions and prohibitions regarding the methods of warfare. The Protocol from 1977 is one of the conventions that belongs to the so-called Geneva law. Hague law, however, becomes a real law on the conduct of war, only through the Protocol. It follows from this that Hague law and Geneva law are combined in the Additional Protocol. The difference between the two cities, as places where law was developed and places that individually symbolize a great contribution to international humanitarian law, is now only academic (Gasser, 1999).

These regulations prohibit:

- inhumane treatment of wounded, sick and shipwrecked members of the enemy's armed forces, as well as endangering their lives and personalities;
- inhumane treatment of prisoners of war and any procedure that can lead to their death or serious damage to their health;
- attacks on the civilian population and certain categories of civilians, including attacks without a choice of targets, attacks on civilian objects, attacks on places and security zones that are used to put them out of the reach of war operations, physical and moral coercion to provide information, torture by starvation, collective punishment, intimidation, terrorizing, robbery, taking hostages, killing, exposure to reprisals, torture, inhuman treatment, causing great suffering and causing serious bodily harm and health, exile and resettlement to another territory, forcing to serve in a foreign army, etc.;
- perfidy;
- attacks on military and civilian medical units, hospitals, medical transports and means of such transport (aircraft, ships and land means of transport) and medical personnel;
- misuse of the distinctive emblem of the Red Cross, Red Crescent, Red Lion and Red Sun and other emblems, signs and signals established by the 1949 Conventions, including the flag of truce, the distinctive emblem of the UN, except as authorized by the UN;
- the use of the flag, military emblems, markings and uniforms of neutral and other countries that are not parties to the conflict, or the opposing party during an attack or with the aim of defending, encouraging, protecting or disrupting a military operation;
- issuing orders that there should be no survivors or threats to the enemy and conducting hostilities on that basis;
- attacks on persons who parachute from an aircraft in distress, while descending to the ground;
- attacks of any kind on enemy cultural monuments, works of art or temples that constitute the cultural or spiritual heritage of the people, use of these objects to aid military actions;
- military actions that have the goal or can be expected to damage the natural environment, harmful to the health or survival of the civilian population;
- attacks on undefended places and demilitarized zones, etc.

The Geneva Conventions justified their existence by their application in armed conflicts. Their practical application, the readiness of states to respect them and their efforts to avoid violations of the rules, the acceptance and engagement of representatives of international organizations, especially delegations of the International Committee of the Red Cross and the UN, indicate the level of their quality and protection of humanitarian principles and principles. The application of these rules, their respect and non-respect, had a significant impact on international relations and their overall changes. For the first time in the history of international relations, law directly affects complex developments in international relations. International organizations closely monitored the application of the Geneva Conventions, which made it possible to notice their shortcomings and ambiguities, and to see the directions for further improvement and the very approach to the reform of the rules (Jončić, 2003).

International humanitarian law introduces mostly unconditional prohibitions of warfare, while in certain cases these prohibitions are conditioned by the requirements of military necessity. Military necessity is a very important issue in the theory and practice of international humanitarian law. It represents special grounds for non-application of an international rule in whole or in part, which may arise when a party to the conflict determines that its application would be difficult or impossible for political, military operational or other similar reasons.

Prohibitions relating to methods of warfare are primarily intended to protect:

- civilians and civilian objects;
- all other non-military facilities;
- cultural goods;
- non-military medical facilities;
- civil protection facilities;
- facilities and installations containing dangerous forces;
- the natural environment.

The famous Israeli lawyer Yoram Dinstein states, among other things, that these prohibitions should be given special protection:

- medical and religious personnel, medical units and vehicles, medical institutions, buildings, materials, ships, hospitals and medical ambulances;
- civilians found in the occupied territory;

- civilians affected by enemy military operations, civilian objects, objects essential for the survival of the civilian population, installations containing dangerous forces;
- civil protection organization;
- International Committee of the Red Cross, national societies of the Red Cross and other humanitarian organizations;
- the Red Cross symbol and other similar signs;
- cultural assets and religious buildings;
- natural environment.

PERPHIDIES AND WAR CUNTS

One of the traditional "chivalrous" rules of the law of war is the prohibition of perfidy, i.e. of using vJerobreaking ways to kill or incapacitate the opponent. Perfidious acts include all acts that abuse the opponent's trust, such as, for example, pretending to want negotiations, simulating an injury or illness, unauthorized use of symbols of humanitarian organizations or the UN.

The Hague Ordinance from 1907 forbids perfidy and thus forbids treacherous killing or wounding of persons belonging to an enemy nation or army or using the flag of a parliamentary or the flag, military insignia and uniform of an opponent. The Hague Rulebook, however, does not define perfidy.

Protocol I introduces amendments and defines perfidy. He defines perfidy as acts that instill confidence in the adversary to make him believe that he has the right or that he is obliged to accept protection under the rules of international law that apply in armed conflict, with the intention of betraying that trust. Perfidious procedures include:

- Pretending to intend to negotiate under a flag of truce or surrender;
- pretending that someone is incapacitated due to injury or illness;
- pretending that someone is a civilian, that is, that they have the status of a non-combatant;
- pretending to have a protected status by using signs, emblems, uniforms of the UN or neutral and other states that are not parties to the conflict. This includes the use of the symbols of the Red Cross, Red Crescent, Red Lion and Red Sun,

as well as the protective emblem of cultural assets, the flag, military signs, insignia and uniforms of the opponent.

Any use of a sign for which international humanitarian law has not been expressly authorized constitutes its misuse.

There are three types of abuse:

- imitation which represents the use of a sign which, by its shape and/or colour, may cause confusion with the sign;
- usurpation, which represents the use of the sign by unauthorized persons or organizations (commercial companies, pharmacists, private doctors, non-governmental organizations, other individuals, etc.), if the persons authorized to use the sign do not do so in accordance with the rules of the Convention and the Protocol, it also represents usurpation;
- perfidy, which represents the use of a sign during a conflict with the aim of protecting fighters or military equipment; perfidious use of the sign can represent a serious violation of international law or, in other words, a war crime.

The misuse of the emblem for protective purposes in times of war undermines the system of protection established by international humanitarian law. The misuse of the emblem for identification purposes undermines its reputation in the eyes of the public, and therefore diminishes its protective power in times of war (Oberson, 2002).

As opposed to perfidy, war tricks are permitted under international humanitarian law. War cunning is one of the characteristics of war and it is constantly used in war operations. Even in ancient times, they were allowed as a way of warfare. They mean various deceptions, camouflages, false withdrawal, false giving of signals, etc., which are aimed at defeating the opponent.

Article 24 of the Hague Regulations stipulates that war tactics are allowed, but did not define them. Protocol I defined stratagems of war as acts which are intended to deceive the adversary or to induce him to behave recklessly, but which do not violate any rule of international law applicable in armed conflict and which are not perfidious because they do not inspire the adversary's confidence in the protection of that the right one.

Sometimes it is difficult to distinguish between perfidy and war cunning because both are essentially a trick of the opponent calculated to defeat him. However, from the definition of war cunning given by Protocol I, the difference between them can be clearly established.

WAR SPOILS

The Hague Rulebook on the Laws and Customs of War on Land from 1907 conditionally allows for spoils of war. It prohibits the destruction and seizure of enemy property, except in cases where destruction and seizure would be imperatively required by the necessity of war. This ban is conditioned by military necessity. All public movable property can be seized, primarily funds and goods intended for military purposes. These goods must be found on the battlefield. These movable assets are generally understood to mean: weapons, ammunition, military equipment, means of transport, documentation, securities of the opposing party, etc., but also not the personal and family belongings of fallen soldiers and prisoners. It is a modern understanding that money from special purpose funds, such as funds for the payment of pensions, disability benefits, etc., cannot be confiscated. Neither does money that is deposited in banks and does not belong to an enemy state. State property cannot be seized, and the only exception to this is if it directly relates to the origin and manner of waging war. Historical monuments, works of art and science may not be seized (Avramov, Kreća, 2001).

Items that are part of the spoils of war become the property of the state and they must be collected and handed over to the competent state authorities, not to individuals. Items that enter the spoils of war can be immediately used for war purposes, which can give a significant war advantage, especially if it is an army that is insufficiently armed, such as the various liberation and revolutionary armies.

There are certain similarities between spoils of war and looting in war and sometimes it is very difficult to distinguish between them. Article 28 of the Hague Ordinance prohibits "a city or place taken by storm" from being left to robbery. Spoils of war should be distinguished from plunder. Robbery means the personal appropriation of other people's property of a public or private nature. Robbery is also prohibited by the Convention on Bombardment by Naval Forces in Time of War from 1907.

In practice, looting often occurs under the pretext that it is war booty. In the Second World War, these rules were often violated by Axis officers and soldiers. German officers and soldiers from the Eastern Front sent their families various art objects and other things that they personally looted in various galleries and private apartments.

Requisitions and contributions should be distinguished from war booty (Degan, 2011). Requisitions imply contributions in kind for the needs of the enemy's occupying army. These are donations in the form of food, clothing, means of

transport, as well as donations in the form of services, i.e. making labor available. The Hague Rulebook in Article 52 sets three conditions for requisitions: they can only be requested for the needs of the enemy's occupying army, they must be in proportion to the economic power of the country and they cannot contain an obligation for the inhabitants to take part in war operations. Requisitions must be paid in cash, at the true value, and if this is not possible, then receipts are issued. Contributions are monetary contributions that can be demanded only on the basis of a written order from the commander-in-chief of the enemy occupation army in a certain area and must be in proportion to the wealth of the country. They do not represent a sanction and the Hague Rulebook states in Article 50 that "no collective punishment, monetary or otherwise, can be ordered against the population for individual acts for which they could not be held collectively responsible".

War customs from the time of the power of the Roman Empire allowed the Roman army to seize not only objects used by the opponent but also the opponent himself, which is explained by the fact that Roman law considered foreigners illegal persons. The booty (*praeda*) was handed over to the state in one form or another, and was divided among the soldiers. However, the rules at that time allowed the possibility of robbery (*dispertio*), which benefited only soldiers and military commanders who allowed robbery. In one part of the ancient period, immovable goods were also captured, but later this practice was discontinued, so only movable goods were considered spoils of war. In the Middle Ages, the spoils of war were given great importance, given the opinion that war should be beneficial to the one who starts it. The practice of dividing the spoils of war between the soldiers who came to it was retained, but there was an obligation to hand over war implements, food supplies and ammunition to the ruler. The military leaders of some states also introduced some restrictions regarding the spoils of war, which prohibited soldiers from pursuing the spoils of war without prior permission, or from seizing them after the battle was over. In treaties on the surrender of cities, the victor often undertook not to seize charters , state papers and public documents. In some states, courts were established with the authority to resolve disputes over the ownership of booty acquired in a land war, while the authority to determine the ownership of booty acquired in a naval war belonged to the admiralty (Nis, 1987). At that time, the principle was accepted that the person who seizes does not have ownership of the loot until the competent court, or the admiralty, grants him permission to do so.

ASSASSINATIONS

International humanitarian law does not specifically regulate the assassination of individual military and political figures of an enemy state during war. However, from general legal principles and other rules of international humanitarian law, it can be concluded that assassination carried out by an individual or a group of people in any way and under any leadership is not a legally legitimate act under the following conditions:

- that it was carried out secretly;
- that the assassin was not noticed until the moment of the murder;
- that the assassin did not wear certain insignia and uniform or wore a fake uniform.

Such an attitude should also be derived from the principle that war is not waged against an individual, not even a high-ranking figure of an enemy state, but against the enemy's armed forces. If the assassin is caught in such an action, the power that catches him has every right to bring him to court and punish him most severely. But if a high-ranking figure of an enemy state loses his life in the action of commandos, who are legally at war, then such an act is legitimate.

BLACKMAIL

Blackmail in an armed conflict is an act whose aim is to capture certain military or civilian persons alive or to kill a military or political functionary of a political party for money or other reward. Usually such blackmails were announced through newspapers or radio. This kind of procedure is illegitimate from the point of view of international humanitarian law because it is against the principle of humanity, it is an inhumane procedure because individuals are encouraged to commit crimes for self-interest. Also, publicly announcing that a certain personality will be deprived of mercy is against international humanitarian law, because the war is fought against the military force of the enemy, and not against individuals.

CAUSING REVOLTS

Inciting insurrection is an act that consists in the fact that one warring party incites, assists or organizes insurrection among the other party on religious, political, national or other grounds. What methods the instigator uses is irrelevant

to international humanitarian law. The goal of the rebellion is to weaken the other side and create an atmosphere of insecurity in order to easily overcome the opponent (Vučinić, 2006).

If the population of one territory is ready to rise up against the occupying power or its own government, the other warring party, by encouraging them to fight, can help and politically manage such a fight in a certain way (Perazić, 1966). If these actions were to be encouraged and assisted in a peaceful period, this would represent interference in the internal life of another state, that is, an intervention that is illegitimate under international humanitarian law, while the same actions are considered legitimate during wartime.

PSYCHOLOGICAL WARFARE

Psychological warfare during armed conflicts includes the application of all methods of placing information, which one side directs against the other with the aim of weakening its military power. Most often, these are various news aimed at disinforming the army and the people. It has been used since ancient times, and today it is especially widely used, thanks to modern ways of distributing information that are widely available.

Information that is placed on the Internet, television, radio, newspapers represents the main influence on public opinion in today's global village and societies of communication abundance. There are elaborate methods for presenting certain information to the public through the means of information, and for the psychological effect and practical result to be as favorable as possible. There is a special connection between those who send information in their goal and the media, which some authors compare to "*a too harmonious but long-lasting marriage*" (Danilović, 2007).

The Second World War showed the great perfection of this method of warfare, so that there were also special military units and a structure of organs for propaganda. In later wars, this would become the standard of conduct used by the warring parties.

CONCLUSION

In terms of the way of warfare, the modern war seems to have turned its back on humanity and turned into a great destructive enterprise. Despite the impressive number of international regulations that introduce prohibitions in this regard, their non-compliance is constant. It is also necessary to work on strengthening the awareness of members of the armed forces and to discriminate against all these inhumane actions in armed conflicts that are prohibited by international law. There is a need for constant training of all participants in armed conflicts on how to act, to know this side of war in addition to war skills. And Sun Tzu pointed out, *" war is of essential importance for the state, it is the area of death and life, the*

path of survival and destruction, and therefore it must be studied as well as possible ".

In the period after the adoption of the Geneva Conventions from 1949, the world experienced an alarming number of armed conflicts that affected almost every continent and a large number of countries. The Geneva Conventions and their Additional Protocols from 1977 provided certain protections that represented a big step forward. However, despite this, there were numerous violations of these treaties, which only resulted in suffering and death, and which could have been avoided if international humanitarian law had been better respected.

It can be concluded that even today, after all the agreed prohibitions, it is not ensured that the warring parties consistently adhere to the rules of international humanitarian law, because the old Roman rule says: "*silent legus inter arms*", i.e. that laws are silent in war, because war itself represents violence, and violence is incompatible with law and legality. However, international humanitarian law prescribes the minimums of humanity, which a large number of countries have incorporated into their internal legislation, and in addition, they have committed themselves to the application of these minimum rules through multilateral conventions. All these rules aim to curb violence in war, so that warring parties will behave in accordance with two basic principles of warfare: the principle of military necessity, which allows the use of violence in the minimum form and intensity necessary to achieve the war objective, and the principle of humanity, which is aimed at protecting people's lives and health. Despite the acceptance of these principles by almost all countries of the world, it has unfortunately been shown that many countries interpret these standards differently and in their own way, which sometimes leads to severe abuses and gross and irreparable violations of international humanitarian law.

The logic of war, primarily on the side of the aggressor, deepens and intensifies the spiral of violence that often gets out of control, and sometimes becomes a goal in itself. In all the wars fought so far, many participants easily crossed the line that separates military measures and actions in war from war crimes and the use of excessive military force, all to the detriment of the civilian population, soldiers, wounded, parliamentarians, private and other property, etc. Such procedures should be prevented by the international community with all available instruments, until the culprits are ultimately brought under the influence of international law and judicial justice.

We can also hope that the UN, as the voice of the international community, will pay more attention in the future to respecting international humanitarian law and resisting all the challenges it faces. Every effort in this direction is worth the effort

because the goal is the survival of people in war and the protection of human dignity.

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