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INTERNATIONAL HUMANITARIAN LAW IN THE CONTEXT OF CURRENT CONFLICTS. THE LOGISTICS IN SPECIAL PROTECTION AREAS

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Abstract

The paper intends to highlight the importance of the referendum in a democratic State and to stress the need that its organization and conduct have to be in accordance with the standards required by a State governed by the rule of law. The role of the Constitutional Court will also be depicted and its case-law will be briefly presented in what concerns the most relevant aspects of the referendum as an instrument used by the citizens in order to participate in the decision-making process at the State level.

Key words: *humanitarian law, conflict, wounded, protection zones, security.*

INTRODUCTION

Romania, as a Member State of NATO and EU, through its consolidation, as well as through the defense policy promoted, has acquired a pronounced proactive role within the alliance. Consequently, we note that Romania's responsibilities are not limited to policies ensuring the defense of the national territory or to preventive diplomacy, but extend to policies that promote the interests of Romania and support global stability in any region of the world, especially in the current context, which focuses on the area in the proximity of the Black Sea and neighborhood of Ukraine, a non-NATO state which is in an armed conflict with another non-NATO state.

Therefore, given the geostrategic position of Romania in the South-Eastern European area – a country at the border of NATO and of the European Union – which has an armed conflict at its border, the national defense policy maintains as

its goal the defense and promotion of Romania's vital interests, as well as the active participation of our country in ensuring security and peace in the interest areas of NATO, EU.

International humanitarian law represents, according to a comprehensive definition, a collection of rules that, for humanitarian considerations, are aimed at limiting the effects of an armed conflict, protect people who do not take part or no longer take part in the hostilities, and restrict the means and methods of war (Dragoman, Ungureanu, 2018, p.29).

International humanitarian law is also known under the name of *law of war* or *law of armed conflicts*, it applies to armed conflicts, being regulated especially by the *1949 Geneva Conventions*, supplemented by the two additional protocols of 1977 regarding the protection of armed conflict victims, to which are added a large number of conventions regulating specific segments of international humanitarian law, as well as customary law rules and related principles.

The current national strategy of Romania of enforcing international humanitarian law makes the best of the humanitarian traditions of the Romanian people in general, of the armed forces in particular, as well as of the experience gathered by the structures with responsibilities in this field, especially as a result of participating in various international missions.

The research theme identifies in an evolutive manner the application of the principles of humanitarian law of applied transposition thereof through *Romania's National Strategy of Defense of for the period 2020 – 2024*¹, the manner in which the Romanian Government through the Ministry of National Defense had the task of creating an integrated logistic system, with a medical component, as well as the need to adjust to new realities with regard to the sizing, configuration and missions of the Romanian Army, so that the provision of forces for the action and collective security and defense be carried out in strict agreement with the NATO-EU compatibility requirements.

Speaking of the area of interest in maintaining a favorable security climate, the analysis is directed at Ukraine, a state located in the immediate proximity of our country, a sovereign and independent state which, as early as the year 2022 proceeded to the adjustment of its legislative system according to the conflict situation, by activating the Martial Law², this being the second time it has been activated since World War II, the first time having been in the year 2018, by President Poroshenko.

The restrictive measures imposed by this law are military in nature, with implications on the use of the workforce, on compulsory labor in vital sectors of the war economy, the takeover of command prerogatives by military commanders

¹ <https://www.presidency.ro> in 10.11.2024

² <https://zakon.rada.gov.ua> in 21.11.2024

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or the emergency replacement of administrative authorities, are aimed at the legal regime of property and goods, the rationalization of consumption, but also with regard to the limitation of the population's freedom of movement and the activity of the media, etc.

However, none of the provisions of the Martial Law of Ukraine diminish the provisions of international humanitarian law applicable to the state of armed conflict, on the contrary, the defense policy of the Ukrainian state in relation to Russia, will be conducted with the observance of these rules, although the army of Ukraine has been the subject of accusations of mistreatment and execution of Russian prisoners, as an inappropriate response to the war crimes committed by the Russian army since the beginning of the invasion in the winter of 2022 (*A. Borovyk, 2022, p. 166*).

So, without differentiating between the parties that committed them, the full spectrum of criminal acts criminalized by humanitarian law are present, and the atrocities committed by both parties are investigated by the International Criminal Court (*Nastas, Dorul, 2023, pp. 94-97*) in conjunction with other acts of genocide, such as: the use of prohibited weapons, the abduction and deportation of persons, arbitrary detention and enforced disappearance, the use of Russian filtration camps for Ukrainians, attacks on civilians – the Bucha Massacre, the mass graves in Izyum, execution of armed attacks against civilian vehicles, attacks on medical facilities and energy infrastructure, destruction of cultural heritage, torture of civilians, use of human shields, sexual violence, looting, mistreatment and killing of prisoners, etc.).

We note that the current war is already part of a very broad spectrum of actions and reactions, in a hybrid (multidimensional) space, which define, among other things, the following types of conflicts: informational, cyber, psychological, media, economic, cosmic, cultural, genetic, geophysical, and not least nuclear conflicts, that are conducted by military and post-conflict means³.

Thus, Romania must further develop its own strategic profile in the context of domestic political stability and of a real economic development, participate in the collective defense effort within NATO and in the construction of the military dimension of EU, as well as in the full range of missions for the fulfillment of commitments undertaken at international level, including in respect of post-conflict resilience and reconstruction measures, among other things, the development of legal resilience, a concept that is already present in international use even in countries located in the proximity of the armed conflict (*Beda, 2024, p.605*).

For a multi-annual budgetary policy used at EU level, the date proposed to put into practice the new instrument was 1st January 2021, with the intention for it

³ <https://cssas.unap.ro> in 27.11.2024

to be operational over the entire duration of the Financial Framework 2021-2027, from which it would also receive adequate funding (*Ilinca, 2022, pp. 7-13*)

This is the context that also circumscribes *Romania's National Strategy for the Application of International Humanitarian Law*, which is aimed at ensuring the knowledge and observance of obligations incumbent on the Romanian state through the ratification of international treaties regarding this field and the dissemination of these rules among civil society. (*Decision no. 298/2007 – for the approval of Romania's National Strategy for the Application of International Humanitarian Law*⁴).

I. SPECIAL PROTECTION AREAS

Taking as a starting point the presentation of general conceptual aspects, translated into the specifics of the construction of the logistics system, and in order to further analyze the casuistry of conducting logistical support actions, in particular, of actions aimed at ensuring support in areas of armed confrontations, *it is necessary to determine the status of geographical areas* in relation to the type of armed conflict. In joint operations, logistical support is provided appropriately alongside the functional fields and in terms of medical support.

The doctrine of joint operations logistics (*Regulation of Joint Operations Logistics, updated*⁵), in Article 1, enshrines as general principles: the assurance of mobility, flexibility, deployability and sustainability of forces for the fulfillment of the full spectrum of missions in which they are engaged, is achieved through appropriate logistical support, supplied by an integrated system, logistical support being a decisive element of the engagement of forces in joint operations led by the North Atlantic Treaty Organization – NATO, the European Union – EU, the United Nations – UN, the Organization for Security and Cooperation in Europe – OSCE, as well as within multinational coalitions.

The personnel of international organizations and bodies is exposed to a variety of risks and threats, not only in conflict situations existing in collapsing states where peace-keeping missions and operations are carried out, but also as a result of a complex security environment, dominated by new conceptual mutations and by a rapid pace of technological development. In recent years, the number of casualties among employees of the aforementioned structures has remained high, which indicates that armed violence is still widespread in mission areas and in peace operations. The risk mitigation process is complex and is based on the need for constant assessment of the security situation in an adaptive manner, as well as on a constant correlation of these risks with the level of available capabilities (*Manga, 2023, p. 171*).

Considering the limitations and prohibitions of conducting military operations in special protection areas, we will analyze in this geographical area

⁴Published in the Official Journal no. 353 of 7 May 2008.

⁵Doctrine of joint operations logistics – S.M.G./L-1 – Centrul editorial al armatei (Editorial Center of the Army) – Bucharest, 2008.

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the manner of providing logistical support in joint operations in terms of the functional fields specific to movement and transport, as well as of the medical support offered to people wounded in the military conflict.

Special protection areas are created to shelter certain categories of persons and non-military targets against the effects of combat actions. These categories include: sanitary areas, security sanitary areas and localities, neutral zones, demilitarized zones, defenseless localities.

It is a well-known fact that the logistical system is considered to be exposed and vulnerable to actions, most often the success of military actions being based on the neutralization and occurrence of significant damage in this system, all of which may be justified; but the occurrence of such damage and the organization of hostile actions in special protection areas are strictly prohibited and manifestly violate the provisions of international humanitarian law (IHL).

In the light of the above, the principles of establishing the logistics assurance system in multinational operations interferes with the principles and rules of application of international humanitarian law, without being of a restrictive nature, by means of the following components: medical support (including sanitary transport for the evacuation of the wounded and the dead); campaign services; setting up refugee camps and prisoner-of-war camps. There are significant responsibilities derived from international treaties, from agreements between parties and military regulations, which fall upon logistics to ensure compliance with IHL provisions.

During combat and especially in the aftermath thereof, together with the other departments, the logistics department has to solve particularly important issues, with responsibilities in enforcing IHL, such as: sanitary transports; carrying out actions in protected areas; organizing the medical service; evacuation; organizing campuses and internees; managing criminal and disciplinary issues in prisoner-of-war campuses; interning belligerents in the neutral zone (*Pashynna, 2024, p.922*).

II. RESPONSIBILITIES REGARDING MEDICAL SERVICES AND TRANSPORTS

The need for a joint debate regarding the two components of the law of war (one legal and the other one technical, with a logistical specificity), has arisen from the conception of FRÉDÉRIC DE MULINEN, who expressed the following opinion: “*military staff with special functions, as well as legal advisors, members of medical services, logistics specialists, etc., will receive training with an emphasis on the specific needs of their functions*” (*Codiță, 2007, pp.58-62*).

As a component of logistics, sanitary transports and sanitary service are aimed at persons with the legal status of wounded person. The terms *wounded* and *sick* mean persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility (*Art. 8, Additional Protocol I to*

the Geneva Conventions of 12 August 1949, relative to the Protection of Victims of International Armed Conflicts - G.P I).

These terms concern postpartum women, newborns and other persons who might need immediate medical assistance, such as disabled persons and pregnant women, and who refrain from any act of hostility. One should note, in the content of this text, the requirement of refraining from acts of hostility, as the practice or the manifested express intention to commit such acts determines the loss of the capacity of protected person.

The person generally in charge of logistics will decide the precise manner in which the sanitary service is to operate behind the front line, according to the sanitary service system in place in his scope of responsibility (e.g. identification, use of camouflage, storage and use of weaponry, temporary medical assignment).

The phrase *healthcare personnel* means persons assigned solely by one party to the conflict either to medical/sanitary purposes (search, evacuation, transport, diagnosis and treatment of the wounded, sick, shipwrecked, as well as the prevention of diseases), or to the operation or management of sanitary transport.

The field of application of the provisions which are aimed at improving the condition of the wounded, sick and shipwrecked covers all those who are affected by a situation foreseen and established under the terms of the protocol, without allowing any unfavorable distinction based on criteria such as race, color, language, religion or belief, political opinions or other opinions, national or social origin, wealth, birth or other status or any other similar criterion.

According to Mulinen, there are three possible functional systems of sanitary service in areas behind the front line; completely distinct military and civilian sanitary services; military and civilian sanitary services that cooperate by mutual acceptance of the wounded and sick, both civilian and military; partially or completely integrated military and civilian sanitary bases and services.

All wounded, sick and shipwrecked persons, regardless of the party they belong to, enjoy protection and medical care, they should be treated humanely under all circumstances and should receive, to the maximum extent possible and within the shortest timeframe, the medical assistance required by their condition, no distinction being permitted according to other criteria than medical ones. The health and physical or mental integrity of persons who are in the hands of the adverse party or interned, detained or otherwise deprived of their liberty should also be protected and should not be compromised by any action or unjustified omission.

Even when such persons give their consent, it is prohibited, in particular, to practice: physical mutilations; medical or scientific experiments; harvesting of tissues or organs for transplants, except in cases where they are justified. The regime of blood or skin donation for grafts is also regulated, with the prerequisite that these should be voluntary, not the result of coercive measures or insistence, and that they should be intended for therapeutic purposes.

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In addition to the aspect regarding the protection of the human factor, which is part of a complex set of rules of international security behavior, the logistic structures that include medical services should also care for the goods and means of health units, as well as for the means of transport (sanitary vehicles, hospital ships, rescue boats, medical aircraft, other means of transport), on condition of fulfilling the requirements of protection of combatants, when they are protected by the Red Cross/Red Crescent/Red Crystal emblems.

These emblems protect: the wounded and the sick, healthcare personnel; ambulances and transports; hospitals, first aid stations and establishments belonging to the Red Cross/Red Crescent/Red Crystal.

Healthcare units should always be respected and protected and should not be subject to attacks. These provisions also apply to civilian healthcare units to the extent that they meet one of the following conditions: they should belong to one of the parties to the conflict; they should be recognized and authorized by the competent authorities of one of the parties to the conflict (*Art. 9/2 Additional Protocol I to the Geneva Conventions, relative to the Protection of Victims of International Armed Conflicts, Geneva - G.P I*).

Healthcare units must never be used as shelter from attacks; the parties to the conflict must make sure that they are located so that attacks against military targets do not endanger such healthcare units. NATO ensures coordination in establishing the tasks and responsibilities for the provision of operational medical support (OMS) on the basis of this provision.

III. THE CONDUCT OF ACTIONS OF LOGISTICAL SUPPORT REGARDING EVACUATION IN PROTECTED AREAS

Areas under special protection are: non-defended localities and demilitarized zones (*Art. 59, Art. 60, Additional Protocol I to the Geneva Conventions, relative to the Protection of Victims of International Armed Conflicts, Geneva – G.P I., 1949*), protection is provided to hospitals, sanitary localities, neutral zones, places of internment (*Art. 14, Art. 15 and Art. 83 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, Geneva, 1949*).

The competent authorities of a party to the conflict will be able to declare as *non-defended locality* any populated area, which is located in the vicinity of or inside a zone where armed forces are in contact and which is open to occupation by an adverse party.

According to the mandatory conditions to be met, logistic structures must undertake measures to collect and evacuate arms and materials, and within the framework of these operations the population and the authorities are not allowed to commit acts of hostility.

A locality loses the status of non-defended locality in cases where the following conditions are met: there are combatants present, as well as arms and

materials intended for the use of force; military targets and facilities are now used for hostile purposes; activities are undertaken to support military operations.

Demilitarized zones are established on the basis of an express agreement, whose the subject matter consists in the following conditions: all combatants, as well as the weaponry and materials intended for the use of force shall be evacuated; no hostile use shall be made of fixed military targets and facilities; the authorities and the population shall not commit any acts of hostility; all activities related to the military effort must cease.

Situations in which, as part of logistical support, missions consisting in the carrying out of actions within the protected areas are also assigned, should be analyzed from the standpoint of the provisions of international humanitarian law. If the supply of medical support is regulated in the doctrine of multinational forces, given the combative nature of logistic forces, in conjunction with the entrustment of missions for the evacuation of goods and materials, with missions to inspect and check fixed targets and facilities located within these areas, there is a need to clarify and to legally classify these types of missions, the ultimate goal being to protect the forces and maintain the status of protected area.

By way of example, the presence in such an area of persons specially protected by police forces maintained with the sole purpose of preserving public order is not contrary to the mandatory conditions to be met for such areas, as presented above (*Paragraph 4 of Article 60 of Additional Protocol I to the Geneva Conventions of 12 August 1949 relative to the Protection of Victims of International Armed Conflicts - G.P I*).

Therefore, the spectrum of Russian warfare, which includes, cyber warfare, combined arms cyber warfare, which includes combined arms attacks on medical facilities and enhanced use of drones, both defense and humanitarian sector staff, and evacuation routes, occurs daily and is likely to continue and intensify. Estimates of the number of dead or wounded across all sectors vary widely, ranging from 200,000 to 400,000. The targeted nature of Russian hybrid warfare and cyber-attacks on individuals, groups of rescuers and volunteers, and health care professionals at large presents challenges in sharing data from the frontlines among partner forces (*Quinn, Panasenko, Leshchenko, 2024, pp.20-21*).

In such situations, one option could be to use, on a free, voluntary basis, civilian persons who do not participate in hostilities and who do not perform any work of a military nature during their stay in these areas; nevertheless, the military nature of these missions is yet to be analyzed (*Art. 15 letter b) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949*).

The civilian staff assigned to work in a supply or maintenance base also bear the risks to which the military staff employed at the base are exposed. The simultaneous presence of military and civilian staff and goods in the same place should be avoided.

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Thus, the difficulty arises in determining the applicability of international humanitarian law, a task that is complicated by the problems of classifying conflicts as international or non-international. Therefore, certain human rights obligations may be temporarily suspended - creating an additional layer of complexity, affecting the interpretation and application of the law during armed conflict (*Chen, 2024, pp.79-80*).

CONCLUSION

As a corollary, there are significant responsibilities incumbent on logistic structures, which are derived from international treaties, from agreements and military regulations, all of these for the purpose of ensuring compliance with IHL rules, throughout the carrying out of actions, but also after the cessation of combats, the logistics department having to resolve, in cooperation with the other departments important, issues of personal safety and security.

*So, together with other authors, the term "emergency logistics" can be called in case of conflict plays an essential role in ensuring the uninterrupted flow in uninterrupted crises and disasters, in particular, when it comes to people injured and evacuated from protected areas. One of the goals of this article is to highlight the importance of the person's safety in the diversity of situations during the war (*Myronenko, Yurchenko, 2024, pp.3-4*).*

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