PROTECTION OF CIVILIANS BY THE POLISH MILITARY CONTINGENT IN AFGHANISTAN

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Summary

The work focuses on the issue of civilian protection by the Polish Military Contingent in Afghanistan, because despite of law changes, the situation of civilians in today's military actions is still far from perfection. This work presents key legal considerations of civilian protection. The authors' intention is also to show the relation between International Humanitarian Law and Human Rights, as both of these law branches focus on respect for, and dignity of the civilian population. But the main object of study has focused on aid provided by the Polish Military Contingent for civilians in Afghanistan.

Keywords: Afghanistan, ISAF peacekeeping mission, Polish Military Contingent.

Introduction

The aim of the "law of war", is to guarantee the highest effectiveness of military operations, while at the same time minimizing losses on people³ and goods involved in these activities. It should be noted, however, that the implementation of these aims is complicated.

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³ It should be noted that the total amount of all XX military conflicts victims exceeded 87 million people. See: B. Pacek, *Współczesne działania militarne i ich wpływ na bezpieczeństwo międzynarodowe* [in:] *Współczesny wymiar bezpieczeństwa (między teorią a praktyką)*, red. J. Pawłowski, Stowarzyszenie Ruchu Wspólnot Obronnych, Warszawa 2011, p. 159.

Civilian population⁴ is especially strongly sensitive to the cruelty of war. Moreover, in modern warfare is more frequently the subject of targeted armed attacks⁵. Crimes committed during armed activities against the civilian population⁶ result in the intensification of conflicts and the formation of permanent bias between opponents.

Despite the progressive of changes in the legal situation of the civilian population, in spite of the successive strengthening of their protection, the situation the civilian population in modern military action practice is still far from perfect.

The study covers legal and theoretical issues, but also reflects the practical approach at issues of civilian protection during military operations carried out by the Polish Armed Forces serving in Afghanistan.

Legal frames of civilian protection

Protection of civilians is very complex and is a set of internally coordinated actions, which have an organizational, logistic, training and investment nature.

In the light of international humanitarian law under the term of civilian protection during military operations, we should understand ensuring the safety of civilians and protection of their property and their environment against attacks⁷.

The widest catalog of legal norms on civilian rights during military operations is included in the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War ⁸ from 12 August 1949, completed in 1977 by protocols thereto.

Art. 3 of the Convention states: "Persons taking no active part in the hostilities, including members of armed forces who have laid down their

⁴ Civilians are a category of persons covered, as a rule, by legal protection against the effects of military actions. The presence, within the civilian population, of individuals not included in the definition of civilians, does not deprive the population of its civilian character. In the event of doubt as to the legal status, each person will be considered a civilian until finding another fact, the so called: presumption of civilian status.

⁵ Violated are also the rights of persons with a special protection status, eg. medical services or journalists.

⁶ In World War I, civilians accounted for 5% of human losses, in World War II, almost 50%, in the Korean War 60%, and the Vietnam War as much as 70%

⁷ See: J. Kraszewski, Ochrona ludności cywilnej przez polskie kontyngenty wojskowe w Iraku [in:] Ochrona ludności cywilnej podczas działań polskich sił zbrojnych w Afganistanie, red. B. Janusz-Pawletta, Akademia Obrony Narodowej, Warszawa 2013, p. 18.

⁸ DzU of 1956 y. Number 38, pos. 171.

arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race⁹, color, religion or faith, sex, birth or wealth, or any other similar criteria" ¹⁰

In addition, art. 14 shows in a special way of protecting: "wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven" 11.

It is worth noting that, in accordance with the provisions of the Convention the occupying state has a duty to provide medical aid and healing of civilians and respecting personal honor, family rights, etc. The Convention and additional protocols also prohibit forcing or inducing individuals to military service in the armed forces of the enemy, forced displacement of civilians in the occupied territories, deportation or transferring of its own civilian population into the territory it occupies¹².

The Convention and its additional protocols undertake to ensure the civilian population basic minimum living conditions¹³ and food, to treat it humanely, to take special care of people in need of assistance.

Although there are legal considerations that limit military action today, still we encounter numerous victims among civilians and their property¹⁴.

According to art. 46 paragraph 2 of the Hague Regulations, civilian property is also subject to protection. "The Occupying state may not destroy movable or immovable property constituting individual or collective property of private persons, the State or public legal persons, social or cooperative organizations, except in cases where such destruction is rendered absolutely necessary by military operations"¹⁵.

For acts against the law, civilians may be held responsible by the occupying state. No person, that is protected, can be punished for an offense, not

⁹ Discrimination based on race has a special status. It's content was shaped gradually to achive a specific autonomous character in the midst of unlawful discriminatory treatment exclusion criteria. See: Art. 1 of the Convention on the Suppression and Punishment of the Crime of Apartheid, Art. 7 paragraph 1 of the Statute of the International Criminal Court, Regulation 2000/15, Section 6 (1) (j) of the UN Transitional Administration in East Timor (UNTAET)

¹⁰ Ibidem.

¹¹ Ibidem.

¹² See: J. Kraszewski, Ochrona ludności cywilnej przez polskie kontyngenty wojskowe w Iraku [in:] Ochrona ludności..., p. 18.

¹³ For example: clothing, medicines, sanitary materials, as well as objects necessary for religious worship.

¹⁴ See: B. Pacak, Współczesne działania militarne i ich wpływ na bezpieczeństwo międzynarodowe [in:] Współczesny wymiar..., p. 166.

¹⁵ The Hague Regulations IV Hague Convention of 1907, DzU of 1927 y. Number 21, pos. 161.

personally committed. This means the prohibition of collective punishment, which is contrary to the principle of individual criminal responsibility¹⁶.

International Human Rights Law and International Humanitarian Law

Minimum humanitarian values are a *sine qua non* of social and legal justification for the use of force or conduct of hostilities¹⁷. The scope of these standards is not easy to define.

The relationship between International Humanitarian Law (IHL) and Human Rights is obvious, not only due to the fact that "human rights and humanitarian law focus on respect for the values and human dignity; both areas are designed to care for human dignity; basic standards objectives of both law branches are to protect persons against certain shameful acts recognized by all civilized nations as unacceptable in any circumstances"¹⁸.

Many discussions take place about whether human rights treaties apply in face of armed conflict, because there are no binding rules which would settle issues of the impact of military action on the continuity of treaties concluded between States, in a situation where these take part in armed conflicts¹⁹. Since 2004 the UN International Law Commission is working on regulations in the above case.

Polish participation in peacekeeping missions in Afghanistan

The Charter of the United Nations has no definition of peacekeeping and stabilization missions²⁰. Although they are a permanent element of

¹⁶ See: B. Janusz-Pawletta, *Prawna ochrona ludności cywilnej podczas działań zbrojnych* [in:] *Ochrona ludności cywilnej...*, p. 26.

DzU of 1956 y. Number 38, pos. 171.

¹⁷ See: B. Janusz-Pawletta, *Prawna ochrona ludności cywilnej podczas działań zbrojnych* [in:] *Ochrona ludności cywilnej...*, p. 37.

¹⁸ Judgment of the International Criminal Tribunal for the former Yugoslavia on Zejnil Delalic, Adravko Mucic, Hazim Delic, Esat Landżo of 20 February 2001.

¹⁹ See: K. Masło, *Wpływ konfliktu zbrojnego na obowiązywanie umów międzynarodowych* [in:] *Współczesne problemy praw człowieka i międzynarodowego prawa humanitarnego*, red. T. Jasudowicz, M. Balcerzak, J. Kapelańska-Pręgowska, Ośrodek Doradztwa i Doskonalenia Kadr, Toruń 2009, p. 367.

²⁰ Issues relating to the United Nations response to a peace interruption risk, breach of peace and acts of aggression regulated by Chapter VII of the Charter of the United Nations.

international politics, becoming a primary, more or less effective tool for resolving international conflicts²¹. In accordance to the definition by the National Defense University a peacekeeping mission is "a field operation of the United Nations, under which the international civilian and military personnel deploys with the consent of the UN²² to help resolve existing or potential conflicts of international or internal conflicts with a clear international dimension." ²³

Poland participates in various peacekeeping and stabilization missions since 1953²⁴. In operations outside the country participated already more than 84 thousand soldiers and civilian employees of the army. Initially, these were traditional peacekeeping operations, consisting mainly of monitoring the separating conflicted parties after the cessation of hostilities²⁵.

The issue of the use of Polish troops outside the country in generally regulated by art. 117 of the Constitution, which is a novelty in the Polish constitutional system²⁶. According to the first part of the article "Principles of using Armed Forces outside the Republic of Polish are defined in ratified international agreements or bills." ²⁷

The Polish Military Contingent participated in the operation Enduring Freedom since 16 March 2002²⁸, participating in the Allied Forces under American command²⁹. For Polish support in anti-terrorist operations America

See: United Nations Information Center, http://www.unic.un.org.pl/dokumenty/karta_onz.php, *Karta Narodów Zjednoczonych*, San Francisco, 30.04.2015 y.

²¹ See: K. Paszkowski, F. Gągor, *Międzynarodowe operacje pokojowe w doktrynie obronnej RP*, Wydawnictwo Adam Marszałek, Warszawa 1998, p. 13.

²² Organizacja Narodów Zjednoczonych/United Nations Organization – ONZ/UNO.

²³ See: W.H. Lewis, *Military Implications of United Nations Peacekeeping Operations*, National Defense University, Washington 1993, p. 17.

²⁴ When for the first time they were sent to Korea to supervise the ceasefire between the Korean republics.

²⁵ The Act of 21 November 1967 on the universal duty to defend the Republic of Poland, DzU of 2004 y. Number 241, pos. 2416.

²⁶ See: Z. Trejnis, *Sily zbrojne w państwie demokratycznym i autorytarnym*, Warszawa 1997, Wydawnictwo Adam Marszałek, p. 307.

²⁷ The Constitution of the Republic of Poland, 2 April 1997, DzU of 1997 y. Number 78, pos. 483.

²⁸ We belong to the group of countries of earliest and most active supporters of the United States in the conducted war. However, the question is drawn whether our loyalty is not at too high expence. After all, even in times of PRL, Poles had a positive reputation in Muslim countries. See: A. Łukaszewicz, *Afganistan i Irak, ekonomiczny bilans wojny z terroryzmem*, Instytut Stosunków Międzynarodowych Uniwersytetu Warszawskiego, Warszawa 2010, p. 10.

²⁹ The intervention of multinational forces in Afghanistan was a direct consequence of the terrorist attacks on the World Trade Center and the Pentagon on 11 September 2001. Responsibility for the attacks was charged Osama bin Laden and Taliban Al –Kaida.

asked the Polish government in November 2001³⁰. According to Polish legislation, the government asked the President of the Republic of Poland with a request for approval of the use of the Polish Military Contingent, the proposal was approved by decision of 20 November 2001³¹.

The mission of International Security Assistance Forces (eng. International Security Assistance Force – ISAF) ³² in Afghanistan was, for the Polish Armed Forces, one of the biggest challenges in recent years³³.

This is because, the mission was carried out under conditions different from the Polish ones in terms of culture, civilization³⁴ and climate³⁵. Under conditions in which the biggest threat was the terrorist activity of the Taliban³⁶ and other anti-government terrorist groups³⁷. The aim of the Taliban operation was to transform Afghanistan into an Islamic state³⁸, where every aspect of governance would be conducted according to the principles and guidelines of religion³⁹. "We want take all weapons which are in the

³⁰ Cf. H.M. Królikowski, C. Marcinkowski, *Afganistan 2002*, Wydawnictwo Bellona, Warszawa 2003.

³¹ See: K. Korzeniewski, *Afganistan, gdzie regulą jest brak regul*, Wydawnictwo Akademickie DIALOG, Warszawa 2006, p. 60.

³² The ISAF mission began in 2001. It was a stabilization operation, conducted on the basis of the UN Security Council Resolution (No. 1386 of 20 December 2001, n. 1510 of 13 October 2003, n. 1563 of 17 September 2004, n. 1623 of 13 September 2005. and No. 1707 of 13 September 2006.) and the Bonn Agreement of 5 December 2001 concerning the temporary agreements on the reconstruction of permanent government institutions in Afghanistan.

³³ See: A. Tokarczyk, *Międzynarodowe prawo humanitarne a operacje pokojowe*, "Kwartalnik Bellona" 2009, nr 2, p. 129. See too: R. Sołtyk, *Tylko nie Kabul*, "Gazeta Wyborcza", 11 czerwca 2003 r.

³⁴ See: T. Ripley, *Air war Afghanistan: US and NATO air operations from 2001*, Pen&Sword Aviation, Barnsley 2011, p. 13.

³⁵ See: Ł. Jureńczyk, *Wojna z talibami i Al-Kaidą. Afganistan w latach 1994-2012*, Wydawnictwo Naukowe Grado, Toruń 2013, p. 181.

³⁶ In October 1994, surprisingly for observers of world politics, unexpectedly in conflict-ridden Afghanistan appeared a new political and military force, the Taliban (Taliban in the Pashtun language means students, those who seek knowledge, truth). A lot os stores have accumulated around their existence. The Taliban movement consisted largely of young men mostly ethnic to the Pashtun group, born in exile in Pakistan and studying at religious schools – madrassas. As a result, they formed a group of mainly young people separated from their roots, deprived of their own social environment, and therefore more susceptible to indoctrination.

³⁷ See: T. Kamiński, *Afganistan. Parla nist*, Oficyna Wydawnicza Branta, Bydgoszcz-Warszawa 2008, p. 233.

³⁸ Cf. D. Cordovez, S.S. Harrison, *Out of Afghanistan. The Inside Story of the Soviet Withdrawal*, Oxford University Press, New York-Oxford 1995; Cf. L. Dupree, *Afghanistan*, Oxford University Press, Karachi 1997.

³⁹ Cf. M. Haghayeghi, *Islam and Politics in Central Asia*, Macmillan, London 1997.

hands of the Afghan people. We want to finally establish a strong government. Obedient to the dictates of Islam"⁴⁰

The slogan "catching hearts and minds" became the newly remembered key to success in anti-partisan⁴¹ actions. It is precisely in such operations that the importance of the local population, their ways of life, social relationships, religious beliefs became a new point of "gravity"⁴². In context of hostilities it should be noted that the word "heart" means gaining emotional support of the local population, while the phrase "brains" indicates that loyal members of the community intend to achieve their personal rational benefits⁴³.

As ways to win the battle for "hearts and minds" one can indicate: development aid aimed at rebuilding the country, local community involvement in civic projects and social activities, strengthening local initiatives, psychological actions through mass media, which were focused on government support. Use of force only in situations where such action is inevitable⁴⁴, because a necessary part of an effective strategy "to catch hearts and minds" is to avoid losses in the civilian population.

In 2008 the Polish Task Force White Eagle (eng. Polish Task Force White Eagle) was created, as one of the brigade's Battle Groups it took over the responsibility for the Ghazni⁴⁵ province.

One of the most important operations carried out by Polish soldiers, was the operation "Eagle Feather". Its aim was to improve the security in the south-east of the Ghazni province, and help for civilians. Polish soldiers fought shoulder to shoulder with American and Afghan armies in the Giro district. The commander of the forces participating in that operation was Colonel Rajmund Andrzejczak. The operation had two phases. In the first part of the Afghan army combed the designated place in search of weapons

⁴⁰ Shir Mohamed Stanekzai statement, the acting Deputy Foreign Minister in the the Taliban government.

See: W. Klewiec, *Talibowie – uczniowie proroka*, "Rzeczpospolita", 25 października 1996 r., p. 15.

⁴¹ Cf. H. Schreiber, Świadomość międzykulturowa. Od militaryzacji antropologii do antropologizacji wojska, Wydawnictwo Uniwersytetu Warszawskiego, Warszawa 2013.

⁴² Most, however, the phrase is associated with a successful campaign in Malaysia, where British troops led since 1952 by Marshal Gerald Templer fought against communist partisans. Templer believed that "the answer to the uprising does not rely on a decision to send more troops into the jungle, but to be pursued in the hearts and minds of the people". See: B. Lapping, *End of Empire*, Granada Publishing, London 1985, p. 477.

⁴³ See: P. Dixon, "*Hearts and Minds"*?, British Counter-Insurgency from Malaya to Iraq, "The Journal of Strategic Studies" 2009, tome 32, nr 3, p. 363.

⁴⁴ Ibidem, p. 359.

⁴⁵ See: http://www.isaf.wp.mil.pl, 03.05.2015 y.

and people associated with the Taliban. Afghans were either shielded by Polish soldiers. Search the villages was based on the Polish soldiers protecting the area, and the Afghan army searching the village. In the second part of the operation, the army helped the most needy. As a result of the operation 20 people suspected of terrorist activity were arrested. Also large quantities of arms were confiscated. Equally important were non-military activities. Polish soldiers handed out a lot of food packs. This operation was strategic not only for Polish soldiers, but also for the safety of the entire region. This was the largest operation of Polish forces in Afghanistan⁴⁶.

Among the main tasks of the Polish Military Contingent (PKW) we can mention: ensuring security and stability in the area of responsibility, training of Afghan Security Forces, supporting the Afghan government and local administration, help with food distribution, assistance for Afghan police, assistance for inhabitants of the province in securing their basic life needs⁴⁷.

Under the doctrine of combined operations in the framework of civil-military cooperation, military commanders made contacts with the authorities and civil organizations. When taking such actions, one should remember to take into account the specificities of the region and the communities living there eg. Social, political, religious, economic, environmental, etc.⁴⁸

The result of the above findings was the supplementation of the Polish military presence with civilian elements. From mid-2008 the Polish contingent in the framework of Provincial Reconstruction Team (eng. Provincial Reconstruction Team – PRT) in Ghazni. Most of the PRT projects were related to infrastructure development (roads, bridges, water management, municipal services). But there were also actions aimed at promoting social development. Including vocational training for people starting and running a business, courses in reading, writing, math, tailoring, carpet weaving, computer training, English language training and technical support to local media⁴⁹.

During each rotation of the PMC in Afghanistan Polish medical personnel provides assistance to civilians in situations of an immediate threat to life, but also helps the needy, who reported asking for assistance directly to the base⁵⁰.

⁴⁶ See: http://www.cannon-fodder.mil.pl/index.php?option=com_content&view=article &id=1269:pkw-afganistan-operacja-qorle-pioroq&catid=23:aktualnoci&Itemid=30, 02.05.2015 y.

⁴⁷ See: http://www.isaf.wp.mil.pl, 03.05.2015 y.

⁴⁸ See: M. Cieślarczyk, M. Chojnacki, A. Radomski, *Współpraca cywilno-wojskowa w siłach zbrojnych*, AON, Warszawa 2003, p. 45.

⁴⁹ See: http://www.isaf.wp.mil.pl, 01.05.2015 y.

⁵⁰ See: K. Goniewicz, M. Goniewicz, R. Brzozowski, Obowiązki sił zbrojnych w zakresie ochrony zdrowia ludności cywilnej, a udział Polski w międzynarodowych siłach wspierania bezpieczeństwa w Afganistanie [in:] Ochrona ludności cywilnej podczas działań

As part of the PMC, operated entities that regularly assisted the poorest Afghans, we must mention here the Group of Civil-Military Cooperation (CIMIC) and the Provincial Reconstruction Team (PRT), assistance provided by the Poles reached schools, universities and health centers⁵¹.

With the completion of the ISAF operation, a new training mission Resolute Support was created. It was established on the basis of NATO agreements during the summit in Chicago in May 2014 in order to continue support of the Afghan security forces after the withdrawal of ISAF contingents. Priority tasks included: training and consulting Afghan army and police on operational and strategic levels without taking part in battles with the rebels. The Polish government has again decided to continue its military presence in Afghanistan after the end of the fifteenth rotation of the PMC ISAF and pursuant to the provisions the President of the Republic of Poland established the Polish Military Contingent in the *Resolute Support* mission, consisting of approx. 120 soldiers, military advisers, protection troop, communication and logisticians⁵².

According to official figures of the Polish Ministry of National Security, 869 soldiers and military employees were injured in combat in the operations of the PMC in Afghanistan, of which 361 were seriously injured (whose care amounted to more than 7 days) 53. Afghanistan forever 54 "consumed" 43 Polish soldiers and two army personnel members. This is by far the longest and bloodiest foreign expedition of Polish armed forces, which officially ended on 31 December 2014. The total cost of Polish involvement in Afghanistan is estimated at 6 billion zlotys (up to 31.10.2014 r.) 55.

polskich sił zbrojnych w Afganistanie, red. B. Janusz-Pawletta, Akademia Obrony Narodowej, Warszawa 2013, p. 66.

⁵¹ See: K. Goniewicz, M. Goniewicz, R. Brzozowski, *Obowiązki sił zbrojnych...*, p. 66.

 $^{^{52}}$ http://www.wojsko-polskie.pl/pl/z-zycia-wojska/34533,pozegnanie-i-zmiany-resolute-support-mission.html, 05.05.2015 y.

http://do.wp.mil.pl/artykuly/aktualnosci/2015-01-05-podsumowanie-polskiego-udziau-w-misji-isaf/, 05.05.2015 y.

⁵⁴ por. Łukasz Kurowski, st. kpr. Szymon Słowik, st. szer. Hubert Kowalewski, kpr. Grzegorz Politowski, por. Robert Marczewski, plut. Waldemar Sujdak, kpr. Paweł Brodzikowski, kpr. Paweł Szwed, st. chor. szt. Andrzej Rozmiarek, kpt. Daniel Ambroziński, sierż. Marcin Poręba, st. szer. Artur Pyc, kpr. Piotr Marciniak, kpr. Szymon Graczyk, kpr. Radosław Szyszkiewicz and others, http://www.psz.pl/116-bezpieczenstwo/polski-kontyngent-w-afganistanie, 07.05.2015 y.

⁵⁵ http://do.wp.mil.pl/artykuly/aktualnosci/2015-01-05-podsumowanie-polskiego-udzialuw-misji-isaf, 07.05.2015 r.

Conclusions

Every armed conflict entails sacrifice. Unfortunately, these victims are mostly civilians. One should be aware that the active participation of the Polish contingent was not just of military dimension. Polish soldiers first and foremost cared about human rights, reacted to the bad situation of Afghan civilians, ensured adequate protection, as far as was possible in difficult wartime circumstances, raised the life standard and watched over their safety, often saving someone's health and life, at the expense of their own.

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