

**THIRD REPORT  
ON THE IMPLEMENTATION AND  
DISSEMINATION  
OF INTERNATIONAL  
HUMANITARIAN LAW  
IN THE REPUBLIC  
OF POLAND 2014**



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# INTRODUCTION

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## 1. Specific nature of international humanitarian law and its implementation

In this report, the term “international humanitarian law” (IHL) is understood as the equivalent of the term used in the past – international law of war and the term that is becoming obsolete – international law of armed conflicts. Thus, international humanitarian law consists of the rules of combat and the rules of protection (*ius in bello*). Like other areas of international public law, humanitarian law derives from the international customary practice that has been shaped for centuries on the basis of the medieval knight codes and barbaric practices of ancient despotism. Since the second half of the 19<sup>th</sup> centuries, both groups of rules have been subjected to codification attempts. That evolution made international humanitarian law take the form of a body of standards of the following features.

First, codification ensured that international humanitarian law is one of the areas that have the highest number of ratified multilateral treaties. Hague and Geneva Conventions introduced in the 19<sup>th</sup> and 20<sup>th</sup> centuries belonged to the biggest legislative undertakings in modern international law. Moreover, next to codification, many further conventions were adopted in the course of the so-called progressive development of international law under the influence of technological innovations in the means and methods of armed combat.<sup>1</sup>

Second, one of the specific features of that body of international humanitarian law treaties takes the form of the influence of the causal relationship between armed conflicts and further amendments of international instruments. It is said that each new Geneva Convention appears one war too late. Subsequent conflicts proved that there are quite a lot of gaps, ambiguity and inconsistency as well as interpretation difficulties, which forced a natural regulatory reflex, i.e. the need to engage in codification efforts after the war in order to correct and supplement the binding treaty regulations.

Third, a significant portion of the international humanitarian law, due to the tendency discussed above, became very clear and precise standards, and which in turn is recognized as one of the important factors that contribute to respecting the humanitarian law, contrary to unclear rules or rules that can be interpreted in many different ways.<sup>2</sup> Introducing precision to the humanitarian law conventions causes, however, a certain and excessive diffuseness of the adopted regulations.

Fourth, a specific consequence of drafting, developing and supplementing humanitarian law standards is the fact that the majority of these standards were formulated using the *self-executing rules*, i.e. standards that may directly be applicable, without the need to pass national implementing, or executive, legislative acts. There are few rules that impose on the countries-parties to the humanitarian law conventions the obligation to issue relevant provisions that enable their application. That group is composed in particular of the standards of the Geneva Conventions

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<sup>1</sup> See probably the most complete set of such instruments: D. Schindler, J. Tomas (eds.), *The Laws of Armed Conflicts. A Collection of Conventions, Resolutions and Other Documents*, Alphen an den Rijn-Rockville and Geneva, 1981, pp. 933. Moreover, websites are available – of the International Committee of the Red Cross (ICRC) – *Treaty Database and States Party* ([www.icrc.org](http://www.icrc.org)) and Yale Law School – *The Avalon Project. Documents in Law, History and Diplomacy* (<http://avalon.law.yale.edu>). Polish compilations include *Międzynarodowe prawo humanitarne konfliktów zbrojnych. Zbiór dokumentów*, M. Flemming *et al.* (ed.), Warszawa: Akademia Obrony Narodowej, 2003, pp. 587.

<sup>2</sup> Such a submission is put forward by the supporters of the legitimacy theory in international relations. One of its proponents indicates *determinancy* of rules regarding prisoners of war as an example (T.M. Franck, “Legitimacy in the International System,” *American Journal of International Law*, Vol. 82, p. 713-719), nevertheless one may refer such an assessment to many other regulations of humanitarian law.

and the Additional Protocols requiring to adopt in the domestic law provisions to prosecute and punish breaches of international humanitarian law.<sup>3</sup> Without such a legislative intervention, IHL provisions on prosecuting and punishing perpetrators may turn out to be ineffective.

Fifth, contrary to other areas of international law, in the case of international humanitarian law, the role of customary law has not diminished, as it accompanied the countries following its rule of combat, protection and judicial procedure. Moreover, treaty-based humanitarian law has been significantly strengthened by working out a collection that resembled a code of common law standards.<sup>4</sup> Under the auspices of ICRC and with the participation of governmental experts, it was possible to agree on a list of 161 rules that are recognized as the rules of the customary humanitarian law.

Sixth, significant integration activities took place within the normative system of humanitarian law. It became perceptible in the slow departing from the division into The Hague law (rules of combat), contained mostly in the 1989 and 1907 Hague Conventions, and the Geneva law (rules of protection) reflected in the Geneva Conventions and Protocols. Another confirmation of that tendency is the integrated approach to some problems of humanitarian law, which is clearly visible in the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Oslo, 1997) that contains anti-war legislation or disarmament legislation (*ius contra bellum*) in one instrument, *rules of combat* in the form of a ban on using mines, and the *rules of protection* in the form of protective legislation of combatants and civilians.

Seventh, the tendency to bring closer and integrate the rules of humanitarian law applicable in international and non-international armed conflicts, what promotes the protection of persons affected by the latter conflicts.

Eighth, strengthening and development is also due to that portion of international law that pertains to prosecuting and punishing grave and other breaches of international humanitarian law by establishing a few *ad hoc* international tribunals and also mixed, or hybrid tribunals, and a permanent International Criminal Court.

These and other specific features of international humanitarian law and its dynamic changes must be taken into account in this report with a view to further supporting its implementation and dissemination process.

## 2. International law within the Polish legal system

Article 9 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of the Republic of Poland of 1997, No 78, Item 483, as amended) stipulates that “The Republic of Poland shall respect international law binding upon it.” This means that Poland is obliged to observe international agreements, norms of customary international law, the general principles of law of the international community and the law-making resolutions of international organizations. Pursuant to Article 38(1)(d) of the Statute of the International Criminal Court, judicial decisions, as subsidiary means for the determination of rules of law, may play an important role in the interpretation and application of international law.

The principle provided for in Article 9 of the Constitution gains significance with reference to international humanitarian law, where customary rules have been well-enhanced in the rulings of international courts in the past decades.<sup>5</sup> A list of 161 customary rules was drafted as a result of a few-year-long work of many experts of the International Committee of the Red Cross and consultants of NGOs and governments.<sup>6</sup>

<sup>3</sup> For more information, consult: K. Drzewicki, “National Legislation as a Measure for Implementation of International Humanitarian Law” [in:] F. Kalshoven & Y. Sandoz (eds.) *Implementation of International Humanitarian Law*, Dordrecht / Boston / London: Martinus Nijhoff Publishers, 1989, p. 110-111.

<sup>4</sup> See *Study on Customary International Law*, conducted by ICRC and published by Cambridge University Press in 2005. The study is available at the ICRC website ([www.icrc.org](http://www.icrc.org)) in a few language versions.

<sup>5</sup> *Case Concerning Certain Military and Paramilitary Activities in and Against Nicaragua*, (*Nicaragua v. United States of America*), *Merits, Judgment*, I.C.J. Reports, 1986, p. 14.

<sup>6</sup> J.-M. Henckaerts, *Studium poświęcone zwyczajowemu międzynarodowemu prawu humanitarnemu: wkład w zrozumienie i poszanowanie zasad prawa dotyczących konfliktu zbrojnego*, Warsaw: Centre for the Dissemination of International Humanitarian Law at the Main Board of the Polish Red Cross, 2006, p. 45.

Poland becomes bound by international agreements once they are ratified by the President of the Republic of Poland (RP) or approved by the Council of Ministers. Non-ratified agreements are only binding upon the organs of state administrations which have concluded the said agreements and do not constitute sources of universally binding law (Article 87(1) of the Constitution), although they are binding upon the State in international relations in the same way as ratified agreements.

Ratification of the most important international agreements may take place only on the basis of prior statutory consent granted by Parliament (Article 89). This requirement applies to agreements concerning:

- 1) peace, alliances, political or military treaties;
- 2) freedoms, rights or obligations of citizens;
- 3) membership of the RP in international organizations;
- 4) imposing a considerable financial responsibilities on the state;
- 5) matters regulated by statute or those in respect of which the Constitution requires the form of a statute.

A ratified international agreement, after its promulgation in the Journal of Laws of the Republic of Poland (hereinafter referred to as “JoL”), shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute (Article 91(1) of the Constitution).

Ratified agreements may shape the legal situation of citizens, defining their rights and obligations. An international agreement ratified upon prior consent granted by statute has precedence over statutes, if such an agreement cannot be reconciled with the provisions of such statutes (Article 91(2)).

Moreover, it should be emphasized that pursuant to Article 241(1) of the Constitution, international agreements ratified in the past by the Republic of Poland on the basis of constitutional provisions applicable during the time of ratification and published in the Journal of Laws are deemed ratified agreements with earlier consent expressed in law. Article 91 of the Constitution applies to such agreements, if the provisions of the international agreement provide for their application to the categories of issues specified in Article 89(1) of the Constitution.

The significance of Article 241(1) is substantial as the main pillar of *corpus iuris* of international humanitarian law, i.e. the Geneva Conventions and Additional Protocols were ratified by Poland before the 1997 Constitution of the Republic of Poland was passed. All these instruments were published in the Journal of Laws and undoubtedly do belong to at least one category of matters listed in Article 89(1) of the Constitution, i.e. “freedoms, rights or obligations of citizens.”

Thus, almost all treaties concerning international humanitarian law constitute an element of the domestic legal order, i.e. they have been incorporated into it. This, in turn, paved the way to direct application of these treaties by the addressees of these standards, including courts, unless it is necessary to issue implementing legislation concerning the matters set in the form of non-self-executing rules. For the purposes of applicability of international humanitarian law instruments in domestic legal order it is important that a problem is not exhausted by the very statement pursuant to Article 91(1) of the Constitution on the incorporation of humanitarian treaties. In practice, it is often the case that it is necessary to apply the transformation of international agreements method parallel, i.e. entering the provisions of international treaties in the acts of domestic law. This need is often dictated by the contents of the standards themselves, their complexity level or the necessity to stipulate the competences of relevant bodies in detail. As a result, not only non-self-executing standards but also some self-executing standards require legislation or a lower level regulation in order to ensure framework that supports adequate implementation of IHL. An example of it is the obligation to disseminate humanitarian law in armed forces; which – while formulated in self-executing standards – requires adopting relevant decisions and regulations within the ministry of national defense for the purposes of implementation.

From the aforementioned considerations it follows why this report adopts an extensive approach of Polish authorities as regards the IHL implementation process. Despite the prevailing number of self-executing rules included in the Geneva Conventions and other instruments, in many cases it is necessary to translate them into the language conducive to their full implementation. An advantage of such approach takes the form of a fuller transformation of international standards into domestic law and verification, in which the absence of relevant domestic standards may occur.



# Part I

## IMPLEMENTATION

### Restrictions of means and methods of armed combat

The Polish Armed Forces implement the prohibitions on the use of methods and means of armed combat stipulated in international agreements, as well as the positive obligations to act resulting from these acts, including:

- conducting program training and supplementary training for subunits;
- conducting various forms of operational and tactical training (in particular command and staff exercises and military tactical exercises), which prepare commanders and soldiers to carry out tasks in accordance with their military purposes;
- preparing commanders and soldiers to carry out tasks during operations on foreign soil in Polish military contingents;
- accounting for restrictions arising from international law of armed conflict (ILAC) in legal acts regulating the principles for the use of forces by soldiers forming part of Polish military contingents.

Bearers of military equipment and weaponry (MEW) subject to commanders of the various Armed Forces constantly monitor new MEW acquisitions to fulfil the obligations arising from the restrictions of the use of methods and means of armed combat. The monitoring of newly-acquired MEW takes place on all levels of involvement of bearers within the MEW acquisition process (especially when drafting Technical and Tactical Requirements and accepting Preliminary Technical and Tactical Guidelines).

Furthermore, specific international agreements which introduce restrictions or prohibitions on the use of specific methods and means of armed conflict are implemented and disseminated through:

1. *Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed in Geneva on 17 June 1925* (JoL of 1929, No 28, item 278).

For the states-parties to the *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction made in Moscow, London and Washington on 10 April 1972* (JoL of 1976, No 1, item 1) (BTWC Convention) and *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, made in Paris on 13 January 1993* (JoL of 1999, No 63, item 703) (CWC Convention) that agreement is of no practical significance as these conventions prohibit owning, developing chemical and biological weapons as well as order their destruction. As a consequence, the Protocol serves as a supplement to the BTWC Convention with a prohibition of using biological weapons as means of combat in military actions.

2. *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction made in Moscow, London and Washington on 10 April 1972* (JoL of 1976, No 1, item 1) (BTWC Convention).

The Polish Armed Forces have never possessed biological weapons or conducted research on biological weapons, and comply fully with the provisions of the Convention. Every year, the

Ministry of National Defense prepares and provides the MFA with input on the declaration on the actions undertaken relating to the Convention.

3. *Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, to be signed in Geneva on 18 May 1977* (JoL of 1978, No 31, item 132).

The Convention imposes on the Contracting States a prohibition on modifying the environment by manipulating natural processes – understood as the dynamics, composition or structure of the Earth. The Polish Armed Forces comply with the provision of this international agreement.

4. *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols), made in Geneva, 10 October 1980* (JoL of 1984, No 23, item 104, as amended) (CCW Convention)

The Republic of Poland is a party both to the CCW Convention and to all Protocols:

- *on Non-Detectable Fragments* (Protocol I) – the Polish Armed Forces do not possess weapons with fragments which in the human body escape detection with X-rays;
- *on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices* (Protocol II as amended on 3 May 1996)

The Polish Armed Forces have undertaken measures ensuring that any potential use of mines will be made in accordance with the restrictions imposed by the Protocol (e.g. the obligation to mark minefields, subsequently demine them, and apply the relevant documentation procedures). Each year Poland submits a national report regarding the application of the provisions of the Amended Protocol II. The reports are available on the websites of the UN Office at Geneva ([www.unog.ch](http://www.unog.ch)) under the following tabs: Disarmament/The CCW Convention/Amended Protocol II;

- *on Prohibitions or Restrictions on the Use of Incendiary Weapons* (Protocol III) – the Polish Armed Forces do not possess incendiary weapons;
- *on Blinding Laser Weapons* (Protocol IV) – the Polish Armed Forces do not possess blinding laser weapons;
- *on Explosive Remnants of War* (Protocol V) – it was ratified by the President of RP on 1 July 2011, it entered into force on 26 March 2012 as regards Poland. Every year Poland submits a national report regarding the adherence to the provisions of Protocol V. The reports are available on the websites of the UN Office at Geneva ([www.unog.ch](http://www.unog.ch)) under the following tab: Disarmament/The CCW Convention/Protocol V.

Additional information regarding the adherence to the CCW Convention and its Protocols are available in the reports that are submitted every year by Poland to the UN Office in Geneva on the websites of the UN Office ([www.unog.ch](http://www.unog.ch)) under the following tabs: Disarmament/The CCW Convention/Compliance.

5. *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, made in Paris on 13 January 1993* (JoL of 1999, No 63, item 703) (CWC Convention).

Poland has never possessed chemical weapons, and is therefore not burdened by any obligations with regard to their destruction. The function of the National Body for the implementation of the CWC is performed by the Ministry of Foreign Affairs, while its performance – i.e. the drafting of declarations, receiving inspections, co-operation with the OPCW – also involves: the Ministry of Economy, the Ministry of National Defense, and the Ministry of Interior. The implementation of the Convention is regulated by the following legal acts:

- Act of 22 June 2001 on the Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (JoL of 2001, No 76, item 812; JoL of 2010, No 182, item 1228);

- Regulation of the Minister of Economy of 8 April 2002 on Specific Data to be Included in Information on Activities Involving the Use of Chemicals and their Precursors (JoL of 2002, No 56, item 507);
- Regulation of the Council of Ministers of 30 December 2010 on Special Procedure for Receiving Inspections of the Organization for the Prohibition of Chemical Weapons in the Territory of the Republic of Poland (JoL of 2011, No 9, item 40);

Regulation of the Minister of National Defense of 9 November 2010 on the Development, Production, Modification and Use of Toxic Chemicals and their Precursors (JoL of 2010, No 217, item 1432; JoL of 2013, No 182, item 1502);

- Decision No 321/MON of 25 October 2004 on the Implementation of the Provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, by Organizational Units of the Ministry of National Defense and Organizational Units Subordinate to or Supervised by the Minister of National Defense (Official Journal of the Ministry of National Defense, No 24, item 379, and of 2013, item 328).

The Ministry of National Defense is implementing CWC provisions through the legal acts referred to above, in the following way:

- monitoring of trading in toxic chemicals and/or their precursors, as listed in Schedule 1 to the Convention (in permitted amounts and for permitted purposes);
- annually drafting a general overview (and providing plans for the following year) on the use of chemical substances listed in Schedule 1 to the Convention (for the MND);
- participation in trainings, conferences and workshops organized under the patronage or directly by the OPCW;
- the use of toxic chemicals and/or their precursors, as listed in Schedule 1 to the Convention, for protection purposes in the framework of military exercises on the basis of the “Instruction on Defense Training against Weapons of Mass Destruction in the Polish Armed Forces”, adopted by Order No 1165/Szkol./P7 of the Chief of the General Staff of the Polish Armed Forces of 22 December 2005.

6. *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction, made in Oslo on 18 September 1997* (JoL of 2013, item 323) (the so-called Ottawa Convention).

The President of RP ratified the Ottawa Convention on 14 December 2012; it entered into force as regards Poland on 1 June 2013. Since 2003 Poland has been voluntarily submitting reports on the implementation of the Convention’s provisions. Acting in the spirit of the Ottawa Convention, when taking part in peacekeeping missions abroad, representatives of the Polish Armed Forces are actively involved in raising awareness among civilians of the threats arising from anti-personnel mines and other dangerous remnants of war, and provide significant help in demining and clearing unspent ordnance in regions where they operate.

Additional information about the application of the Ottawa Convention is included in annual reports submitted by Poland and available on the website of the UN Office at Geneva ([www.unog.ch](http://www.unog.ch)) under the following tabs: Disarmament/Anti-Personnel Landmines Convention/Article 7 reports.

7. In line with the *Government’s statement of 11 July 2013 on amending the scope of the Optional Protocol to the UN Convention on the Rights of the Child on the involvement of children in armed conflicts, adopted on 25 May 2000 in New York* (JoL item 1094) it was stated that pursuant to the Act of 10 October 2012 amending the scope of the Optional Protocol to the UN Convention on the Rights of the Child on the involvement of children in armed conflicts, adopted on 25 May 2000 in New York, (JoL item 1335), on 29 May 2013 the President of the Republic of Poland decided to amend the scope of the Protocol by presenting, pursuant to Article 3(4) of the Protocol, of a new declaration of the Republic of Poland replacing the declaration of the Republic of Poland to Article 3(2)

of the Protocol made on 7 April 2005 to the depositary – UN Secretary General – along with the ratification document dated 14 February 2005.

The new declaration of the Republic of Poland was submitted to the depositary – UN Secretary General on 28 June 2013 in the following wording:

“In line with Article 3(4) of the Protocol, the Government of the Republic of Poland hereby declares that:

1. Under the Polish law, the minimum age in the case of obligatory requirement of Polish citizens into the national Armed Forces is eighteen (18) years.
2. Under the Polish law, the minimum age for the voluntary requirement of Polish citizens into the national Armed Forces is eighteen (18) years. The candidate is obliged to show a special document certifying the date of his/her birth.”

The basis for this declaration is formed e.g. by the regulation of Article 124(2) of the Act of 11 September 2003 on military service of professional soldiers (JoL of 2010, No 90, item 593 as amended). The indicated provision is consistent with the international humanitarian law on the protection of the rights of the child, establishing the time limit of 18 years, below which the recruitment to armed forces was forbidden.

### Protection of certain categories of persons

#### 4.1. Protection of civilians

Issue relating to civil defense in Poland is regulated by the following legal acts:

- a) Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977;
- b) Act of 21 November 1967 on the Universal Duty to Defend the Republic of Poland (JoL of 2004, No 241, item 2416, as amended), in particular its Article 17 and Section IV: Civil Defense;
- c) Executive acts to the Act, particularly:
  - Regulation of the Council of Ministers of 25 June 2002 concerning the terms of reference of the Chief of National Civil Defense and the chiefs of civil defense of voivodeships, counties (*powiat*) and communes (*gmina*) (JoL of 2002, No 96, item 850);
  - Regulation of the Minister of Interior and Administration of 26 September 2002 concerning service in civil defense (JoL of 2001, No 169, item 1391; JoL of 2008, No 108, item 698);
  - Regulation of the Council of Ministers of 28 September 1993 on common self-defense of citizens (JoL of 1993, No 91, item 421);
  - Regulation of the Council of Ministers of 5 October 2004 on personal performance for defense at the times of peace (JoL of 2004, No 229, item 2307);
  - Regulation of the Council of Ministers of 3 August 2004 on proprietary performance for defense at the times of peace (JoL of 2004, No 181, item 1872);
  - Regulation of the Minister of National Education and Sport of 27 June 2002 on the types of schools whose students are subject to the obligation to complete civil defense training and on its organization (JoL of 2002, No 113, item 987);
  - Regulation of the Minister of National Education and Sport and of the Minister of Health of 2 October 2003 on the method of conducting civil defense training of male and female students (JoL of 2003, No 174, item 1686).

The structure of civil defense in the Republic of Poland is based on the administrative division of the country, with civil defense in each territorial unit led by the head (*wójt, starosta, wojewoda*) of its administration. At the central level, the Chief of National Civil Defense reports to the Minister of Interior and Administration. Civil defense formations are the basic organizational units competent to perform civil defense tasks. Certain difficulty with ensuring protection as part of civil defense exists at the voivodeship level, since under the domestic law the Voivode is obligated to implement tasks relating to national defense. In light of Article 65 of Additional Protocol I, this could cause a cessation of the protection of the Voivode and of the Voivodeship office. In an extreme situation, it is possible to imagine the destruction of centers coordinating civil defense at the voivodeship level.

Issues relating to the protection of the emblem of civil defense are regulated in the 1977 Additional Protocol I and not anywhere else. There are no domestic regulations concerning the



emblem of civil defense in peacetime, as is the case with the emblem of the Red Cross, protected pursuant to the Polish Red Cross Act of 16 November 1964 (JoL of 1964, No 41, item 276).

Considering the necessity to regulate the problem of protecting the civilian population in a comprehensive manner in an act of law at the level of a statute, the Ministry of Interior of the Republic of Poland commenced works on the *project of foundations for a draft act on the protection of the population*. The main objective of these works is to regulate the population protection system in line with the current situation and threats by providing precise indication of the tasks of individual entities, in particular of government's and local government's administrative bodies. A new national solution regarding protection of the population is intended to reorganize a series of issues in this area and to collect them in one act of law. Moreover, the new act is to establish a system of protection of the population that performs the population protection tasks both at the times of peace and of war. The new regulation will be based on the principle that the public administration authorities are responsible for the safety of the citizens in line with the subsidiarity and support principle of the bodies at individual levels of public safety management if a given task cannot be adequately performed by the public administration authorities at a given level. The act will also put emphasis on shaping the awareness of the society and to promote proper behaviors in the face of threats.

On 29 April 2014 the Council of Ministers of RP adopted the Resolution on adopting the *Rescue and Population Protection Program 2014-2020*. The program is a joint undertaking of the Ministers: of the Interior, Administration and Digitization, Health and National Defense. It pertains to the issues of mutual relations of the national rescue and fire-fighting system, the system of State Medical Emergency Service and the emergency notification system. *The Program* is the first document that discusses the issue of organizing rescue actions to protect the lives, health, property and environment by all public and social entities implementing these tasks in such detail and in such a comprehensive manner. The Program intends to indicate the objectives that are to be implemented in the area of rescuing and protecting the population in 2014-2020, the requirements as well as the primary legal, financial and organizational instruments that are necessary to achieve them. *The Program* also takes into consideration the role of social rescue organizations that operate in the area of fire protection, water rescue, mountain rescue and other types of rescue activities, whose incontestable output and potential has had a significant impact on the safety of our citizens. Partner-level cooperation of the state services with these organizations is an important requirement for the successful implementation of the *Program's* objectives.

#### **4.2. Protection of medical and religious personnel**

Specific protection granted to medical and religious personnel under international humanitarian law concerns these categories of persons who have received the authorization or order of a belligerent party to act on behalf of war victims. The protection and respect for this type of personnel means that direct attacks against them are prohibited and that they cannot be prevented from performing their humanitarian functions (Articles 24-26 of Geneva Convention I, Article 36 of Geneva Convention II, Article 20 of Geneva Convention IV, and Articles 8 and 15 of Additional Protocol I, Article 9 of Additional Protocol II). No one can be punished or convicted for conducting medical activity in accordance with medical and ethical principles, regardless of the party the intended beneficiary of the activities is from (Article 18 of Geneva Convention I, Article 16.1 of Additional Protocol I, Article 10.1 of Additional Protocol II). Moreover, such persons shall not be forced to perform acts or to carry out work contrary to their professional ethics or other norms that protect the good of the wounded and sick, or be forced to refrain from performing acts or from carrying out work required by those rules and provisions (Article 16.2 of Additional Protocol I, Article 10.2 of Additional Protocol II).

Despite the obligation to refrain from active participation in combat, medical staff may use light personal weapons for their own defense or for that of the wounded and sick in their charge (Article 22.1 of Geneva Convention I, Article 13.2a) of Additional Protocol I).

The special protection status of medical and religious staff also applies in a situation where such persons fall into the hands of the enemy (Article 33 and 35 of Geneva Convention III). Though they shall not be formally considered as prisoners of war, they shall receive all the benefits and protection applicable to prisoners of war. While in camps containing prisoners of war, they shall not be obliged to do any work other than connected with their medical or spiritual functions. They should have the right to have access to the competent authorities of the camp in all matters relating to their duties. Chaplains shall exercise freely their ministry amongst prisoners of war of the same religion and shall be free to correspond with the ecclesiastical authorities in the country of detention and with international religious organizations.

In order to materialize the protection applicable to religious and spiritual staff, such persons may use the protective emblems defined by international law (Articles 38 and 44 of Geneva Convention I, Article 18 of Additional Protocol I, Article 12 of Additional Protocol II) and identity badges and cards. In Polish law, the use of protective emblems is laid down in Defensive Norm NO-02-A032:2009 displaying and concealing the Geneva Emblem on medical premises on land introduced by Decision No 105/MON of the Minister of National Defense of 1 April 2011 concerning the adoption and introduction of normalization documents pertaining to defense and national security (Official Journal of the Ministry of National Defense No 7, item 90). The issue of identity badges and cards is defined in Article 54a of the Act of 21 November 1967 on the Universal Duty to Defend the Republic of Poland and the related executive Regulation.

Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law shall be qualified as war crimes, pursuant to Article 8.2b) XXIV of the Rome Statute of the International Criminal Court. Such activity constitutes a crime defined in Article 122 of the Criminal Code of 6 June 1997 (JoL of 1997, No 88, item 533, as amended), which penalizes attacks on undefended buildings and using other forms of warfare prohibited under international law. Moreover, Article 123 of the Criminal Code penalizes the killing of medical and religious personnel committed in violation of international law and all acts which cause persons to suffer serious detriment to health, subject such persons to torture, cruel or inhuman treatment, make them, even with their consent, the objects of cognitive experiments, use their presence to protect an area or facility, or to protect one's own armed units from warfare, or keep such persons as hostages.

#### **4.3. Protection of the Staff of the Polish Red Cross and of other humanitarian organizations**

This issue is regulated primarily by Article 26 of Geneva Convention I of 1949. Its aim is to put aid societies authorized to support regular medical services of the armed forces of a given country on equal footing with armed forces medical personnel, both with regard to the protection they enjoy and treatment, if they fall into the hands of the enemy.

J. Pictet's commentary to the Geneva Conventions stipulates the following conditions for granting protection to the staff of authorized societies designated to assist regular medical services of the armed forces:

1. The given organization must be duly recognized by the Government of its home country: the role and tasks of the Polish Red Cross are elaborated in the Polish Red Cross Act of 16 November 1964 and the Polish Red Cross Statute introduced on the basis of the Regulation of the Council of Ministers of 25 October 2004 on the adoption of the Statute of the Polish Red Cross (JoL of 1964, No 237, item 2372).
2. Under Polish law, an organization must be authorized to lend its assistance to the medical service of the armed forces. That condition is fulfilled through Article 2 of the PRC Act, which stipulates that the Polish Red Cross is an organization providing voluntary assistance to the medical service and the medical service of the Armed Forces. Furthermore, § 9.1 of the PRC Statute asserts that the Polish Red Cross provides assistance to the military and civilian medical service during an armed conflict, pursuant



- to the provisions of the 1949 Geneva Conventions and the 1977 Additional Protocols, and conducts humanitarian activity for the benefits of the victims of armed conflicts.
3. Appropriate notification must be given: a government which has authorized one or more societies to assist the medical service of its armed forces must, at the latest before actually employing their personnel, notify all other signatory states of the fact in peacetime or its adversaries in time of war. This requirement is in the interest of the personnel concerned since otherwise, the other party to the conflict, if not notified of the fact, could refuse to grant due protection to the personnel. The commentary suggests that in order to avoid any misunderstandings this requirement should also be fulfilled with respect to the personnel of the national society of the Red Cross or Red Crescent, even though the existence of such an organization in the given country is common knowledge and is affirmed in international relations (through the recognition of the national society by the ICRC or the participation of the national societies, together with states and Movement bodies, in International Conferences of the Red Cross and Red Crescent). The Ministry of Foreign Affairs should play a leading role in the implementation of this requirement.
  4. The staff of voluntary societies must, in time of war, be subject to military laws and regulations, while acting on behalf of a given state – this requirement stems from the international law principle of the state’s responsibility for the actions of its representatives or organs. In practice, this means that the Staff of voluntary societies is under the command of military superiors and that military authorities are obligated to issue to the staff of these organizations appropriate identity badges and cards. The latter obligation is implemented in accordance with Article 54a of the Act of 21 November 1967 on the Universal Duty to Defend the Republic of Poland and the related Regulation of the Minister of National Defense of 10 April 2008 concerning identity cards and badges (JoL of 1967, No 79, item 472, and No 105, item 676). The subordination of the staff of aid societies to military authorities does not mean that these organizations lose their identity and status, so granting them equal protection does not mean that the staff of these organizations has been incorporated into the armed forces. The rules of such subordination should be specified in domestic law (e.g. in the form of an regulation to the PRC Act). It is noteworthy that the Regulation of the President of the Republic of Poland of 1 September 1927 (JoL of 1927, No 79, item 688 – repealed by the 1964 PRC Act), provided in Article 5 that “upon the outbreak of hostilities, proclamation of general or partial mobilization, and also in instances when the interest of State so requires, affirmed by resolution of the Council of Ministers, the Polish Red Cross Society shall be fully subordinated to the Minister of War Affairs.” Nowadays, such kind of a legislative arrangement seems to be not applicable due to the Fundamental Principles of the Movement, including the principle of independence.
  5. The staff of aid societies should perform the same tasks as the personnel of the military medical service: this principle means that special protection is only accorded to those staff members of a given society who actually perform the duties of military medical personnel (and not all staff members of a society authorized to play an auxiliary role in relation to the medical service of the armed forces). These tasks are specified in Article 24 of Geneva Convention I of 1949 and consist in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease and administration of medical units or establishments.

It is worth emphasizing that such in-depth regulation of the situation of medical care society staff is mainly linked to the fact that Geneva Convention I ensures protection for military medical personnel, while Geneva Convention IV provides equal status to civilian and military medical personnel only in exceptional situations. With the adoption of the 1977 Additional Protocols, this issue is of lesser significance for countries which – like Poland – are Parties to the Protocols. This is

due to the fact that the Protocols ensure protection for medical personnel as a whole (Article 15 of Protocol I and Article 10 of Protocol II). Article 8.3 of Protocol I stipulates that “medical personnel” shall mean the military or civilian personnel of a Party to the conflict and personnel assigned to civil defense organizations; but also “medical personnel of national Red Cross (...) Societies and other national voluntary aid societies duly recognized and authorized by a Party to the conflict.” Accents have thus been shifted – the status and protection of such personnel is not a special privilege, but a rule. However, due to the fact that the staff must be “duly recognized and authorized” by their Governments, and that not all states are parties to the Additional Protocols (as opposed to the Geneva Conventions, which are truly universal in nature), a cautionary approach implies the need to fulfil the above-mentioned requirements under Article 26 of Geneva Convention I.

#### **4.4. Prisoners of war, internees and repatriates**

Issues connected with the treatment of prisoners of war, pursuant to the provisions of Geneva Convention III of 1949, have been regulated in the following Defensive Norms, introduced by Decision No 105/MON of the Minister of National Defense of 1 April 2011, on the confirmation and implementation of normalization documents on national defense and security:

1. *NO-02-A020:2010 Procedures for the treatment of prisoners of war, captured equipment and documents of the adversary* – defines the rules of the treatment of prisoners of war and their possessions and specimens of documents needed to keep records of prisoners, their personal and military possessions.
2. *NO-02-A036:2010 Interrogation of prisoners of war* – lays down procedures for the interrogation of prisoners of war, the division of prisoners of war into categories depending on the information in their possession and the division of the interrogating units, specimens of interrogation reports and their transfer to the competent intelligence services.
3. *NO-02-A042:2001 Military exercises* – Rules for conduct relative to persons pretending to be prisoners of war – defines procedures aimed at acquiring appropriate habits as far as the treatment of prisoners of war is concerned.

Section III of Chapter 2 of the 1967 Act on the Universal Duty to Defend the Republic of Poland specifies the types of military ranks (with division into privates, non-commissioned officers and officers), as well as the rules governing the awarding and revoking of military ranks. Article 43 of Geneva Convention III of 1949 does not precise the methods for communicating to the adversary the titles and ranks of persons entitled to the status of prisoners of war or of those who may enjoy treatment reserved for prisoners of war, for the purpose of ensuring equal treatment; it only obligates combatant states to convey the relevant information upon the opening of hostilities. In practice, the fulfilment of this obligation could take any form, provided it ensures that this provision is duly implemented.

#### **4.5. Refugees**

Under the international legal order, there are a number of legal instruments aimed at protecting those who seek asylum from persecution and those who have been officially recognized as refugees. Their scope covers the entire international community, also on the regional level. Customary international law, which applies equally to all countries, is also important.

Below are the main instruments of international law on refugees to which the Republic of Poland is a party:

1. Convention relating to the Status of Refugees, done at Geneva on 28 July 1951 (JoL of 1991, No 119, items 515 and 517)
2. European Agreement on the Abolition of Visas for Refugees, signed in Strasbourg on 20 April 1959 (JoL of 2005, No 225, item 1929)
3. Protocol relating to the Status of Refugees, done at New York on 31 January 1967 (JoL of 1991, No 199, item 517)

4. European Agreement on Transfer of Responsibility for Refugees, signed in Strasbourg on 16 October 1980 (JoL of 2005, No 225, item 1931)
5. Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of “Eurodac” for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice
6. Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person
7. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection
8. Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection
9. Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

The European Community has also significantly contributed to aligning the provisions in question with EU law by establishing the Common European Asylum System. Since 1999, EU Member States have adopted, among others, the following legal acts that form part of the EU *acquis* on asylum:

1. Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

Transposing these documents into national law on asylum resulted in creating a legal framework for the protection refugees and persons who seek refugee status in Poland. European and international standards are reflected in the Act of 13 June 2003 on Granting Protection to Foreign Nationals in the Territory of the Republic of Poland (JoL of 2012, item 680), and many executive acts, in particular:

- Regulation of the Minister of the Interior of 6 December 2011 on the Rules of Stay in the Center for Foreigners Seeking Refugee Status (JoL of 2011, No 282, item 1654)
- Regulation of the Minister of Interior and Administration of 10 November 2011 on the Amount of Assistance for Foreigners Seeking Refugee Status (JoL of 2011, No 261, item 1564)
- Regulation of the Minister of Health of 1 March 2011 on Medical Examination and Sanitary Treatments of the Body and Clothing of Foreigners Seeking Refugee Status (JoL of 2011, No 61, item 313)
- Regulation of the Minister of Interior and Administration of 23 June 2009 on the Geneva Convention Travel Document (JoL of 2009, No 99, item 835)
- Regulation of the Minister of Interior and Administration of 30 January 2009 on the Temporary Foreigner’s Identity Certificate (JoL of 2009, No 27, item 168, as amended)
- Regulation of the President of the Council of Ministers of 9 December 2008 on the Organization and the Rules of Procedure of the Refugee Council (JoL of 2008, No 223, item 1469)

- Regulation of the Minister of Interior and Administration of 27 May 2008 on the Template of the Refugee Status Application (JoL of 2005, No 186, item 1558)
- Regulation of the Minister of Interior and Administration of 20 May 2008 on the Procedures for Granting Funeral Allowances and the Conditions for Financing Funerals of Foreigners from State Funds (JoL of 2008, No 91, item 574)
- Regulation of the Minister of Interior and Administration of 7 September 2005 on the Template of the Fingerprint Card for the Purposes of Taking Fingerprints of Foreigners (JoL of 2005, No 186, item 1558)
- Regulation of the Minister of Interior and Administration of 25 July 2005 on the Template of the Pass for Foreigners Enjoying Temporary Protection in the Republic of Poland Who Are Due to Be Transferred to Another EU Member State (JoL of 2005, No 147, item 1228)
- Regulation of the Minister of Labor and Social Policy of 9 March 2009 on Providing Aid to Foreigners Who Have Been Granted Refugee Status or Subsidiary Protection in the Republic of Poland (JoL of 2009, No 45, item 366)

On 1 May 2014, the Foreigners Act of 12 December 2013 (JoL of 2013, item 1650) entered into force. It defines, in Chapter 9, Section V, the status of temporary residence in the territory of the Republic of Poland of a foreigner who has been identified as a victim of trafficking. Furthermore, Article 3, Section VIII of the act allows that foreigners stay in the territory of the Republic of Poland for humanitarian reasons and maintains permits for tolerated stay that were previously regulated by the Act on granting protection to foreigners in the territory of the Republic of Poland.

#### **4.6. National Information Bureau**

The Geneva Conventions for the Protection of War Victims of 12 August 1949 (in particular Article 22 of Geneva Convention III and Article 13 of Geneva Convention IV) and the Additional Protocols of 8 June 1977 obligate Poland to establish and operate a bureau for the purpose of collecting information on the victims of wars and armed conflicts and conveying it to their families. Accordingly, pursuant to the Polish Red Cross Act of 16 November 1964, the Polish Red Cross runs – on behalf of the state – a National Information Bureau called the Information and Tracing Bureau of the PRC.

Until 1 January 2013, the competence to mandate the Polish Red Cross to implement the above-mentioned public task lied with the Minister of the Interior.

Pursuant to the letter of authorization of the President of the Council of Ministers of 9 December 2011, No DKN-511-8(9)/11, and in connection with the Regulation of the President of the Council of Ministers of 16 July 2012 repealing Regulation concerning the Delegation of the Competences of the President of the Council of Ministers laid down in the Polish Red Cross Act (JoL item 845), as of 1 January 2013, the Minister of Administration and Digitization oversees all PRC tasks with respect to the functioning of the National Information and Tracing Bureau.

In performing its tasks, the Information and Tracing Bureau of the PRC collaborates with the Central Tracing Agency of the International Committee of the Red Cross in Geneva and ICRC Delegations in conflict zones, the International Tracing Service in Bad Arolsen (Germany) and several dozen national societies of the Red Cross and Red Crescent. In Poland, the Bureau cooperates with numerous institutions which have information on victims of World War II and contemporary armed conflicts (e.g. Institute of National Remembrance, Museum of the Warsaw Uprising, Jewish Historical Institute, Council for the Protection of the Memory of Struggle and Martyrdom, Office for Aliens, State Archives).

# Protection of specific categories of locations and premises

### 5.1. Protection of the natural environment

The Republic of Poland is a party to the:

1. Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, done at Moscow on 5 August 1963 (JoL of 1963, No 52, item 288),
2. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques of 10 December 1976,
3. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989 (JoL of 1995, No 19, item 88, annexed),
4. Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, signed at Geneva on 18 May 1977 (JoL of 1977, No 31, item 132).

The protection of the natural environment is comprehensively regulated by the Environmental Protection Act of 27 April 2001 (JoL of 2008, No 25, item 150, as amended).

In its policy on environment protection, the Ministry of National Defense seeks to minimize damage to the environment caused by the functioning of armed forces. Environment protection, due to its complex and interdisciplinary nature, is treated by the Polish Armed Forces as a separate sub-system in the structures of the Ministry of National Defense. The development and the operation of the sub-system are based on the following premises:

- protection of the environment and its resources is the task of every soldier and every employee of the Ministry,
- the organization of environmental protection is the task of commanders at all levels of the Armed Forces of the RP and managers of other organizational units of the Ministry,
- the principle of minimizing damage to the environment is applied to military training and fulfilment of other tasks,
- rational use must be made of the natural resources,
- environmental education is an integral part of every form of training and education in the Armed Forces of the RP,
- the Polish Armed Forces set a positive example on the protection of the natural environment.

The implementation of the objectives and strategy on environment protection in the defense sector is based on the following elements:

- minimizing damage to the natural environment caused by current activity,
- prevention of future damage, also through legislation,
- elimination of past environmental damage,
- providing the defense sector with adequate financial resources in order to fulfil its environmental objectives,
- oversight of environment-oriented activities.

A number of legal acts has been adopted with this in mind, including the Regulation of the Minister of National Defense of 16 October 2008 Identifying Bodies with Oversight Respon-



sibilities for Environmental Protection in the Organizational Units of the Ministry of National Defense and Organizational Units Subordinated to the Minister of National Defense or under His Supervision (consolidated text, JoL of 2013, item 1232) and the Regulation of the Minister of National Defense of 9 August 2002 on Detailed Rules for Drawing Up Training Instruction to Meet the Requirements of Plant and Animal Protection during the Training of the Polish Armed Forces on Testing Grounds (JoL of 2002, No 137, item 1157). Annual reports are drawn up on the state of the environment in areas under the administration of the Minister of National Defense and on fulfilment by organizational units of the Armed Forces of the RP of environment protection requirements, including:

- compilation of the quantities of gas and dust emissions, quantities of water used and sewage discharged,
- collection of information about infrastructural objects having substantial impact on the environment as the basis for establishing a central database on such objects used by the Ministry of National Defense,
- collection of information about harmful and other waste materials.

Decision of the Minister of National Defense of 8 June 2010 (196/MON) established a Team for Operating and Improving the National System for Contamination Detection and Response. The Team is currently drafting an amendment to the Regulation of the Council of Ministers on Contamination Detection and the Division of Competences in this regard. The objective of the amendment is to raise the effectiveness of co-operation procedures for entities operating within the National System for Contamination Detection and Response, as well as to define the role of the Government Centre for Security in terms of the operation of contamination detection and response.

In order to ensure external national security and exercise overall leadership in matters of national defense, on 16 October 2006 the Council of Ministers adopted the Regulation on Contamination Detection and the Division of the Competences in This Regard (JoL of 2006, No 191, item 1415), issued on the basis of Article 6.2 (5) of the Act of 21 November 1967 on the Universal Duty to Defend the Republic of Poland. This Regulation applies in the event a state of emergency is declared, in particular due to a natural disaster, in order to prevent the effects of natural disasters, technical malfunction or terrorist acts which may lead to chemical, biological or radioactive contamination.

Under Article 120 of the 1997 Criminal Code, the use of means of mass destruction prohibited by international law is a war crime. The catalogue of prohibited means that can be used for mass destruction includes, in particular, chemical and biological weapons, the application of which can cause extensive, protracted and serious damage to the natural environment.

## **5.2. Protection of cultural property**

The Republic of Poland is a party to the Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, the First Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (both signed at The Hague on 14 May 1954), and the Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (done at The Hague on 26 March 1999).

The principles of protection of cultural property in the event of armed conflict are defined in the Regulation of the Minister of Culture of 25 August 2004 on the Organization and Methods of Protection of Monuments in the Event of Armed Conflict and Crisis Situations (JoL of 2004, No 212, item 2153), adopted pursuant to the Act of 23 July 2003 on the Protection and Guardianship of Monuments (JoL of 2003, No 162, item 1568). Most importantly it provides for an obligation on the part of the owner or user of cultural property to prepare a plan for the protection of the most valuable cultural sites, including their evacuation in the event of a threat. The Regulation also provides for the identification of cultural property used in plans of protection, the rules for mark-

ing objects, the principles of training personnel assigned to the protection of cultural property and specimens of identity cards issued to the personnel assigned to the protection of cultural property.

Rules concerning the implementation of international legal norms for the protection of cultural property are provided for in Decision No 72/MON of the Minister of Defense of 6 March 2014 on Observing the Rules of Protection of Cultural Property by the Ministry of National Defense (Official Journal of the Ministry of National Defense of 2014, item 83). “Instruction on the Principles of the Protection of Cultural Property by the Polish Armed Forces in their Activities” is currently being implemented in the Armed Forces. It specifies the tasks and competences of top officials in the Ministry of National Defense and commanders of the Armed Forces in the field of protection of cultural property. The organizational structure of the Ministry of National Defense includes an officer responsible for observing the principles of protection of cultural property arising from international law.

Cultural property subject to protection in the Republic of Poland can be marked with distinctive emblems, as defined in the Hague Convention of 14 May 1954. The principles of applying such markings are defined in the Regulation of the Minister of Culture of 9 February 2004 concerning Information Emblem on Immovable Monuments Entered in the Register of Monuments (JoL of 2004, No 30, item 259).

In order to familiarize Polish Army soldiers with regulations dealing with the protection of cultural property in the event of armed conflict, specialist trainings in the protection of cultural heritage were organized for units preparing for missions in Afghanistan. The MOD published a booklet entitled “Afghanistan’s Cultural Heritage. Legal and Organizational Aspects of Protection,” to help implement tasks in Afghanistan.

For many years now, the Ministry of Culture and National Heritage has also organized training for civil-military cooperation experts in the field of protection of the cultural heritage, for stabilization missions. The most recent expert training was held in May 2010 at the National Defense University. For nine years, the Ministry of Culture and National Heritage has co-organized the Polish School of International Humanitarian Law of Armed Conflict in Radziejowice. For many years, one of the topics covered by the School’s curriculum has been the “Protection of Cultural Property in the Event of Armed Conflict.”

According to Polish law, persons who commit breaches of the Hague Convention during armed conflict are subject to sanctions under Chapter XVI of the Criminal Code Act of 6 June 1997: crimes against peace, crimes against humanity and war crimes.

The introduction of these provisions to the Criminal Code fulfilled the requirements of Article 28 of the Convention, which obligates the states parties to introduce sanctions for breaches of the Convention in their criminal law. The Criminal Code provides for the prosecution of perpetrators regardless of nationality and regardless of whether the offence was committed in the territory of another state.

Pursuant to Resolution II to the 1954 Hague Convention, the Republic of Poland has set up an appropriate advisory body, the Polish Advisory Committee, established by the Regulation of the Council of Ministers of 27 April 2004 on the Polish Advisory Committee (JoL of 2004, No 102, item 1066). The Committee is an auxiliary body of the Council of Ministers, the purpose of which is to coordinate monument protection measures in the event of armed conflict. Chaired by the Minister of Culture and National Heritage, the Committee is composed of representatives of several ministries (the Ministry of the Interior, the Ministry of National Defense, the Ministry of Justice, the Ministry of National Education, the Ministry of Sciences and Higher Education, and the Ministry of Foreign Affairs).

Furthermore, in the Agreement between the Minister of Finance, the Minister of Culture, the Chief of Police, and the Chief of State Fire Service on the Cooperation in Combating Illegal Transfer of Monuments to or from Another Country of 3 November 2004, the Polish side expressed its firm will to combat illegal imports of cultural property. It is important the in case of attempts to illegally transfer monuments from the theatre of military operations.

Moreover, to satisfy the need to protect monuments and ensure their fire safety, a Program Council for the Protection of Cultural Property from Extraordinary Threats was established at the National Headquarters of State Fire Service in 2002. It is a consultative body, which advises the Chief of State Fire Service on matters relating to the protection of cultural property. It is composed of representatives of the National Headquarters of State Fire Service, the Fire Service College of State Fire Service in Krakow, the Main School of Fire Service, and other institutions and organizations that are competent to protect cultural property, such as: the Ministry of Culture and National Heritage, the Ministry of the Interior, the Ministry of National Defense, and the National Institute for Museums and Public Collections.

The Council develops and formulates conclusions on training tasks carried out by the Training Centre on the Protection of Civilians and Cultural Property of the Fire Service College of State Fire Service in Krakow, including trainings on the protection of cultural property, and initiates other activities, such as conferences, seminars, etc. These activities are addressed to officers of State Fire Service, owners and administrators of historic monuments and institutions that collect national cultural property, public administration officials, etc.

Furthermore, under the day-to-day cooperation with the Main Board of the Polish Red Cross, representatives of the National Headquarters of State Fire Police participate each year in trainings and courses on international humanitarian law of war, including the protection of cultural property, organized by the Polish Red Cross.

### **5.3. Protection of civilian and military hospitals**

The obligation to protect civilian and military hospitals arises directly from the provisions of international humanitarian law and signifies, among other things, the obligation to respect medical establishments – which also include hospitals (with no distinction made between civilian and military hospitals) – and the prohibition of attacking them, as long as, apart from their humanitarian function, they are not used for hostile activities (Article 27 of the Annex to the 1907 Convention respecting the Laws and Customs of War on Land, Article 19 of the First Geneva Convention and Article 12 of Additional Protocol I). Respect granted to medical establishments signifies that unauthorized persons and authorities shall not interfere with the medical activity in a way which could interfere with their work and the medical treatment process. Protection against attacks is backed by the obligation for due diligence to be taken in ensuring that the said medical establishments and units are, as far as possible, situated in such a manner that attacks against military objectives cannot jeopardize their safety during such attacks. Moreover, in order to materialize and display the right to special protection, medical establishments may be marked with protective emblems provided under the Geneva Conventions and their Additional Protocols, e.g. the emblem of the Red Cross. The use of these emblems should be subject to state control. The above issues are regulated by the Defensive Norm NO-02-A032:2000. Geneva emblem. Camouflaging of medical facilities on land.

International humanitarian law lacks a norm which would categorically impose an obligation on states to mark medical establishments with protective-identification emblems. Therefore, a situation where medical establishments are not marked with protective emblems does not constitute a breach of law. Simultaneously, it should be emphasized that the prohibition to attack such establishments is an absolute one, meaning that attacking medical establishments under the pretext that by not using protective emblems, they are not entitled to special protection, shall be qualified as war crimes pursuant to Article 8.2b) XXIV of the Rome Statute of the International Criminal Court.

### **5.4. Protection of works and installations containing dangerous forces**

International humanitarian law generally stipulates that buildings or facilities containing dangerous forces, namely dams, dykes and nuclear power plants, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release



of dangerous forces and consequent severe losses among the civilian population (Article 56.1 of Additional Protocol I and Article 15 of Additional Protocol II). However, the special protection against attack is not absolute and shall cease if these buildings or facilities are used in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support. If the protection ceases, the attacking party shall take all practical precautions to avoid the release of the dangerous forces. The attacked party shall strive to avoid locating any military objectives in the vicinity of the buildings or facilities involving dangerous forces. Nevertheless, installations constructed for the sole purpose of defending the protected buildings or facilities from attack are permissible. The parties to the conflict may conclude further agreements among themselves to provide additional protection for objects containing dangerous forces, and may mark them with a special sign consisting of a group of three bright orange circles placed on the same axis, as specified in Article 16 of Annex I to Additional Protocol I.

The protection of buildings and facilities containing dangerous forces in the meaning of Article 56 of Additional Protocol I (dams, dykes, nuclear power plants) is regulated by the following legal acts:

- 1) Act of 22 August 1997 on the Protection of Persons and Property (JoL of 2005, No 145, item 1221, as amended), which defines the areas, objects and installations subject to special protection, and supervision over persons and property;
- 2) Act of 23 August 2001 on the Organization of Tasks in Order to Defend the State to be Implemented by Entrepreneurs (JoL of 2001, No 122, item 1320), which lays down rules for the organization of tasks in order to defend the state to be implemented by entrepreneurs conducting business activity in the territory of the Republic of Poland (taking into account entrepreneurs of particular importance for the economy and defense), and specifies the organs competent to oversee these tasks and the principles of their financing;
- 3) Regulation of the Council of Ministers of 24 June 2003 on Objects of Special Importance for State Security and Defense and their Special Protection (JoL of 2003, No 116, item 1090), which specifies the categories of objects of special importance for state security and defense, the tasks involved in their special protection and the competencies of state authorities in these matters.

### **5.5. Zones and localities under special protection**

The Geneva Conventions of 1949 and the 1977 Additional Protocol relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) provide for the possibility of creating various types of zones and towns subject to special protection, mainly in cases of international armed conflict. These include:

- Hospital and safety zones provided for in Article 23 of the First Geneva Convention and Article 14 of Geneva Convention IV and in Annexes 1 to the Conventions. Their aim is to provide protection to sick and wounded soldiers and to personnel providing aid and administering these zones (Geneva Convention I), as well as to wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven (Geneva Convention IV). Such zones may be established both in peacetime, as well as after the outbreak of hostilities, but their factual protection depends on the agreements made between the belligerents;
- Neutralized zones provided for in Article 15 of Geneva Convention IV. They are intended to provide protection to wounded and sick combatants or non-combatants against the effects of war. In the case of armed conflict not of an international character, Article 3 of the four Geneva Conventions of 1949 provides for the creation of analogous zones for civilians. Such zones may be created during armed conflict on the basis of an agreement made between the belligerents;
- Non-defended localities provided for in Article 59 of Additional Protocol I. Their aim is to provide protection of the civilian population in its place of residence located near

or in a zone where armed forces are in contact. The status of non-defended localities stems from the declaration of one of the parties of the armed conflict (if all of the conditions laid down in Article 59 have been fulfilled) or by agreement of the belligerents (if all of the conditions laid down in Article 59 have not been fulfilled);

- Demilitarized zones provided for in Article 60 of Additional Protocol I. As in the case of non-defended localities, the aim of demilitarized zones is to provide protection of civilian population in its place of residence. They are created on the basis of an agreement made between the belligerents. The limits of the zone may be established unilaterally in peacetime.

The 1997 Criminal Code penalizes breaches of the legal regulations protecting the above-mentioned zones and localities against attack. Article 122 § 1 of the Criminal Code provides a penalty of deprivation of liberty for a minimum period of 5 years, or a penalty of deprivation of liberty for 25 years for an attack on a “non-defended locality or object, medical, demilitarized, or neutral zone (...).”

## **5.6. Graves Registration Service**

The issue of the organization of cemeteries and the burial of deceased persons is regulated by the Act of 31 January 1959 on Cemeteries and the Burial of Deceased Persons (consolidated text, JoL of 2011, No 118, item 687). Article 10 of the law stipulates that the right of burial of military personnel deceased in the course of performing active military duty rests with the military authorities, pursuant to the provisions of military law.

The supervision over and care for war graves and cemeteries is regulated by the War Graves and Cemeteries Act of 28 March 1933 (JoL of 1933, No 39, item 311, as amended), which obligates authorities of the Republic of Poland to ensure care and due respect for war graves, regardless of the nationality and religion of the buried persons or the formations in which they served.

Matters connected with the transfer of corpses or their remains to other graves (including graves located abroad) are regulated by the provisions of Article 4 of the 1933 War Graves and Cemeteries Act and Article 14 of the Act on Cemeteries and the Burial of Deceased Persons of 1959, as well as the relevant Regulation of the Minister of Health of 27 December 2007 concerning the Issuance of Permits and Certificates for the Transport of Corpses and Remains (JoL of 2007, No 249, item 1866).

The procedures for burial during armed conflict are laid down in Defensive Norm (NO-02-A053:2004 War operations – Procedures for the burial of killed and deceased persons) introduced by decision No 199/MON of the Minister of National Defense of 9 July 2013 concerning the Acceptance and Application of Normalization Documents Pertaining to Defense and National Security. The norm stipulates procedures for the sudden burial of own soldiers, members of allied forces, and soldiers of the adversary, killed and deceased on land. Pursuant to the norm, a killed person is a person injured in combat, who died in consequence of sustained injuries before receiving medical aid. It also contains the principles of treatment of persons killed or deceased at sea and of deceased civilians belonging to the armed forces, but not taking part in hostilities.

The document determines the general principles of burial (maintenance of hygiene and counter-epidemic measures, protection of bodies against carrion-eating animals and birds, against desecration and robbery, provisions for the exhumation and identification of bodies, prevention of environmental contamination through contact with bodies or remains contaminated as a result of the use of nuclear, biological or chemical weapons), selection of the place of burial, marking of graves, treatment of bodies (with special reference to the treatment of persons killed or deceased in consequence of the use of weapons of mass destruction), preparation of burial reports, and instructions concerning personal effects and identity badges. The norm also contains a listing of the relevant provisions of the 1949 Geneva Conventions and their Additional Protocol concerning persons killed and deceased during hostilities.

# Responsibility for breaches of international humanitarian law

### 6.1. National laws and procedures on repression of breaches of international humanitarian law

For many years crimes against peace, humanity and war crimes were not regulated comprehensively under Polish law. Earlier Polish penal legislation criminalized war crimes to a certain extent (Military Criminal Code of 21 October 1932). Criminal liability for this type of crime was extended through the decree of the President of the RP of 30 March 1943 envisaging punishment for the gravest violations of international law to the detriment of the Polish State, a Polish legal person or Polish citizen, the Decree of 31 August 1944 on Punishment for Nazi criminals Guilty of Murder and Persecution of Civilians and Prisoners and for Traitors of the Polish Nation (the so-called “August Decree”), and through the Criminal Code of the Polish Armed Forces of 23 September 1944.

An attempt in 1969 to introduce a chapter on “Crimes against Peace, Humanity and International Relations” to the Criminal Code was unsuccessful. During parliamentary legislative work on the draft Code, that chapter was removed, with the intent of regulating its subject in a separate law, which, ultimately, was not adopted. A new Chapter XVI of the Criminal Code entitled “Crimes against Peace, Humanity and War crimes” was introduced as late as in 1997 following the codification of the criminal law. Chapter XVI covers several areas of protection: international peace (Article 117), fundamental human rights (Articles 118 and 119), principles of production and handling of weapons of mass destruction and other means of warfare (Article 121), and the principal norms of warfare and conduct during armed conflicts (Articles 120 and 122-126).

The division present in the title of Chapter XVI makes reference to the Charter of the International Military Tribunal in Nuremberg, which defines in Article 6 crimes against peace, war crimes and crimes against humanity. Thus, Chapter 16 addresses the most socially damaging crimes, which is reflected in the severity of the attendant penalties.

The choice of method used in incorporating provisions addressing violations of international humanitarian law into Polish law shaped the new regulations. In particular, this is true of the way the prohibited methods and means of warfare specific to international humanitarian law were described without listing them on a case by case basis. The Criminal Code regulates these issues in a synthetic way, through references to the prohibitions specified in international law. The provisions of Chapter XVI of the Criminal Code on war crimes do not distinguish between international and domestic armed conflicts, which means that they apply to both kinds of conflicts.

A review of the incorporation into Polish law of the provisions of international humanitarian law, conducted before the introduction into the Criminal Code of Chapter 16, did not take into account the provisions of the Rome Statute of the International Criminal Court (the Statute had not been adopted at the time). The Statute is not a typical criminal law agreement and does not contain provisions obligating states parties to punish the crimes it covers; it merely lays down the scope of crimes subject to the jurisdiction of the International Criminal Court. However, bearing in mind the fact that the definitions of crimes against humanity and war crimes set out in the Statute are the currently accepted standard in international law, the Ministry of Justice drafted an

amendment to the Criminal Code, aimed at fully implementing the crimes covered by the Statute into the Polish legal order. The Criminal Code Amendment Act was adopted on 20 May 2010 and entered into force on 8 September 2010.

It provides for the introduction of additional crimes against humanity corresponding to the scope of Article 7 of the Statute (the newly-introduced Article 118a of the Criminal Code), the supplementation of war crimes referred to in Article 8 of the Statute (Articles 122, 124 and 125 of the Criminal Code) and expands the scope of responsibility of commanders and other superiors in accordance with the wording of Article 28 of the Statute (newly-introduced Article 126b of the Criminal Code).

## 6.2. Criminal law in the scope of the so-called “grave breaches” of the Geneva Conventions and of Protocol I

Pursuant to Articles 49, 50, 129 and 146 of the four Geneva Conventions of 1949, the states parties undertook to “enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of” the Geneva Conventions.

The Criminal Code criminalizes the following “grave breaches” of the Geneva Conventions:

a) willful killing – criminalized under Article 123 § 1 of the Criminal Code:

*Article 123 § 1 Whoever, in violation of international law, commits the homicide of:*

- 1) *persons who surrendered, laying down their arms or lacking any means of defense,*
- 2) *the wounded, sick, shipwrecked persons, medical personnel or clergy,*
- 3) *prisoners of war,*

*4) civilians in an occupied area, annexed or under warfare, or other persons who are protected by international law during warfare, shall be subject to the penalty of deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years, or the penalty of deprivation of liberty for life;*

b) torture and inhuman treatment, including biological experiments – criminalized under Article 123 § 2 of the Criminal Code:

*Article 123 § 2 Whoever, in violation of international law, causes the persons specified in § 1 to suffer serious detriment to health, subjects such persons to torture, cruel or inhuman treatment, makes them, even with their consent, the objects of cognitive experiments, uses their presence to protect a certain area or facility, or to protect own armed units from warfare, or keeps such persons as hostages, shall be subject to the penalty of deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years;*

c) willfully causing great suffering or serious injury to body or health – criminalized under Articles 123 § 2 and 124 of the Criminal Code:

*Article 123 § 2 Whoever, in violation of international law, causes the persons specified in § 1 to suffer serious detriment to health, subjects such persons to torture, cruel or inhuman treatment, makes them, even with their consent, the objects of cognitive experiments, uses their presence to protect a certain area or facility, or to protect its own armed units from warfare, or keeps such persons as hostages, shall be subject to the penalty of deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years.*

*Article 124 § 1 Whoever, in violation of international law, forces the persons specified in Article 123 § 1 to serve in enemy armed forces or participate in military action directed against their own country, uses corporal punishment, uses violence, unlawful threat or deceit to force these persons to participate or engage in sexual intercourse or any other sexual act, perpetrates an attack on human dignity, especially by way of humiliating treatment, deprives them of liberty or of the right to independent and impartial judicial proceedings, or restricts their right to defense in criminal proceedings, or declares the rights or claims of citizens of the opposing side to be null and void, suspended or inadmissible for court action, shall be subject to the penalty of deprivation of liberty for a minimum term of 3 years;*

d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and intentionally – criminalized under Article 125 of the Criminal Code:

*Article 125 § 1 Whoever, in an area occupied, taken over or under warfare, in violation of international law, destroys, damages, seizes or appropriates cultural property, shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years.*

**§ 2 If the act pertains to property of particular importance to culture, the perpetrator shall**

*be subject to the penalty of deprivation of liberty for a minimum term of 3 years;*

- e) compelling a prisoner of war or a civilian person to serve in the armed forces of a hostile power – criminalized under Article 124 of the Criminal Code:

*Article 124 § 1 Whoever, in violation of international law, forces the persons specified in Article 123 § 1 to serve in enemy armed forces or participate in military action directed against their own country, uses corporal punishment, violence, unlawful threat or deceit to force these persons to participate or engage in sexual intercourse or any other sexual act, perpetrates an attack on human dignity, especially by way of humiliating treatment, deprives them of liberty or of the right to independent and impartial judicial proceedings, or restricts their right to defense in criminal proceedings, or declares the rights or claims of citizens of the opposing side to be null and void, suspended or inadmissible for court action, shall be subject to the penalty of deprivation of liberty for a minimum term of 3 years;*

- f) willfully depriving a prisoner of war or a civilian person of the right to a fair and regular trial – criminalized under Article 124 of the Criminal Code:

*Article 124 § 1 Whoever, in violation of international law, forces the persons specified in Article 123 § 1 to serve in enemy armed forces or participate in military action directed against their own country, uses corporal punishment, violence, unlawful threat or deceit to force these persons to participate or engage in sexual intercourse or any other sexual act, perpetrates an attack on human dignity, especially by way of humiliating treatment, deprives them of liberty or of the right to independent and impartial judicial proceedings, or restricts their right to defense in criminal proceedings, or declares the rights or claims of citizens of the opposing side to be null and void, suspended or inadmissible for court action, shall be subject to the penalty of deprivation of liberty for a minimum term of 3 years;*

- g) directing attacks against the civilian population as such or against individual civilians – criminalized under Article 122 of the Criminal Code;
- h) directing indiscriminate attacks against the civilian population as such or against civilian objects – criminalized under Article 122 of the Criminal Code;
- i) directing attacks against objects containing dangerous forces – criminalized under Article 122 of the Criminal Code;
- j) directing attacks against non-defended localities and demilitarized zones – criminalized under Article 122 of the Criminal Code;
- k) directing attacks against individuals with the knowledge that such individuals are out of combat (*hors de combat*) – criminalized under Article 122 of the Criminal Code:

*Article 122 § 1 Whoever, in the course of warfare, attacks a non-defended locality or object, a hospital or neutral zone or uses any other means of warfare prohibited by international law, shall be subject to the penalty of deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years.*



Article 122 § 1 explicitly mentions only certain protected objects, otherwise referring to the methods of warfare prohibited under international law. The doctrine of international criminal law specifies the prohibited methods and means of warfare. All acts mentioned in subparagraphs 7-11 are considered prohibited methods of warfare;

l) unjustified delay in the repatriation of prisoners of war or civilian persons –criminalized under Article 124 of the Criminal Code:

*Article 124 § 2 The same punishment shall be imposed on anyone who, in violation of international law, commits an unjustified delay in the repatriation of prisoners of war or civilian persons, relocates, resettles or deports civilian persons, inducts or recruits for service in armed forces of persons under 18 or the use of such persons in warfare;*

m) practices of apartheid or other inhuman or degrading practices based on racial discrimination – criminalized under Articles 119 § 1 and 123 § 2 of the Criminal Code:

*Article 119 § 1 Whoever uses violence or makes unlawful threats against a group of persons or a particular individual because of their national, ethnic, racial, political, religious affiliation, or because of their lack of religious beliefs, shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.*

*Article 123 § 2 Whoever, in violation of international law, causes the persons specified in § 1 to suffer serious detriment to health, subjects such persons to torture, cruel or inhuman treatment, makes them, even with their consent, the objects of cognitive experiments, uses their presence to protect a certain area or facility, or to protect own armed units from warfare, or keeps such persons as hostages, shall be subject to the penalty of deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years;*

n) unlawful deportation or transfer of civilian persons – criminalized under Article 124 of the Criminal Code:

*Article 124 § 2 The same punishment shall be imposed on anyone who, in violation of international law, commits an unjustified delay in the repatriation of prisoners of war or civilian persons, relocates, resettles or deports civilian persons, inducts or recruits for service in armed forces of persons under 18 or the use of such persons in warfare;*

o) taking of hostages – criminalized under Article 123 § 2 of the Criminal Code:

*Article 123 § 2 Whoever, in violation of international law, causes the persons specified in § 1 to suffer serious detriment to health, subjects such persons to torture, cruel or inhuman treatment, makes them, even with their consent, the objects of cognitive experiments, uses their presence to protect a certain area or facility, or to protect own armed units from warfare, or keeps such persons as hostages, shall be subject to the penalty of deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years;*

p) directing attacks against clearly identified historic monuments, works of art or places of worship which constitute the common cultural or spiritual heritage of peoples and to which special protection has been given by a special agreement – criminalized under Article 125 of the Criminal Code:

*Article 125 § 1 Whoever, in an area occupied, taken over or under warfare, in violation of international law, destroys, damages or removes cultural property, shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years.*

**§ 2 If the act pertains to property of particular importance to culture, the perpetrator shall be subject to the penalty of deprivation of liberty for a minimum term of 3 years.**

The war crimes regulated by the Criminal Code are common crimes, meaning that they can be committed by any natural person.

As regards the possibility of war crimes also being committed through omission – the rules applied are the same as in the case of all other crimes, meaning that Article 2 of the Criminal Code applies to them. Depending on the specific circumstances under which an act was committed, Article 18 § 3 may also be applicable (abetting through omission).

*Article 2 Criminal liability for an offence with criminal consequences committed by omission shall be incurred only by a person who had borne a legal, special duty to prevent such a consequence.*

*Article 18 § 3 Whoever, with the intent that another person should commit a prohibited act, facilitates by his conduct the commission of the act, particularly by providing the instrument, means of transport, giving counsel or information, shall be liable for aiding or abetting; whoever, acting in breach of a particular legal duty to prevent the prohibited act, facilitates its commission by another person through his omission, shall also be liable for aiding and abetting.*

### **6.3. Criminal law in the scope of war crimes other than the so-called grave breaches of the Geneva Conventions and of Protocol I**

The Criminal Code also criminalizes non-grave breaches of international humanitarian law. These include:

1. all methods of warfare prohibited under international law (Article 122),
2. all means of warfare prohibited under international law (Article 122),
3. using persons protected under international humanitarian law to protect, through their presence, specific areas, objects, or one's own forces from warfare (Article 123),
4. application of corporal punishment (Article 124),
5. deprivation of a person's liberty in breach of international humanitarian law (Article 124),
6. committing attacks on human dignity against persons protected under international humanitarian law, especially by way of debasing and humiliating treatment (Article 124),
7. forcing persons to take part in combat operations against their own country (Article 124),
8. resettlement of the civilian population (Article 124),
9. committing sexual crimes against persons protected under international humanitarian law (Article 124),
10. declaring the rights or claims of citizens of the opposing side to be null and void, suspended or inadmissible for court action (Article 124),
11. conscription into, or recruitment by armed forces of persons under 18 years of age or the use of such persons in warfare (Article 124),
12. restriction of the right to defense in criminal proceedings of persons protected under international humanitarian law (Article 124),
13. using during warfare, in breach of international law, of the emblem of the Red Cross/ Red Crescent, the protective emblem for cultural property and any other emblem protected under international law (Article 126),
14. using during warfare of the state flag or military markings of the enemy, a neutral state or an international organization or commission (Article 126).

### **6.4. Criminal law in the scope of the crime of genocide**

The crime of genocide is defined in Article 118 of the Criminal Code:

*Article 118 § 1 Whoever, acting with the intent to destroy in full or in part any national, ethnic, racial, political or religious group, or group with a specific world outlook, commits homicide or causes serious detriment to the health of a person belonging to such a group, shall be sub-*

ject to the penalty of deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 2 years, or the penalty of deprivation of liberty for life.

§ 2 Whoever, acting with the intent specified under § 1, creates, for persons belonging to such a group, living conditions that threaten them with biological extinction, applies means aimed at preventing births within this group, or forcibly removes children from persons constituting it, shall be subject to the penalty of deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years.

§ 3 Whoever makes preparations to commit the offence specified under § 1 or 2, shall be subject to the penalty of deprivation of liberty for a minimum term of 3 years.

The provisions of Article 118 § 1-3 fulfil the obligations stemming from the UN Convention of 9 December 1948 on the Prevention and Punishment of the Crime of Genocide (JoL of 1952 No 2, item 9). The definition of the crime of genocide in Polish law is broader than the one in the Convention. Article 118, in addition to groups named in the 1948 Convention, also includes political groups and groups with a specific world outlook.

Genocide, also known as extermination is the gravest crime, carrying the penalty of the deprivation of liberty for a minimum term of 12 years, the penalty of the deprivation of liberty for 25 years, or the penalty of the deprivation of liberty for life. Penalization applies not only to the principal perpetrator but also to all forms of complicity – including leadership and command complicity – which applies, in particular, to persons issuing the orders: political leaders, commanders of military, police and paramilitary units, concentration camp commanders, etc. Preparation to commit the crime of genocide in all the forms described above is also punishable.

## 6.5. Criminal law concerning crimes against humanity

The Act of 20 May 2010 introduces a new crime (Article 118a) whose scope corresponds to that of Article 7 of the Rome Statute of the International Criminal Court, i.e. crimes against humanity.

*Article 118a § 1* Whoever, while taking part in a large-scale attack or in at least one in a series of attacks directed against part of the population with the aim of implementing or supporting the policies of a country or organization:

- 1) *commits murder,*
- 2) *causes serious injury to a person's health,*
- 3) *creates conditions for persons belonging to a group of the population which threaten their biological existence, in particular by denying access to food or medical care, aimed to destroy this group, shall be subject to the penalty of deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years, or the penalty of deprivation of liberty for life.*

§ 2 Whoever, while taking part in a large-scale attack or in at least one in a series of attacks directed against a population group with the aim of implementing or supporting the policies of a country or organization:

- 1) *is responsible for a person's enslavement or subjects a person to enslavement,*
- 2) *deprives a person of his/her liberty for a period exceeding 7 days or does so with particular torment,*
- 3) *applies torture or subjects a person to cruel or inhuman treatment,*
- 4) *commits rape or uses violence, unlawful threat or deceit to otherwise violate the sexual liberty of a person,*
- 5) *uses violence or unlawful threat to cause a woman to become pregnant with the purpose of influencing the ethnic composition of a part of the population, or of causing any other serious breach of international law,*
- 6) *deprives a person of liberty and declines to provide information as to this person or his/her whereabouts, or provides false information as to this person or his/her whereabouts, with the purpose of depriving this person of legal aid for a prolonged period of time,*



*shall be subject to the penalty of deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years.*

§ 3 Whoever, while taking part in a large-scale attack or in at least one in a series of attacks directed against a part of the population undertaken with the aim of implementing or supporting the policies of a country or organization:

- 1) *in violation of international law, causes a person to change their lawful place of residence,*
- 2) *commits serious acts of repression against a part of the population for reasons which are considered unacceptable under international law, in particular for reasons of political, racial, national, ethnic, cultural, or religious affiliation, or the lack of religious beliefs, thereby leading to a deprivation of fundamental rights,*

*shall be subject to the penalty of deprivation of liberty for a minimum term of 3 years.*

Apart from Article 118a, which reflects crimes against humanity under Article 7 of the Rome Statute of the International Criminal Court, the Criminal Code includes – in Chapter XVI devoted to crimes against peace, humanity, and war crimes – Article 119 which defines the crime of using violence or making unlawful threats against a group of persons or a particular individual because of their national, ethnic, racial, political, religious affiliation, or because of their lack of religious beliefs. Article 119 protects the fundamental values and human rights, first and foremost, the right to life and to develop individual values and group distinctness.

§ 1 Whoever uses violence or makes unlawful threats against a group of persons or a particular individual because of their national, ethnic, racial, political, religious affiliation, or because of their lack of religious beliefs, shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

## **6.6. Jurisdiction**

Criminal law does not limit the liability for offences covered under Chapter XVI of the Criminal Code, i.e. crimes against peace, humanity and war crimes, to those committed by soldiers. Crimes listed in this chapter are common crimes, meaning that any person can commit them. Consequently, cases involving such crimes are examined by common courts of law, unless they are explicitly within the jurisdiction of military courts. However, it should be noted that the Polish criminal law is evolving in the direction of eliminating differences in proceedings before military and common courts. The Polish Code of Criminal Procedure – the Act of 6 June 1997 (JoL of 1997, No 89, item 555) has significantly restricted the jurisdiction of military courts as regards the subject matter it is competent to examine. The system of military courts has been changed to reflect that of common courts of law, while the differences that have remained are warranted by the special nature of the military; furthermore, the Minister of Justice exercises general administrative and organizational oversight of their activity. Criminal proceedings before military courts are conducted in accordance with the procedural guarantees applicable in court proceedings before common courts of law and fulfil the relevant international standards.

## **6.7. Liability of superiors**

A superior or higher ranking soldier authorized to issue orders, when issuing an order the fulfilment of which is tantamount to the commission of prohibited act, is subject to criminal liability under Article 18 § 1 of the Criminal Code. In a situation when a subordinate attempts to commit a prohibited act, the person who has issued the relevant order is liable for the commitment of the act (Article 22 § 1 of the Criminal Code). Occasionally, the conduct of a superior may also fulfil the prerequisites of a prohibited act provided for in Article 231 of the Criminal Code. A superior does not only mean a person performing military service, but also a civilian to whom a soldier reports during his service.

*Article 18 § 1* Liability for perpetration shall not only be borne by the person who has committed a prohibited act himself or jointly and under arrangement with another person, but also by the person who has directed the commission of a prohibited act by another person or, taking advantage of the subordination of another person to himself, orders such a person to commit such an act.

*Article 231 § 1* A public official who, exceeding his authority or failing to perform his duties, acts to the detriment of public or private interest, shall be subject to the penalty of deprivation of liberty for a term of between 1 and 3 years.

§ 2 If the perpetrator commits the act specified in § 1 with the purpose of obtaining material or personal benefit, he/she shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years.

§ 3 If the perpetrator of the act specified in 1 § acts unintentionally and causes essential damage, he/she shall be subject to a fine, the penalty of restriction of liberty or deprivation of liberty for up to 2 years.

In its Article 28, the Rome Statute of the International Criminal Court provides for the liability of a military commander or other superior for crimes covered by the Statute committed by forces under his or her effective command and control. Such liability is limited to cases where the superior either knew or should have known that his or her forces were committing or were about to commit such crimes, and failed to take all necessary measures to prevent or repress their commitment. Although the Criminal Code provides for abetting through omission (Article 18 § 3), which essentially overlaps with the scope of Article 28 of the Statute, this responsibility is limited to intentional crimes, while Article 28 also provides for the responsibility of the military commander or other superior if the actions of his or her forces are undertaken unintentionally. A new specific regulation has thus been introduced (Article 126b), which considers the commander or superior who permits the commission of an unlawful act by his or her superior as the perpetrator of such crimes (and not as an abettor) and provides for their responsibility also in the case of unintentionally-committed crimes.

*Article 126b § 1* Whoever, failing to perform the obligation of necessary control, permits the commitment of acts defined under Articles 117 § 3; 118; 118a; 119 § 1; 120-126a by a person under his or her effective command and control, shall be subject to the penalty provided for in these regulations.

§ 2 If the perpetrator acts unintentionally, he or she shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

### **6.8. Defense of superior orders**

The concept of an order is defined in Article 115 § 18 of the Criminal Code. It is a command to undertake or refrain from performing a specified action, issued by a superior or an authorized soldier of superior rank. The right to issue orders usually stems from organizational decisions, rules, official authorization or a decision by a commander of superior rank. A superior is a person who, in addition to the right of issuing orders, directs the service of soldiers and bears responsibility for them. A soldier of superior rank is a soldier of higher military rank, who, in a given situation, has the right to issue orders to a soldier of lower rank. The issued order may take any form, including oral, written or by way of a signal. An order must be an explicit command to perform a specified action or omission relating to official duties connected with military service. Under Article 318 of the Criminal Code a soldier who perpetrates a prohibited act which constitutes the fulfilment of an order is not committing a crime, unless in fulfilling the order he was willfully

committing a crime. The obligation to fulfil an order is annulled if its fulfilment would constitute an offence. The responsibility of the soldier is based on the awareness of the criminal nature of the order, including the awareness of its inconsistency with criminal law provisions and the soldier's conviction that he or she would be committing a crime by performing the order. Article 344 § 1 of the Criminal Code stipulates that a soldier who refuses to fulfil or fails to fulfil an order that leads to the commitment of an offence is not guilty of the offence of insubordination. Pursuant to § 2 of that article, in the event of the fulfilment of an order in a way that contravenes its content to substantially reduce its harmfulness, a court may apply extraordinary mitigation of punishment, or forego punishment altogether.

### **6.9. Non-applicability of statute limitations**

Poland is party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, adopted by the UN General Assembly on 26 November 1968.

The principle of non-applicability of statutory limitations to crimes against humanity and war crimes is also incorporated in the Constitution (Article 43) and the Criminal Code (Article 105).

Article 43 of the Constitution:

*There shall be no statute of limitations regarding war crimes and crimes against humanity.*

Article 105 of the Criminal Code:

§ 1 The provisions of Articles 101-103 shall not be applied to crimes against peace, crimes against humanity and war crimes.

### **6.10. Jurisdiction of Polish courts in criminal cases and the obligation to prosecute crimes under Articles 49, 50, 129 and 146 of the four Geneva Conventions of 1949**

Pursuant to paragraph 2 of Articles 49, 50, 129 and 146 of the four Geneva Conventions every state party to the Geneva Conventions is obligated "to search for persons alleged to have committed or to have ordered to be committed any of the grave breaches" and to bring all such persons "regardless of their nationality before its own courts."

The fulfilment of the above obligation largely hinges on the principle of territoriality laid down in Article 5 of the Criminal Code, the principle of legalism established in Article 10 of the Criminal Code and the provisions of Articles 109–113 of the Criminal Code which specify the rules of responsibility for crimes committed abroad. These regulations specify the scope of application of the Criminal Code and, at the same time, the jurisdiction of Polish courts in criminal cases, including with regard to crimes against peace, humanity, and war crimes.

Article 5 of the Criminal Code specifies the principle of territoriality. Pursuant to this principle, Polish criminal law applies to all prohibited acts committed in the territory of the Republic of Poland and also on board of Polish maritime and air ships, regardless of the nationality of the perpetrator or his statelessness. A prohibited act is deemed to have been committed in the territory of the Republic of Poland or on board of a Polish maritime or air ship where the perpetrator had acted or omitted to perform an action which he was under obligation to perform or where a criminal consequence has ensued or has been intended by the perpetrator to ensue (Article 6 § 2 of the Criminal Code).

The Criminal Code does not precisely define the concept of "the territory of the Republic of Poland." That concept is elaborated in the Act of 12 October 1990 on the Protection of the State Border (JoL of 2009, No 12 item 67, as amended) as an area delineated by state borders separating the territory of the Republic of Poland from the territories of other states and the open sea, including inland waters and maritime territorial waters, the air space above that area and subsoil under it. The Act of 21 March 1991 on the Maritime Domain of the Republic of Poland and Maritime Administration (JoL of 2003, No 153, item 1502, as amended) provides that the territorial

sea encompasses territorial waters extending 12 nautical miles from the lowest water mark along the coast or the external boundary of internal sea waters (bays and harbors). The Criminal Code extends the application of the principle of territoriality to prohibited acts committed outside the territory of the Republic of Poland. Polish criminal law is applied on board of Polish sea or air ships, regardless of their location when the act was committed. This also applies to military units. For example, Polish criminal law applies when the act was committed on board of a Polish vessel in a foreign port, or in the open sea.

Article 10 of the Polish Code of Criminal Procedure codifies the principle of legalism, placing upon the organ established for the purpose the absolute duty to prosecute crimes. The subjective scope of the principle of legalism encompasses crimes prosecuted ex officio. Since all crimes under Chapter 16 of the Criminal Code are prosecuted ex officio, the principle of legalism is fully applicable in their case. The principle of legalism obligates all judicial organs to ensure that no one – with the exception of cases specified by statute or international law – avoids liability for a committed offence. The provisions of Article 10 are not only addressed to the organs involved in preparatory proceedings, but also to courts. Agencies tasked with law enforcement (prosecutors, the police, the Internal Security Agency, the Military Police, agencies with special authority under law) are obligated, in the event of justified suspicion that an offence has been committed, to initiate and conduct preparatory proceedings. Moreover, a public prosecutor has the obligation to press charges in the event of an act prosecuted ex officio.

The principles of liability for offences committed abroad are codified in Chapter XIII of the Criminal Code. Articles 109-113 specify the principles of nationality, relative protection and universal repression.

*Article 109* Polish criminal law shall be applied to Polish citizens who have committed an offence abroad.

*Article 110 § 1* Polish criminal law shall apply to an alien who has committed abroad an offence against the interests of the Republic of Poland, a Polish citizen, a Polish legal person or a Polish organizational unit without the status of a legal person, and to an alien who has committed abroad an offence of a terrorist nature.

§ 2 Polish penal law shall apply to an alien who has committed abroad a prohibited act other than listed in § 1, if under Polish penal law such an offence is subject to the penalty of deprivation of liberty exceeding 2 years, the perpetrator is in the territory of the Republic of Poland and no decision has been taken on his extradition.

*Article 111 § 1* Liability for an act committed abroad depends on the recognition of the act as an offence also under the law in force in the place of its commission.

§ 2 If differences occur between Polish law and the law in force in the place of the commission of the act, the court, applying Polish law may take the differences into account in favor of the perpetrator.

§ 3 The condition envisaged in § 1 shall not apply to a Polish public official, who, while serving abroad, committed an offence in connection with the performance of his duties nor to a person who committed an offence in a place not under the jurisdiction of any state authority.

*Article 112* Notwithstanding the provisions in force in the place of the commission of the offence, Polish penal law shall apply to a Polish citizen and an alien in the event that they commit:

- 1) *an offence against internal or external security of the Republic of Poland,*
- 2) *an offence against Polish offices or public officials,*
- 3) *an offence against essential Polish economic interests,*

- 4) *an offence of perjury before a Polish office,*
- 5) *an offence resulting, even indirectly, in obtaining material gain in the territory of the Republic of Poland.*

*Article 113 Notwithstanding the regulations in force in the place where the offence was committed, Polish criminal law shall apply to a Polish citizen or an alien, with respect to whom no decision on extradition has been taken, in the event that an offence was committed abroad which the Republic of Poland is obligated to prosecute under international agreements, or an offence covered by the Rome Statute of the International Criminal Court, done at Rome on 17 July 1998 (JoL of 2003, No 78, item 708).*

### **6.11. Nangar Khel**

On 16 August 2007, as a consequence of heavy machine gun and mortar fire by Polish soldiers of a village within Nangar Khel in the Islamic Republic of Afghanistan, six persons died on the spot, including two women, a man – a groom preparing for a wedding, and three children, while two more persons died in hospital. In September 2007 the superiors concluded an arrangement with the seniors of the village. The harmed family received compensation and the injured women were taken to Poland to be treated.

Military Prosecutor's Office accused seven soldiers of a war crime. On 13 November 2007, 7 soldiers from the first turn of Polish military contingent within the International Security Assistance Force (ISAF) in the Islamic Republic of Afghanistan: the head of the group, captain (*kpt*) Olgierd C., second lieutenant (*ppor.*) Łukasz B., master sergeant (*chor.*) Andrzej O., corporal (*plut.*) Tomasz B., privates (*st. szere.*) Jacek J. and Robert B. and reserve private Damian L., who as the only one was not accused of murdering the civilians, but only of shooting an undefended facility. The investigation was conducted by the 2nd Division of the Office for Organized Crime at the Main Military Prosecutor's Office with its headquarters in Poznan. Six soldiers faced the life imprisonment, while Damian L. – imprisonment of no less than 5 years or 25 years of imprisonment.

In line with the Release of the Main Military Prosecutor's Office of 14 November 2007, on 16 August 2007 in the morning, in the vicinity of Nangar Khel, an explosion of IED mines took place, i.e. an impromptu explosive materials set by Taliban fighters. As a consequence of that event, two military vehicles of ISAF sustained damage. In connection with this situation, Polish military patrols, including the 1. assault battalion of the "C" Assault Team of the Polish Military Contingent to Afghanistan, in which the detained soldiers served.

From the collected evidence it clearly followed that the departure of the patrol with the detained soldiers took place on 16 August 2007 in the afternoon, a few hours after the IED attack.

Having arrived near the Nangar Khel and getting in position in line with the binding military procedure, the soldiers did not determine the presence of any Taliban fighters within the village or its vicinity.

The empirical evidence collected in the course of the investigation as at 14 November 2007 by the military prosecutor of the Polish Military Contingent to the Islamic Republic of Afghanistan who opened the investigation on the next day following the event and continued with the investigative work together with the military policemen at the place of the event, supplemented with the evidence investigation conducted in Poland by the prosecutors with the 2nd Division of the Office for Organized Crime of the Main Military Prosecutor's Office in Poznan – allowed to clearly state that following a command of the officer managing the team, the Polish soldiers used heavy machine gun and 60 mm mortar fire on the Nangar Khel village. It must be emphasized that the collected evidence clearly showed that the described conduct of the soldiers was in no case related to any direct and real act of aggression from the local population or the conduct that would endanger the lives, health or safety of the Polish and other soldiers serving in ISAF.

As a consequence of the event, six citizens of the Islamic Republic of Afghanistan died following the fire as a result of extensive injuries to the torso as well as upper and lower limbs, leading to shock or hemorrhagic shock, followed by death. Also, three female citizens of the Is-



Islamic Republic of Afghanistan suffered from serious injuries in the form of injuries to the torso and lower limbs, leading to amputation and permanent disability, i.e. a long-term disease causing a prolonged and potentially fatal illness in the understanding of Article 156(1)(2) of the Polish Criminal Code. There were children among the killed and wounded.

Karol Frankowski, Head of the 2nd Division of the Office for Organized Crime of the Main Military Prosecutor's Office in Poznan, in the Release issued by the Main Military Prosecutor's Office on 14 November 2007 indicated that from the legal analysis of the soldier's conduct it follows that they breached the provisions of international law protecting the civilian population and undefended villages in the course of armed movements in the form of Article 23(b) and Article 25 of the Regulations Respecting the Laws and Customs of War on Land comprising an integral part of the Hague Convention made on 18 October 1907 regarding the laws and customs of war on land (JoL of 1927, No 21, item 161), Article 3(1)(a) of the Fourth Geneva Convention of 12 August 1949 on the protection of civilian persons in time of war (JoL of 1956, No 38, item 171), Article 4(2)(a) and Article 13(a) and (2) of the II Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of Non-International Armed Conflicts (JoL of 1992, No 41, item 175).

Based on the aforementioned findings, the 6 detained soldiers were accused of committing offences under Article 123(1)(4) of the Polish Criminal Code in conjunction with Article 123(2) of the Polish Criminal Code in connection with Article 122(1) of the Polish Criminal Code, – i.e. the offences punishable by imprisonment for a minimum term of 12 years, imprisonment for 25 years or life imprisonment, while one soldier was accused of committing an offence under Article 122(1) of the Polish Criminal Code, – i.e. an offence punishable by imprisonment for a minimum term of 5 years or 25 years of imprisonment<sup>7</sup>.

*Article 123 of the Criminal Code [Attack on the life or health of prisoners of war or civilian population] § 1 Whoever, in violation of international law, commits the homicide of: 4) civilians in an occupied area, annexed or under warfare, or other persons who are protected by international law during warfare, shall be subject to the penalty of deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years, or the penalty of deprivation of liberty for life;*

*§ 2 Anyone who, in violation of international law, causes grievous bodily harm to the people specified in § 1, or who subjects such people to torture, cruel or inhumane treatment, or who makes them the objects of cognitive experiments, even with their consent, or who uses their presence to protect a certain area or facility, or armed units from warfare, or who holds such people as hostages is liable to imprisonment for a minimum term of five years or imprisonment for 25 years.*

*Article 122 of the Criminal Code [Impermissible attacks and means of warfare] § 1 Whoever, in the course of warfare, attacks a non-defended locality or object, a hospital or neutral zone or uses any other means of warfare prohibited by international law, shall be subject to the penalty of deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years.*

The detained suspected soldiers confirmed firing upon the Nangar Khel village and denied that there was any exchange of fire with the Taliban fighters before firing upon the village. The soldiers explained that their original report of the events given by them soon after the event that indicated as if the fire had been a response to enemy fire was an official untrue version of the events agreed for the purposes of the disciplinary and criminal investigation<sup>8</sup>.

On 6 July 2008 the prosecutor concluded the investigation and filed an indictment with the Military Regional Court (MRC) in Warsaw. MRC in Warsaw issued a decision of 9 October

<sup>7</sup> Karol Frankowski, Press Release of the Main Military Prosecutor's Office, link: <http://dziennik3rp.blogspot.com/2007/11/komunikat-prasowy-naczelnaj-prokuratury.html>, 14 November 2007

<sup>8</sup> Karol Frankowski, Press Release of the Main Military Prosecutor's Office, link: <http://dziennik3rp.blogspot.com/2007/11/komunikat-prasowy-naczelnaj-prokuratury.html>, 14 November 2007

2008 No. S. 50/2008 on rebutting the matter to the prosecutor in order to supplement the investigation. The prosecutor filed a complaint against the decision of MRC. In response to the complaint filed by the prosecutor, the Supreme Court – Military Chamber, in its decision of 3 December 2008 (WZ 66/2008), having considered the matter at a session held on 3 December 2008 at the Military Chamber, revoked the decision and rebutted the matter to the Military Regional Court in Warsaw for consideration.

The Prosecutor's Office demanded that the soldiers accused of killing civilians be punished by imprisonment for a minimum term between 12 and five years. The defense and the accused themselves applied for acquittal.

The Military Regional Court in Warsaw issued a ruling on 2 June 2011 acquitting the seven soldiers of the accusations of having committed a war crime in Afghanistan. The Statement of Grounds regarding the Nangar Khel shooting has 156 pages. MRC acquitted the soldiers due to insufficient evidence. The Court decided that the evidence present was not complete, it lacked evidence, and that the presented evidence was not sufficient to ascribe fault to the accused. Moreover, MRC acknowledged that the prosecutor had the right to open the investigation, and the court had the right to arrest the soldiers in 2007, as there was a suspicion that they did commit the offences they were accused of.

After the ruling was announced, prosecutor Jakub Mytych with the Main Military Prosecutor's Office in Poznan told the Polish Press Agency (PAP) that the military prosecutor's office does not agree with the acquitting ruling on Nangar Khel by saying that "there were grounds for convicting all accused of the war crime of killing civilians and firing upon the village"<sup>9</sup>.

Having analyzed the Statement of Grounds, the Prosecutor's Office filed an appeal to the Supreme Court.

The Military Chamber of the Supreme Court, in its ruling of 14 March 2012, case file no. WA39/11: acquitted three soldiers: head of the base and two privates from the accusation of a war crime in Nangar Khel in 2007 and the ruling is binding; while the matter regarding four soldiers was rebutted for consideration by the court of first instance.

The ruling was passed by a panel of three judges at the Supreme Court, presided by Judge Wiesław Błuś. Following the appeal filed by the military prosecutor's office complaining against the entire acquitting ruling of the court of the first instance, the Supreme Court agreed with the prosecutor's office only partially: it upheld the acquitting rulings issued on 2 June 2011 at the Military Regional Court in Warsaw regarding captain Olgierd C. – head of the Charlie base in Afghanistan, and privates Jacek J. and Robert B. The acquittals regarding: second lieutenant Łukasz B., master sergeant Andrzej O., reserve corporal Tomasz B. and reserve private Damian L. were revoked. A new trial before MRC will be launched in their cases.

Judge Wiesław Błuś emphasized that the "Trial regarding Nangar Khel is not a trial of the entire Polish army and cannot have an impact on assessing the entire Polish military operation in Afghanistan." The presiding judge of the SN adjudicating panel also supported the response of the law enforcement authorities that opened the investigation regarding the dramatic events of Nangar Khel, where – as he emphasized that "some commentators seem to forget about" – civilians have died. "Any decisions on acquitting or convicting the accused must be made by an independent court," he added.

According to the Supreme Court, it cannot be stated that captain Olgierd C. issued an order to fire upon the village. The Court believed the explanations of the accused in this matter and confirmed the MRC's findings regarding him. The judges indicated that captain Olgierd C., who stood trial due to being accused of giving an order to fire upon the Nangar Khel village, has since the very beginning been adamant in denying the accusation, contrary to his subordinates that changed their stories, who first stated they responded to Taliban fire, then that they acted as commanded, and then that they selected different targets but the munition was faulty.

<sup>9</sup> PAP, <http://www.rp.pl/artykul/739406.html?print=tak&p=0>, 25 October 2011

In the argumentation supporting the acquittal of privates B. and J., the Supreme Court emphasized that the soldiers “did not intend to kill civilians, they acted on the orders of their superior who said how the mortar is to be set, they had no grounds to question the order, they had to follow it, because denial to follow an order invokes criminal liability.” According to the Court, “privates had the right to assume that their leader issues an order that is objectively legitimate,” said judge W. Błuś. The Supreme Court acknowledged that during the briefing the use of the 60 mm mortar was not planned, but the situation in the field could change; they had no reason to suspect that their mortar will be used against an undefended facility and the civilian population.

In the statements of grounds for revoking the acquitting rulings in the case of four soldiers the Supreme Court indicates that in their case, the legal principle saying that the doubts that cannot be removed shall be settled to the advantage of the charged officers and acquit them due to lack of sufficient evidence. According to the Supreme Court, the doubts in the *Nangar Khel* case do not belong to such doubts. The matter is to be considered in a new trial by a court of first instance. The Supreme Court noted that it does not decide on how these doubts are to be settled.

According to the judge, colonel Krzysztof Mastalerz, who provided the statement of grounds for the Supreme Court further, the four accused made contradictory reports on the course of events. Judge K. Mastalerz also stated that “the Court of first instance did not strive to clarify these doubts using other evidence, e.g. witness testimonies. Also, the Court failed to notice that the accused made reports in such a way so that to present themselves in the best light possible.”

Reserve private Damian L., who is also awaiting a new trial before MRC, as the only one out of the seven soldiers was not accused of killing civilians using the mortar, but only firing a heavy machine gun on an undefended civilian facility. Damian L. was acquitted by the court of first instance due to lack of evidence. That ruling was also revoked and the case is rebutted to MRC. The Supreme Court Judge Marian Buliński, in the statement of grounds for revoking the acquittal of Damian L., stated that “the Court cannot refrain from deciding on which evidence to believe and which not.”

As it was explained by the Supreme Court, by acquitting Damian L., the court of first instance acknowledged that the he fired using heavy machine gun in order to fire upon the hills and to check the weapon as true, while Damian L. himself stated that he fired the first round into the hills, but later into the buildings themselves. Witnesses also testified that reserve private L. fired upon the buildings.<sup>10</sup>

The Military Regional Court in Warsaw postponed the trial of 4 soldiers accused in the *Nangar Khel* case until January 2013. The new reading of the indictment by the prosecutor, colonel Jakub Mytych, was prevented by the motion of Tomasz B., who turned to the court to be granted court-appointed defense, stating that he cannot afford an attorney.

For procedural reasons, the court failed to start the trial at the planned date. The Court inquired whether the motion for a court-appointed attorney means that the powers of attorney to current attorneys are revoked. Tomasz B. confirmed that he is forced to do so and to move for the appointment of court-appointed attorneys. The discussion was joined by attorney Piotr Dewiński, an attorney defending master sergeant O. He reminded that the Supreme Court suggested that MRC should examine whether the explanations made by O. and B. are contradictory enough so that they could not be represented by the same attorneys.

In the end, MRC conceded that it is not possible for the same attorneys to defend master sergeant Andrzej O. and reserve corporal Tomasz B. According to the Court, one soldier cannot be defended by the same attorneys as another accused soldier for fear of the conflict in the lines of defense. Therefore, as the judge lieutenant colonel Rafał Korkus stated to the adjudicating panel of five judges – a motion will be filed to the head of MRC to determine court-appointed attorneys for Tomasz B., who will have to familiarize themselves with the case filed by 9 January 2013,

<sup>10</sup> Wojciech Tumidalski, *Nangar Khel*: three binding acquittals, the trial of four to be repeated (description), link: <http://www.lex.pl/czytaj/-/artykul/nangar-khel-trzy-prawomocne-uniewinnienia-proces-czterech-do-powtorki-opis>, 14 March 2012



i.e. the date of the second attempt to start the trial.<sup>11</sup> Court trial in this case is currently on-going.

In June 2013, the Military Regional Court awarded to major Olgierd C. PLN 500 thousand in damages and approx. PLN 2 thousand compensation for over seven months spent in jail. In August 2013 the Military Chamber of the Supreme Court, after the appeal filed by the prosecutor's office, reduced the damages to PLN 150 thousand. The Supreme Court noted that the amount of damages may only cover the damage to the unjustly detained person, not of other persons (including family). However, the court of first instance in determining the value of the damages erroneously considered the negative feelings of the officer's family. The attorney of Olgierd C. filed a motion for cassation of the ruling to the Supreme Court, requesting that the matter is rebutted to MRC. He noted that PLN 150 thousand is a symbolic amount, considering that a completely innocent person spent seven months in jail. The prosecutor's office moved to reject the cassation motion, stressing that it is a very large sum. An adjudicating panel of seven judges of the Supreme Court rejected the cassation motion. In the statement of grounds judge Marek Pietruszyński stated that the awarded sum is real and reasonable, and serves a compensatory function.<sup>12</sup>

The *Nangar Khel* case had no precedence. It was the first trial of Polish soldiers in history accused of war crimes. The course of the procedure confirmed the efficiency and transparency of the investigation, indictment and court trial procedures in the matters related to breaches of international humanitarian law.

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<sup>11</sup> Jakub Ostałowski, The *Nangar Khel* trial postponed until January, link: <http://www.rp.pl/artykul/949244.html?print=tak&p=0>, 6 November 2012

<sup>12</sup> PAP, <http://www.polskieradio.pl/5/3/Artykul/1020283,Sprawa-Nangar-Khel-Uniewinniony-zolnierz-dostanie-150-tys-zl->

# Competence of national authorities and organizations in implementing international humanitarian law

In Poland, both the executive and judicial authorities are responsible for the implementation and dissemination of IHL.

As far as the executive branch is concerned, each governmental administration authority executes the tasks related to IHL implementation within its competences pursuant to the binding specific provisions of law. These activities are coordinated by the Ministry of Foreign Affairs, which inspires the work of the Commission for International Humanitarian Law established in 2004 (Ordinance of the Prime Minister No. 51 of 20 May 2004; Official Gazette of the Republic of Poland *Monitor Polski* of 2004, No. 23, item 402 and of 2009, No. 73, item 918). The Commission is tasked with the dissemination of international humanitarian law standards for the purpose of transforming them into the Polish legal system, in particular by means of:

- a. Reviewing and analyzing international agreements on international humanitarian law and issuing opinions to this purpose;
- b. Submitting to the Prime Minister periodic opinions on the legislative, organizational and educational measures that should be undertaken in order to transpose the standards of international humanitarian law into Polish legal system;
- c. Forming proposals related to drafting acts of law intended to implement international humanitarian law standards into Polish legislation;
- d. Maintaining contacts and exchanging information on a current basis with other Committees and Commissions, whose work relates to international humanitarian law topics, in particular with the Commission on Dissemination of International Humanitarian Law at the Main Board of the Polish Red Cross;
- e. Updating information on the drafted acts of law, governmental programs and other documents related to the IHL topics;
- f. Drafting projects of training programs related to IHL;
- g. Providing an opinion on the position of Poland to international conferences and on the implementation of the commitments undertaken at these conferences, on request of a competent minister;
- h. Maintaining contacts with institutions, whose work relates to the IHL topics abroad.

The Commission comprises representatives of the ministries competent in matters of implementation and dissemination of IHL, including representatives of the ministers competent for: public administration, public finance, culture and protection of national heritage, science, education, interior, foreign affairs, higher education, health, and the Minister of National Defense and the Minister of Justice.

The Resolution of the Council of Ministers of the Republic of Poland of 27 April 2004 on the Polish Advisory Committee (JoL of 2004, No 102, item 1066) established the Polish Advisory Committee – an auxiliary body of the Council of Ministers, whose tasks include in particular:

1. Presenting the Council of Ministers with the opinions and motions regarding legislative, technical or military measures that are to be undertaken at the time of peace and

- in the case of an armed conflict, as well as in the case of participation of the Armed Forces of the Republic of Poland in peace and stabilization missions undertaken by international organizations with the consent of UN in order to ensure the implementation of the Hague Convention and the associated Protocols, ratified by Poland;
2. Submitting motions to the Council of Ministers intended to ensure – in case of an armed conflict – the familiarity, respect and protection by the Armed Forces of the Republic of Poland of monuments located both within the territory of the Republic of Poland and abroad;
  3. Ensuring, in cooperation with government administration authorities, of contacts and cooperation with Committees of similar nature from other countries and with the relevant international organizations;
  4. Providing explanations as to the implementation of the provisions of the Hague Convention and accompanying Protocols to institutions and bodies of public administration as well as to social and non-governmental organizations.

The Committee is chaired by the secretary of state at the Ministry of Culture and National Heritage responsible for protection of monuments. The Committee is made up of the representatives of the Ministers: of National Defense, of the Interior and Administration, of Foreign Affairs, of Justice, of Education, and persons holding specialist qualifications in the area of protecting and maintaining monuments. The Committee has operated since 2004.

In the course of their judiciary duties, the courts and tribunals are obliged to adhere to the international law binding upon the Republic of Poland (Article 9 of the Constitution of the Republic of Poland). Moreover, in line with Article 91(1) of the Constitution, the judges may directly apply international agreements after three requirements are fulfilled: the agreement is ratified, published in the Journal of Laws and be fit for direct application, i.e. if the agreement does not require passing a statute. In exercising their duties, judges are independent and are subordinate only to Constitution and acts of law (Article 178(1) of the Constitution of the Republic of Poland).



# Part II

## DISSEMINATION



# Dissemination of international humanitarian law by public administration authorities

### 8.1. Ministry of National Defense

The professionalization of the Polish Armed Forces in recent years has resulted in much greater practical emphasis on international humanitarian law of armed conflict. The significance of law of war has been raised in the practical training of soldiers, intensified training of commanding officers and the preparation of instructors in law of war. Polish officers regularly participate in international seminars and courses devoted to this field of law, including those organized by the International Committee of the Red Cross, the International Institute of Humanitarian Law in San Remo and the International Society of Military Law and the Law of War.

All soldiers and employees of the Ministry of Defense are obliged to participate in training and education in international humanitarian law. International law of armed conflict is now part of the curriculum for candidates for professional servicemen and is taught at career advancement courses attended by professional servicemen of the Polish Armed Forces.

In order to ensure a consistent education and training system in this respect, the Minister of National Defense has issued a decision on 13 June 2012 No. 184/MON on the organization of the education and training system related to International Law of Armed Conflicts in the department of national defense (Official Journal of the Ministry of National Defense, No. 360). In line with the aforementioned decision, education is held in six sub-systems:

- 1) Trainings for legal counsellors to superiors, lecturers and instructors;
- 2) Education at military universities;
- 3) Education at training centers and facilities;
- 4) Trainings in organizational units and sections of the Ministry of National Defense;
- 5) Trainings in military sub-units;
- 6) Education of personnel reserves.

The fundamental objective of the education is:

- 1) to provide the knowledge necessary to implement tasks in line with IHL standards;
- 2) to make aware of the criminal liability for breaching the said standards;
- 3) to teach soldiers and employees of the Ministry of National Defense the skills necessary to properly implement IHL and to respond accordingly;
- 4) to prepare the commanding officers to solve problems related to proper implementation of IHL and considering any limitations arising therefrom, as well as to consider all and any caution measures while planning, preparing and conducting activities.

The aforementioned decision stipulates the principles of organizing IHL education, its thematic scope (e.g. the principles establishing limitations on the military operations, protection of medical and religious personnel, protection against the consequences of armed operations and protection of the civilian population, prisoners of war and facilities subject to protection) and the skills that are required following the completion of training and education within individual sub-

systems. The thematic scope of the training encompasses the principles of liability for breaching the IHL standards.

Education on the topics covering international humanitarian law is held in all military universities: in the process of educating candidates for professional soldiers (officers) and within the professional improvement system that prepares professional soldiers to undertake duties on further positions. An exam concludes this training. IHL education is also implemented in the training centers and facilities as well as in non-commissioned officer's training schools, mainly while preparing soldiers (non-commissioned ranks and privates) to take up further positions. The scope and duration of training in individual groups varies, but regardless of the group, it concludes with an exam. IHL training is also obligatory for the staff and heads of all levels of command as well as organizational units of the Ministry of National Defense that work on the practical implementation of these issues in the course of staff trainings or exercises.

The process of professionalization of the Polish Armed Forces has resulted in much greater practical emphasis on international humanitarian law problems. It resulted in increasing the importance of the law of war in practical training of candidates for officers and professional soldiers in post-graduate courses and credit classes in the professional training system, as well as in the training of law of war instructors.

The IHL topics were included in the teaching programs for candidates for professional soldiers and in the course of the training system of professional soldiers of the Polish Armed Forces:

1. Teaching candidates for professional soldiers.

Decision No 203/MON of the Minister of National Defense of 10 June 2010 introduces a separate subject into the curriculum of full-time studies and the officer's course for officer candidates. Minimum Program Requirements (Official Journal of the Ministry of National Defense, No. 12, item 136) – separate subject – “International law of armed conflict” – 20 teaching hours. Additionally, the field of international law of armed conflict is covered by other courses, including: peacekeeping and stabilization measures, aspects of national and international security, civil-military cooperation and environmental protection. These courses are taught at: the Naval Academy in Gdynia, the Military University of Technology in Warsaw, the Army Academy in Wrocław and the Air Force Academy in Deblin.

2. Post-graduate training within the professional life-long learning of professional soldiers of the Polish Armed Forces.

Decision No. 420/MON of the Minister of National Defense of 12 September 2008 on the Implementation of a Career Advancement System for Professional Servicemen of the Polish Armed Forces (Official Journal of the Ministry of National Defense No. 18, item 241, as amended) provides for the teaching of topics covering international law of armed conflict on all course levels, in the framework of post-graduate courses and credit classes run by all military universities and schools.

The curriculum of the “Professional development system for professional soldiers of the Polish Armed Forces” comprises structural and program guidelines for the following post-graduate and development courses that are held each year:

- Two-term part-time post-graduate studies “International Humanitarian Law of Armed Conflicts”, encompassing 200 hours of lectures and practical classes at the National Defense University in cooperation with the Military Centre for Civic Education;
- Course on international humanitarian law of armed conflicts for battalion and company commanders (equivalent) – 68 hours, run by the National Defense University;
- Course on international humanitarian law of armed conflicts for Air Force officers and NCOs – 60 hours, run by the Air Force Academy;
- Course on international humanitarian law of armed conflicts for Land Army officers and NCOs – 60 hours, run by the Land Forces Training Centre;
- Course on international humanitarian law of armed conflicts for Navy officers and NCOs – 40 hours, run by the Naval Academy;

- Course on international humanitarian law of armed conflicts for Navy officers and NCOs – 60 hours, run by the Naval Training Centre.

Moreover, the Military Centre for Civic Education runs the following development courses for soldiers and military employees in the field of IHL:

- International humanitarian law of armed conflicts for NCOs – 35 hours;
- International humanitarian law of armed conflicts – protection of cultural property in armed conflicts and critical situations – 35 hours;
- E-learning course in international humanitarian law of armed conflicts – no time limit. During training, particular emphasis is placed on the significance of such fundamental principles of IHL as military necessity, differentiation, proportionality, due caution during military operations, prohibition of the use of specified means and methods of warfare, as well as the principles of protection of civilian persons and objects (including humanitarian personnel), and the principles of treatment of prisoners and detainees. The training is conducted in the form of lectures and interactive sessions, requiring participants to be directly involved, to do their own analysis and to solve special cases.

Practical training focuses on the implementation of IHL topics, with due reference to these issues during exercises and realization of tasks connected with peace and stabilization missions. The main goal here consists in instilling attitudes and habits among professional soldiers and conscripts that will prevent them from breaching the norms of international law in extreme combat conditions.

Additionally, other measures are undertaken in order to acquaint Polish Armed Forces servicemen and employees with the principles and obligations arising from international humanitarian law and issues related to individual responsibility for one's actions. These include: series of trainings for professional army corps and employees of the Polish Armed Forces – in the form of supplementary trainings, conferences, meetings in the framework of cooperation with international organizations and dissemination of training and information materials.

The structures of the Ministry of National Defense include a representative responsible for dissemination of IHL and protecting cultural property and the Polish Red Cross brand.

The Department of Education and Defense Promotion of the Ministry of National Defense prepared and published the following training materials for the participants of military missions abroad:

- International law of armed conflicts – rules of engagement – KOSOVO;
- Information guide on mines, traps and hazardous loads;
- CD – Fight according with the rules;
- Information guide on the rights and duties of soldiers participating in military operations;
- The principles of protection of monuments in national and international law;
- Manual of a soldier – Afghanistan (supplement) – GHAZNI;
- Manual of a soldier – MALI;
- Manual of a soldier – Central African Republic;
- Afghanistan – rules of engagement;
- Protective marks and labels in international humanitarian law of armed conflicts;
- International humanitarian law of armed conflicts – training material for privates.

In order to support the dissemination process of IHL in the Polish Armed Forces, the Doctrine and Training Centre of the Polish Armed Forces (CDiSSZ) started to work on a first edition of the national doctrine document in 2013 entitled “Instruction manual to the IHL training” DU-7.1.1.1, whose implementation in the training process of the Polish Armed Forces is planned by the end of this year. The DU-7.0.1.1 instruction manual will support the theoretical training process in the Armed Forces related to IHL and it will be used to train military sub-units and to hold supplementary trainings for soldiers and military personnel. The main section of this manual will include a set of slides comprising complete materials for theoretical classes. They will be di-

vided into training modules describing the following IHL problems: introduction to international humanitarian law, primary principles, laws and customs of war, veterans, persons to be protected, the role of the International Committee of the Red Cross, protected facilities (including protection of cultural property during armed conflicts), markings – marks and emblems, means and methods of military operations (including prohibited means and methods of combat), law of armed conflicts in planning and conducting military operations (including the right to use force), truce and suspension of military action, legal basis for military occupation and enforcement of IHL.

It is important to add that the areas related to liability for breaching the provisions of the international humanitarian law and to responsibility for dissemination of IHL under the competences of the Ministry of National Defense remain in the area of interest of the Main Military Prosecutor. Since 13 June 2011, military prosecutors have not run or supervised any cases regarding the liability of soldiers for breaching the provisions of IHL. The activity of prosecutors related to dissemination of IHL consisted mainly in meetings with the professional servicemen, during which the most important IHL legal issues were discussed. During that period, approx. 230 such meetings took place. The discussions during the meetings pertained mostly to the following topics:

1. Primary principles of IHL, Hague Conventions, Geneva Conventions, the principles governing the use and stay of the Polish Armed Forces abroad;
2. Liability for crimes against peace, humanity and war crimes;
3. Tasks of military prosecutors while using Polish Armed Forces abroad;
4. Legal basis and the rules of engagement during the military mission in Afghanistan;
5. Principles of liability of soldiers and military personnel for crimes, offences and disciplinary infringements committed in the course of performing tasks abroad;
6. The principles regulating weapons use by soldiers performing tasks within the Polish Military Contingents (PMC);
7. Code of conduct in the case of engagement by PMC soldiers;
8. Protection of cultural property at the time of armed conflicts and liability of soldiers for damage to the cultural property while on a mission.

## **8.2. Ministry of National Education**

The Ministry of National Education and the Polish Red Cross participate in implementing the program entitled *Exploring Humanitarian Law* (DIHL).

In the course of the works of the Coordinating Team for dissemination and monitoring the program in schools and educational establishments:

1. in 2012, a Polish edition of the most recent educational materials prepared by the International Committee of the Red Cross was prepared, the so-called EHL mini-program.
2. in 2013, the EHL mini-program was published in electronic version and is provided to teachers free of charge within trainings and seminars organized by the Polish red Cross;
3. in the 2012/2013 and 2013/2014 academic years two on-line editions of the course were organized. The e-learning courses were organized by the Education Development Centre in cooperation with the Polish Red Cross and co-financed by the International Committee of the Red Cross. Reports from that course, encompassing 16 training cycles between November 2012 and February 2014 show that teachers are very interested in such form of education in IHL. 889 teachers declared their willingness to participate in the course, 468 teachers took the final exam, while 312 of them received graduation certificates. A new edition of the course is planned for 2014/2015 academic year.

In connection with the changes introduced to the provision of Article 166 of the Act on the common obligation to defend the Republic of Poland, junior and senior high schools introduced a new course to the curricula starting from the 2009/2010 school year – “Education for Security.” It replaced the previous course, “Civil defense training” that was only taught in senior high schools.

The Education for Security classes are obligatory in junior and senior high schools. They include: primary principles of IHL, including the acts of law comprising international humanitarian law, objectives and tasks of the Red Cross movement, common self-defense and protection of civilian population, as well as identifying facilities marked with international monument protection marks and preparing for rescue activities.

### 8.3. Ministry of the Interior

The Ministry of the Interior implements the task of disseminating the standards and principles of international humanitarian law in particular through the following subordinate services:

– State Fire Service

Headquarters of the State Fire Service through the National Rescue and Population Protection Coordination Centre implements tasks related to sharing information with international coordinating bodies as regards measures related to rescue and humanitarian aid, in particular: *Euroatlantic Disaster Response Coordination Centre (EADRCC)*, NATO, *Emergency Response Coordination Centre (ERCC)*, *ECHO UE*, Office for the Coordination of Humanitarian Affairs (UN OCHA). Poland, as an active member of the international community, is becoming more and more involved in providing assistance to countries afflicted by different critical situations, including provision of humanitarian aid awarded by the European Union pursuant to the Regulation of the Council (EC) No. 125796 of 20 June 1996 concerning humanitarian aid. Moreover, Poland participates in the Community Civil Protection Mechanism (CMCP) that is the primary instrument of the European Union in this area and may be activated in the case of threats caused by natural disasters and disasters caused by humans (floods, earthquakes, technical failures). Decision of the European Parliament and of the Council of 17 December 2013 No. 1313/2013/EU on a Union Civil Protection Mechanism, in force since 1 January 2014, makes it possible to issue a call also to third countries by UN, its agencies and relevant international organizations: International Maritime Organization (IMO), International Committee of the Red Cross (ICRC), International Federation of Red Cross and Red Crescent Societies (IFCR), Organization for the Prohibition of Chemical Weapons (OPCW), International Atomic Energy Agency (IAEA).

Moreover, IHL topics are included in the curricula of the training programs: “Primary training for newly employed population and civil defense employees in the voivodeship, county and commune” organized at a central and local levels and “Trainings for civil defense instructors.” The aforementioned programs contain topics related to IHL and humanitarian operations.

– Police

Currently, Polish police officers take part in missions held in the following countries:

- 1) in Kosovo (Special Unit of Polish Police);
- 2) in Liberia (UN mission) (police experts);
- 3) in Georgia (police experts);
- 4) in Afghanistan (police experts).

Participation of Polish police officers in civilian critical management operations is based on the implementation of a mandate of a given operation. Before being sent to work on a mission, each police officer completes a training in human rights, humanitarian law and protection of victims of war. Moreover, after arrival, each mission organized an introductory course, also called *induction course*, during which procedures and standards of a given mission are explained in detail.

### 8.4. Ministry of Culture and National Heritage

On the international arena, Poland is recognized as a country that actively participates in all and any measures in the field of protecting cultural heritage, in particular those undertaken under the auspices of UNESCO. Ratification of the Second Protocol to the Hague Convention of 14 May 1954 in 2011 was another step intended to maintain that image. The Second Protocol



expands the current scope of principles on protection of Polish cultural heritage in the event of armed conflict with the doctrine of international law. It makes it possible to use its procedures in planning, organizational and training operations; it makes it possible to present the legal solutions binding in the Republic of Poland related to protection of cultural property in the event of armed conflict more extensively on the international arena. Moreover, it allows Poland to apply for appointing a Polish representative to the Committee for Protection of Cultural Property in the Event of Armed Conflict that will award, suspend or withdraw enhanced protection, and promote the list of cultural properties subject to enhanced protection.

The Ministry of Culture and National Heritage has been realizing tasks related to law and training tasks related to protecting cultural property in the event of armed conflicts based on the adopted international commitments. One of the legal instruments serving the implementation of the 1954 Hague Convention and its 1999 Protocol II into practice is the functioning of the Polish Advisory Committee, an inter-departmental authority established pursuant to a Resolution of the Council of Ministers, chaired by the secretary of state to the Ministry of Culture and National Heritage, the Main Conservator of Monuments, Piotr Żuchowski. In 2012-2014 the Polish Advisory Committee (PAC) has initiated and implemented a series of important tasks related to protecting cultural property in armed conflicts:

- on 3 April 2012 PAC adopted a catalogue of measures related to the joining of Poland to Protocol II. It included:
  - the need to make legal changes to the Resolution of the Council of Ministers of 27 April 2004 on the Polish Advisory Committee, to include the new tasks arising from Poland's ratification of Protocol II;
  - facilitating and supporting the substantive activity of the Committee by inviting experts that specialize in protection of cultural property in the event of specific threats, starting with experts that performed such tasks during missions of the Polish Armed Forces in Iraq and Afghanistan;
  - revising the Decision No. 250/MON of the Minister of National Defense of 4 August 2005 on adhering to the principles of cultural property protection in the operations of the Polish Armed Forces as regards inclusion of new tasks arising from the provisions of Protocol II and organizational changes in the Armed Forces;
  - establishing cooperation of the Polish Advisory Committee with the Committee on protection of cultural goods in the event of armed conflicts; established pursuant to Article 24 of Protocol II;
  - determining the principles and criteria for the selection by Poland of cultural properties of particular significance, proposed for the list of cultural properties covered by enhanced protection.
  
- on 6 November 2013, PAC adopted a report on the implementation in the Republic of Poland of the provisions of the Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict and its Protocols. The report was drafted at the Ministry of Culture and National Heritage in cooperation with the Ministry of National Defense and the Ministry of the Interior. It discussed the following issues: a/ the principles of caring for cultural property; b/ measures of military nature undertaken at the time of peace; c/ the principles of using a mark of cultural properties; d/ the principles of disseminating the Convention; e/ official translation; f/ legal solutions providing for punitive or disciplinary sanctions for breaching the provisions of the Convention; g/ principles of implementing II Resolution of the Conference of 14 May 1954; h/ principles of implementing the provisions of the First Protocol of 1954. The document was submitted to the UNESCO Secretariat. At the moment, that document is published on UNESCO's website along with the other reports submitted by the countries – parties to the Hague Convention. Moreover, a PAC session pertained legal

changes in the Resolution of the Council of Ministers of 27 April 2004 on the Polish Advisory Committee in connection with the new tasks arising from Poland's ratification of Protocol II. Information was also adopted on the role and tasks of the International Blue Shield Committee and the Polish Blue Shield Committee as regards the protection of cultural property in the event of threats and the principles of cooperation of these Committees with PAC. An idea was presented to include civilian experts in implementation of cultural property protection projects in the event of specific threats for the purposes of international missions and the missions of the Polish Armed Forces conducted abroad; The Chair of PAC also obliged the members of the Committee that represent governmental administration sections to disseminate the provisions of the new legal instrument (Protocol II).

- on 28 May 2014, an official session of the Polish Advisory Committee took place on the occasion of the 60th anniversary of the Hague Convention and the 15th anniversary of Protocol II. The PAC session was attended by the chair of the Commission for International Humanitarian Law at the Ministry of Foreign Affairs, the Commission for the dissemination of international humanitarian law at the Main Board of the Polish Red Cross and the Program Council for the protection of cultural property against extraordinary threats at the Main Chief of the State Fire Service. The main objective of this session was to commemorate these anniversaries and to determine the principles of mutual cooperation in popularizing the principles of protecting the cultural property in armed conflicts as a part of international humanitarian law. A schedule for the anniversary celebration for the Convention and Protocol II was established, including e.g. publishing information materials and training materials regarding the Convention and Protocol II, organizing a scientific conference at the University of Warsaw, organizing workshops for the heads of civil training section managers with the military universities and training centers regarding the methodology of holding classes in protecting cultural property in armed conflicts by the Ministry with the Military Centre for Civic Education, publication of information materials regarding protection of cultural property in the event of specific threats in *Polska Zbrojna* and *Przegląd Obrony Cywilnej*.

In December 2013, the Ministry of Culture and National Heritage held a three-day training of candidates for experts in national heritage protection for the purposes of international missions. The training was held at the Ministry of Culture and National Heritage and the Centre for Preparedness for the purposes of international missions in Kielce. The training was attended by 31 candidates for experts representing different communities in the area of cultural heritage protection (museum employees, librarians, archivists, conservators, archaeologists, architects). The Ministry plans to hold another training for expert candidates in December 2014. The training will be dedicated to improving the working standards of an expert in cultural heritage protection in a mission on the basis of experiences from the missions to Iraq and Afghanistan.

Since 2003 the Ministry of Culture and National Heritage is the co-organizer of the Polish School of Humanitarian Law organized at the initiative of the Main Board of the Polish Red Cross. The participation of the Ministry in organizing the School involves assisting in holding a training in a subordinate cultural facility – House of Creative Works in Radziejowice, covering the costs of the official graduation and holding classes for students on the topic of protecting cultural goods in armed conflicts. In 2014, in the course of the celebration of 60th anniversary of the Hague Convention and the 15th anniversary of Protocol II, the students of the School took part in a panel on protection of cultural property in armed conflicts that paid particular attention to the new tasks arising from Poland's ratification of Protocol II.

On 21-22 October 2014, the Ministry of Culture and National Heritage, in conjunction with the Faculty of Law and Administration of the University of Warsaw, Polish Blue Shield Committee and the Polish Advisory Committee organized a scientific conference entitled Protection of cultural property in armed conflicts in the context of international and national law. 60 years of the

Hague Convention and 15 years of its Protocol II within the celebration of the 60th anniversary of the Hague Convention and the 15th anniversary of Protocol II. There were 23 presentations held during the conference, divided into seven thematic panels in the following areas:

- protection of cultural property in armed conflicts in the context of international law – two panels;
- restitution of works of art;
- protection of cultural property in armed conflicts in the context of national law;
- liability for breaching the Hague Convention and its Protocols in the international and national law;
- Hague Convention and its Protocols in the practice of contemporary armed conflicts;
- towards a better protection of cultural property in armed conflicts.

The conference enjoyed a lot of interest among the scientific community, the army, students, NGOs and institutions specializing in protecting cultural heritage. The attendance was confirmed by 164 persons. The Chief of the National Security Bureau, under-secretary of state at the Ministry of National Defense, the Head of the Polish Red Cross, the Head of the Polish Blue Shield Committee, Vice-chancellor of the University of Warsaw, Polish UNESCO Committee were the patrons of the event. Media patronage was offered by *Polska Zbrojna* and *Przegląd Obrony Cywilnej*. The hosts of the conference were: the Dean of the Faculty of Law and Administration at the University of Warsaw, prof. dr hab. Krzysztof Rączka and the secretary of state at the Ministry of Culture and National Heritage, the General Conservator of Monuments, the Head of the Polish Advisory Committee, Piotr Żuchowski. The Ministry of Culture and National Heritage plans to issue a post-conference publication by the end of 2014.

#### **8.5. Commission on International Humanitarian Law**

On 20 May 2004 the Prime Minister issued Ordinance No 51 (Official Gazette of the Republic of Poland *Monitor Polski* of 2004, No. 23, item 402), establishing the Commission on International Humanitarian Law, tasked with the dissemination of the norms of international humanitarian law for the purpose of introducing them into the Polish legal system.

The Commission pursues its tasks by conducting reviews and analyses of international agreements relating to IHL and by formulating opinions in this field, presenting the President of the Council of Minister with periodic opinions on the legislative, organizational and educational measures which should be undertaken with a view to ensuring that the Republic of Poland performs its obligations in the field of international humanitarian law, as well as formulating proposals related to the preparation of legal acts aimed at transposing international humanitarian law into Polish law.

Since 2009, the Commission implemented a series of measures aimed at disseminating international humanitarian law. Among others, three expert teams have been established to draft the 1<sup>st</sup> and 2<sup>nd</sup> Reports on the implementation and dissemination of the International Humanitarian Law in the Republic of Poland, to analyze obligations in the field of assistance measures arising from international agreements on disarmament, and to adopt specific proposals for further actions in this field. The reports were intended to constitute a review of the compliance of domestic legislation and practice with the norms of international humanitarian law. Information obtained in the course of preparing the report has allowed the identification of areas requiring concrete action in order to guarantee full implementation of the international humanitarian law in the Polish legal order and its dissemination in the Polish society.

The 2<sup>nd</sup> Report – which includes up to date information on the implementation and dissemination of international humanitarian law in Poland – was disseminated among the interested institutions, both in Poland and abroad. The report was also made available on the official websites of the Ministry of Foreign Affairs, the Ministry of National Defense, the Ministry of Justice and the Ministry of Interior.

# Dissemination of international humanitarian law by the Polish Red Cross

Polish Red Cross is a national society of the Red Cross of the Republic of Poland in the understanding of the Geneva Conventions on the Protection of Victims of War of 12 August 1949 and Additional Protocols to the Conventions of 8 June 1977. The Polish Red Cross operates pursuant to the Polish Red Cross Act of 16 November 1964 (JoL of 1964, No 41, item 276) and the Statute issued pursuant to that Act, confirmed by the Resolution of the Council of Ministers of 20 September 2011 (JoL of 2011, No 217, item 1284).

PRC is actively involved in disseminating and promoting the principles of the Red Cross movement and the standards of humanitarian law. The following types of projects can be distinguished:

### **1. Polish School in International Humanitarian Law**

The School constitutes a five-day course in international humanitarian law (IHL) that has been organized annually for 18 years and is intended for three groups of recipients: law, international relations, journalism and national security students of civilian and military higher schools, representatives of the military, the Police, the Border Guard and Red Cross workers and volunteers. IHL knowledge is provided in the form of lectures and presentations, and in practical classes – by working on specific cases. The School lecturers include leading specialists in IHL from civilian and military academic schools. In 2011, the course was held on 11-15 April, in 2012 – on 28 May – 1 June, in 2013 – on 15-19 April, and in 2014 – it is planned for 19-23 May. The School is organized in the House of Creative Works in Radziejowice.

### **2. International School in International Humanitarian Law**

The IHL School's motto is *From Vancouver to Vladivostok* and the School itself is open to students and graduates of such studies as law, international relations and similar studies from all over the world. Every year for two weeks, almost 40 persons selected from hundreds of candidates by the International Committee of the Red Cross gains advanced knowledge in IHL under the watchful eye of the most outstanding specialists, such as: judges and defenders of the international courts, professors of law and ICRC delegates. The classes are held in a workshop style – after each lecture, the participants work on specific cases in groups related to the discussed topic; they simulate diplomatic conferences and trials before international courts. 30 editions of the School were held between 1981 and 2012 (only the 1982 edition was cancelled during the Martial Law in Poland). The last editions of the International IHL School were held on 27.06 - 07/07/2011 and 27.08 – 06/09/2012 By the decision of ICRC, the School was temporarily suspended in 2013 and 2014.

### **3. Organizing sessions IHL Committees**

Since 1979, a Program Council of the Centre for Dissemination of IHL has operated at the Main Board of the Polish Red Cross, to be later transformed into the Commission for Dissemination of International Humanitarian Law. Since 2012, it is chaired by PhD Marcin Marcinko,

representing the Jagiellonian University and the Małopolski Regional Branch of the Polish Red Cross. The Commission is composed of:

- high-class specialists – lawyers conducting research and teaching activity in international public law;
- permanent representatives of the Ministries of: National Defense, Foreign Affairs, the Interior, Health, Culture and National Education as well as the representatives of the State Fire Service and State Border Guard;
- Polish Red Cross workers and volunteers.

The long-term program of the Commission for Dissemination of IHL assumes activities to disseminate humanitarian law in Poland e.g. in the form of publishing and training activity. The operation of the Commission is strictly related in its program and organization with the activity of the Main Board of the Polish Red Cross.

The Commission meets at least three times a year. Between sessions Commission members are in contact with the Main Board of the PRC. Experts and other persons interested in the dissemination of international humanitarian law are invited to the meetings.

The tasks of the Commission for Dissemination of International Humanitarian Law are:

- co-creating the activity program of the Main Board of PRC as regards disseminating, initiating activities and participating in implementing the program;
- participation of the Commission members (as lecturers) in all training activities, e.g. in the English-language Warsaw Summer IHL School, Polish IHL School, courses and lectures organized for law students, PRC instructors, army, etc.
- organizing the annual Professor Remigiusz Bierzanek Competition for the best thesis on international humanitarian law and Red Cross movement;
- supporting international operations of the Main Board, including preparing and editing documents for the sessions of the International Red Cross and Red Crescent Movement, participation in international conferences and seminars;
- working with the Polish national institutions, structures of the International Red Cross and Red Crescent Movement, in particular the International Committee of the Red Cross, UNHCR, the Institute of Humanitarian Law in San Remo, Amnesty International and other organizations.

#### **4. Organizing sessions of the Commission for the Protection of the Red Cross Emblem and its protection against misuse**

The Commission for the Protection of the Red Cross Emblem was established in 1995 at the Main Board of the Polish Red Cross. Since 2013, the Commission is chaired by PhD Magdalena Stefańska. The objective of the Commission is to intervene in the event of breaching the protection principles of the Red Cross emblem within and outside the organization. The tasks of the Commission include:

- informing, via the media, about the function of the Red Cross emblem and the necessity to protect the RC mark in order to imprint the information in the awareness of the public;
- coordinating the works of persons responsible for protecting the emblem on the national scale (providing information, instruction of procedure in the event of misuse, suggestions of intervention letters, training materials) as well as planning and holding trainings for PRC workers and volunteers in order to improve the quality of their work;
- editing documents and preparing publications related to protecting the emblem;
- assessing applications of institutions, companies and persons for use of the emblem that are submitted to the Main Board of the PRC;
- interventions in the event of misuse or improper use of the emblem by institutions, companies, media and private persons in the country in order to ensure that such misuse ceases.



In 2012, the Commission was expanded to include the representatives of: pharmaceutical supervision authority, main medical board, advertising ethics committee as well as the PRC rescue, voluntary and honorary blood donation movements.

#### **5. Participation in the consultations of the European Legal Counsellors Group of National Societies**

PRC has been actively involved in the works of the group (on-line) and in the annual meetings of the Group (3-6 April 2011, Dublin; 16-17 April 2012, Tallinn; 3-6 June 2013, Geneva; 13-16 April, Lisbon).

#### **6. Issuing opinions on draft documents prepared by ICRC and the Ministry of Foreign Affairs on IHL issues**

Issuing opinions on the current activity of ICRC on the international arena and supporting the Ministry of Foreign Affairs with its expertise in the subject area.

#### **7. Holding classes in disseminating IHL at the Military Centre for Civic Education and National Defense University**

Lectures related to the Red Cross topics, protection of the emblem and the basics of the international humanitarian law for military professionals and students intended to show to its recipients – mostly representatives of armed forces – what the International Red Cross and Red Crescent Movement is, what are the scopes of actions of individual sections of the movement as well as discussing the difference in informative and protective functions of the Red Cross and Red Crescent emblems as well as the types of infringements.

#### **8. Holding classes at the NATO international course *CIMIC Functional Specialist***

A course for international representatives of armed forces and the NGO sector that is intended to raise awareness of what the International Red Cross and Red Crescent Movement is and how NGOs cooperate with the military in the event of armed conflicts and natural disasters.

#### **9. Holding an e-learning course entitled *Exploring Humanitarian Law***

*Exploring Humanitarian Law* (EHL) is an educational program for teenagers aged 13-18 with the primary principles and rules of IHL. For this purpose, it provides teachers with ideas and lesson plans that may easily be included in a lesson plan in social studies or history course, which contributes to enriching the educational message. This easily adaptable method makes it possible for teachers to use easily accessible strategies, to draw upon sources and materials that are of high quality, including reports on current events, photographs, letters, video recordings, case studies and interactive projects that allow students to apply theoretical rules to living people and real events. The objective is to present the IHL topics and to combine the conclusions drawn in the past with current events. Since 2002 that international educational package has been implemented in schools of over forty countries. Poland launched its implementation in 2003. In 2012 the Education Development Centre and PRC signed an agreement on cooperation in supporting and promoting professional development of teachers. The first joint task was to organize a series of e-learning courses on international humanitarian law of armed conflicts. On 19 November 2012 the first certified edition of the course took place: *Exploring Humanitarian Law*. It was addressed to teachers and other persons working with junior and senior high school students who wanted to enrich their knowledge for the purposes of teaching IHL. That free on-line training was considered a relevant form of improving qualifications. The course lasted from November 2012 until April 2013, eight editions took place in that time. Also, regular contacts with the regional EHL coordinator at the ICRC office in Sarajevo continued. Also, PRC has actively participated in the meetings of national coordinators and representatives of individual ministries of education. In September 2013 a meeting was held to summarize and conclude the program.

#### **10. Professor Remigiusz Bierzanek Competition**

The competition is organized by the Commission for Dissemination of International Humanitarian Law with the cooperation of the Ministry of Foreign Affairs. It has long traditions. Each year students and graduates of law, international relations and similar studies may present their BA, MA or PhD theses to a wider community of specialists to gain their appreciation and to fight for the winning title. The current activity in this field consists in running a register of incoming dissertations for the new editions of the competition, verifying and assessing their level, obtaining the funds for the awards for the winners and selecting the winners.

#### **11. IHL library**

The IHL library has approx. 5,000 articles – books and articles, brochures, reports, papers, conference reports, in a few languages – mostly in English and French, as well as a video library of approx. 200 VHS tapes in three languages – Polish, English and French. The collection of CDs and DVDs is quickly growing, and at the moment it has approx. 100 articles. The Centre also has many photographs and slides documenting the activity of PRC and the International Red Cross Movement, as well as educational transparencies. The current activity consists in obtaining new volumes and registering incoming publications and in running a lending register.

**List of multilateral international agreements in the field of international humanitarian law ratified by the Republic of Poland**

| No. | Title   | Date of signature by the Republic of Poland | Date of ratification by the Republic of Poland | Place of publication                      |
|-----|---|---|--|---|
| 1.  | Convention on Hospital Ships, signed at The Hague on 21 December 1904   |   | 10 April 1936                                  | JoL of 1936, No. 60, item 439             |
| 2.  | Convention respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, signed at The Hague on 18 October 1907  | 9 July 1925                                 | 20 January 1927                                | JoL of 1927, No. 21, item 163             |
| 3.  | Convention on Respecting the Laws and Customs of War on Land with Regulations concerning the Laws and Customs of War on Land, signed at The Hague on 18 October 1907  | 9 July 1925                                 | 20 January 1927                                | JoL of 1927, No. 21, item 161             |
| 4.  | Convention relating to the Status of Enemy Merchant Ships at the Outbreak of Hostilities, signed at The Hague on 18 October 1907  | 31 May 1935                                 | 28 November 1935                               | JoL of 1936, No. 6, item 64               |
| 5.  | Convention relating to the Conversion of Merchant Ships into War-ships, signed at The Hague on 18 October 1907  | 31 May 1935                                 | 28 November 1935                               | JoL of 1936, No. 6, item 65               |
| 6.  | Convention concerning Bombardment by Naval Forces in Time of War, signed at The Hague on 18 October 1907  | 31 May 1935                                 | 28 November 1935                               | JoL of 1936, No. 6, item 66               |
| 7.  | Convention concerning the Rights and Duties of Neutral Powers in Naval War, signed at The Hague on 18 October 1907  | 31 May 1935                                 | 28 November 1935                               | JoL of 1936, No. 6, item 67               |
| 8.  | Convention relative to Certain Restrictions with regard to the Exercise of the Right of Capture in Naval War, signed at The Hague on 18 October 1907  | 31 May 1935                                 | 28 November 1935                               | JoL of 1936, No. 6, item 68               |
| 9.  | Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925  | 17 June 1925                                | 18 October 1928                                | JoL of 1929, No. 28, item 278             |
| 10. | Convention and Statute establishing an International Relief Union, signed at Geneva on 12 July 1927   | 12 July 1927                                | 13 June 1930                                   | JoL of 1933, No. 6, item 35               |
| 11. | Procès-verbal relating to the Rules of Submarine Warfare Set Forth in Part IV of the Treaty of London of 22 April 1930, signed in London on 6 November 1936   |   | 25 May 1937                                    | JoL of 1937, No. 55, item 425             |
| 12. | Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal, signed in London on 8 August 1945   |   | 25 June 1947                                   | JoL of 1947, No. 63, item 367             |
| 13. | Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948  |   | 22 September 1950                              | JoL of 1952, No. 2, item 9, as amended    |
| 14. | Conventions for the Protection of Victims of Armed Conflicts, signed at Geneva on 12 August 1949: <ul style="list-style-type: none"> <li>• Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field</li> </ul> | 8 December 1949                             | 18 September 1954                              | JoL of 1956, No. 38, item 171, attachment |

|     |   |                  |                   |   |
|-----|---|------------------|-------------------|---|
| 14. | <ul style="list-style-type: none"> <li>• Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea</li> <li>• Convention relative to the Treatment of Prisoners of War</li> <li>• Convention relative to the Protection of Civilian Persons in Time of War</li> </ul>  |                  |                   |   |
| 15. | Final Act of the Intergovernmental Conference on the Protection of Cultural Property in the Event of Armed Conflict, signed The Hague on 14 May 1954  | 14 May 1954      | 16 July 1956      | JoL of 1957, No. 46, item 212, attachment |
| 16. | Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, adopted by the General Assembly of the United Nations, 26 November 1968   | 16 December 1968 | 29 January 1969   | JoL of 1970, No. 26, item 208, as amended |
| 17. | Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, opened for signature at London, Moscow and Washington on 10 April 1972   | 10 April 1972    | 11 December 1972  | JoL of 1976, No. 1, item 1, attachment    |
| 18. | Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, opened for signature at Geneva on 18 May 1977  | 18 May 1977      | 4 May 1978        | JoL of 1978, No. 31, item 132, attachment |
| 19. | <p>Protocols additional to the Geneva Conventions of 12 August 1949, done at Geneva on 8 June 1977:</p> <ul style="list-style-type: none"> <li>• Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)</li> <li>• Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-international Armed Conflicts (Protocol II)</li> </ul>   | 12 December 1977 | 19 September 1991 | JoL of 1992, No. 41, item 175, attachment |
| 20. | <p>Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, done at Geneva on 10 October 1980:</p> <ul style="list-style-type: none"> <li>• Protocol on Non-detectable Fragments (Protocol I)</li> <li>• Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II)</li> <li>• Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III)</li> </ul> | 10 April 1981    | 24 February 1983  | JoL of 1984, No. 23, item 104             |
| 21. | Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989  | 26 January 1990  | 30 April 1991     | JoL of 1991, No. 120, item 526            |
| 22. | Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, done in Paris on 13 January 1993  | 13 January 1993  | 27 July 1995      | JoL of 1999, No. 63, item 703, attachment |
| 23. | Additional Protocol of 13 October 1995: Protocol IV on Blinding Laser Weapons to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May Be Deemed to Be Excessively Injurious or to have Indiscriminate Effects, done at Geneva on 10 October 1980  |                  | 31 July 2004      | JoL of 2007, No. 215, item 1583           |

|     |  |                  |                   |                                 |
|-----|--|------------------|-------------------|---------------------------------|
| 24. | Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the 1980 CCW Convention as amended on 3 May 1996), done at Geneva on 10 October 1980  |                  | 23 July 2003      | JoL of 2005, No. 125, item 1048 |
| 25. | Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, done at Oslo on 18 September 1997   | 4 December 1997  | 14 December 2012  | JoL of 2013, item 323           |
| 26. | Rome Statute of the International Criminal Court, done in Rome on 17 July 1998   | 9 April 1999     | 9 October 2001    | JoL of 2003, No. 78, item 708   |
| 27. | Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, done at The Hague on 26 March 1999   | 9 June 2006      | 17 November 2011  | JoL of 2012, item 248           |
| 28. | Food Aid Convention, adopted by the United Nations General Assembly on 13 April 1999   |                  | 9 June 2006       | JoL of 2007, No. 118, item 813  |
| 29. | Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, adopted in New York on 25 May 2000  | 13 February 2002 | 14 February 2005  | JoL of 2007, No. 91, item 608   |
| 30. | Amended Article 1 of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, done at Geneva, 10 October 1980 (CCW Convention); amendment adopted by State Parties at the second CCW review conference in Geneva on 21 December 2001 |                  | 28 August 2006    | JoL of 2007, No. 85, item 566   |
| 31. | Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (Protocol V), done at Geneva on 28 November 2003  |                  | 1 July 2011       | JoL of 2011, No. 266, item 1577 |
| 32. | Additional Protocol to the Geneva Conventions of 12 August 1949, relating to the Adoption of an Additional Distinctive Emblem (Protocol III), adopted at Geneva on 8 December 2005   | 20 June 2006     | 30 September 2009 | JoL of 2010, No. 70, item 447   |
| 33. | Amendments to Rome Statute of the International Criminal Court done in Rome on 17 July 1998 and adopted during a revisionist conference in Kampala (resolutions 5 and 6) on 10 and 11 June 2010  | 10 June 2010     | 31 July 2014      | JoL of 2014, item 500           |
| 34. | Partnership Agreement on Relations between the Federal Archives of the Federal Republic of Germany and the International Tracing Service, done in Berlin on 9 December 2011  | 9 December 2011  | 30 July 2012      |                                 |

## ANNEX No. II

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### **Multilateral international agreements in the field of international humanitarian law, signed by the Republic of Poland or currently in the process of ratification.**

1. International Convention on Battling, Using and Financing Mercenaries, adopted by the General Assembly of the United Nations on 4 December 1989. The Convention was signed by a representative of the Republic of Poland on 28 December 1990.
2. International Convention for the Protection of All Persons from Enforced Disappearance, done in New York on 20 December 2006. The Republic of Poland signed the Convention on 25 June 2013. The document's ratification requires amending the Polish Family and Guardianship Code. The amendment is currently underway.
3. Arms Trade Treaty, signed in New York on 2 April 2013. The Republic of Poland signed the Treaty on 1 July 2013. The ratification of the Treaty is currently underway.

## ANNEX No. II

### **Ruling of the Supreme Court of 14 March 2012 in the case Nangar Khel**

Description of the ruling is available at:

<http://sn.pl/sites/orzecznictwo/Orzeczenia2/WA%2039-11-2.pdf>

## ANNEX No. IV

### **Contact details of Polish national authorities and organizations with competences in implementing and disseminating international humanitarian law in the Republic of Poland:**

#### 1. International Humanitarian Law Commission

Secretariat of the Commission – Legal and Treaty Department of the MFA

tel. +48 22 523 8381, fax +48 22 523 8329, email: [dpt.sekretariat@msz.gov.pl](mailto:dpt.sekretariat@msz.gov.pl)

#### 2. Commission for Dissemination of International Humanitarian Law Under the Executive Board of Polish Red Cross

ul. Mokotowska 14, 00-561 Warsaw

tel. +48 22 326 12 86, fax: +48 22 628 41 68,

email: [info@pck.org.pl](mailto:info@pck.org.pl), [zarzad.glowny@pck.org.pl](mailto:zarzad.glowny@pck.org.pl), [head.office@pck.org.pl](mailto:head.office@pck.org.pl)



3. Polish Advisory Committee

ul. Krakowskie Przedmieście 15/17, 00-071 Warsaw,  
tel. +48 22 42 10 260, fax.: +48 22 828-16-96  
email: ksalacinski@mkidn.gov.pl

4. Committee for Cultural Heritage Protection in an Event of Extraordinary National Emergency,  
Operated Under the Chief of State Fire Service

ul. Podchorążych 38, 00-463 Warsaw,  
tel. +48 22 523 35 10 fax +48 22 523 30 16, email: sekretariat\_kgsp@kgsp.gov.pl

5. Polish Red Cross Executive Board Headquarters

ul. Mokotowska 14, 00-561 Warsaw  
tel. +48 22 326 12 86, fax: +48 22 628 41 68,  
email: info@pck.org.pl, zarzad.glowny@pck.org.pl, head.office@pck.org.pl

6. Ministry of Foreign Affairs

Legal-Treaty Department

Al. J. Ch. Szucha 23, 00-580 Warsaw  
tel. +48 22 523 9424, fax: +48 22 523 8329  
email: dpt.sekretariat@msz.gov.pl

7. Ministry of National Defense

Legal Department

ul. Klonowa 1, 00-909 Warsaw  
tel. +48 22 6 871 584, fax +48 22 6 871 697

8. Ministry of the Interior

Department of Emergency Services and Protection of the Civilian Population

ul. Stefana Batorego 5, 02-591 Warsaw  
tel. +48 22 601 52 07, email: driol@msw.gov.pl

9. Ministry of Culture and National Heritage

Administrative and Budget Management Office

ul. Krakowskie Przedmieście 15/17, 00-071 Warsaw  
tel. +48 22 42 10 260, fax +48 22 828-16-96  
email: ksalacinski@mkidn.gov.pl

10. Ministry of Administration and Digitization

Crisis Management and Reducing Natural Disaster Impact Department

ul. Królewska 27, 00-060 Warsaw  
tel. 22 245 54 84, email: sekretariat.duszk@mac.gov.pl

11. Ministry of Justice

Criminal Law Department

Al. Ujazdowskie 11, 00-950 Warsaw  
tel. +48 22 52 12 252, fax + 48 22 52 12 248



