

Ozbrojený konflikt v proměnách věků: *zbraň* a jak ji můžeme používat?

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About us

Introduction

- „*Wars belong in the museum.*“ (Heeresgeschichtliches Museum, Vienna)
- Yet they are arguably part of human nature.
- Let's go back...

Third Punic War (149 – 146 BC)

- The Punic city of Carthage in Africa X the Roman Republic
- Complete destruction of the city of Carthage
- Scope of means and methods of warfare AND their use were not limited at all
- Inhabitants sold into slavery
- Complete destruction of the city

Legal Constraints on Weapons Over Centuries

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Types of weapons

- Weapons of mass destruction
 - chemical weapons, nuclear weapons, use of poison, bacteriological and biological weapons
- Conventional weapons
 - They are NOT weapons of mass destruction
 - mines, incendiary weapons, non-detectable fragments, and cluster munitions

WEAPON	TREATY
Explosive projectiles weighing less than 400 grams	Declaration of Saint Petersburg (1868)
Bullets that expand or flatten in the human body	Hague Declaration (1899)
Poison and poisoned weapons	Hague Regulations (1907)
Chemical weapons	Geneva Protocol (1925) Convention on the prohibition of chemical weapons (1993)
Biological weapons	Geneva Protocol (1925) Convention on the prohibition of biological weapons (1972)
Weapons that injure by fragments which, in the human body, escape detection by X-rays	Protocol I (1980) to the Convention on Certain Conventional Weapons
Incendiary weapons	Protocol III (1980) to the Convention on Certain Conventional Weapons
Blinding laser weapons	Protocol IV (1995) to the Convention on Certain Conventional Weapons
Mines, booby traps and "other devices"	Protocol II, as amended (1996), to the Convention on Certain Conventional Weapons
Anti-personnel mines	Convention on the Prohibition of Anti-Personnel Mines (Ottawa Treaty) (1997)
Explosive Remnants of War	Protocol V (2003) to the Convention on Certain Conventional Weapons
Cluster Munitions	Convention on Cluster Munitions (2008)

Nuclear weapons

- NOT explicitly prohibited
- *"There is in neither customary nor conventional international law any specific authorization of the threat or use of nuclear weapons."*
(unanimously)
- *"There is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such." (11:3).*

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

LEGALITY OF THE THREAT OR USE
OF NUCLEAR WEAPONS

ADVISORY OPINION OF 8 JULY 1996

1996

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

LICÉITÉ DE LA MENACE OU DE L'EMPLOI
D'ARMES NUCLÉAIRES

AVIS CONSULTATIF DU 8 JUILLET 1996

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Lethal Autonomous Weapons Systems

- https://www.youtube.com/watch?v=e_DsE9f5gyk

Cyber Weapons

- To get more inspiration:

<https://www.youtube.com/watch?v=iaajKzbSUOY>

<https://www.youtube.com/watch?v=CS01Hmjv1pQ>

<https://www.langner.com/stuxnet/>

Use of weapons – combatants, civilians and others

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Introduction

- Weapons used and how to use them – increased *humanisation*
- Third Punic War (slavery, utter destruction)
 - Every conflict as preemptive/preventive conflict (Ender's Game)
- Eg. Debtors' prison
 - We cannot suppress negative phenomena (warfare, debts), but we can *humanise* the response
- Presence of civilians in the area of combat
 - Artillery, Strategic bombardment, Strategic missiles, ICBMs

Not so fast!

- Old Testament – Elisha prohibits the King to kill the captured
- Ancient India – those who sleep, those who lost their coat of mail, those who are naked or disarmed or those who look without taking part
- Islamic Law – women, children, monks, hermits, aged, blind and insane
 - Abu Bakr (573 to 634): fruit trees, heads of palm trees, livestock (only for food!)

Lieber Code

- 1863
- Union Army in the American Civil War
- Requested: humane treatment of civilians, no execution of PoWs

Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field

- 1864
- After the Battle of Solferino
- Founding of ICRC (1863)

- Protection to: non-participants; *hors de combat*, impartial humanitarian organizations providing humanitarian assistance

Hague Convention II

- 1899
- PoWs and Civilians

Hague Convention IV

- 1907
- PoWs and Civilians

Geneva Conventions

- 1949
- WW2 experience (execution of PoWs, retaliation against civilian population)
- Codification

Basic principles of GCs

- Distinction:
 - Civilian population and objects is to be protected
 - Belligerents have to distinguish between combatants/military objectives and civilian/civilian objects
 - Civilian loses protection if engaging in hostilities
 - (Customary)
- Necessity and proportionality:
 - Attacks on military objects must not cause loss of civilian life excessive in relation to direct military advantage
 - Feasible precautionary measures must be taken by commanders
 - (Customary)

Basic principles of GCs II

- Humane treatment:
 - Civilians are to be treated humanely – no violence to life and person, no taking hostages, no humiliating treatment, no execution without regular trial against non-combatants/wounded/sick/shipwrecked
 - (Customary)
- Non-discrimination:
 - When treating PoWs/civilians/wounded/sick/shipwrecked, no discrimination based on race, sex, nationality, religious belief, political opinion is permitted
 - (Customary)
- Women/children:
 - Women must be protected from rape/indecent assault, children under the age of eighteen cannot take part in hostilities

Law meets politics

- Unlawful combatant, unprivileged combatant, illegal combatant, illegal enemy combatants (post-2001 term)
- Term not defined in any international agreement
- Political decision
- Legal black holes (1942 Quirin Case, Guantanamo Bay)

Law meets reality

- Abovementioned principles stand in way of efficient military operations (undisputed fact)
 - Do we want that or no?
- *Lawfare*

Thank you for your attention!

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