

HUMANITARIAN LAW IN ARMED CONFLICTS: THE DOCTRINE AND PRACTICE OF POLISH INSURGENTS IN THE 19th CENTURY

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Did Poland, whose territory was divided up between Prussia, Russia and Austria at the end of the 18th century and which did not regain its independence until 1918, contribute in the 19th century to the ideas underlying humanitarian law applicable in armed conflicts?

The political conditions under which the Polish people were then living, while they devoted all their energies to the fight for independence, encouraged them to study and consider various aspects of wars of national liberation. Their thinking was marked by much originality, with some special characteristics that are worth recalling.

After the failure of the insurrection of 1830-1831, many Poles emigrated to France, England and Belgium, where they set to work preparing for a new uprising. The members of the Polish Democratic Association, in particular, devoted themselves to the study of the political and military problems of wars of national liberation and especially of the conduct of guerrilla warfare. The main question they discussed and sought to resolve was: "how could a people having no standing army fight against oppressors who did?" They analyzed in detail the cumulative experience of history, taking into account the previous Polish insurrections, the war of the Vendée during the French revolution, the Spanish guerrilla war at the beginning of the 19th century and even the Hussite wars in the Middle Ages. Military problems were obviously the first of their concerns, and their discussions led to the publication of a number of manuals on

guerrilla warfare, some of which became widely known.¹ Other problems of a legal and humanitarian character were also considered by the authors of these works and by the Polish Democratic Association in its periodical publications.

Among the legal questions which aroused great interest was that of the very legality of the insurrectionary movement, from the point of view of both Polish constitutional law and international law. The Polish authors expressed violent opposition to the ideas of those who regarded wars of national liberation as acts of high treason or rebellion.

Szaniecki, who had been a member of the Polish Diet during the insurrection of 1830-1831, expressed his attitude this way: "Revolution is a violent and terrible means but—sadly for humanity—it is the only means available to oppressed people to fight against their oppressors." Writing of the partitions of Poland, and citing the views of Grotius and de Vattel on treaties, he sought to demonstrate that the partition treaties were null and void, consistent with the principle, *Si belli causa est injusta injustos esse omnes ejus actus etiamsi solennissime suscipiantur*, asserting that the partition of Poland had "wronged the community of European nations and mankind itself". He declared himself opposed to principles which made it possible, after a conquest, to incorporate different peoples into the same state structure, since "the conquering people regard themselves as superior while the conquered people resent their degradation", so that "conquests are of use neither to the conquerors nor to a country which annexes conquered territories".²

Another author, H. Kamienski, regarded a people's war as "the ultimate recourse of a mistreated people . . . and the means to correct and redress the distorted and corrupted course of human affairs".³

In their reflections upon the legality of insurrectionary movements, the Polish authors took as their initial premise a distinction between "normal conditions" and "abnormal conditions" in the life of a people. Under

¹ General Chrzanowski, *The War of the Partisans* (in Polish), Paris, 1835. German translation: *Über den Partheigänger-Krieg*, Berlin, 1846.

K. B. Stolzman, *The War of the Partisans, or the Most Effective War for Peoples in Revolt* (in Polish), Paris and Leipzig, 1844. Part of this work was published in French by the French underground in 1943 under the title, *L'Insurrection est un art*.

A. Jelowcki, *Concerning the Insurrection* (in Polish), Paris, 1835.

XYZ (pseudonym for H. Kamienski), *The People's War* (in Polish), Bendlikon 1866.

² From the magazine *Poland*, Paris, 1835, No. 1, p. 27 *et seq.*

³ XYZ, *The People's War*, *op. cit.*, p. 79.

“normal conditions”, legality is demonstrated by the fact that people vote, whereas they do not vote under “abnormal conditions”. When a people has been deprived of its independence by force, all of its rights and obligations are assumed by those who first take action to restore that independence. Consequently, a conspiracy to restore a people to “normal conditions” is “completely legitimate and bears within itself the attributes of the highest majesty”. Conspiracy therefore has the same status for an insurrection as a constitutional assembly has for people living under “normal conditions”. In conclusion, “the establishment of public authority in a democracy may be brought about by one of two means, under “normal conditions” by a vote and under “abnormal conditions” by conspiracy”, for there is a close link between the insurrectionary movement and the national aspirations of the people.¹ This juridical proposition was designed to justify the claims of national liberation movements to represent their respective peoples as legitimate authorities. It was also intended to back up the claim of these movements and of peoples fighting for national liberation to be legal entities under international law.—A comparable problem was destined to exercise the minds of jurists specializing in international relations in the middle of the 20th century.

Opinions differed as to whether insurgents should conform to the usages and customs of war. Some people, representing an extremist point of view, said they should not, arguing that guerrilla warfare by its very nature was a desperate struggle by the oppressed against their oppressors, in which guerrilla forces were sometimes compelled by military necessity to refuse to grant quarter. Others made a distinction between insurgents who were recognized by their enemies and those who were not; they considered that an insurrection which was not protected by the law was not required to observe its provisions; that they would only become subject to it from the moment they were recognized by the enemy state.² Some authors went beyond this, insisting upon the need to inculcate in the captured soldiers of Czarist Russia “a hatred for tyranny and a zeal for the ideas of free peoples”. They went so far as to demand that “efforts be undertaken to set up a Russian battalion under the command

¹ See article, *Concerning Revolutionary Power under Revolutionary Conditions and under Normal Conditions* in the magazine *The Polish Democrat* (in Polish), vol. VI, 1843-1844, p. 14 *et seq.*

² K. B. Stolzman, *The War of the Partisans*, *op. cit.*, p. 47.

of liberal Russians, explaining to them that we are fighting for their liberty as well as our own". They added that if the insurgents should treat prisoners of war badly this would become known to the Russian soldiers "and might incline the enemy toward a desperate resistance which would increase their strength".¹

During the insurrection of 1863-1864, known as the January Insurrection, which had all the characteristics of guerrilla warfare,² the doctrine that the armed insurrectionary forces should conform to the usages and customs of war was adopted and put into effect.³ The humanitarian attitude of the insurrectionary governmental authorities was clearly demonstrated in the Instructions⁴ for doctors in the field, dated 14 April 1863, issued at Krakow by the War Division of the Provisional National Government.

This document, which appeared more than a year before the final draft of the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, contained the following provision: "The enemy's wounded must be treated with the same care as our own; after dressing their wounds they must be transported to the nearest locality where a doctor can be found."

The Instructions had recommendations concerning the means of transport for the wounded and provided protection for transports by a distinctive emblem: "During the battle, the ambulances and the wagons required for the transport of the wounded shall be kept near the reserve corps, in a place protected as well as possible against projectiles. A black ambulance flag shall be displayed on each wagon."

¹ XYZ, *The People's War*, *op. cit.*, p. 41 *et seq.*

² Numerous requests by the Provisional National Government for recognition by western powers of a belligerent status for the insurgents were fruitless. The French Government refused to recognize the insurgents after the Senate noted that they did not control a clearly defined territory. In a statement to the French press on 29 October 1863, the Provisional National Government declared: "For eight months we have been unable to obtain from the civilized world satisfaction of the single request we have made, the request for recognition of our right to defend ourselves against oppression."

³ Following exactions by the Russian troops, the Central Committee, acting as the Provisional National Government, in a decree on 18 February 1863, acknowledged the practice of reprisals "against all those who committed atrocities... since the Moscow invaders, despite the humanitarian treatment accorded them by the insurgents, have shown no improvement in their conduct". The text of this decree is in *The January Insurrection, Documents of the Central Committee and the National Government* (in Polish), "Wroclaw", 1968, p. 54.

⁴ The text of the Instructions is in *The January Insurrections, Documents of the War Division* (in Polish), "Wroclaw" 1973, pp. 23-26.

In the same Instructions, along with detailed provisions concerning the protection and treatment of the wounded, there were others dealing with the organization of the medical service and the duties of doctors. It was recommended that relatively small units, unless operating far away from towns, should not be accompanied by ambulances since these would impede the movements of the insurgents. Larger units, with 500 to 800 insurgents, should be followed by at least one ambulance equipped with a pharmacy and drawn by four horses to enable it to move rapidly. One of the duties of the doctor in charge was to draw up a list of the wounded as soon as possible after the battle, with a pencil if necessary, and to send it with his report to the military commander to whom he was responsible, keeping a copy for himself.

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