ASPECTS REGARDING THE APPLICATION OF THE NORMS OF INTERNATIONAL HUMANITARIAN LAW IN THE SETTLEMENT OF THE TRANSNISTRIAN CONFLICT

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The concept of international humanitarian law has a lot of substitutes, initially entering the language of law under the name of "Law of War" ("Droit de la guerre", "Kriegsrrecht"), with two meanings: jus ad bellum, that designates the rules on the conditions under which a State may use the armed force and jus in bello, ie the set of rules applicable between the parties of the armed conflict [1, p. 275].

With the creation of the International Committee of the Red Cross in 1863, which undertook the task of stimulating the codification of the rules of the protection of combatants and non-combatants, as well as of civilians, jus in bello divides into two branches – the Law of War and Humanitarian Law [2, p. 322]. Coding conferences at the end of the nineteenth and early twentieth centuries enshrined the law of war

in the formula "laws and customs of war". Subsequently, the last major codification of 1977 brought together the two branches – the Law of War and Humanitarian Law – into a new concept: "The International Humanitarian Law of Armed Conflicts," which is the official name.

Taking into account that international humanitarian law applies only in times of armed conflict, we should clarify whether there is an armed conflict in the Transnistrian region. In that case, we rely on the Court of Appeal's definition of the International Criminal Tribunal for the former Yugoslavia (ICTY) on the Tadić case, which states that "an armed conflict exists whenever there is a use of armed force between states or durable violence between authorities and organized armed groups or between such groups within a state" [3].

Although, the Transnistrian conflict could be considered frozen since the hostilities ceased in 1992, the Tadic decision seems to include the conflict between the Republic of Moldova and Transnistria as an "armed conflict" because there was a prolonged armed conflict between governmental authority (Republic of Moldova) and an organized armed group (Transnistria), but a peaceful settlement has not been achieved yet.

Would this suggest that international humanitarian law should be applied in the Transnistrian region, as Tadić defines, international humanitarian law also extends in peacetime? Besides the cessation of hostilities, will it be until the end of the peace or until a peaceful solution is achieved?

Although a number of initiatives bringing the peace to Transnistria were adopted, they have failed, and Russian troops are still present in the region in a capacity of peacekeepers. Transnistria came forward with an initiative to strengthen the statehood, whereas having no recognition from the international community and a little chance to obtain such recognition. In the case of the withdrawal of Russian peacekeeping troops, a military conflict can appear again. Therefore, we conclude that a situation of armed conflict has existed and continues to exist in the Transnistrian region and that international humanitarian law should apply.

In the following, it is necessary to determine the categorization of this conflict. If the involvement of the Russian Federation has any impact on this categorization, there is a need to understand the potential extent of the application of international humanitarian law in the region.

Underscore that that the USSR was a party of the Geneva Conventions of 1949, including the Additional Protocols I and II of 1977 and the Republic of Moldova was a party by succession, in accordance with the provisions of the Government Decision of R.M. no.442 of 17.07.2015 for the approval of the Regulation on the mechanism for the conclusion, application, and termination of international treaties.

In recent years, there have been a number of calls for the modification of international humanitarian law by abandoning the division of international and non-international armed conflicts, but the respective classification is still in force [4, p.34]. Within this context, the question is whether the involvement of the Russian Federation has transformed the Transnistrian conflict into an international armed conflict, thus triggering the potential for the application of the entire corpus of international humanitarian law.

Moreover, it is important that a legal regime, and especially an expansive legal regime, is effectively applied in cases such as Transnistria, because, as this territory is a de facto state, there are no obligations and possibilities to apply the standards and international norms, leaving the population of Transnistria without international legal protection [5, p.63].

The regime of international humanitarian law offers a certain level of protection for the population, prosecuting alleged offenders for war crimes, such as rape, murder and torture, protecting civilian assets [6, p.118]. However, as mentioned above, the potential level of protection depends on the classification of the conflict.

Although, it is often claimed that the situation in Transnistria is used as an instrument of the Russian Federation's policy of "close vicinity" [7, p.15], there is a need of a detailed examination of the conflict to determine the extent of Russian Federation's involvement

in the planning and managing of the Transnistrian governance. This issue, as well as the continued existence of the de facto state of Transnistria, was addressed by the European Court of Human Rights (ECHR) in the case of Ilascu and others vs. Moldova and the Russian Federation [8, p.59]. The court examined the issue in order to determine whether Russia's involvement in the conflict was sufficient to bring the conflict under Russia's jurisdiction. This case examined by the ECHR is the main source of information regarding the involvement of the Russian Federation in the Transnistrian conflict.

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