



## INTERNATIONAL HUMANITARIAN LAW AND RELIGION – INVITATION TO DIALOGUE –

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Among the major challenges in the contemporary world, which are on the agenda of all international debates, we can identify the effervescence of violence, the war in the name of religious symbols, a suffocated atmosphere of insecurity in developed countries due to terrorist attacks or the power of the new communication technologies. Experts in international humanitarian law try to analyze the causes of this violent eruption of energies within civilizations and to find solutions to stop this anger and restore peace and harmony among people. Rational words, arguments recognized by international conventions and treaties do not seem sufficient. In many debates, there are voices that argue that religion can be the solution that humanity needs again for peace, harmony and communion. I will try to make a brief analysis of the two currents that animate the today dialogue of experts in international humanitarian law: does religion have a role in solving the crisis of humanity or not?

**Keywords:** religion; peace; law; humanity; violence; victims; war; conflict.

From a historic perspective, the seeds of international humanitarian law were planted by the first human communities, stemming from a natural need to limit violence in times of war in order to assure the survival of the group. The emergency to secure the perpetuation of human life, embedded from the beginning of times into interdictions with sacred value intended for protecting the humans and the goods needed for living, is found today stated in principles, norms, rules, conventions and treaties applicable to the entire human kind.

A historical and an anthropological overview on the limits of violence and the protection of the victims of warfare gives us clue of the origins of humanitarian law and the motivation that determines combatants to adhere to these rules. Researchers set the origins of IHL (International Humanitarian Law) in a fundamental religious canon. Michel Veuthey, vice-president of the San Remo International Humanitarian Law Institute, opened the discussions of the "Religions et droit international humanitaire: histoire et actualité d'un dialogue nécessaire" colloquy in Geneva<sup>1</sup> in 2008, by appealing to the most simple definition of IHL: "Do unto others as you would have them do unto you!". Veuthey calls this the „golden rule" of humanity, with an universal value, due to the fact that its spirit is found in most of the religions

today – Christianity, Judaism, Islamism, Hinduism, Confucianism, Buddhism, etc. The samples that show the way in which religions internalized this golden canon are multiple: restrain hostilities in liturgical time, the Japanese code of honour, prohibition of weapons that produces unwanted harm to adversaries, human treatment of the losers, loyalty and honour in battle, etc. The researcher looks far back in time and resorts to Heraclit's<sup>2</sup> and Cicero's<sup>3</sup> writings in order to give a the religious origin of the law. Warriors were not allowed to attack women and children, to destroy crops or orchards, to poison water or destroy sacred places or buildings.

Another accepted opinion that identifies the origin of the law in religion is retrieved in Fr. Prof. Nicolae V. Dura, PhD. In his study "Dreptul și religia. Normele juridice și normele religios-morale", Father Dura shows that in antiquity „there was no distinction between the religious-moral norms and the legal ones, as they were both considered to be results of the same divine will, while their content was nothing but an expression of moral-religious principles «voluntas Dei» assessed as «lex vitae» (life norms)"<sup>4</sup>.

Veuthey claims that the promoters of IHL principles, as we know them today, were religious people, who "romoted the dignity of the human being, created in the image of God the Creator". Examples are not few and we find them in the electronic version guide of the American Society of International Law<sup>5</sup>: Toma d'Aquino (1225-1274),

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the Dominican Francisco de Vitoria (1483-1546), Balthasar Ayala (1548-1584), the Jesuit Francisco Suarez 1548-1617), the Protestant Emer de Vattel (in the middle of the 18th century he wrote *Le Droit des gens*), the Puritan John Locke, Hugo Grotius (*De Jure Belli at Pacis*), Alberico Gentili (*De Jure Belli*). They questioned the rules of conduct in case of war.

We adhere to Veuthey's opinion and consider that the one who identified the deepest foundation of the IHL is Max Huber, president of the International Committee of the Red Cross and the Permanent Court of Justice (1925-1927). Huber saw in the Parable of the Good Samaritan from the Gospel a symbol of humanity, built around the divine example of giving unconditional help to every human being, whether known or unknown to us.

A deeply religious and charitable man was also Henry Dunant (1828-1910), considered one of the founders of the contemporary IHL. His ideas, included in the work "A Memory from Solferino", formed the basis of the Geneva Convention (1864), which regulated the protection of wounded soldiers on the battlefield. Laureate of the first Nobel Peace Prize (1901), Dunant founded in 1862 the "International Committee of Aid Associations for the Care of the Wounded" which since 1876 has been called the International Committee of the Red Cross<sup>6</sup>.

In search of IHL origins, this rapid flip through a few pages of human history is not accidental. Wars were born with the first man, who, out of disobedience to the divine command, came to be in a permanent state of conflict, both within himself, in the struggle with the unseen enemies of the passions which always try to distance him from the Creator, as well as in the seen world, giving free rein to the desire for power, for conquest, for material possessions. It took many centuries of death on the battlefields, in wars of conquest or defense, for man to begin to question coherently the need for rules applicable to the whole of humanity so as to protect individual values such as the human being, human physical and mental integrity or universal values such as cultural heritage, peace, or the environment.

The nineteenth century represented this beginning of the IHL, through the Geneva Convention, together with the Washington Convention (1863), the Lieber Code (rules of

conduct and instruction applicable to the American Unionist Army during the Civil War), and St. Petersburg Convention (1868), which prohibited certain types of explosive projectiles. These three instruments represented the basis of the Geneva Law, which regulates the protection of persons who have fallen into the hands of the enemy, prisoners of war or the civilian population affected by hostilities<sup>7</sup>. The Hague Peace Conferences in 1899 and 1907 standardized the means and methods of conducting war and formed the basis of Hague Law. These conventions marked the emergence of a humanitarian law (which has as its domain the protection of victims) and a law of war (attempts to regulate the behavior of combatants in case of armed conflict)<sup>8</sup>.

The limits of these regulations were to manifest themselves shortly after their appearance. The cataclysms of the twentieth century, especially the two world wars, will shed light on dramatic new situations of the wounded, sick and shipwrecked in the armed forces in the campaign, of prisoners of war, of civilians in time of war. The completion and improvement of the Geneva Law was achieved by the adoption of the four new Geneva Conventions in 1949. Two Additional Protocols to the 1949 Geneva Conventions, adopted in 1977, concern the protection of victims of international and non-international armed conflicts.

In 1954, cultural property became a universal value defended by IHL rules, with the signing of Hague Convention regarding the Protection of Cultural Property during armed conflicts.

Some contemporary researchers question the emergence of a new branch of the IHL, namely New York Law, amid the UN's concerns to ensure respect for fundamental human rights in case of armed conflict<sup>9</sup>. Although according to the UN Charter, the purpose of the organization is to prevent conflicts, some major issues that arose after the Second World War were discussed in this forum. It was about individual responsibility for war crimes<sup>10</sup> and the legal aspects of using the atomic bomb in Hiroshima and Nagasaki. From this moment, the UN began to interfere with the IHL. Thus, in 1946, UN Resolution no. 95 reaffirmed the "Nuremberg Principles", including the principle of individual criminal responsibility for crimes against peace, war crimes and crimes against humanity<sup>11</sup>. Other UN resolutions addressed legal issues that arose in the



process of decolonization, during wars of national liberation, in national liberation movements, in connection with guerrilla warfare, and with the prohibition of weapons of mass destruction, such as chemical or bacteriological weapons<sup>12</sup>.

In the opening of the mentioned colloquium, Veuthey discusses the fragility of the IHL norms. If in the last years of the twentieth century mankind celebrated a round number of years since the adoption of famous instruments of positive law (UN Charter, Universal Declaration of Human Rights, Geneva Conventions), in the early years of the next century, the rod of terrorism, with the unforgettable imprint of September 11, 2001, would shake the frame of IHL norms. On the background of the increasing danger of international terrorism, but also of technological developments (the use of unmanned aircraft), the USA has formulated and applied directions of action that have been translated into proposals for reinterpretation or reform of the law<sup>13</sup>.

Without going into details, we will enumerate some challenges for IHL experts, arising from the global fight against terrorism, which substantially change the meaning of the terms and situations of war regulated by the conventions mentioned above: conducting military operations against specific persons, in and outside the theaters of operations, extending the geographical scope of the notion of armed conflict even outside the actual battlefields, the status of the attacked persons, respectively a combatant or a civilian person directly participating in hostilities.

The terrorist threat, the hybrid warfare, which combines subtle propaganda techniques, cyber-attacks and armed forces, the emergence of non-state actors involved in such destructive actions, the devastating effects of countermeasures taken by states or groups of states, such as massive deployments of population from the conflict areas – all these represent challenges to the viability of IHL standards.

Researchers are called upon to respond to the question about the extent that the new types of conflicts and threats to peace and humanity change, nuance or abolish IHL rules. The problem is acute, and researchers agree on different conceptions, depending on the states of origin and the geo-political role they play on the international chessboard. We agree with the IHL researchers at the San Remo

Institute who, evaluating all these new challenges, translated into tendencies to litigate the IHL by states or non-state actors, strongly argue that IHL need to regain its legitimacy, moral strength and acceptability throughout humanity, starting with the religious principles from the beginning. A dialogue between religion and the IHL can sensitize once again the protagonists of present or future conflicts and motivate them to respect these humanitarian norms of universal value.

Relevantly, in the years immediately following the September 11, 2001 attacks, three international lawyers pleaded for the inclusion of the religious factor in international law: Richard Falk, a Jewish American, Yadh Ben Achour, a Tunisian Muslim, and Christopher Weeramantry, a Christian from Sri Lanka. They proposed an interdisciplinary approach to universalize international law through dialogue with religions<sup>14</sup>. Researchers at San Remo advocate for the "humanization of international humanitarian law" and the development of a culture of the IHL values, which can only be achieved by anchoring them in local religious traditions.

The messages of religious leaders and their role in resolving conflicts or in diluting violence come to test the energy that the religious word imprints on the norm of humanitarian law. Pope John Paul II talked about international law, which had long been a right to war and peace, but which must become exclusively one of peace, based on justice and solidarity.

"Morality must fertilize the law", said Pope John Paul II; "It may exercise a function of anticipation over the law, in so far as it indicates the direction of what is just and good"<sup>15</sup>.

However, there are also researchers who take a more reserved position regarding the influence and insertion of religion in the IHL. For instance, Henri Coursier<sup>16</sup> (member of the Legal Council of the International Committee of the Red Cross) argues that contemporary international law is no longer based on theology and is not even Christian-inspired. "Apart from any religion, the modern thinking of civilized societies has formulated this notion of human dignity, which is the center and *raison d'être* of humanitarian law"<sup>17</sup>, defined as "a set of rules and principles designed to save and protect at all times and in all circumstances the essential rights and dignity of the human being"<sup>18</sup>.

A balanced attitude, trying to mirror two different views on the need for dialogue between religion and the IHL, is found in Carolyn Evans in *The Double-Edged Sword: Religious Influences On International Humanitarian Law*, a study published in 2005 in the Melbourne Journal of International Law<sup>19</sup>. Evans analyzes the secular view of legislators who emphasize the destructive role of religion in wartime. There is, in the secular view, a dark side of religion, which would play a negative role if it were legitimized in the international legal system. It is enough to remember, secularists say, the hatred preached in the name of religion, the discord it sows, to conclude that it is wiser to keep laws away from the potential problems created by religious influence.

Yet, at the same time, there are many areas where religion still plays a vital socio-political role, even in conflict-ridden regions. Pragmatically, Evans believes that in order to limit the potentially devastating effects that violent actions in the name of religion can have, a solution would be a balanced dialogue between legislators and religious leaders. Religious leaders and religious symbols can help to conform to and abide by the rules in certain cultures, especially where the secular legal system is perceived as degraded and decadent. Evans believes that religious precepts that contain a deep and strong tradition of respect for human beings can help create a lasting foundation on which to base mutual rights and obligations in humanitarian law. In conclusion, religion may be a "double-edged sword", but it remains a powerful weapon that must not be left to those who preach violence in its name. Evans challenges modern specialists in law to reflect on the paradoxical solution of using "the edge of the sword", religion, to promote peace.

### **Findings**

I have tried to review some points of view of researchers in the field who addressed the issue of dialogue between IHL and religion. It is just a beginning which can open the way for further in-depth analyses. There are cautious views, especially among Western experts, strongly influenced by the Enlightenment beliefs, which emphasize reason. They plead for the exclusion of any interference between IHL and religion, admitting, at best, some distant sources with religious valences of the first norms of humanitarian law. However, researchers

from the western area are also exalted by the refreshing perspective of the religious essence of IHL norms, who appreciate that only a sincere dialogue between legal experts and religious people can synergistically awaken the consciences of all people in the sense of respecting the norms aimed at protecting humanity. They accuse the tendency to technicalize IHL norms, to the detriment of the human. Only religion, through norms of sacred value, internalized and lived at group level, can give the laws of the living spirit.

In the Christian-Orthodox tradition, we appreciate that any word, including the legislative one, can be edifying in the souls and consciences of people, as long as it carries a sacred charge. The Gospels of Orthodoxy have been calling us for two thousand years, and the same words spoken for the first time by Jesus Christ the Savior resound with power, shaping consciences, healing souls, sowing the coveted seeds of peace, harmony, and communion between people, of faith, hope and true love. "I leave my peace with you", says the Savior Jesus Christ. "This peace given to people in and through Christ is the foundation of people's reconciliation with God and of the reconciliation and brotherhood of peoples among themselves", said the head of the Romanian Orthodox Church in the 2015 Christmas Pastoral<sup>20</sup>. This spiritual message covers in theological words precisely this acute need of mankind to find a solid foundation for the norms that protect life to be respected.

A major argument in favor of including religion in the international dialogue, implicitly in the IHL sphere, is related to the identity changes brought about by globalization. The erasure of borders, economic, political and military alliances, the media, technological developments, social networks transform the relations between people and inter-state, leading to the relativization of identities<sup>21</sup>.

In this context, religion remains an important coordinate in the search for and definition of identity: "There are, on the one hand, religious movements that fight against the tendencies of relativizing identities, by defending socio-cultural pluralisms, such as Islamic fundamentalisms, for example, but there are, at the same time, religious traditions and movements that support a pluralistic global order, which propose an extension of identity, conceived in terms of a common humanity"<sup>22</sup>.



In the current violent situation in which we live, amid escalating conflicts, including some carried out in the name of religion, to ignore religion or try to cancel religious discourse is a risky attitude, which will rather deepen the crisis of humanity: "In the new era inaugurated by global terrorism, which often acquires religious values (...) religion has become a major force on the international stage, which must be treated as a serious variable in the conduct of international relations"<sup>23</sup>.

Recalling the words attributed to the French writer André Malraux, "the 21st century will be religious or it will not be at all" – we might say that there is an acute need for divinity, to search for the true meanings of this world, to find lasting and convincing arguments to combat violence, to cancel the calls for a so-called deadly holy war, to convince people that the rules that protect life need to be universally respected.

#### NOTES:

1 <http://www.aiesc.net/blog/2014/08/23/religions-et-droit-international-humanitaire-histoire-et-actualite-dun-dialogue-necessaire-michel-veuthey/>, accessed on 14.02.2016.

2 "All human laws are nourished by a single divine law".

3 "There is a law according to nature, common to all men, reasonable and eternal, which obliges us to virtue and protects us from injustice".

4 <http://www.crestinortodox.ro/drept-bisericesc/dreptul-religia-norme-juridice-norme-religios-morale-69944.html>, accessed on 14.02.2016.

5 Edited by Joan Policastru and Sergio D. Stone, the IHL [https://www.asil.org/sites/default/files/ERG\\_International%20Humanitarian%20Law%20%28test%29.pdf](https://www.asil.org/sites/default/files/ERG_International%20Humanitarian%20Law%20%28test%29.pdf), accessed on 15.02.2016.

6 [https://ro.wikipedia.org/wiki/Henry\\_Dunant](https://ro.wikipedia.org/wiki/Henry_Dunant), accessed on 15.02.2016.

7 <http://www.ujmag.ro/drept/drept-international-public-si-privat/drept-international-umanitar/rasfoire/>, accessed on 15.02.2016.

8 *D.I.U.-I, Manual pentru instruirea militarilor în Drept Internațional Umanitar (Individ, grupă, pluton, companie-similare)*, Ploiești, 2005, p. 12.

9 Christine Gray, *International Law and the Use of Force*, Oxford University Press, 2000, pp. 7-8, <http://www.ujmag.ro/drept/drept-international-public-si-privat/drept-international-umanitar/rasfoire/>, accessed on 15.02.2016.

10 Vespasian V. Pella, *Războiul – crimă și criminalii de război. Reflecții asupra justiției penale internaționale. Ce este și ce ar trebui să fie*, introductory study prof. Mircea Duțu, PhD, Translated from French by Andrei Duțu, PhD, Universul juridic Publishing House, Bucharest, 2013.

11 <http://www.ujmag.ro/drept/drept-international-public-si-privat/drept-international-umanitar/rasfoire/>, accessed on 15.02.2016.

12 *Ibidem*.

13 Ion Gâlea, *Aplicarea normelor dreptului internațional umanitar în cazul operațiunilor antiteroriste*, C.H. Beck Publishing House, Bucharest, 2013, pp. 169-266.

14 Michel Veuthey in the opening of the colloquium, <http://www.aiesc.net/blog/2014/08/23/religions-et-droit-international-humanitaire-histoire-et-actualite-dun-dialogue-necessaire-michel-veuthey/>, accessed on 14.02.2016.

15 Pope John Paul II addresses members of the diplomatic corps accredited to the Holy Seat on January 13, 1997, at [https://w2.vatican.va/content/john-paul-ii/en/speeches/1997/january/documents/hf\\_jp-ii\\_spe\\_13011997\\_diplomatic-corps.html](https://w2.vatican.va/content/john-paul-ii/en/speeches/1997/january/documents/hf_jp-ii_spe_13011997_diplomatic-corps.html), accessed on 17.02.2016.

16 The article "Définition du droit humanitaire", *Annuaire français de droit international*, 1995, Vol. 1, No. 1, pp. 223-227, at [http://www.persee.fr/doc/afdi\\_0066-3085\\_1995\\_num\\_1\\_1\\_1164](http://www.persee.fr/doc/afdi_0066-3085_1995_num_1_1_1164), accessed on 15.02.2016.

17 *Ibidem*, p. 225.

18 *Ibidem*, p. 227.

19 <http://www.austlii.edu.au/au/journals/MelbJIL/2005/1.html>, accessed on 14.02.2016.

20 <http://basilica.ro/pacea-lui-dumnezeu-daruita-oamenilor-pastorala-de-craciun-2015-111028.html>, accessed on 15.02.2016.

21 Natalia Vlas, *Globalizarea și religia la începutul secolului XXI*, Presa Universitară Clujeană, 2008, pp. 105-108.

22 *Ibidem*.

23 *Ibidem*.

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[https://w2.vatican.va/content/john-paul-ii/en/speeches/1997/january/documents/hf\\_jp-ii\\_spe\\_13011997\\_diplomatic-corps.html](https://w2.vatican.va/content/john-paul-ii/en/speeches/1997/january/documents/hf_jp-ii_spe_13011997_diplomatic-corps.html)

<http://basilica.ro/pacea-lui-dumnezeu-daruita-oamenilor-pastorala-de-craciun-2015-111028.html>