

***Poland and Spain - Border
Countries of the European Union***

Edited by
Małgorzata Mizerska-Wrotkowska
José Luis Orella Martínez

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- 2) *Poland and Spain in the Interwar and Postwar period*, Schedas, Madrid 2015, ss. 228.
- 3) *De fronteras hacia fuera. Polonia y España y sus aliados estratégicos y secundarios en el s. XX*, Schedas, Madrid 2016, ss. 354.
- 4) *Poland and Spain in Late Modern and Contemporary Civilisation and Culture*, Schedas, Madrid 2018, ss. 263.

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Introduction

Introduction

MAŁGORZATA MIZERSKA-WROTKOWSKA
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This new volume, entitled *Poland and Spain - Border Countries of the European Union*, has been coordinated by Professors Małgorzata Mizerska-Wrotkowska and José Luis Orella. This publication studies Poland and Spain as border countries of the European Union. Both have a similar size and their positions are analyzed by experts from different disciplines: Economy, Political Science, History, International Relations and Security.

This volume is the fifth one in an outstanding collection started in 2014:

- 1) *Poland and Spain in Contemporary World*, Schedas, Madrid 2014, ss. 250.
- 2) *Poland and Spain in the Interwar and Postwar period*, Schedas, Madrid 2015, ss. 228.
- 3) *De fronteras hacia fuera. Polonia y España y sus aliados estratégicos y secundarios en el s. XX* [From the Borders Towards the Outside. Poland and Spain and their Strategic and Secondary Allies in the s. XX], Schedas, Madrid 2016, ss. 354.
- 4) *Poland and Spain in Late Modern and Contemporary Civilization and Culture*, Schedas, Madrid 2018, ss. 263.

New collaborators have been invited to participate in this fifth research work, enriching our collection with their contributions and their friendship. We are extremely grateful for the participation of Professor Jacek Czaputowicz, former Minister of Foreign Affairs of the Republic of Poland, with *Poland's Position on Key Issues Related to International Humanitarian Law in the UN Security Council in 2018-2019*, where he offers an academic first-hand analysis of the role of Poland in the present time, as far as Security and Human Rights issues are concerned.

We also have Professor Dariusz Poplawski, with *The Role of Good Neighbourhood Treaties in Polish Foreign Policy*, where he talks about the treaties signed by Poland with neighbouring countries in the democratic era. Next, Professor Joanna Starzyk-Sulejewska with *Poland Towards the CFSP of the European Union After Its Accession to the EU - Analysis of Selected Aspects of the Activity*, where she explains the central importance of Poland's relationship with the European institutions of the European Union, after its integration process. Professor Joanna Szymanska, from the Polish Institute of International Relations, with *Between Discourse and Reality: Poland's Migration Policy* deals with the sensitive issue of the reality of migration policies in Poland, as a border country of the European Union.

Professor Joanna Rak, with *The Role of Nationalist Milieu for Violent Social Mobilization in Times of the Indignados*, presents a study of the violence shown in social mobilizations against the austerity measures emerging after the 2008 crisis. José Luis Orella with *Geopolitics of the Spanish Empire Today*, gives us a little-known vision of Spanish geopolitics, based on historical geopolitics raising now both in Spain and Italy, the two main southern countries in the European Union. Professor Guillermo Rocafort, with *The Silent Depredation Suffered by Spain and Europe by the Vulture Funds and Fiscal Paradises like Gibraltar*, reveals the reality of the last colony in Europe, which serves as a fraudulent haven for black money and illicit associations. In turn, we continue with Captain Fernando Manrique's *Russian military reform*. He details the latest progress made by the army of the Russian Federation, the main country that borders the Baltic countries and Poland itself through Kaliningrad. Finally we finish with Major General Vicente Díaz de Villegas y Herrería, whose interesting comparison between our countries, *Poland, Spain and the EU* identifies similarities and differences. His insight and expertise in military operations and NATO commands helps us understand the present situation, especially in Poland.

Poland's Position on Key Issues Related to International Humanitarian Law in the UN Security Council in 2018-2019

JACEK CZAPUTOWICZ

UNIVERSITY OF WARSAW

MINISTER OF FOREIGN AFFAIRS OF THE REPUBLIC OF POLAND (2018-2020)

The objective of this publication is to summarize Poland's position with regard to the topics related to the international humanitarian law (IHL) during its elected membership in the United Nations Security Council (UNSC). Obviously the humanitarian agenda, as a very much cross-cutting one, was present also in the context of Poland's engagement under other UNSC agenda items, such as those related to the Middle East, Syria or peacekeeping operations.

Poland's membership in the UNSC in 2018-2019 has confirmed its commitment to the principles of the UN Charter and engagement for international peace and security. Amid top priorities of the Polish UNSC membership were: strengthening of the international law, protection of civilians, in particular of vulnerable groups, including children, people with disabilities and religious minorities.

During its tenure Poland organized UNSC meetings and other events in order to pursue these priorities. The aim of a high-level UNSC debate on upholding international law chaired by the President of Poland, Mr. Andrzej Duda was to emphasize the primacy of international law, including humanitarian law, in the context of the current challenges for international peace and security. Poland also promoted international law by highlighting particular legal issues, such as the prevention of international crimes or the Security Council's cooperation with the International Criminal Court. Both of the above-mentioned topics have been addressed at two separate informal meetings of the Council in the so called, "Arria" formula.

Clearly one of Poland's biggest achievements in the UNSC was the adoption of the first-ever resolution on persons with disabilities in armed conflicts. The UNSC Resolution 2475 highlights the need to provide adequate support - be it of humanitarian or psychological nature or with regard to the inclusion in reintegration processes - for the groups most affected by conflicts, i.e. children and women with disabilities.

As regards the special focus on the implementation of IHL, Poland organized a high-level briefing in August 2019, which marked the 70th anniversary of the Geneva Conventions. It resulted in the adoption of the Presidential Statement dedicated to the IHL.

Another debate in August 2019 concentrated on the need for protection of civilians as the major victim of hostilities. The meeting - co-organized with like-minded countries - was accompanied by several side-events as a part of the "United4Civilians" initiative. An open debate on children in armed conflicts allowed the Council to discuss ways to enhance international system of protecting children exposed to violence and abuse in the conflict-ridden regions.

Given the long-standing priority of Poland, that is promoting the rights of persons belonging to religious minorities, on 22 August 2019 Poland hosted an informal UNSC "Arria" meeting' on safety and security of religious minorities. The date coincided with the "International Day Commemorating the Victims of Acts of Violence Based on Religion or Belief," which had been proclaimed by a resolution adopted on Poland's initiative by the UN General Assembly in May 2019. The latter constitutes one of the milestones of the Polish UNSC membership.

This paper unpacks the arguments laid out in the brief introduction. To begin with, it depicts the committed advocacy of Poland with regard to the fundamental significance of the UN Charter, international law and the UNSC as its guardian. Subsequently, the Geneva Conventions - both as binding and customary international norms - are presented as the key safeguards to protect victims of war. In this context, the principles of accountability and awareness-building deserve particular attention. The next part reflects upon the alarming record of immense sufferings among women, men and children who continue to be exposed to indiscriminate atrocities in conflicts across the globe. A separate section focuses on Poland's engagement against the deteriorating situation of religious minorities. In particular, the validity of interreligious dialogue and the centrality of the right to have or not to have or adopt a religion

or belief are presented. The last two passages highlight the priority of the protection of children in armed conflict and the gravity of youth empowerment in the efforts aimed at building sustainable development and perpetual peace. In the latter context, building upon youth's engagement in democratization intergenerational dialogue, reference is sought to the World Youth Day 2016 in Kraków and the lasting heritage of John Paul II.

1. The importance of the UN Charter in maintaining international peace and security¹

The Purposes and Principles of the Charter of the United Nations pronounce the most salient values for the international community. They describe both the goals that should be pursued and the essential rules to follow.

Poland has always been deeply committed to the fundamental ideas constituting the legal basis of the United Nations. From the signing of the Declaration of the United Nations in 1942, through over 70 years of our UN membership and the strong commitment to maintenance of international peace and security, up to the present day – when Poland, as a non-permanent Member of the Security Council, proved to be a dedicated advocate of the efforts aimed at strengthening the Charter and the trust to international law. One of the most prominent examples of the pivotal role of the UNSC as the guardian overseeing the maintenance of international peace and security was, in fact, the liberation of the State of Kuwait from the Iraqi occupation. Poland played an active role in this collective endeavor.

The sometimes underestimated principle contained in article 2 paragraph 2 of the Charter states:

“All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter”².

¹ Statement delivered by the Minister of Foreign Affairs of the Republic of Poland, Mr. Jacek Czaputowicz at the UNSC ministerial briefing on *Purposes and principles of the Charter of the United Nations in the maintenance of international peace and security*, New York, 21 February 2018.

² Charter of the United Nations, 24 October 1945, <https://www.un.org/en/charter-united-nations/index.html>.

This principle deserves to be considered as a *Grundnorm* (fundamental norm) for UN Members since the good faith is a prerequisite for the reliability and constancy of commitments undertaken by States. Without respect of every State for its obligations there can be no confidence and trust in the international community. At the same time the principle of good faith obliges States to apply their duties stemming from international law reasonably and lawfully, without abusing the rights of others. It also indicates that States must abstain from acts contrary to the purpose of their commitment and obligations. This assumption, in turn, reinforces the significance of the peaceful settlement of international disputes.

In this light, it must be stressed that the Security Council remains the ultimate custodian of State's territorial sovereignty, peaceful settlement of disputes between States, the prohibition of threat and use of force against the territorial integrity or political independence of any State. It should also be perceived as the ultimate safeguard with regard to respect for human rights and fundamental freedoms for all and without distinction.

A separate area where the Security Council's activity remains of paramount importance is the prosecution of the most atrocious international crimes. This record can be depicted through the establishment of the international criminal tribunals for Rwanda, the former Yugoslavia and – most notably - the creation of the International Criminal Court. Equally, the Security Council resolutions aimed at combating international terrorism deserve to be recalled and duly appreciated.

Nonetheless, there are still flagrant violations of international law endangering international peace and security as well as the protection of human rights and fundamental freedoms. In this regard the illegal annexation of Crimea, the support of separatist forces in Eastern Ukraine as well as the violations of international humanitarian law and the Chemical Weapons Convention in Syria can be named as the most alarming examples.

As the Secretary General once stated:

“Peace is a tireless undertaking, to which all United Nations agencies and bodies must work, in accordance with their mandates and responsibilities”³.

³ UN Secretary General statement at the UN Security Council debate on maintenance of international peace and security on 17 April 2017, <https://undocs.org/en/S/PV.7926>.

Accordingly, Poland has pledged to engage actively in all efforts strengthening the role of the UNSC in the maintenance of international peace and security, in line with the Purposes and Principles of the United Nations Charter.

2. The importance of international humanitarian law⁴

The Geneva Conventions have been ratified and acceded to by almost every state of the world. Moreover, the principles and norms enshrined in them are widely recognized as customary international humanitarian law (IHL), thus enjoy a universal applicability. This is a rare quality for any multilateral treaty. The four Conventions have been supplemented by three Additional Protocols and together they constitute a significant body of law that has played a vital role in limiting the brutality of armed conflicts.

If the international community wishes to offer effective protection to victims of wars, the principles and rules of IHL must be respected. A lot remains to be achieved in this domain as far too many innocent civilians continue to suffer from grave atrocities despite the formally binding legal instruments in place. In order to tackle this acute challenge Poland wishes to underscore several factors.

Firstly, the greatest challenge to protecting human life in modern conflicts is the observance of and respect for the existing rules by the armed forces and non-state armed groups. These violations of humanitarian law are usually propelled by the savage conduct of warfare, intimidation of opponents and the perceived impunity of perpetrators. It seems justified to assume that if only the IHL norms were followed, much of the human suffering could be avoided.

Secondly, new developments in the present armed conflicts continue to emerge. With a more prominent role played by non-state actors, the actual fighting is often conducted in densely populated urban areas, which result in devastating consequences for civilians. At the same time artificial intelligence and autonomous lethal weapons systems, such as military robots and cyber weapons, reduce the role and control of human factors during wartime. The IHL norms together with established practice of conduct must be urgently applied to this rapidly evolving picture of international conflicts.

⁴ Statements delivered by the Minister of Foreign Affairs of the Republic of Poland, Mr. Jacek Czaputowicz at the UN Security Council ministerial briefings on International Humanitarian Law, New York, 1 April 2019 and 13 August 2019.

The complexity of new challenges impedes the process of classification of conflict situations and makes it difficult to determine the exact rules that may be applied. For example, only a small part of IHL may be applied to non-state actors. It also poses a question whether the emergence of non-state actors and new means of combat require a revision of international humanitarian law or whether the existing rules are sufficiently adaptable to frame these new challenges. Poland takes the view that international humanitarian law needs to be protected by way of its implementation. However, its further development and adjustment to the new challenges need to be pursued.

A lot of existing weapons systems are likely to cause indiscriminate harm to civilians. Although the general rules of IHL prohibit the use of indiscriminate and inhumane weapons, they are being violated oftentimes. Existing rules do not always ensure appropriate protection of civilians and prevent unnecessary suffering. What is missing is the strict observance of these general rules by all actors. An effective implementation of humanitarian standards and the inevitability of accountability for wrongdoings would definitely improve the situation of civilians.

Whilst reviewing the continued relevance of the Geneva Conventions, two principles of international humanitarian law deserve particular attention. Firstly, the obligation to protect civilians, prisoners of war, the wounded and shipwrecked; also the limitations to the rights of conflict on how they conduct operations and on their choice of weapons. Secondly, IHL should serve not only those affected by atrocities but also must be provide a shield to providers of humanitarian assistance.

The creation of the Kigali Principles should be observed with satisfaction. It is a step in the right direction which could be considered as a code of conduct to be followed by all involved in conflict situations, not solely by States engaged in in peacekeeping operations. Such a comprehensive awareness of basic rules stemming from international humanitarian law should be urgently promoted amongst all state and non-state actors, both on national and international level.

The insufficient or lacking accountability for violations of international humanitarian law remains a considerable problem. This grave systemic error precludes the imposition of punishment. Rafał Lemkin, the great Polish lawyer, author of the legal notion of “genocide” who has left priceless contribution to international humanitarian law, has put it very bluntly:

“Why is the killing of a million a lesser crime than the killing of an individual?” (Frieze 2013)

It is the international community's role to ensure that impunity be removed and remedies for victims of violations be provided. Impunity may be eradicated only by prosecuting alleged perpetrators. This task rests first and foremost upon States. It should constitute a joint objective to create the reality where no state and no perpetrator may be above the law and no person is left unprotected by law in situations of armed conflict. The existing instruments of mutual legal assistance through judicial cooperation and collaboration with the International Criminal Court should be utilized to facilitate this important struggle.

Poland continuously promotes compliance with international law and human right norms on national and international level. A part of this approach includes an unequivocal condemnation of all violations and abuses of human rights and IHL in armed conflicts. In particular, among civilians such vulnerable groups as women, children, people with disabilities, members of religious minorities and forcibly displaced persons deserve special protection.

As regards the development of IHL, Poland has sponsored various initiatives domestically and multilaterally, such as the establishment of stand-alone forum of States to enable a regular discussion on international humanitarian law. Platforms of this sort allow to share best practices between States, provide safe space for thematic approach and create access capacity building, upon request.

A close cooperation with the International Committee of the Red Cross remains a *sine qua non* condition for strengthening humanitarian law and safeguarding humanitarian space in areas embraced by armed violence. The Committee's long-standing experience in providing consistent support to people in need and preserving their sense of dignity, stability and self-reliance remains unquestioned. ICRC is one of Poland's strategic partners in the field of providing humanitarian aid in crisis regions. This partnership was reinforced in in September 2018 with the signing of a Memorandum of Understanding in the field of humanitarian assistance and international humanitarian law. It should be regarded as an valuable move towards the promotion and upholding of international humanitarian law and the strategic dialogue with civil society.

On the national level, the Polish government - together with the Polish Red Cross and other institutions - has long been engaged in promoting,

disseminating and implementing international humanitarian law. Hosting the Intergovernmental Committee on implementation and dissemination of IHL is one instance. An annual educational course organized with the Polish School of International Humanitarian Law as well as the Professor Bierzanek Competition rewarding the best academic papers devoted to IHL can be mentioned as further examples. A detailed account of the activities undertaken in this regard have been collected the “4th report on the implementation and dissemination of international humanitarian law in the Republic of Poland for 2015-2018” which was published in 2019.

Whilst remaining proud of the deep partnership in the area of IHL, Poland intends to uphold its engagement and calls upon other States to do their best in supporting the badly needed ICRC’s legitimacy.

3. Protection of civilians in armed conflict⁵

The Report of the Secretary-General on the protection of civilians in armed conflict covering the year 2017⁶ contains well-founded and continuously accurate recommendations aimed at solving the global protection crisis. It reveals the horrific image of horror and suffering that affect millions of women, children and men that have been victims of deliberate or indiscriminate attacks by parties to conflicts in places all around the globe. Armed conflicts in the urban areas result in the extremely high number of victims, dead or wounded, among civilian population, affecting more than 50 million people. Civilian objects such as schools, hospitals, markets and places of worship are targets of attacks. Violations of international humanitarian and human rights law continue to have an enormous negative impact on civilians.

In order to put an end to this situation a joint effort of international community is needed in three main dimensions: prevention, protection and accountability.

Firstly, conflict prevention must become an overarching priority of the United Nations. As the Secretary General rightly stated in his Report, dialogue and inclusive peace processes combined with holistic approach to address the root causes of conflicts are essential elements of preventive action.

⁵Statement delivered by the Minister of Foreign Affairs of the Republic of Poland, Mr. Jacek Czaputowicz at the Security Council open debate on protection of civilians in armed conflict, New York, 22 May 2018.

⁶Report of the UN Secretary-General on the protection of civilians in armed conflict dated 10 May 2017 (S/2017/414), <https://reliefweb.int/sites/reliefweb.int/files/resources/N1713265.pdf>.