10 World War I and the Appearance of Aerial Warfare: A Lacuna in the Texture of International Law?

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10.1 Introduction

One hundred years passed away since the beginning of the World War I. This centenary provides a chance to rethink or think over numerous debates, draw conclusions and reveal coherences in order to – as precisely as possible – map the none or not entirely unravelled affairs, actions and prime movers.

Besides the representatives of numerous professions – historians, military historians, theorists, tutors and practical experts of military sciences, today's war correspondents, political scientists, sociologists, statisticians etc. – an international lawyer is forced to stop to engrossment by this centenary as well. Since the first great world conflagration resulted in drastic changes in several areas of international law. The interpretation of the *ius ad bellum* has been get into a different approach, the need for the creation of a potent (than effectively condemned to inefficiency) collective security system has been conceived, the redrawn world map brought up thousands of aspects of state succession, there has been an emphasis laid on the international protection of minority rights, the handling of the floods of refugees urged international actions, and we could extendedly count the changes launched in the scope of international law which were generated by the global cataclysm started in 1914.

Evidently the 'Great War' fundamentally affected the scope of the classic subject of international law, the *ius in bello* as well. For such new challenges as the mass presence of the prisoners of war, the appearance of chemical warfare or all the innovations of total war there was of course a great need to properly react. But it seemed that the adequate answer was missing on the following topic: seemingly the appearance of the aerial warfare has

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been untouched by the texture of international law, although it cannot be questioned that the emergence of the command of the air caused profound changes in modern warfare. As Giulio Douhet few years later after the end of World War I already laid down: 'In the wars to come the decisive field of action will be the aerial field.'[1] He also firmly declared that: 'To conquer the command of the air means victory; to be beaten in the air means defeat.'[2]

It is a real debate if could really talk about the gap of international legal regime concerning aerial warfare or just on the contrary, the available system of laws provided an adequate and detailed base then and today in order to adjudge the legality of the conflicts fought by all sorts of military services.

10.2 The Conquest of the Third Theatre of War

10.2.1 The Appearance of the 'Military Birds'

Battles have been fought for thousands of years on land and water as well. However the possibility for aerial warfare has only been interpreted on the level of fantasy as an impossible, inaccessible negative utopia for ages.[3] Then due to technological development mankind has conquered the airspace as well, which acquisition just immediately started to serve warfare (and even the needs of the military industry generated further the as fast as possible aerial developments).

According to the memorials the first successful air raid has been carried out in August, 1849[4] when the Austrian army tried to break the defence of Venice, which was impossible to approach due to the lagoons, with air-balloons equipped with explosives[5] (today we would use the word UAV, unmanned aerial vehicle). However, the technique which was expelled to the eccentric wind courses could not totally come up to the expectations, so

1 G. Douhet, *The Command of the Air: Book Three. Recapitulation*, Translated by: D. Ferrari. New Imprint by Air Force History and Museums Program, Washington, D.C. 1998. Original work published 1929, p. 251.

2 Douhet 1998, *Book One. The Command of the Air*, Original work published 1921, p. 28.

3 See for instance the novel 'Robur the Conqueror' of Jules Verne published in 1886, or H. G. Wells's 1908 'The War in the Air' science fiction. Quoted by: O. Stone & P. Kuznick, *The Untold History of the United States*, Simon and Schuster, 2012, p. 23.

4 Moreover balloons were first used to military purposes even in 1794 introduced by the French revolutionary forces. In the beginning these aerial devices were used to intelligence, observation, forwarding messages and transmitting signals. W. Lin, 'Aeronautical Law in Time of War', *Journal of Air Law*, Vol. 3. 1932, p. 79.

5 Y. Tanaka & M.B. Young (Eds.), *Bombing Civilians: A Twentieth-Century History*. The New Press, 2013; T. Vanderbilt, *Survival City: Adventures among the Ruins of Atomic America*, University of Chicago Press, 2010, p. 53; J.D. Murphy, *Military Aircraft, Origins to 1918: An Illustrated History of their Impact*, ABC-CLIO, 2005, p. 161; Stone & Kuznick 2012, p. 23.

the development of aerial warfare has not yet been initiated up till the appearance of the first (manoeuverable) airships and airplanes.

However, the appearance and spread of the 'military birds'[6] has not claimed a long time. First they were taken in action in 1911 in the Italian-Turkish and then in the 1912-1913 Balkan wars.[7] Few years later in World War I they have been applied in large quantities.

10.2.2 *'Will They Have Any Role and What Kind of, Who Would Be Able to Answer This Question Now?'*

In August, 1914 the journalist of the Pesti Napló was gazing still on this question, namely the possible role of the military zeppelins and airplanes in modern warfare. In the first days of the world war he was writing the following lines:[8]

> It is for sure that compared to the past war maybe the greatest change will be the possibilities of airborne battle. Through thousands of years mankind knew only warfare on land and water. Now the third element, the air has been introduced to the fields of war. […] We have to resign ourselves to the idea that modern warfare became from the combat of two elements to the fight of three elements.

And while before 1914 'there was no remarkable sign for airplanes or fighter pilots to decisively interfere to combat fortune',[9] in World War I aviation science became highly important. Marshal Ferdinand Foch – the French general later becoming the commander-in-chief of the Entente forces – made a huge mistake when in 1911 he labelled airplanes as only engaging sports equipment or toys and at this time he was not considering them to military purposes as worthwhile factors.[10]

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6 Plume, 'Három elem harca' (i.e. 'Fight of Three Elements'), *Pesti Napló*, Vol. 65, No. 184, Budapest, 4 August 1914, p. 5.

7 'Interview with François Bugnion: 150 Years of Humanitarian Action: First World War', 25 March 2014. www.icrc.org/eng/resources/documents/audiovisuals/video/2014/150-years-ww1-video-interview.htm (last visited Aug. 7, 2014).

8 Plume 1914, p. 5.

9 Id.

10 J.G. Gómez, 'The Law of Air Warfare', *International Review of the Red Cross*, Vol. 38, No. 323, 1998, www.icrc.org/eng/resources/documents/article/other/57jpcl.htm (last visited Aug. 20, 2014). It is also interesting to note that, whilst László Buza in the first sentence of his study published in 1914 stated that 'airships and airplanes play a particularly important role in modern warfare', as regards specifically the significance of the fighter aircrafts he still concluded that 'the experience of the Tripolitanian War shows however that bombs dropped by airplanes have rather only moral effect.' L. Buza, 'A repülőgépek és léghajók nemzetközi jogi helyzete a háborúban' (i.e. 'The Status of Airplanes and Airships under International Law in Time of War'), *Jogtudományi Közlöny*, Vol. 49, No. 45, Budapest, 6 November 1914, p. 453.

However the evolving air forces soon gave evidence of their real power as well as their vital importance, and so they were formed with lightning speed to a separate military service. While in the beginning the functions of the aircrafts were reconnaissance and surveillance operations at the battles, soon they became a much more active player of warfare and so they intercepted the sky as bombers contributing to the military successes with their devastating power. Shortly it became a fact: 'Man can fight above our head as well and in the times of war it is also good to sound the sky whether any suspicious enemy experiment is approaching.'[11] Aviation became a key segment of war industry which soon started to produce revolutionary developments: by 1918 instead of the sluggish, powerless and vulnerable machines from 1914 much stronger airplanes were put in operation which could fly much higher and much further with greater bomb load as well.[12] As Georg Shwarzenberg said: now irrevocably 'scientific "progress" has transformed two-dimensional into three-dimensional war.'[13]

10.3 International Law Applicable to Aerial Warfare

However, the appearance of the new military service was not followed by the special regime of international norms, nor directly after the World War I, neither later. What could be, what can be the reason for all this? We can talk about a loophole or, just on the contrary, the creation of the particular legislation was simply redundant?

10.3.1 The Hague Peace Conferences of 1899-1907

On the peace congresses organized in The Hague in the turn of the 19th-20th centuries, where slightly oppositely to the denomination of the meetings[14] the majority of the adopted treaties recorded the rules of warfare, during the delineation of the conventions laying down the basics of the *ius in bello* the differentiation by military services led the delegates. Namely distinct agreements were born regarding the laws and customs of war on land, and separate conventions concluded also the rules concerning naval war. Implicitly at this time the (subsequent) third military service could not even be mentioned (do not forget

11 Plume 1914, p. 5.

12 Murphy 2005, p. 86.

13 G. Schwarzenberg, 'The Law of Air Warfare and the Trend Towards Total War', *The American University Law Review*, Vol. 8, No. 1, 1959, p. 1.

14 The first Hague Peace Conference of 1899 was congregated by the initiation of the Russian Tsar Nicholas II 'with the object of seeking the most effective means of ensuring to all peoples the benefits of a real and lasting peace, and, above all, of limiting the progressive development of existing armaments.' Final Act of the International Peace Conference. The Hague, 29 July 1899. www.icrc.org/ihl/INTRO/145?OpenDocument (last visited Aug. 20, 2014).

that the Wright brothers flew to the air in 1903 with the first ever airplane of history) so concerning military flight an autonomous treaty has not been conceived in The Hague yet.

However, the embryo of the possible regulation of aerial warfare already appears here. Namely both in 1899 and in 1907 declarations were made concerning 'the prohibition of the discharge of projectiles and explosives from balloons.'[15] While the first declaration only regulated this moratorium to a 5 year period of time, the later declaration already lost its provisional characteristics, although notwithstanding its aim. Namely in the plans it appeared that the declaration will only remain in force until the next, that is the third Conference at The Hague. Nevertheless the organization of this congress was not taken place. Accordingly this latter declaration is pro forma in force, which for a moment can urge us to think it over. Sith the contracting powers assumed with the approval of this document to prohibit (until the sealing of the Third Hague Peace Conference) 'the discharge of projectiles and explosives from balloons or by other new (!) methods of a similar nature.' And certainly if this commitment is in force, after it every aerial attack seems to be opposite to it. We should not forget, however, that in The Hague the *si omnes* ('if everybody') clause was still functioning, so this undertaking obliged in principle only the parties when an armed conflict has been broken out between them, and the burden of the obligation immediately slid away as soon as other, non-contracting state became a belligerent as well. In the light of all this it is worth to lay down that the number of the member states of the declaration realized only 20 and among the great powers only the USA and Great Britain ratified the agreement.[16] And these provisions surely cannot be regarded as customary international law (on the contrary to several other Hague rules).[17]

On the apropos of the conferences we should also mention that while the Hague Convention II of 1899 with respect to the laws and customs of war on land – more exactly its annexed Regulations – disposed only as 'the attack or bombardment of towns, villages, habitations or buildings which are not defended is prohibited', the same Article 25 of the Regulations annexed to the Hague Convention IV of 1907 had an interlining as well: attacking and bombing 'by whatever means' is prohibited. Supposedly (although arguable) this amendment has been made already in order to cover the attacks coming from the air.[18]

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15 1899 Hague Declaration (IV.1) to Prohibit, for the Term of Five Years, the Launching of Projectiles and Explosives from Balloons, and Other Methods of Similar Nature, 26 Martens Nouveau Recueil (ser. 2) 994. 1907 Hague Declaration (XIV) Prohibiting the Discharge of Projectiles and Explosives from Balloons, 3 Martens Nouveau Recueil (ser. 3) 745.

16 States parties: Belgium, Bolivia, Brazil, China, El Salvador, Ethiopia, Fiji, Finland, Haiti, Liberia, Luxembourg, the Netherlands, Nicaragua, Norway, Panama, Portugal, Switzerland, Thailand, United Kingdom, United States of America. www.icrc.org/ihl/INTRO/245?OpenDocument (last visited Aug. 20, 2014).

17 R. Bierzanek, 1923 Hague Rules. Commentary, *in* N. Ronzitti (Ed.), *The Law of Naval Warfare. A Collection of Agreements and Documents with Commentaries*, Martinus Nijhoff Publishers, Dordrecht/Boston/London, 1988, pp. 396-397.

18 D. Schindler & J. Toman, *The Laws of Armed Conflicts*, Martinus Nijhoff Publisher, Dordrecht, 1988, p. 201.

The creation of a comprehensive separate special treaty on aerial warfare however, this time could only emerge as an absurd idea far away from reality in The Hague.

10.3.2 The Geneva Conventions Adopted after World War I

After in World War I it has been proved that – as Paul von Hindenburg said 'without airmen, no Tannenberg'[19] so in other words – without airplanes modern warfare is unimaginable, it has also been raised that after the world conflagration there would be a need to reconsider the regulatory framework.

As a consequence of the starting up of the erosion[20] of the *ius ad bellum* than its final outlawry,[21] from the Hague Conventions the emphasis was put on the further development of the Law of Geneva, i.e. the international humanitarian law focuses on the protection of victims of armed conflicts. However, following World War I, none of the agreements (1929, 1949, 1977, 2005) revising and replacing the earlier two Geneva Conventions, so the treaties of 1864 and 1907, paid any special attention on the particular regulation of aerial warfare.

The previous thematic division – which was followed by the Hague Conventions and which was differentiating based on which battleground the conflict was operating, so on land, at sea or subsequently in the air – was followed by another kind of logic. The Geneva Conventions were already concentrating on the victims or potential victims of the armed conflicts (being fought anywhere). They were already designed to protect a) wounded, sick and shipwrecked soldiers; b) prisoners of war; c) and the civilian population.[22]

Although it is true that in 1949 a little bit of the Hague thematic approach seemed to be reflected: since related to the wounded and sick combatants a separate agreement (First Geneva Convention) was made in case of armed forces in the field and a separate treaty (Second Geneva Convention) to the armed forces at sea. So in point of fact the latter treaty replaced the Hague Convention X – Convention for the Adaptation to Maritime Warfare

19 The successful outcome of the battle of Tannenberg was considered by Hindenburg due to the effective aerial reconnaisance. I. Német, 'Galamb, Zeppelin és a Vörös Báró: A német légi hadviselés' (i.e. 'Dove, Zeppelin and the Red Baron: The German Aerial Warfare'), *Rubicon*, Nos. 4-5, 2014; S. Cox & P. Gray (Eds.), *Air Power History. Turning Points from Kitty Hawk to Kosovo*, Routledge, 2013, p. 94.

20 1907 Drago-Porter Convention, 1919 Covenant of the League of Nations.

21 1928 Briand-Kellogg Pact, 1945 Charter of the United Nations.

22 1929 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, 118 LNTS 303. 1929 Geneva Convention (II) relative to the Treatment of Prisoners of War. 118 LNTS 343. 1949 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 75 UNTS 31. 1949 Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 75 UNTS 85. 1949 Geneva Convention (III) relative to the Treatment of Prisoners of War, 75 UNTS 135. 1949 Geneva Convention (IV) relative to the Protection on Civilian Persons in Time of War, 75 UNTS 287.

of the Principles of the Geneva Convention – of 1907. Regarding to the air forces, however, the need for special regulation did not emerge.

And in 1977 the two additional protocols relating to the protection of victims of international and non-international armed conflicts totally left behind the differentiation between the different types of military services.

10.3.2.1 Special Rules Concerning Aerial Warfare in the Geneva Conventions of 1949

Having the horrible experiences in possession of the two world wars in 1949 the adopted four conventions on humanitarian law is containing some explicit references to aircrafts and aerial bombardment, but these on the one hand, taking into consideration the ratio, appear only in a minimal quantity in the extensive texts of the norms, and on the other hand looking at their content in point of fact cannot be estimated as such provisions specifically serving the aim of unique regulation of aerial warfare.

Namely, what these allusions exactly refer to?[23]

a. on the one hand on account of the members of the aircraft crews it becomes clarified which cases can be considered as combatants and so whether they are entitled to the special rights and privileges or not;
b. on the other hand through several paragraphs the treaties pay attention on the medical aircrafts, detailing their rights and duties (we have to mention that this was already carried out by the 1929 convention as well);[24]
c. and the treaties considered it to be important to call upon the medical units and establishments and internment camps to be fixed by the parties to the conflict with a distinctive emblem which can be seen from a certain distance even for the air forces (its roots can also be seen in 1929);[25]
d. again the category of the air vehicles emerges as well, but only in relation to the obligations of the neutral states;
e. finally in relation with the prisoners of war and the internees the picture of aerial warfare turns up again since in Geneva they laid down that for this personnel it should be guaranteed as well that hiding from the aerial bombardments they should be able to escape to shelters.[26]

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23 1949 Geneva Convention I. Arts. 13, 36-37, 42; 1949 Geneva Convention II. Arts. 13, 15, 39-40, 43; 1949 Geneva Convention III. Arts. 4, 23; 1949 Geneva Convention IV. Arts. 18, 22, 83, 88, 95.

24 1929 Geneva Convention (I), Art. 18.

25 Id., Art. 22.

26 Considering the combatants in captivity Art. 1 of the 1929 second treaty on the treatment of prisoners of war declared that its regulations should be applied both to persons captured in conflicts on land and 'to all persons belonging to the armed forces of belligerents who are captured by the enemy in the course of operations of maritime or aerial war.' However for this latter category the treaty affixed that: 'Subject to such exceptions (derogations) as the conditions of such capture render inevitable. Nevertheless these exceptions

We can see that it is not out of the question that the Geneva Conventions would be paying special attention on the special regulation of aerial warfare. The paragraphs hiding within their provisions related to aircrafts, air-raid alarms and aerial bombardments are fitted to the general pattern, they show no specific content.

10.3.2.2 Special Rules Concerning Aerial Warfare in the Protocols of 1977

The upper mentioned statement based on the Geneva Conventions of 1949 totally comes through concerning the additional protocols as well. Even in 1977 the participants of the Geneva Conventions have not thought so that the regulation of the aerial warfare would even need a particular convention, or within the finally created conventions – and as we saw differentiating between the international and non-international conflicts (and not by the type of military services) – it would be worth laying special emphasis on battles fought in the air.

The second additional protocol totally ignores this topic. The first protocol pays attention on the role of the airspace during armed conflict but in point of fact almost only in terms of protection of the medical aircrafts.[27] Apart from these the relevant provisions are:[28]

a. the protocol deals with the treatment of the persons parachuting from an aircraft in distress and of the airborne troops;[29]
b. the treaty decidedly in terms of the military operations in the air and at the sea repeats the commitments of the parties to the conflict to take reasonable precautions in order to have as minor civilian damage as possible (so here, as it can be seen, after the

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shall not infringe the fundamental principles of the present Convention; they shall cease from the moment when the captured persons shall have reached a prisoners of war camp.' What should be and what should justify these exceptions the treaty keeps the phrasing undiscussed.

27 1977 Protocol (I) Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, Arts. 24-31, and also Ann. I. of Protocol I. Arts. 6-14. (see also Art. 5).

28 1977 Protocol I. Arts. 42, 57. and 49.

29 On the centenary of World War I we should commemorate on the comradeship, a kind of brotherly alliance and chivalry which characterized the members of the air forces of the belligerents during the 'Great War' and about which the commentary of the 1977 protocols states: the members of the crew of the shot hostile airplanes were not welcomed at the landing with drift of bullets but with salutation and if they were wounded their attackers wished a quick recovery for their 'comrades' and if they died their enemies paid tribute with flowers to their memory. Y. Sandoz, C. Swinarski & B. Zimmermann (Eds.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, International Committee of the Red Cross, Martinus Nijhoff Publishers, Geneva, 1987, p. 494. As far as the notion of 'fairness' or 'fair play' is concerned, the principle of chivalry together with the principles of military necessity and humanity must be the fundamental cornerstones of the law of armed conflict still today. M.S. McDougal & F.P. Feliciano, *The International Law of War: Transnational Coercion and World Public Order*, Martinus Nijhoff Publishers, Dordrecht/Boston/London, 1994, pp. 521-522; T. Gill, Chivalry: A Principle of the Law of Armed Conflict? *in* N. Matthee et al. (Eds.), *Armed Conflict and International Law: In Search of the Human Face*, Asser Press, The Hague, 2013, pp. 44, 46.

securing of the general rules, the drafters of the treaty considered it to be important to make special provisions about the aerial aspects – handling it together with sea warfare – without, however, declaring peculiar obligations);

c. finally we have to stress that the section summarizing the rules concerning general protection against effects of hostilities of the protocol starts with this:

> The provisions of this Section apply to any land, air or sea warfare which may affect the civilian population, individual civilians or civilian objects on land. They further apply to all attacks from the sea or from the air against objectives on land but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air.

So this latter paragraph would provide priority to special norms. The commentary annexed to the protocol, however, notes that in the field of aerial warfare there is no precise written legislation available, only some blurred customary norms can serve as a base. According to the commentary the only codified rule can be just found in the protocol, namely the upper mentioned provision about the ones escaping with parachutes.[30]

10.3.3 The Initiative of the Red Cross

Turning back to the era of World War I, the Red Cross, facing with the increasing extension and intensity of aerial warfare, during the 'Great War' undertook the task for regularizing this topic. The ICRC planned to appeal to the participants of the conflict against the aerial bombardments. But at this time the countenance against the chemical weapons constituted priority[31] and lastly the war has ended without the International Committee of the Red Cross would have been able to contribute officially in the subject of aerial warfare. Finally it was dealt with for the first time during the Spanish Civil War and the Sino-Japanese War.[32]

So this topic was not moved from the agenda of the organization. The Red Cross in the first general disarmament conference – organized within the framework of the League of Nations – in 1932 went as far as to initiate the acceptance of the total ban of aerial

30 Sandoz, Swinarski & Zimmermann 1987, p. 606.

31 In 1918 the Red Cross called upon the parties to the conflict to immediately discontinue the use of poisonous gases as weapons. However at that time this appeal was falling on deaf ears so during the battles these devastating instruments were used all along. But we cannot consider completely useless this action of the ICRC: in 1925 the Geneva Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare could be adopted among others as a result of their intense intervention. Interview with François Bugnion 2014.

32 Id.

bombardments in order to protect the civilian population.[33] It is not even worth mentioning that in terms of pragmatism this initiation was soon swept off.

10.3.4 The 1923 'Hague Rules of Aerial Warfare'

Nevertheless, we can find another remarkable enterprise in this age. Namely, just shortly after the termination of World War I there was an attempt to the codification of the rules of aerial warfare. The 1921-22 Washington Disarmament Conference mandated a committee of the deputies of six states – France, Italy, Japan, the Netherlands, the United Kingdom and the United States – with the task to identify the rules. By 1923 the 'Commission of Jurists' framed up a draft convention.[34] Finally the 'Hague Rules of Aerial Warfare',[35] however, never became a legally binding document. The proposal of the committee neither formed even a separate treaty, nor the idea of the US was realized according to which from the draft the supplement of the Paris Convention of 1919 on Aerial Navigation could have been created.[36]

What was the reason for the failing of the plans? According to Remigiusz Bierzanek, on the one hand there was no will from the point of the governments to undertake legal obligations, having seen the possible role of aerial warfare in the following wars as experiencing the fast development of the occupation of airspace and the technology for the occupation from the airspace. On the other hand the opinion appeared to be general according to which the codification of the rules regarding air wars is redundant, since as a matter of fact the norms are existing, only the available rules concerning land warfare and naval warfare should be applied appropriately in the case of the air forces as well.[37]

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33 P. Spoerri, From the 1907 Hague Conventions to the Additional Protocols of 1977 and beyond. Historical Evolution of the Law on the Conduct of Hostilities, *in* G.L. Beruto (Ed.), *The Conduct of Hostilities. Revisiting the Law of Armed Conflict 100 Years after the 1907 Hague Conventions and 30 Years after the 1977 Additional Protocols*, International Institute of Humanitarian Law, Sanremo, 2007, p. 37. 'Atomic Weapons and Non-Directed Missiles: ICRC Statement, 1950', *International Review of the Red Cross*, Supplement, Vol. III, No. 4, 1950, www.icrc.org/eng/resources/documents/misc/5kylur.htm (last visited Aug. 29, 2014).

34 The jurists usually having idealistic notions were also accompanied by technical advisers (military professionals) balancing them with their pragmatism. R.H. Wyman, 'The First Rules of Air Warfare', *Air University Review*, March-April 1984, www.airpower.maxwell.af.mil/airchronicles/aureview/1984/mar-apr/wyman.html (last visited Aug. 27, 2014).

35 1923 Hague Rules of Aerial Warfare, reprinted in *AJIL*, Vol. 17, No. 4, 1923, Supplement, p. 245.

36 Art. 38 of the 1919 Paris Treaty expressly lays down that at the time of war the freedom of action of the contracting parties – being either belligerents or neutral states – is not limited by the regulations of the treaty. Bierzanek 1988, pp. 396, 398.

37 Id., p. 402. See, for instance, the feasible applicability of the provisions regarding attacks against undefended towns of the Hague Convention IX of 1907 (concerning bombardment by naval forces in time of war) to strategic bombing during World War I, which after the first German Zeppelin raids became more and more intense and devastating over the years after 1914.

So on the contrary to the original ideas the regulations of the Hague Rules did not become a conventional obligation. We can still not state – as Bierzanek notices[38] – that there could be no legal relevance of the material recorded in The Hague at all. Although not the complete code, but its certain provisions today undisputedly constitute a part of the customary international law[39] and so they oblige all the members of the international community.

Moreover it is also worth paying attention on that although in The Hague in 1923 the declared recommendations then and there could not become legally binding conventional requirements, after all numerous provisions of the Rules later appear in international treaties when framing the 1949 four Geneva Conventions or in 1977 the Additional Protocols and last but not least in 1954 the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.[40] So the impact of the Rules – also in the absence of the legal value – cannot be considered as negligible to the forthcoming international legislation at all.[41] It is a question whether such treaty could be created nearly after 100 years which would totally remount to the 1923 concept – adjusting the recorded material to the modern world – and would exclusively collect special rules related to aerial warfare, or the chance and sense for this would be converging to zero.

10.4 Reasons for Non-Adoption of Special Rules

According to the opinion of Michael N. Schmitt 'law responds almost instinctively to tectonic shifts in warfare', although it is true that it can lag behind for years from the innovations of the theatres of war.[42] However, more than one century expired since the first action of fighter aircrafts even so a specific international convention concerning aerial warfare has not yet reached completion.

What kind of reasons are there in the background? Why the international legislation regarding civil aviation has not been followed parallel with the evolution of the (special) system of norms for the use of airplanes for military purposes? Since not so much, only one and a half decade later after the pioneer flight of the Wright brothers in 1919 the

38 Id., pp. 404-405.

39 Sandoz, Swinarski & Zimmermann 1987, p. 688.

40 Bierzanek 1988, pp. 403-404.

41 It is also essential to bear in mind that in the 1923 Hague Rules appeared for the first time the notion, the concept of military objective. The importance, the significant impact of this fundamental definition – see Art. XXIV – is also unquestionable. A. Jachec-Neale, *The Concept of Military Objectives in International Law and Targeting Practice*, Routledge, 2015, p. 21.

42 M.N. Schmitt, 'Effects-based Operations and the Law of Aerial Warfare', *Washington University Global Studies Law Review*, Vol. 5, No. 2, 2006, p. 265.

'Magna Charta of the air',[43] namely the Paris Convention – first regulating the international air navigation – has already been conceived. Additionally the norms – such as technology as well – developed further and in 1944 in Chicago new conventions were born,[44] but every treaty only strictly took on the civilian topics. What is the reason for the non-adoption of a multilateral international agreement targeting the regulation of the deployment of air vehicles for military purposes?

According to Remigiusz Bierzanek one of the reasons should be sought in the phenomenon that World War I made the world realize the special significance of aerial warfare. Just the huge potentiality and the highlighted importance of these new instruments inhibited the states in an agreement on the common rules.[45]

Let us see for instance the circumstances of the acceptance of the two Hague declarations on the 'prohibition of the discharge of projectiles and explosives from balloons.' While in 1899 the first declaration was unanimously accepted by the delegations, than in 1907 the agreement could be put across only as a result of serious arguments. And what is the reason? While during the time of the first peace conference the aircrafts played only a marginal role in warfare, and neither serious potentiality was prognosticated for them, than at the congress some years after the turn of the century the unquestionable military role of the flying machines could be already fairly presumed. So by 1907, between the 'strong' states, which started serious developments concerning aviation and would not intend to hold up themselves, and the 'weak' countries, having no offensive air capabilities, that is why demanding for restrictions, made the acceptance of the common 'rules of game' more difficult.[46]

Continuing the exploration of the possible reasons, Javier Guisández Gómez attributes role to several factors. According to his point of view:

a. the relative novelty of the conquest of the air inhibited the adequate reactions (this argument today can hardly stand its ground),
b. respectively the enormous amount of technological development could also play a role which was impossible to follow with the instruments of the law,
c. furthermore the inevitable interests of the international arms trade, and
d. finally the fact that the airplanes are considered as dual-use objects (namely they can serve both civilian and military purposes) may also have caused the stagnation of the codification to date.

43 R.F. Williams, 'Developments in Aerial Law', *University of Pennsylvania Law Review*, Vol. 75, Nos. 2-3, 1926, p. 148.

44 1944 Convention on International Civil Aviation 15 UNTS 295; 1944 International Air Services Transit Agreement 84 UNTS 389 and 1944 International Air Transport Agreement 171 UNTS 387.

45 Bierzanek 1988, p. 398.

46 Wyman 1984.

Philip Spoerri draws the attention to that after Hiroshima and Nagasaki on the Diplomatic Conference of Geneva of 1949 presumably it could also play a role to the lack of the creation of the special rules – not leaving out of consideration of course all the other impedimental effects resided in the cold war – that the states did not wish to get tangled up to unprofitable, unproductive debates on the legality of nuclear weapons.[47]

10.5 A Lacuna in the Texture of International Law?

The statement can be heard several times at several places according to which aerial warfare is an unregulated field, there are no norms which would cover it.[48] Or, if there are such norms, they are anarchic.[49] Does this allegation really stand its ground just because no special international treaty has been created concerning the air wars?

It is an argument from the side of those who are denying the existence of coherent regulation that in Nuremberg, so during the trials of the Nazi leaders after World War II we could not find any crime related to aerial warfare among the counts;[50] due to the lack or uncertainty of relevant system of norms.[51] (However, it is no doubt that there have been numerous such crimes committed.) Lacking such (special) international treaty would indeed a complete freedom characterize the aerial warfare in the fields of available means and operational methods? I do not share this conviction.

On the one hand in the absence of (special) conventional obligation the customary international law could serve as a basis and benchmark. So it is not an unregulated field at all. We should not forget the Martens Clause that cannot be missed from the codification treaties which just appeared first in the area of *ius in bello*. As the Hague Convention No. IV of 1907 defines:[52]

47 Spoerri 2007, From the 1907 Hague Conventions […], p. 38.

48 Remigiusz Bierzanek for instance quotes the opinion of W. G. Downey expressed on the 43rd meeting of the American Society of International Law. Bierzanek 1988, p. 405. Hamilton DeSaussure cites Marshal of the Royal Air Force Sir Arthur Travers Harris as an example. H. DeSaussure, 'The Laws of Air Warfare: Are There Any?', *International Law Studies*, Vol. 62. The Use of Force, Human Rights, and General International Legal Issues, US Naval War College, 1980, p. 281.

49 Bierzanek 1988, p. 407.

50 Although among others Göring was also sitting in the dock. (It is a generally accepted point of view that for the carpet bombing carried out by the Axis Powers none was blamed in Nuremberg because both sides performed such actions in the same way.) De Saussure 1980, p. 284; P.J. Goda, 'The Protection of Civilians from Bombardment by Aircraft: The Ineffectiveness of the International Law of War', *Military Law Review*, Vol. 33, 1966, p. 109.

51 Bierzanek 1988, p. 406.

52 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land, 3 Martens Nouveau Recueil (ser. 3) 461. Preamble.

> Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.

So even during World War I – namely hardly one decade after the first flight and successful landing of an airplane when the non-development of the relating conventions could be charged to the really short time and when on paper both the rules of land and naval warfare has been recorded, but not the rules concerning war in the air – and ever since then the aerial warfare did not experience to be exempt from obligations deriving from legal norms. It was always a regulated area although it is doubtless that due to the character of the relevant customary norms it had numerous uncertainties but was provided with univocal basic rules.

The substantive norms, the canons were always given (and are given today as well since we do not even have specific rules at present.) These foundation stones provide such a fundament which, I believe would permit the detailed legislation but at the same time make it unnecessary too. Namely during the aerial warfare, just like in the case of ground and sea operations, four principles should be kept in mind. Should it be any special topic these have to direct the commanders and the executors. These principles are: the requirement of humanity, the precept of distinction,[53] the military necessity and the aspects of proportionality. These four essential requirements would guide us whether the given attack could be considered as legitimate: be it either ground or naval or even aerial warfare.

The British Prime Minister, Neville Chamberlain was conceiving likewise in 1938:

> I think we may say that there are, at any rate, three rules of international law or three principles of international law which are as applicable to warfare from the air as they are to war at sea or on land. In the first place, it is against international law to bomb civilians as such and to make deliberate attacks upon

53 Although in the legal world discrimination should be avoided, in the field of humanitarian international law it is even desired, actually more than that, it is a basic expectation. See for instance Art. 51 of Protocol I of 1977 which declares: 'Indiscriminate attacks are prohibited. Indiscriminate attacks are: […] those which employ a method or means of combat the effects of which cannot be limited […] and are of a nature to strike military objectives and civilians or civilian objects without distinction.' In other cases of course the classic prohibition of discrimination can be found out of the provisions of the Geneva norms. So accordingly the common Art. 3 of the four Geneva Conventions of 1949 states the following: 'Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed "hors de combat" by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.'

> civilian populations. […] In the second place, targets which are aimed at from the air must be legitimate military objectives and must be capable of identification. In the third place, reasonable care must be taken in attacking these military objectives so that by carelessness a civilian population in the neighbourhood is not bombed.[54]

In addition to the above, the rules which were recorded from 1864 in the Geneva and from 1899 in the Hague conventions could naturally be adapted – when they could be considered as relevant – in the cases of aerial warfare as well. (Paul Fauchille already proposed in 1911 that the rules adopted in The Hague in 1907 related to the siege and bombardment carried out by the ground and naval forces should be applied inrelation to the aerial warfare as well.)[55] Let us take an example: Article 51 of Additional Protocol I of 1977. The paragraph states that the indiscriminate attacks are prohibited. At the same time it defines this category and points out that – among others –

> an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilian or civilian objects

must be regarded as inadmissible. Although not even a word mentions the air forces, unequivocally the so called saturation bombing as such (*inter alia*) is qualified by the article as contrary to international law.

Furthermore, as far as the development of law by analogy is concerned, the following must be highlighted. When in 1977, as an absolute new rule, the paragraph appears in Protocol I related to – the above already mentioned – persons parachuting from an aircraft in distress in point of fact what else happened then the adaptation of the long ago codified customary rules to the shipwrecked members of armed conflicts at sea?[56] In my view, all the relevant provisions could be transplanted in a similar manner, *mutatis mutandis*, when there is a need to alteration at all. But why should, just for example,[57] in the case of air bombardments other regulations be created which already and clearly were fixed in relation to the attacks launched by the field artillery?

And similarly all the international treaties which order to ban either type of weapons should be applicable in the case of all military services. What should explain the different

54 Quoted by: Goda 1966, pp. 97-98.
55 Id., p. 95.
56 Sandoz, Swinarski & Zimmermann 1987, p. 495.
57 Wyman 1984.

treatment for instance in the cases of bacteriological, toxin or chemical weapons, or asphyxiating gases etc.? In my opinion no rational reason can be found for this.

10.6 Would There Be a Need for Special Rules?

Taking into consideration the system of the norms of aerial warfare we can frame three options (not excluding each other): a) We need such rules which can be applied and should be applied to all forms of warfare. b) The norms of land and sea warfare should be adapted by analogy to the battles fought in the air as well. c) There is a need specifically to the particular regulations related to aerial warfare.[58]

According to my point of view it is redundant to differentiate between the three dimensions of war. The same basic rules should be applied in the case of every military service, differentiation is unnecessary.[59] However, the viewpoints of those are worth investigating who argue for the importance of unique legislation. Let us see how convincingly.

Indeed, the statement is categorical according to which the lack of a specific code governing the acts of the air forces at present is one of the greatest deficiencies of the law of armed conflicts.[60] And although by creating Protocol I of 1977 numerous aspects of aerial warfare could be covered, several topics still remained open. According to Yoram Dinstein, due to the fast and continuous development of aerial techniques and strategies, there is a huge gap between the present practice and the prevailing positive law, which is waiting for liquidation.[61]

Elbridge Colby was warning even in 1925 that the idea according to which the accepted rules regarding ground forces or sea forces could also be used to the atmosphere is false. In his opinion we cannot make the rules of aerial warfare by analogy where there is no analogy. An aircraft cannot be compared to a seagoing vessel. For instance it cannot be stopped in the air and be forced to boarding. If it perpetrates an infringement in the airspace and opposes its interception it can only be destroyed. It is not able to transport a great quantity of contraband either (do not forget it is only 1925). And we could further count – in the view of Colby – where this constrained analogy is unable to function.[62]

58 Schwarzenberg 1959, p. 2.

59 It can be resulted from the above mentioned that in my opinion neither the land nor the naval warfare necessitate separate regulations. So the dilemma cannot even emerge that whether the pilot of the military airplane supporting ground or sea operations would 'switch off' one of the system of laws and 'switch on' the other set of standards when he or she intercepts the shore of seas or oceans. Wyman 1984.

60 The opinion of Professor Howard Levie is quoted by: De Saussure 1980, p. 281.

61 P. Spoerri, The Contemporary Challenges to the Law on the Conduct of Hostilities, *in* Beruto 2007, p. 150.

62 E. Colby, 'Aerial Law and War Targets', *American Journal of International Law*, Vol. 19, 1925, p. 702.

A recently executed project deserves attention under which the Harvard's *Humanitarian Policy and Conflict Research* (HPCR) group published a manual in 2009 decidedly dealing with the topic of 'international law applicable to air and missile warfare'.[63] Why the experts launched out on such a huge enterprise 8 decades after the creation of the Hague Rules?[64] According to their explanation it is evident though that from 1923 numerous such treaties were adopted which tried to match to the challenges of modern warfare (the Geneva Conventions of 1949 and 1977 and further on a series of disarmament treaties) and so these abundantly consist rules on the functioning of air forces in accordance with international law, but they do not cover however all the important aspects of aerial warfare (moreover with the exemption of the 1949 conventions these are not universal treaties so they do not oblige all states).[65]

The San Remo Manual, published in the mid-1990s, served as a sample for the researchers made by the *International Institute of Humanitarian Law* in the topic of 'international law applicable to armed conflicts at sea'.[66] The aim of the group of international experts of the HPCR[67] was also to frame up such a document that would be a non-binding instrument – such as the San Remo Manual – but accepted as a compass, functioning as a guideline, which would reveal the general practice of states accepted as law and the relevant conventional obligations.[68] (It should be noticed that the San Remo Manual related to naval warfare also richly contains paragraphs related to air law.) Of course the Hague Rules of 1923 served as another model. But when in the 1920s the aerial warfare was so to say in its infancy, the role, the strategic importance, the facilities, etc. of air forces have come through revolutionary changes during the 8 decades. The HPCR Manual intended to match to these new challenges as well and wished to react on all the relevant novelties of modern warfare.[69]

What kind of – not sufficiently regulated – questions would justify, according to the experts, the importance of the identification of special norms? Let us see their most important arguments. They take the view that the currently available rules based on treaties for example inadequately react to the requirements posed by the threat of international

63 *HPCR Manual on International Law Applicable to Air and Missile Warfare.* Program on Humanitarian Policy and Conflict Research at Harvard University, Bern, 15 May 2009.

64 The project initiated by the HPCR was launched exactly 80 years after 1923, in 2003.

65 *Commentary on the HPCR Manual on International Law Applicable to Air and Missile Warfare.* Program on Humanitarian Policy and Conflict Research at Harvard University, 2010, p. 1.

66 L. Doswald-Beck (Ed.), *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, Grotius Publications, Cambridge University Press, Cambridge, 1995.

67 The group led by Yoram Dinstein comprised more than 30 theoretical and practical professionals who on the one hand were coming from governmental spheres (military and civilian) and on the other from the staff of the ICRC. International Humanitarian Law Research Initiative, IHL in Air and Missile Warfare, About the Project, www.ihlresearch.org/amw/about-project (last visited Aug. 29, 2014).

68 Id.

69 Commentary on the HPCR 2010, p. 1.

terrorism. Thus – definitely since September 11, 2001 – the system of laws of armed conflicts should be able to give an adequate answer to the problem of the hijacked civilian aircrafts used as weapons.[70] And not least it should keep pace with the unstoppable development of military technology, and so military aircraft technology and should fulfil the gaps appearing in the system of norms concerning high-tech warfare.[71]

In order to understand the reasonableness of the special norms it could help if we just review schematically the content concept of the Manual so the main track of its chapters. However, I consider it to be conducive that as a first step we carry out an overview of the Hague Rules of 1923 and after that, providing a chance to compare the two documents, we get the 2009 Manual to take place.

So first let us see the structure of the Hague Rules. The titles of the chapters in sequence are: I. Applicability: Classification and Marks (of aircrafts); II. General Principles; III. Belligerents; IV. Hostilities; V. Military Authority Over Enemy and Neutral Aircraft and Persons on Board; VI. Belligerent Duties Towards Neutral States and Neutral Duties Towards Belligerent States; VII. Visit and Search, Capture and Condemnation; VIII. Definitions.

The Manual follows the undermentioned framework: A. Definitions; B. General Framework; C. Weapons; D. Attacks; E. Military Objectives; F. Direct Participation in Hostilities; G. Precautions in Attacks; H. Precautions by the Belligerent Party Subject to Attack; I. Protection of Civilian Aircraft; J. Protection of Particular Types of Aircraft (civilian airliners, aircraft granted safe conduct); K. Specific Protection of Medical and Religious Personnel, Medical Units and Transports; L. Specific Protection of Medical Aircraft; M. Specific Protection of the Natural Environment; N. Specific Protection of Other Persons and Objects(civil defence, cultural property, objects indispensable to the survival of the civilian population, UN personnel); O. Humanitarian Aid; P. Exclusion Zones and No-Fly Zones; Q. Deception, Ruses of War and Perfidy; R. Espionage; S. Surrender; T. Parachutists from an Aircraft in Distress; U. Contraband, Interception, Inspection and Capture; V. Aerial Blockade; W. Combined Operations; X. Neutrality.

The question appears: do not the existing general rules cover all of these subjects? Reviewing the titles and the content of these chapters, I consider that all the relevant provisions applicable to these issues can be found, without any exceptions, in the conventions and protocols of 1949 and 1977 or in the Hague treaties.[72]

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70 Id. See about this topic: G. Sulyok, 'An Assessment of the Destruction of Rouge Civil Aircraft under International Law and Constitutional Law', *Fundamentum*, English Edition, No. 5, 2005, pp. 5-30.

71 The experts also emphasized that – since international law is not a static law – the Manual itself would need a revision as time goes by in relation to the future changes. International Humanitarian Law Research Initiative, About the Project, www.ihlresearch.org/amw/about-project (last visited Aug. 29, 2014); About the Manual, www.ihlresearch.org/amw/aboutmanual (last visited Aug. 29, 2014).

72 To give only some examples:

10.7 Conclusion

According to my point of view it is definitely useful, though unnecessary to draft a special international treaty concerning aerial warfare.

Why is it unnecessary? Because the available norms are sufficiently adaptable in the cases of all military services. There is nothing which would explain the differentiation. If a new type of weapon, new type of method appears in warfare due to the technological progress the foundations will not change, they should be applied the same way. To bring up an example just from the field of airspace used for military purposes: even after the appearance of the drones, so the unmanned aerial vehicles in the near past the question emerged also if there is a need to react on the challenges of the drone warfare with the creation of a new international treaty or the already existing rules are adequate and sufficient enough. I consider that although the drones unquestionably meant and still mean a novelty but in their case it would not explain the necessity of special rules. Why should different norms be applied for instance during the definition of a target for the pilot of an airplane than for the drone operator who is thousands of kilometres far from the person or object that should be liquidated?[73] The applicable provisions are the same.[74]

Why could the special regulation be useful after all? Because the unequivocal, precise system of norms would evidently foster compliance and would facilitate the sanctioning

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- see HPCR Manual, Chapter E. ('Military Objectives') and Protocol I, Art. 52. ('General Protection of Civilian Objects');
- or HPCR Manual, Chapter G. and H. ('Precautions') and Protocol I, Arts. 57-58. ('Precautionary Measures');
- or HPCR Manual, Chapter L. ('Specific Protection of Medical Aircraft') and Protocol I, Arts. 21-31. ('Medical Transportation');
- or let us compare HPCR Manual, Chapter M. ('Specific Protection of the Natural Environment') with Protocol I, Art. 55. ('Protection of the Natural Environment');
- or HPCR Manual, Chapter N. ('Specific Protection of Cultural Property') with the Hague Convention of 1954 ('for the Protection of Cultural Property in the Event of Armed Conflict');
- or HPCR Manual, Chapter R. ('Espionage') with Protocol I, Art. 46. ('Spies');
- or HPCR Manual, Chapter T. ('Parachutists in Distress') with Geneva Convention II, Chapter II. ('Wounded, Sick and Shipwrecked'), and so forth and so on.

73 See: Zs. Csapó, Drónok harca – kérdések keresztтüzében. Van-e szükség új nemzetközi szabályozásra? (i.e. Game of Drones – In the Crossfire of Questions. Do We Need the Renewal of the International Legal Framework?), *in* Zs. Csapó (Ed.), *Emlékkötet Herczegh Géza születésének 85. évfordulójára. A ius in bello fejlődése és mai problémái. (i.e. Memorial Volume to Herczegh Géza's 85th Birthday: Development and Current Problems of Ius in Bello)*, University of Pécs Faculty of Law, 2013, pp. 39-63.

74 Just for example the most important are (from Protocol I of 1977): 'It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.' (Art. 35.) 'The Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.' (Art. 48.) 'Indiscriminate attacks are prohibited.' Such as an 'attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.' (Art. 51).

of infringements. In 1949 the members of the delegations just waking up from the horrors of World War II did not either decide on the Diplomatic Conference of Geneva to – following my already explained logic – only record the golden rules of humanitarian law and be satisfied with the declaration of some principles (humanity, distinction, military necessity, proportionality or their consequences since the right of the parties of a conflict to choose the methods or means of warfare is not limitless, the prohibition to cause unnecessary suffering, etc.). Then and there (and later at the congress in the 1970s as well) they thought that the more detailed rules would serve for their basic aims the protection of the victims of armed conflicts. Let us just think how in-depth paragraphs the third 'prisoners of war' Geneva Convention operates with. It deals meticulously and exhaustively on the accommodation, nutrition, medical treatment, religious activities, labour, etc. of the POWs and does not only settle for sketching up the – otherwise univocal – frames (such as the declaration of the prohibition of discrimination or the requirement to respect humanity). At that time the drafters of the treaty saw in this thorough regulation the guarantee to moderate the atrocities of the up and coming conflicts.

That is why all the initiatives could be welcomed which would clarify the rules of *ius in bello*. How much chances we find today to the creation of a convention containing articles intend to codify or to develop progressively rules concerning the military aspects of international air law? According to the present state, only exiguous. Its reason is on the one hand the lack of the political will from the states and on the other the abandonment of the structure of the Hague legislation at the turn of the 19th-20th centuries and starting from 1949 the crystallising and spread of another type of framework. Nevertheless whether we turn back or not to the differentiated regulation according to military services we can surely state that: in the case of all the armed conflicts at the time of the centenary of World War I the regulations which should be complied with are unequivocal whether these battles are fought on land, at sea or in the air. Only the norms should be respected! Whether there should be no need to apply them? It is to be regretted that one and a half decade after the turn of the millennium someone who would wish this – aware of the current incidents and processes, monitoring what is going on – would be a naive utopian. Although it is doubtless that not either in 1914 none could even suspect where the world is going to…