CIVITAS, 2022, 12(2), 288-307
www.civitas.rs

Aleksandra Jovanović [1]
Aneta Atanasovska Cvetković[2]

UDC 341.322.5(497.11)
Review Article
Received: 10/04/2022
Accepted: 14/10/2022

LEGAL PROTECTION OF PRISONERS OF WAR: A HISTORICAL OVERVIEW

Abstract: The status of prisoners of war and their treatment post capture has always been of interest to the humane individuals. Throughout history, there are various examples of the treatment of the captives, which largely reflected the interests of their captors. In order to prevent war crimes and crimes against humanity, which affect the position of civilians and prisoners of war, there are rules and conventions in armed conflicts. Despite the existence of these rules, history has shown that crimes against humanity (e.g., mass killings of civilians and prisoners, devastation, looting and enslavement) are a regular occurrence in armed conflicts. The paper will examine the treatment of captives throughout history. This paper will also provide an analysis of the conventions, charters and legislation of international humanitarian and international criminal law, which incriminate war crimes, crimes against humanity, and slavery, with the aim of improving the treatment of prisoners of war.

Key words: war crime, crime against humanity, captive, prisoner of war, captor.

[1] Associate Professor, Faculty of Business Economics and Entrepreneurship, Belgrade, ORCID ID: 0000-0003-1062-3351, e-mail: aleksandra.aj17@gmail.com

[2] Assistant Professor, Faculty of Business Economics and Entrepreneurship, Belgrade,ORCID ID: 0000-0002-4489-5040, e-mail: a.atanasovska@yhaoo.com

1. Introduction

Captivity is a concept well-known in international criminal, international humanitarian and international public law. If captivity is seen as slavery, then it can be considered one of the first crimes recognized by the international law. Captivity, i.e., the act of enslavement, the state of slavery and the status of captive all amount to the restraint of individual liberty. In modern law, captivity also involves the right of ownership over an individual.

This paper focuses on the position of prisoners of war, with an emphasis on the protection of civilians and prisoners of war during armed conflicts in international criminal legislation. In first section, the authors discuss the position of captives throughout history. The next section deals with the treatment of Serbian prisoners of war in the twentieth century, which contradicts the provisions of the Hague Convention. The last section examines the criminal justice protection of civilians in international armed conflicts, contained in conventions and charters, the normative organization of international criminal acts, such as crimes against humanity and war crimes, and the crime of enslavement in the Criminal Code of the Republic of Serbia. The paper comprehensively discusses the concept of captive throughout history, and the position of prisoners of war in the twentieth century who were used as forced labour, making them equal to slaves. The aim of this paper is to stress the importance of lawful treatment and responsibility towards prisoners of war.

2. Methods

The methods used in the paper are historical and research methods, primarily on the legislation and practices in the treatment of prisoners of war from the ancient times to the present day. Furthermore, the authors used a comparative method for the analysis of legislation related to human rights and criminal codes at the national and international level. In addition to the historical and criminal law approach, the paper also includes a moral aspect that seeks to promote ethical values. The expected contribution of this analysis is an improved understanding of the

position of prisoners of war throughout history and an understanding of the necessity and importance of protecting their position by means of humanitarian and criminal law.

3. Corpus

The corpus of analysis comprises the following legislation: Criminal Code of the Republic of Serbia, the First Geneva Convention "for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field", the Second Geneva Convention "for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea", the Third Geneva Convention "relative to the Treatment of Prisoners of War", the Fourth Geneva Convention "relative to the Protection of Civilian Persons in Time of War", Amendment Protocol I relating to the Protection of Victims of International Armed Conflicts, Amendment Protocol II relating to the Protection of Victims of Non-International Armed Conflicts, the Rome Statute of the International Criminal Court, Control Council Law No. 10, the 1926 Slavery Convention, and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. Besides the above legislation (available online), the authors used many examples. To analyse the historical aspects of the prisoners of war treatment, historical sources and legislation were used.

4. Results

The proposed research methods (comparative analysis of laws and conventions and the historical method) proved to be adequate. On the basis of the historical accounts of the captor – captive relationship and the analysis of the elements of international crimes and the causes of captivity, the authors have provided a comprehensive survey of the position of captives and identified the different interests of the captor, mostly political and economic. The research results aim to improve the treatment of prisoners and prosecute international crimes.

5. Discussion

5.1. Historical Overview of the Captive-Captor Relationship

From ancient times to the present, states and nations created by wars promote the creation of a specific relationship between the captor and captive. The subordinate position, which results from this relationship, constitutes a new social position: every native in the conquered territory becomes a captive, and the life of the captive largely depends on the will of the captor. The place of the enslaved in the social life of the new society primarily depended on the captors, specifically on their treatment and treatment of the enslaved. In the earliest history of humanity, there was no captor-captive relationship: in times of war, entire tribes were exterminated and wiped off the face of the Earth, which in modern law equals genocide (Jovanović & Atanasovska Cvetković, 2021). Throughout history, there are instances when the captives were denied any right unless they became slaves, on the one hand, and on the other hand, when they had certain privileges in the newly created relationships in society, although they remained slaves or almost slaves.

If we equate the position of the captive with the position of the slaves, then the sources of slavery in large systems (even if they were the initial forms of the first states) are wars of conquest. The first slaveholding states, also known in history as Eastern despotisms, were more lenient when it came to the position of slaves, compared to the mighty Rome. The assumption is that the enslaved had a clear awareness of the benefit of social peace for the functioning of the state and of the danger that could arise through social unrest and potential war that would be initiated by the enslaved due to dissatisfaction with their own position.

In the turbulent history of Egypt, there is a story of a general who spared the life of a captive instead of killing him (Stanojević, 2003). In this way, the captive became a slave and acquired certain rights in society. Based on this Egyptian attitude towards the enslaved, we can conclude that there was a fairly humane relationship. Namely, the Egyptian slaver allowed the slaves to have families, to gain freedom by marrying a free woman, as well as to have limited business and legal capacity, which leads us to the conclusion that certain jobs were allowed to them. This

can be seen as the beginning of the development of humane treatment of slaves and their rights.

The unusual history of Mesopotamia, especially the age of Babylon and the great Hammurabi, translated into Hammurabi's Code (Weiss, 1969; Stanimirović, 2011), also presents the beginning of the humanitarian treatment towards the slaves. Wars of conquest meant that the captive population (foreigners and residents of the conquered territories) became the social class of slaves, whose rights are limited, but not non-existent. In Babylonian society, according to Article 175 of the Code of Hammurabi, marriages of enslaved people with members of the free class of people were allowed, and their offspring had the status of free people if the mother was a member of the free class of Babylonian society. In the same article, a slave is prescribed the right to marry a woman belonging to the free class of Babylonian society. According to Hammurabi's code, enslaved people, who were engaged in crafts and trade, were given the right to participate in the business life of Babylon, specifically the right to conclude business contracts. We can consider the redemption of the slaves' freedom during the development of Babylonian history as a humane treatment of the slaves. Humanitarian conduct of captors can even seen in the established social rule included in Hammurabi's code: it was prohibited to beat captives to death or otherwise abuse them. These deeds were punished by killing the captor's son (Art. 116, Code of Hammurabi).

Another example of humane treatment of slaves can be found in the history of the ancient state of Sparta. By conquering Laconia, the Dorians succeeded in subduing the indigenous population. The indigenous enslaved population from the peripheral regions of Sparta, the Periecii, were given the status of free residents by engaging in trade and crafts within the borders of Sparta and retaining ownership of their own land (property). The right to possession was conditioned by the payment of tribute (rent) and the obligation to serve in the Spartan army as foot soldiers with heavy military weapons (holpite soldiers). Although this right was conditional, it cannot be denied that the enslaved population were granted some rights. It is assumed that they also had local self-government in some form, under the watchful eye of their captors (Gardner & Jevons, 1895, p. 423). The enslaved indigenous population in

Sparta was made up of another social class, the helots. They were slaves in Spartan society, constituting the lowest social class, closest to medieval serfs. Their treatment had some humane elements, such as the right to start a family, the right to own money and certain type of property, such as agricultural tools,

By conquering the Athenian polis, the natives became slaves, and depending on whether the slaves were state-owned or private, they were treated differently. Private slaves completed their existing slave status with the status of a private slave, after they were bought, resulting in a "mix" of slavery. Although the state did provide the right of asylum (escaping to the temple) for private slaves in case of abuse by their masters, private slaves were overall in a more difficult position than state slaves. It was forbidden for slave owners to mistreat, abuse or kill private slaves. Private slaves could even go to court with a request to be sold to another master. However, there were differences in the treatment of private and state slaves. The captives of the state had the right to marry, start a family, own movable property, even to have their own slaves. The humane elements of this treatment can be seen in the fact that state slaves were part of the civil service, received compensation for their work, and were provided with housing, food and clothing. In short, they had both business and legal capacity (Kurtović, 1987).

The magnificent Rome, which rose from a small city-state to the largest and mightiest empire of the known world, was created as a result of great campaigns and wars of conquest. Here we will try to summarize the rich history of Rome, and to recognise the specific relationship between the enslaver and the enslaved and possibly the humane treatment of the enslaved. After the Punic Wars between Rome (Roman Republic) and Carthage 264-146 BCE, the Roman territory expanded, and thus the number of slaves who were integrated into Roman society in the status of slaves also increased. Considering Gaius's division of humanity into free people and slaves (*Et quindem summa divisio de iure personarum haec est, quod omnes homines aut liberi sunt aut servi* (Gaius, Institutions 1,9)), the status of slaves in Roman society was based on coercion, although there were many educated individuals among the population found in the conquered and enslaved territories. In the beginning, the slave was in an unenviable situation (Deretić, 2011), illustrated by the

masters' ability to kill their slaves without any consequences. The attitude towards slaves changed with the expansion of the territory during the Roman Republic and the encounter with an educated population. Apart from the fact that they had a master and that their fate was directly related to his will, the slaves lived on the master's property engaged in agriculture on the latifundia, thus creating a class of rural slaves (*servus rustica*). In contrast to them, city slaves (*servus urbana*) had a more favourable position. They ran their master's household, helped him, and those who were educated had the opportunity to be the master's readers, secretaries, or doctors (Bujuklić, 2010). It is indisputable that the position of slaves changed throughout Roman history, as well as the relationship between the enslavers and the enslaved, but also that their position was far less favourable than it was in the Athenian state.

The Middle Ages, in addition to autocratic rulers, the influence of the church, the creation of feudal states and the binding of free peasants to the land (Atanasovska Cvetković, 2021), retained the legacy of the previous era, regarding the wars of conquest and the captor-captive relationship.

In the Modern Era, new insights into the concept of human rights and Rousseau's views in *Contrat Social* created a new understanding of the captor-captive relationship and the status of the enslaved minority population of conquered states. The armed conflicts, especially those in the 20th century (World War I and World War II) inspired the need to protect human rights of captives. The protection of human rights of captives can also be traced through the historical development of military law, in which the principle of humanitarianism becomes a dominant element in refraining from undertaking certain actions during warfare. The principle of humanitarianism is a recent creation, associated with modern regimes and human rights (Draper, 1988).

The captor-captive relationship and the treatment of prisoners in war-torn areas can be found both in ancient and in modern times. They were defined by customary or legal norms. Today, these relations are defined by international law, international humanitarian law, human rights, and have a clear aim – the incrimination of international criminal acts.

5.2. Serbian Soldiers as Prisoners of War in the 20th Century: Violations of the Hague Convention

The twentieth century is characterized by the development of international law and the protection of human rights, focusing on civilian victims and prisoners of war. At the turn of the twenty-first century, we witnessed the inconsistent application of international conventions, which leads to a lack of protection for civilians who suffer direct and indirect consequences of armed conflict. Although international laws (humanitarian law, military law and criminal law) strive to maintain peaceful relations between combatants (Fabijanić Gagro & Jurašić, 2013), there are many disagreements and divergences in political and economic interests, which lead to consequences suffered by civilians and prisoners of war.

In 1907, the Hague Convention on the Laws and Customs of War on Land was adopted with the aim to introduce a more humane aspect to armed conflicts and reduce human suffering as much as possible (Reisman & Antoniou, 1994). The Hague Convention set out precise regulations for the behaviour of the occupying forces towards the civilian population and prisoners of war. The second chapter stipulates that captives are in the power of the hostile government, but not of the individuals or corps that captured them, which can be understood as a prohibition of enslavement. The convention mandates the humane treatment of prisoners and regulates various aspects of the population's life, such as accommodation, food, clothing, work, mail and spiritual life. At about the same time, especially since the 1907 Customs War broke out, the Austro-Hungarian Empire tried to subjugate the economically underdeveloped Serbia, simultaneously prevent any Serbian-Bulgarian cooperation, and prevent the strengthening of the Serbian army. The annexation of Bosnia and Herzegovina in 1908 and the creation of an "anti-Serbian climate" during the Balkan wars were of special importance for Austria-Hungary. After the Sarajevo assassination and the outbreak of World War I, the Austro-Hungarian army occupied parts of northern Serbia (Mačva), where they killed the wounded and civilians, looted and destroyed private property, in violation of international laws and conventions. The Austro-Hungarian army abused the Serbian pri-

soners of war and the civilian population, confiscated production, agricultural tools and equipment, looted food and livestock, demolished educational and cultural institutions, and committed other violations. Although the Serbian government invoked the Hague Convention to protect prisoners of war and civilians imprisoned in the camps of Austria-Hungary, it was still forced to provide aid through humanitarian organizations and the missions of neutral countries. The largest number of Serbian prisoners of war, as many as 154,631, were in Austro-Hungarian camps, where around 80,000 died. After the Battle of Cer, most of them were interned in the Esztergom camp.

At the beginning of the Great War, the position of Serbian prisoners was extremely difficult; during 1914 their number rose to around 200,000. The capacities in the camps were not sufficient because many camps were under construction at the time, so the prisoners were also kept in fenced-in meadows, without warm clothing, starved and exhausted by the long hike. Due to hunger, cold, exhaustion, typhus and other diseases, the number of prisoners decreased. In 1915, there remained about 45,000, and after the winter of 1916/17, according to Germany's estimate, there were around 174,000 captured and missing Serbian prisoners. Serbian prisoners of war were also interned in Hungary, where the conditions were similar to the Austro-Hungarian camps. The position of prisoners in Bulgaria, where officers were housed in camps with non-commissioned officers, did not differ from the camps in Austria-Hungary. After the capture, the prisoners of war were taken to the camps on foot, while the wounded, if possible, were transported by car. Contrary to the Hague Convention, which stipulates only the confiscation of arms, money, watches, shoes, and other valuables were confiscated from the soldiers. The practice of violating the Hague Convention was widespread among other armies in Europe. Serbian prisoners had poorer diet and more severe punishments compared to prisoners of other nationalities (English, French). In the Bulgarian camps, and in other camps in this period, in addition to the lack of space and food, there were also poor hygienic conditions that favoured the spread of typhus, dysentery and malaria.

During World War II, millions of prisoners of war and civilians were forcibly taken to the camps. The camps were built near large and densely

populated urban areas with a focus on areas with large Jewish, Polish and Roma population, as well as in areas where there were supporters of communism. In most camps, prisoners were forced to wear colour markings depending on their categorization. Red flags were worn by communists and other political prisoners, green triangle by criminals, pink by homosexuals, purple by Jehovah's Witnesses, black by people unable to work (disabled, mentally ill, homeless, prostitutes, etc.), yellow by Jews and brown by Roma. A large number of prisoners died in the camps due to forced labour, starvation and abuse, or during transport to the camp due to lack of food and water and due to inhumane conditions in the wagons, which were primarily used to transport livestock. In 1942, the SS built a network of death camps and carried out systematic ethnic cleansing of prisoners, who were most often killed by toxic gas.

During World War II, more than 100,000 Yugoslavian prisoners of war were in fascist concentration camps, prisons and sites of free internment" in about two hundred towns across Italy (Milak, 1986). The position and conditions of the prisoners differed from place to place, depending on whether they lived in rural houses or in camps. The money they received for buying food was insufficient, and they were under the control of the carabinieri, confined, without health care and clothing supplies. The situation of prisoners in camps and prisons was even more difficult, due to frequent physical and psychological torture. Many prisoners died, especially in the camps in the north of Italy. After the fall of the fascist government and the capitulation of Italy, Yugoslav prisoners were taken to Germany, where they were also held captive, and only a small number managed to break free.

5.3. **Legislation Related to Prisoners of War**

The Geneva Conventions include measures taken in order to ensure respect for international humanitarian law, on which the provisions of the international law of war rely and which additionally specify the provisions of the international criminal law. They oblige the signatory states and non-state actors – parties in the conflict, to respect humanitarian principles towards enemy soldiers and civilians during wartime conflicts. The provisions of international war and humanitarian law are codi-

fied in the four Geneva Conventions on the Humanitarian Treatment in War from 1949: Geneva Convention on the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (the First Geneva Convention); Geneva Convention on the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (the Second Geneva Convention); Geneva Convention on the Treatment of Prisoners of War (the Third Geneva Convention) and Geneva Convention on the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention). The Amendment Protocol to the Geneva Conventions on the Protection of Victims of International Armed Conflicts (Protocol I) and the Amendment Protocol to the Geneva Conventions on the Protection of Victims of Non-International Armed Conflicts (Protocol II) were added to the aforementioned documents. Amendment Protocols (Protocol I, Part III and IV, Chapters I–V) additionally regulate the rules and customs of war, thus unifying the rules of Hague law of war and Geneva humanitarian law. In order to protect the most important human values, international criminal law and justice are being developed, which led to the adoption of the 1998 Rome Statute, which confirms that the perpetrators of the most serious crimes, related to the international community, especially genocide, crimes against humanity and war crimes, must not remain unpunished, and it is necessary to ensure their effective prosecution by taking measures at the national level and encouraging international cooperation.

5.3.1. *War Crime*

The Geneva Conventions, Amendment Protocols I and II, statutes of international criminal courts and national criminal legislation define a war crime as a serious violation of international humanitarian law. According to the provisions of the Rome Statute, war crimes include actions directed against persons or property protected by the provisions of the 1949 Geneva Conventions and the 1977 Amendment Protocols and require the prosecution of their perpetrators. The Criminal Code of the Republic of Serbia also provides for this. The Article 4A of the Third Geneva Convention on the Treatment of Prisoners of War defines which persons may be considered prisoners of war. Among others, these

are: members of the armed forces of one party to the conflict, as well as members of militias and volunteer units, who are part of those armed forces, members of organized resistance movements belonging to one party to the conflict and operating outside or within their own territory. Therefore, the object of protection by this convention is a prisoner of war, in this case a combatant, a member of the armed forces. On the other hand, Amendment Protocol II of the Geneva Convention for the Protection of Victims of Non-International Armed Conflicts determines that all persons who do not participate directly or have ceased to participate in hostilities, regardless of whether their freedom is limited or not, have the right to respect for their persons, their honor, their beliefs and their religious rituals. The Protocol does not mention combatants or prisoners of war, but provides protection for those participating in hostilities, stating humane treatment and the prohibition of violence against the life, health and physical or mental well-being of persons, especially murder and cruel treatment, such as mutilation or any form of corporal punishment (Fabijanić Gagro, 2008).

Determining the status of a victim of war crimes implies the application of international law due to the blanket norm. While national criminal laws allow a choice between two acts – a war crime against the civilian population and a war crime against prisoners of war – the eventual qualification of the act depends on the assessment of whether the conflict in the specific case is international or non-international (Sokanović, 2021). The issue of the status of prisoners of war is related to armed conflicts, while in an internal (non-international) armed conflict, the status of prisoners of war does not arise, unless the parties to the conflict agree to provide that status to persons deprived of their liberty.

Persons who, according to the rules of international humanitarian law, enjoy the right to protection and respect in armed conflicts must not be attacked. They must be protected and treated humanely and without discrimination on any basis. There are two categories: the first category are civilians, i.e., persons who do not participate directly in hostilities, including refugees and internally displaced persons and specially protected civilians, i.e. women, children, the elderly, the wounded, the sick, shipwrecked, military medical and religious personnel, civilian or military civil protection personnel and humanitarian workers. The se-

cond category are persons who no longer participate in hostilities, such as wounded or sick combatants, shipwrecked members of armed forces, and prisoners of war.

5.3.2. *Crime Against Humanity*

The elements of crimes against humanity have been evident long before the Nuremberg Trials, the first trials for this crime. The crime against humanity is a direct product of the violation of the principle of humanity and the negation of humanity. Crimes against any civilian population are prohibited, regardless of whether it is an international or non-international armed conflict. In practice, the claim that actions directed against the civilian population taken at a time when there is no armed conflict can be qualified as war crimes against the civilian population is often rejected (Excerpt from the explanation of the verdict, Case KŽ1 Po2 2/2013 Gnjilane, para. 11 and para. 2.1.). Crimes against humanity, such as killings, extermination, enslavement, deportation and other inhumane acts committed before or during war or persecution on political, racial or religious grounds are within the jurisdiction of the International Criminal Court, regardless of whether those acts were committed in violation of other laws (Article II (11) Act No. 10 of the Control Council).

Despite the established rules of warfare, such acts are widespread in practice, which shows us that even in modern times, the Latin saying *Vae victis!* (Woe to the vanquished!) continues to apply (Ignjatović, 1998).

There are some basic differences between the definition of crimes against humanity contained in Art. 3 of the Statute of the International Criminal Tribunal for Rwanda (hereinafter: ICTR) and definitions in Art. 5 of the Statute of the International Criminal Tribunal for the former Yugoslavia (hereinafter: ICTY): setting or not setting the conditions for the existence of an armed conflict, discriminatory intentions and determining the object of the attack. Article 5 of the ICTY does not categorise an attack on the civilian population as "widespread or systematic", while Article 3 of the ICTR does. In addition, the ICTY in

practice recognizes the criterion determined by the ICTR as a condition for crimes against humanity. Considering the nature of this crime, several perpetrators participate in it within the framework of a common criminal goal, so the crime consists of numerous illegal actions, such as: killing, extermination, enslavement, deportation or forced relocation of the population, imprisonment or other forms of severe deprivation freedom, torture, rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, sexual violence, persecution, enforced disappearance, apartheid, etc. These acts illustrate the treatment of civilian persons in war. Also, potential war crimes such as: mutilation, conducting medical or scientific experiments on prisoners, destruction and appropriation of their belongings, inhuman treatment, etc., illustrate the treatment of prisoners of war.

When determining what constitutes a crime against humanity, we find the term enslavement, which means being placed in a position of a slave. It is also important to mention the conventions invoked by individuals, although they were not adopted as legislation on enslavement. These are the 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. Enslavement is also discussed in other conventions in the field of human rights and humanitarian law. By Rule 94, slavery and the slave trade are prohibited in all forms (Henckaerst & Doswald, 2005). The Rome Statute essentially takes over the definition of enslavement from the conventions. In paragraph 2(c) of Art. 7 of this statute states that "enslavement means the exercise of individual or all powers arising from property rights over a person, which implies the exercise of these powers in the trade of persons, especially women and children." Stating the elements of the crime, Art. 7 in footnote 11 specifies that the right to property is reflected in the sale, purchase, rental or barter of persons or the exercise of such actions against them and the deprivation of their freedom, which can also be reflected in forced labor or in another way bringing a person to the status of slavery, as defined by the 1956 Supplement convention.

Through the practice of *ad hoc* tribunals, we come across cases of enslavement in which the position is taken that the position of slavery itself does not have to be accompanied by other cruel behaviors. In the

"Foca" case before the *ad hoc* tribunal for the former Yugoslavia, keeping a person in a house against their will was characterized as enslavement. Namely, a certain number of persons were kept in a house that was not guarded and locked but was located in a hostile environment. The position of these enslaved people was worsened due to poor living conditions (lack of food), bad treatment and being forced to work which included housework. When summarizing the work of the Tribunal, the definition and analysis of enslavement given in the case "Kunarac and others" is taken as accurate. In this sentence, enslavement represents the manifestation of ownership rights over individual persons through movement control, control of the environment of residence, psychological control, measures taken to prevent and hinder escape, threat of use of force, abuse, cruel treatment and forced labour (International Criminal Tribunal for the former Yugoslavia, Case Kunarac and Others, Judgment, February 2001, par. 540). This kind of crime against humanity is similar to human trafficking even though it has different characteristics from enslavement. Enslavement is a crime against humanity, the cause of which is the implementation of a state plan or policy, while human trafficking is a crime perpetrated for financial benefit. We cannot fully accept this attitude because the basis of enslavement also lies in the financial interest of the enslaver.

5.3.3. *Enslavement and Transporting Enslaved Persons*

The international legal basis of the act of enslavement and transporting enslaved persons can be found in the 1885 Berlin General Act on the Congo, the 1845 London Collective Agreement, the 1890 Berlin Collective Act, and the 1926 International Convention on the Abolition of Slavery and in its supplement concluded in Geneva in 1956. The Federal People's Republic of Yugoslavia ratified this convention in 1958, one year after its entry into force. The aforementioned conventions define slavery as the state and position of persons over whom powers are exercised that represent the attributes of property rights, whereby a slave represents an individual with the status of property. From this definition of slavery, it follows that slavery implies the following acts: putting another in a position of slavery, disposal of persons in a servile

relationship, i.e. exercise of ownership powers, trafficking in persons in slavery and their transportation from one country to another, inducing another to sell his liberty or the liberty of a dependent or dependents. The Criminal Code of the Republic of Serbia, in the articles related to human trafficking and enslavement, stipulates punishment for acts committed against minors. The position of the enslaved is defined by the acts of criminal acts contained in the Criminal Code, which may consist of putting another in a position of slavery, of keeping them in such a position, of human trafficking or execution, i.e. mediation in the sale, delivery or purchase (Jovanović, 2022).

6. Responsibility to Provide Protection

The evident human suffering throughout history serves to incite and apply measures to protect and prevent further suffering (Focarelli, 2008). Contemporary international law is characterized by the correlation of the principle of humanity with other principles, which exhausts their mutual shaping and limitation. The principle of humanity acts on the principle of sovereignty, which leads to the emergence of a new principle – the principle of obligation and responsibility to provide protection to the population. This principle follows the principle of collective responsibility even though international criminal law criminalizes criminal responsibility. The responsibility of the state in practice was realized only as the individual responsibility of its citizens. The increasingly dominant influence of the principle of humanity from the beginning of the twentieth century led to the creation of the theory of humanized sovereignty. We find the emergence of this principle in Article 38 of the Statute of the International Court of Justice precisely because of the need to emphasize sovereignty as responsibility, not sovereignty as control. The result of accepting this concept is the Resolution of the UN General Assembly, the content of which is based on the principles of responsibility for providing protection. This responsibility, in fact, represents the obligation of every state to protect its population from crimes against humanity, war crimes and genocide, which implies further protection from inhumane enslavement and captivity. The resolution,

therefore, refers to the prevention of these crimes and their prosecution. The resolution provides for the establishment of the responsibility of the United Nations and the use of humanitarian funds.

The issue of responsibility for the protection of individuals from suffering and the responsibility of the state for serious violations of humanitarian rights incriminated as international crimes was resolved by sanctioning individuals. This approach is positive, but not sufficient, because it is first of all important that states show responsibility not by punishing individuals, but by preventing suffering, enslavement, captivity and all other inhumane acts.

7. Conclusion

The miserable position of prisoners, present from the very beginnings of human civilization, has changed throughout history, with the fact that it was always subordinated to the interests of the enslavers. The position of the captives also changed in the society from somewhat favourable to deprived of basic rights, such as, among others, the right to life.

Despite the will of the enslavers, which went as far as merciless killing and inhumane treatment, historical circumstances still influenced to establish better conditions for the enslaved. Conventions and other legal norms integrated into national legislation contributed to this. Thanks to them, no matter how inhumane the situation in the field is, the modern world tries to highlight the importance of correct treatment of civilians, specifically women, children, and the elderly.

The modern times and changes in the rules of warfare entail changes in the rules of treatment of prisoners. They are reflected in the legislation in the area of international humanitarian law, while regulations in the area of international criminal law aim to incriminate the perpetrators of acts such as war crimes, crimes against humanity and enslavement.

References:

Atanasovska Cvetković, A. (2021). Rimskiot emptio-venditio (Dogovor za kupoprodažba) vo Francuskiot Code Civile od 1804 godina. *Godišen zbornik, Praven fakultet, Univerzitet „Goce Delčev"*, Štip, vol. XI , br. 11, 34.

Bujuklić, Ž. (2010). *Forum Romanorum*. Beograd: Pravni fakultet Univerziteta u Beogradu, Centar za izdavaštvo i informisanje.

Deretić, N. (2011). Uporedna analiza: „Prava čoveka" u Rimskoj državi i savremena „ljudska prava". *Zbornik radova Pravnog fakulteta u Novom Sadu*, br. 3 (2011), 469–496.

Draper, G. I. A. D. (1988). Development of international humanitarian law. U: *International Dimensions of Humanitarian Law.* Dordrecht, Boston, London: Henry Durant Institute, Unesco, Martinus Nijhoff publishers, 67–90.

Fabijanić Gagro, S. (2008). Promjena kvalifikacije oružanog sukoba. *Zbornik radova Pravnog fakulteta Sveučilišta u Rijeci* 29 (2), 1067–1092.

Fabijanić Gagro, S., & Jurašić, B. (2013). Protection of civilians in modern armed conflicts-international legal solutions in light of the development of new tendencies protection. *Zbornik radova Pravnog fakulteta u Splitu* vol. 50, no. 3, 615–641.

Focarelli, C. (2008). The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine, *Journal of Conflict and Security Law*, Vol. 13 (2), 191–213.

Gaj, *Institucije*. preveo: Stanojević, O. (1982). Beograd: Nolit.

Gardner, P., & Jevons, B. F. (1895). *A manual of Greek Antiquities.* London: Charles Griffin and company.

Henckaerst, J. M., & Doswald Beck, L. (2005). Usually international law, vol I. Cambridge: ICRC and Cambridge University Press.str 355.

Ignjatović, A. (1998). Krivičnopravna zaštita života, zdravlja i telesnog integriteta civilnog stanovništva u ratu. *Vojno delo*, 1998, vol. 50, br. 1, 92–106.

Jovanović, A. (2022). *Međunarodno krivično pravo*. Beograd: Visoka škola za poslovnu ekononiju i preduzetništvo.

Jovanović, A., & Atanasovska Cvetkovic, A. (2021). Genocid – krivično delo protiv čovečanstva zaštićeno međunarodnim pravom. *Iuridica Prima, 7-th International Scientific Conference*, Ohrid School of Law.

Kandić, Lj. (1988). *Odabrani izvori iz opšte istorije države i prava*. Beograd: Savremena administracija. Tekst Hamurabijevog zakonika: Lj. Kandić, Odabrani izvori iz opšte istorije države i prava. (Beograd: Savremena administracija, 1988), 34–62.

Kurtović, Š. (1987). *Opća historija države i prava*, I dio. Zagreb: Informator.

Milak, E. (1986). Yugoslavs in the concentration camps and prisons in fascistic Italy during the second world war. *Istorija 20.veka*, Institut za savremenu istoriju Beograd, br.1–2, str 155–172.

Reisman, W. M., & Antoniou, T. C. (1994). The Laws of War. U: Vintage Books (Edt.), New York. *A Comprehensive collection of primary documents on international laws governing armed conflict*. 150–152.

Sokanović, L. (2021). Ratni zločin protiv civilnog stanovništva VS. Ratni zločin protiv ratnih zarobljenika: ubojstvo Aleksandra Lave. *Godišnjak pravnih znanosti Hrvatske*, Vol. XII No. 1.175-205. doi: 10.32984/gafzt.12.1.9

Stanojević, O. (2003). Egipat – civilizacija i pravo. *Anali Pravnog fakulteta u Beogradu*, LI, br. 1–2, 158–172.

Stanimirović, V. (2011). Novi pogled na Hamurabijev zakonik (I deo). *Anali Pravnog fakulteta u Beogradu*, 1/2011, 133–159.

Stanimirović, V. (2011). Novi pogled na Hamurabijev zakonik (II deo). *Anali Pravnog fakulteta u Beogradu*, 2/2011, 91–121.

Rimski statut Međunarodnog krivičnog suda, Zakon o potvrđivanju Rimskog statuta međunarodnog krivičnog suda („Sl. list SRJ - Međunarodni ugovori", br. 5/2001), dostupno na: https://www.paragraf.rs/propisi/zakon-o-potvrdjivanju-rimskog-statuta-medjunarodnog-krivicnog-suda.html

Statut Međunarodni Krivični Tribunal za bivšu Jugoslaviju, dostupno na:
https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_bcs.pdf

Statut Međunarodni Krivični Tribunal za Ruandu, Statute of the international tribunal for Rwanda, dostupno na: https://legal.un.org/avl/pdf/ha/ictr_EF.pdf

Ženevska konvencija o poboljšanju položaja ranjenika i bolesnika u oružanim snagama u ratu; Ženeva, 12. august 1949. godine (Prva konvencija), https://www.isac-fund.org/download/MHP-zbirka_2013.pdf

Ženevska konvencija o poboljšanju položaja ranjenika, bolesnika i brodolomnika oružanih snaga na moru; Ženeva, 12. august 1949. godine (Druga konvencija), dostupno na: https://www.isac-fund.org/download/MHP-zbirka_2013.pdf

Ženevska konvencija o postupanju sa ratnim zarobljenicima; Ženeva, 12. august 1949. godine (Treća konvencija), dostupno na: https://www.isac-fund.org/download/MHP-zbirka_2013.pdf

Ženevska konvencija o zaštiti građanskih lica za vreme rata; Ženeva, 12. august 1949. godine (Četvrta konvencija), dostupno na: https://www.isac-fund.org/download/MHP-zbirka_2013.pdf

Dopunski protokol uz Ženevske konvencije od 12. avgusta 1949. godine o zaštiti žrtava međunarodnih oružanih sukoba (Protokol I); Ženeva, 8. jul 1977. godine, dostupno na: https://www.isac-fund.org/download/MHP-zbirka_2013.pdf

Dopunski protokol uz Ženevske konvencije od 12. avgusta 1949. godine o zaštiti žrtava nemeđunarodnih oružanih sukoba (Protokol II); Ženeva, 8. jul 1977. godine, dostupno na: https://www.isac-fund.org/download/MHP-zbirka_2013.pdf

Dopunska konvencija 1956, dostupno na: https://arhiva.mpravde.gov.rs/lt/articles/medjunarodne-aktivnosti-eu-integracije-i-projekti/medjunarodna-pravna-pomoc/multilateralni-ugovori.html

Krivični zakonik Republike Srbije („Sl. glasnik RS", br. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 i 35/2019), dostupno na: https://www.paragraf.rs/propisi/krivicni-zakonik-2019.html

Zakon 10 kontrolnog saveta, CONTROL COUNCIL Law No. 10, dostupno na: https://www.legal-tools.org/doc/ffda62/pdf/

Predmet „KŽ1 Po2 2/2013" Gnjilane, st. 11 par. 2.1., Bilten sudske prakse Apelacionog suda u Beogradu, br. 7/2015, Intermex, Beograd, Sudska praksa, dostupno na:

http://www.bg.ap.sud.rs/lt/articles/sudska-praksa/pregled-sudske-prakse-apelacionog-suda-u-beogradu/

Međunarodni krivični tribunal za bivšu Jugoslaviju, predmet Kunarac i drugi, Presuda, februar 2001, par 540 dostupno na:

https://www.icty.org/x/cases/kunarac/acjug/bcs/kun-aj020612b.pdf

KRIVIČNOPRAVNA ZAŠTITA ZAROBLJENIKA I NJIHOV POLOŽAJ KROZ ISTORIJU

Rezime: Status zarobljenika u ratu i njihov položaj nakon porobljavanja privlači pažnju humanog dela čovečanstva. Kroz istoriju nailazimo na raznovrsne primere položaja porobljenih, odnosno zarobljenih koji su umnogome odražavali interese porobilaca. U cilju sprečavanja ratnih zločina i zločina protiv čovečnosti, koji utiču na položaj civila i ratnih zarobljenika, u oružanim sukobima postoje pravila ratovanja. Uprkos postojanju ovih pravila, istorija je pokazala da su ratovi obeleženi zločinima protiv čovečanosti, tj. da su obilovali masovnim ubijanjima civila i zarobljenika, razaranjima, pljačkanjima i porobljavanjima. U radu je prikazan položaj porobljenika kroz istoriju, a putem komparativnog metoda analizirane su konvencije, povelje i zakonski propisi međunarodnog humanitarnog i međunarodnog krivičnog prava kojima su inkriminisani ratni zločini, zločini protiv čovečnosti i ropski odnos, a sve u cilju poboljšanja položaja zarobljenika.