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The Living Tradition of the Lviv School of International Law

У цій статті зосереджено увагу на концепціях війни та миру в міжнародному праві, розвинутих у науковій спадщині таких науковців як Густав Рожковський і Зигмунт Цибіховський, які представляли погляди юристів-міжнародників і науковців зі Львова у XIX – на початку XX століття. Ці автори дотримувалися цілковито протилежних поглядів щодо застосування сили у міжнародних відносинах, стверджуючи при цьому, що правила ведення війни слід систематизувати і врегулювати у правовому просторі. Дискусії щодо миру і війни у Львівському університеті у XIX-XX століттях відбувалися у середовищі, де велися конституційні дебати про державність і право на самовизначення для польської і української спільнот, які проживали у Галичині на території Австро-Угорської імперії.

Ключові слова: Львівський університет, Густав Рожковський і Зигмунт Цибіховський, право народів, міжнародне право, війна, справедливість.

This article focuses on the concepts of war and peace in international law embedded in academic heritage of such scholars as **Gustaw Roszkowski** and **Zygmunt Cybichowski**, who represented the positions of the international lawyers and academicians working in Lviv (city being named throughout its history as Leopoldis, Lwów, Lemberg and Lvov) in 19th century and early 20th century. These authors represent totally opposing standpoints with regard to the use of military force in international relations, arguing however that rules on war need to be systematized and regulated by legal norms. It is assumed that the debates on war and peace, as held at the University of Lviv in 19th and early 20th centuries were linked to the constitutional debate on statehood and self-determination for Polish and Ukrainian communities, living at the territory of Galicia in the Austro-Hungarian Empire.

Keywords: University of Lviv, **Gustaw Roszkowski**, **Zygmunt Cybichowski**, Law of Nations, international law, war, justice.

Introduction

War and peace are two opposite states in which international society has operated throughout the history of the civilization. Over time, these polar modes of political conduct in the international arena have sparked a variety of academic and wider public discussions about regulating international relations as something embedded in legal norms, rules and traditions. These exchanges have put the question of the use of power in international affairs on the contemporary research agenda in both international law and political science.

Contemporary discussions of war and peace questions address such issues as just and unjust wars, the legal and political grounds of wars, rules governing the conduct of belligerent parties while they fulfill their international legal obligations, and the consequences of wars in the dimensions of law, economics, politics, and society. Given the changing nature of wars and especially their so-called hybrid character, the international

УДК: 341.01: [341.3.018]
<https://doi.org/10.36952/uail.2020.2.36-45>

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community is increasingly pushing issues of law and international law to the fore in contemporary legal, and particularly international legal, discourse. The 'hybrid' nature of modern wars – evident in the ongoing military conflict in Eastern Ukraine and the case of the annexation of Crimea – refers mostly to the massive involvement of nonmilitary instruments (information campaigns, economic pressure, financing of terrorism, lawfare as warfare, etc.), rather than the use of force and the military component itself, to achieve the desired result of foreign policy.

In its institutional and intellectual history, the University of Lviv has been home to various approaches to issues of law and war being controversial or even polarizing in nature. The relevant concepts were also reflected in the public discourse surrounding events and influenced both public opinion and state behavior in the international arena at the start of the 20th century and in the interwar period. This contribution is aiming to present the academic output of Lviv scholars on war and peace studies while teaching international law at the University of Lviv.

In the introductory part of this essay I will address teaching and research in international law at the University of Lviv. Gustaw Roszkowski's (1847–1915) stance on war and peace in international law and his focus on issues of justice in international relations will be compared to Zygmunt Cybichowski's (1879–1946) views that the justification of wars is a valuable instrument of international politics that should also be applied in international law. Issues of the social and legal dimensions of war and peace were also important in Lviv, in light of the statehood and state-building processes that were underway in the multiethnic, multicultural Galicia of the 19th and 20th centuries. Here the scope of the debates will be limited to the constitutional dimension and political law perspective, represented by the contributions of Stanisław Dnistriyanskyi (1870–1935), author of the Constitution of the West Ukrainian People's Republic, and Stanisław Starzyński (1853–1935), mastermind of a 1928 project for a Polish constitution and author of numerous publications in the field of constitutional law, including some dealing with constitutional law in a comparative perspective. The concluding remarks will focus on the common and distinctive points in the views of the authors in question.

International Law at the University of Lviv: Origins of Teaching and Research

University of Lviv (now Ivan Franko National University of Lviv)¹ was established on 20 January 1661 by a Charter of King Jan Kazimierz. According to this Charter the Jesuit Collegium was given the notion of the academy and title of the university, including the right to provide education in all university courses and to grant the degrees of licentiate, master and doctor.

Studies of international law in Lviv were of course tightly connected with the history of the law school itself. However, only in 1784 did academic and education activities in the field of law begin in earnest, after the university was re-established as Josef II University with a medical faculty and law school officially embedded in its institutional structure [13, P. 78]. Nevertheless, as Adam Redzik [6; P.357] rightly points out, the late date of the law school's formal establishment does not mean that legal courses had not been provided at the university. Redzik also suggests that arguably the first law professor at the University of Lviv was Tomasz Perkowicz, who taught canon law even though a separate legal department had not been established yet. As a part of Lviv Academy in the 17th century, canon law boasted firmly established pedagogic traditions connected with the names of Melchior Starzeński, Ignacy Odrzywolski, Dominik Sędzimir, Josef Bertrand, Andrzej Narolski and others, as legal studies were already present in the academic curricula of the university even when the law school was not yet set up as part of its university education in the modern sense. Later the traditions of the canon school of law were upheld by Edward Rittner, Władysław Abraham and Leon Halban, among others who contributed to the institution of academic research in this field of law.

In 1774, Anton Pfleger and Jan Ambros arrived in Lviv, having been called in, as Adam Redzik states, to arrange for studies in law in the new Kronland² territories fully ten years before the law school's official founding. Pfleger was a professor of the law of nations, natural law and Roman law, Ambros, a professor of canon law and criminal law. Besides instruction in legal subjects, research in international law was also

¹ Both, the city of Lviv and the University of Lviv have been bearing different official names, related to change of the sovereigns and countries ruling over the territory in different historical periods. The University of Lviv has had various official names, reflecting its cross-cultural history on the border between West and East. Established in 1661 as Jan Kazimierz University, it offered academic and educational activities focused on theology and philosophy until 1773, and then was shut down. Upon its re-establishment in 1784 as Josef II University, the medical faculty and law school were institutionalized in its structure for the first time. In the period from 1805 to 1817 it was downgraded to a lyceum; however, it regained its university status in 1817 as Franz I University and remained such until 1918. In 1919 the university again became Jan Kazimierz University and held this name through 1939. In 1940, the university was once more renamed, this time after Ivan Franko, and bears his name today.

² Kronland Galizien und Lodomerien was established as part of the Austro-Hungarian Empire in 1867.

conducted prior to the establishment of the law school at the University of Lviv. An anonymous work titled «Synopsis of Three Basic Laws: Natural Law, Political Law and Law of Nations»¹ appeared in 1780, representing the actual stage of international legal science in 18th-century Poland.

After the law school was founded in 1784, the law of nations (in Ukrainian *право народів*, in Polish *prawo narodów*) as an academic discipline attained a permanent place in the university curriculum. The law of nations (now known as international law) was taught by Ignaz Zergoll,² Maximilian Fügler,³ Petro Lody (Lody),⁴ Mikołaj Napadiewicz-Więckowski⁵ and others.

With the inauguration of the law school in Lviv, international law took its place on the teaching and research agenda of Lviv's legal community, which exercised strong commitment to teaching canon law in the 17th and 18th centuries. After the law school was instituted in 1784, courses related to the domestic legal system became a focal point on the academic agenda of the university. The law of nations was already considered as an essential part of legal education there; however, original research in international law from this period seems to have been quite sporadic and unusual in academic life in this field. The thematic coverage of different special issues and institutes of international law ranged from debates about sovereignty and statehood to norms, rules and customs, war and peace, and finally codification of international law as one of the foremost tasks of the international community.

The University of Lviv's teachings in international law were embedded in European discourse and associated with the teaching and study of natural law. As Ihor Zeman has noted, international law as an academic discipline emerged and developed almost contemporaneously at the University of Lviv and at German universities, as it was based upon the natural law discussions of the 17th and 18th centuries and tightly linked to the public law and constitutional law discourses of the 19th century. However, almost all teachers in these subdisciplines also specialized in criminal law, and thus were able to connect debates on the role and sense of justice in personal perspective to discourses on justice as a social phenomenon and global challenge. A final and consequential factor throughout the history of the University of Lviv has been its heavy involvement with the international and particularly the European educational sphere. The university's international impact and commitment are deeply rooted in its academic traditions and reflected in the composition of its teaching staff, who are known today for producing valuable academic output as source of teaching materials in different subjects, including law.

Gustaw Roszkowski, International Law Studies and Research in Laws of War at the University of Lviv

The rules of customs of wars, and their causes and consequences for states and their populations, were among the topics that Lviv lawyers addressed extensively in the late 19th and early 20th centuries. The various contemporary authors' contributions to the treatment of issues of war and peace in international law and international relations reveal a diversity of approaches that is due in part to the complexity of the issues themselves. While analyzing the approaches of different authors, I intend to focus on personal approaches to the recognition of war as a legitimate tool of international politics, and reasons for justifying or not justifying wars.

When Gustaw Roszkowski (1847–1915) began his work at the University of Lviv in 1877/78, the science of international law was showing strong signs of development at the university. On 10 December 1878 he was appointed extraordinary professor in philosophy of law and international law at the University of Lviv, whereupon its department of philosophy of law and law of nations was established, marking a qualitative transformation from solely teaching international law to pursuing academic research in that field.

Born in the village of Syrniki in Poland, Roszkowski started his legal education at the *Szkoła Główna Warszawska* (University of Warsaw) law school and continued his studies at the Universities of Berlin, Leipzig and Heidelberg. In 1870, the University of Fribourg (Switzerland) conferred on him the title of doctor of

¹ This contribution is presented in J. Kolasa, *Pierwsze «System prawa narodów» w języku polskim z 1780 r. Przedstawione na posiedzeniu nauk społecznych dnia 3 lutego 1949 roku*/J.Kolasa. – Wrocław: Nakładem Wrocławskiego Towarzystwa Naukowego, 1951.

² According to Ihor Zeman, Ignaz Zergoll, a professor of natural, state, criminal and international law, was the first teacher at the University of Lviv to teach the subject 'international law'. Zeman, *Razvitie nauki*, p. 23.

³ Maximilian Fügler also chaired the Department of Natural and Criminal Law; besides law of nations he also taught courses on natural private law, introduction to legal sciences, customary law, statistics and Austrian criminal law.

⁴ Petro Lody (Lody) taught philosophy and natural law based on Khristian Baumeister's «Elementa Philosophiae Pecentioris» and Karl von Martini's «Notion of natural, state and international law». Zeman, *Razvitie nauki*, p. 24.

⁵ Mikołaj Napadiewicz-Więckowski likewise combined teaching of international law with instruction in subjects such as philosophy, natural law, general law of nations, and criminal law. He also taught a course titled «Natural and European International Law» that was later transformed into the course «Natural International Law».

philosophy, and in 1871 he habilitated in philosophy of law at the Jagellonian University in Kraków (Poland), where he subsequently began teaching philosophy of law. He was also a member of parliament in Vienna for more than twenty years. Furthermore, he was selected to become a member of the Institute of International Law, as was Franciszek Kasperek. At the time, the two were the only professors of international law in Poland. Roszkowski authored numerous publications in the philosophy of law¹ and international law, covering different areas of international law such as diplomatic and consular law, extradition and asylum issues, and law of international organizations,² as well as the legal aspects of war. His most noteworthy publications on the issues of war and peace include «O Oxfordzkim Projekcie prawa wojny lądowej w porównaniu z prawem francuskim, hollenderskim i rosyjskim oraz z deklaracją brukselską» (On the Oxford Project on the law of war in comparison to French, Dutch and Russian legislation and the Brussels declaration, 1881) and «O poglądach Moltkego na prawo wojny» (On Moltke's views on the law of war, also 1881).

The first publication is actually a concise description of the rules of war that attempts to represent both the different approaches to regulation of war that were embedded in the domestic legislation of Russian, French and Dutch law, and the provisions reflected in the 19th-century international instruments on rules and customs of war. The second contribution comprises a comprehensive critical appraisal of Moltke's position on war and peace. Though both publications are devoted to the legal regulation of war, they differ in their subject matter. The former focuses on the content of Oxford's Laws of War on Land Project, presents the structure and content of rules to be codified and addresses some issues that the project did not include in its scope of regulation. The second publication deals with the nature of war and its impact on mankind and the legal order in a broader sense.

Roszkowski suggests that whereas war arises in the international community as a tool for reacting to any kind of injustice, preventing dangerous aftermath, or solving interstate misunderstandings[9, P.18], in all cases a legal framework is needed to prevent the escalation of cruelties and atrocities that can follow military actions. Describing the content of the Oxford Declaration for a general audience, Roszkowski sums up the fundamentals of legal regulation of rules and customs of war in the following principles. First, war activities exclusively concern the military forces of the states. Also, the rules of war must be applied to limit freedom of behavior in wartime so as to prohibit massacres, unreasonable persecutions, tyranny and injustice. Finally, agreements reached in the course of wars have to be implemented and respected, and only temporary measures can be enacted in a state of occupation.

These basic principles influenced the structure of the Oxford Project itself, which addresses the behavior of belligerents with regard to military personnel, civil populations, medical personnel and others; the legal regime of occupation; and prisoners of war and interned persons³ on the territory of neutral states. In his 1881 work on the Oxford Project, Roszkowski explains the legal framework and goes on to point out legal gaps pertaining to the conduct of wars and their results. He states also that the Oxford Project, like the international community itself, lacks a common approach to the proclamation of war as an independent institution of legal regulation[9, P.18], a situation attributable to the debated nature of war as an instrument of international relations.

Roszkowski's own approach to wars is represented in «On Moltke's View of Laws of War» (O poglądach Moltkego na prawo wojny). Restating the position which he took in debates with Moltke, who considered war mankind's greatest blessing, Roszkowski argues that if Moltke's approach to war were to prevail, it would constitute the most horrifying development ever suffered by mankind and deprive the human world of its future [10, P.4]. Analyzing the international community's various attempts to regulate wars in the 19th century, Roszkowski nonetheless recognizes the unavoidability of wars, seeing all those attempts and international commitments as aiming mostly to minimize wars' negative consequences and impacts [10, P.6]. As for the question of the advantages conferred by wars, elaborated by Moltke, Roszkowski argues that there is only one just reason for wars: the defense of peoples' rights acquired rightfully in history [10, P.9]. Analyzing Moltke's claim that wars are a civilizing factor of economic and political consequence for the development of the state and statehood, Roszkowski criticizes the statement that wars are better suited for resolving international disputes than are international parliaments or tribunals. In conclusion, Roszkowski states that Moltke was right in two ways: wars are an unavoidable part of human life, and the most obvious way to combat the atrocities that wars cause – is to minimize the ennoblement of human customs. Meanwhile,

¹ E.g., *Über das Wesen des Eigentums*, Freiburg 1870; *O istocie i znaszaniu filozofii prawa*, Kraków 1871; *O komunizmie i socjalizmie*, Kraków 1872; *O pojęcie prawa natury*, Lwów 1879.

² E.g., *O przywilejach i ceremoniach w świecie dyplomatycznym*, Lwiv 1872; *O poselstwach dyplomatycznych i konsulatach*, Vienna 1872; *O azylach i ekstradycji*, Lwów 1881; *O organizacji międzynarodowego związku państw*, Lwów 1880; *De la codification du droit international*, Brussels 1906; *Das neuste Stadium Reichsdume*, Vienna 1906.

³ Internment of persons, practiced predominantly in wartime, is understood as a type of forcible detention of people or enemy aliens in large groups at specified locations, without trial.

Roszkowski continues, the reasons for war lie in human imperfection. Wars are not of divine origin—they are not based on God's will but are rooted in human behavior, irrespective of the social status of the people involved in the decision-making process at the state level. In his analysis of the need to codify laws and customs of wars, he states that law that is not grounded in the historic and civilizational factors of a human life is a colossus without a foundation, very much subject to the winds of time[9, P.4].

Discussing the nature of interstate cooperation in the 19th century, Roszkowski emphasizes that very few elements of international law have a role in the regulation of the interstate conduct. He sees just two trends in international law as important: that of its institutionalization and creation of new forms of interstate cooperation, and another tendency connected to then recent developments in the legal regulation of warships. In his essay «Über das Wesen und Organization der internationalen Staatengemeinschaft» penned after the international community failed to realize its late-19th century dream of eternal peace, he suggests that the international community's contemporary commitments regarding the rules and customs of wars be directed to reducing cases where war is used to solve disputes and minimizing the negative consequences of wars. In his opinion, war should be defined as an extraordinary state of affairs [8, P.19] that is justifiable only when it serves to protect the rights of the state, and that is conducted by armies and not the population.

Having compared different principles as foundations on which to organize the interstate community, Roszkowski strongly believed that in the future, the principle of nations (Nationalitätsprinzip) [8, P.22] would form the basis of interstate cooperation and organization, and eventually also of the future of political relations in the world. Thus, he held that the aim of war is the mitigation of the enemy's power—not vengeance. This opinion is reflected in the current changes in the legal regulation of wars, where, based on principles of humanity and compassion in wartime, the prohibition of cruel treatment and atrocities is being established as new paradigm in the law of war [8, P.20].

Zygmunt Klemens Cybichowski (1879–1946), Law of War Studies at Lviv University in the Interwar Period

Born in Poznan in 1879, Zygmunt Klemens Cybichowski also had an internationally diversified legal education. He studied law in Berlin, Munich, Breslau (now Wrocław), Strasbourg and Paris and received his degree of doctor of law in 1902 in Strasbourg based upon his work «Artikel 76 der Reichsverfassung». In 1910 he defended his habilitation thesis based upon his work «Das antike Völkerrecht» (1907) in Fribourg (Switzerland), and in 1912 he was named an extraordinary professor in law of nations and private international law. Zygmunt Cybichowski's academic legacy addresses issues both of national and international law with a particular focus on international private law and international public law issues. He was the first chair of the International Law and Private International Law Department of the University of Lviv, he remarkably influenced the academic discourse on international law issues [12, P.210]. He considers the domestic and international legal orders as competing ideas in the life of modern states, where the states tend to adhere to legal rules of national or/and international origin at different times and in different ways [5, P.995-1003]. Adam Redzik remarks that while holding this position at University of Lviv, he published quite extensively: «Studien zum Internationalen Recht» («Studies in International Law», Berlin, 1912), «O międzynarodowym prawie prywatnym» («On International Private Law», Lwów [now Lviv], 1912), «O pojęciu i źródłach prawa narodów» («On the Idea and Origins of the Law of Nations», Lwów, 1915), «Prawo narodów. System prawa międzynarodowego» («The Law of Nations: The System of International Law, Lwów», 1915).

His special work, titled «Międzynarodowe prawo wojenne. Z uwzględnieniem przesilenia Bałkańskiego» («International Law of War, with Consideration of the Balkan Crisis», Lwów, 1914) represents his approach towards the issues of law and peace. We live in a time of war, Cybichowski suggests[1, P.2], and it is not unusual for some people to treat war as a great boon while others consider it the most barbarous kind of human conduct. These two approaches to war, he states, are based on perceptions of its effects on society, one camp arguing that war brings death, property losses and inescapable, indivisible changes in human nature, and the other maintaining that it stimulates prowess, courage and sacrifice, and is moreover a source of prosperity and happiness. The gap between these two visions, he asserted, can be over-ruled by linking war to human nature.

Cybichowski suggests that human nature is the real cause of wars, for it is human nature not to recognize that an institution of any nature can be strong enough to prevent military action. Even were there the agreement can be reached that wars result from application of the principle *par in parem non habet imperium*, he doubts the establishment of a world-level superpower would help to solve the problem, as war is inherent to human nature. «Man exists to fight» (*Człowiek jest po to, by walczyć*)[1, P.4], Professor Cybichowski states,

explaining further that even as people fight every day for their survival, they are also struggling for their beliefs, daily bread and homeland—in other words, the manner and type of this struggle might change, but the fact of war never will, for eternal peace would mean eternal death. According to Cybichowski, the purpose of the law of war is to «limit the freedom of fighters» (*ograniczać swobodę walczących*), since in the chaos of war the basest human instincts come into play, transforming the meaning of war from the idea of winning the struggle [1, P.4] to the idea of destroying the enemy as well as enemy's property and life.

War is a military struggle between states, so parts of states and their units are not subject to the laws of war. Cybichowski points to the difficulty of applying this rule in cases of insurrection, civil war and revolution within a society, emphasizing these cases as the cause of a gap in the legal regulation of warfare. As he sees it, domestic criminal law is unsuited to these situations because it mainly addresses questions of individual responsibility for criminal offenses and therefore cannot be automatically applied in cases of illegal conduct by mass movements. Nor is international law applicable here, domestic revolts lack an interstate dimension. Therefore, the international laws of war ultimately cannot be the legal framework applied in these circumstances.

To answer the question of what legal rules would govern a domestic insurrection, Professor Cybichowski proposes looking to analogous factual situations already treated by law, so that the rules applied can be examined and the legal explanations and interpretation of the already existing legal instruments and parameters can be extended to the case at hand [1, P.10]. He argues that international legal rules are also applicable in cases of broad-based domestic revolts and revolutions because such events clearly outreach the territorial borders of states to become matters of international concern—especially in cases where, in the course of military action, a rebel population organizes itself in a state-like manner and assumes the duties of state on behalf of the inside population in the disputed territory. However, Cybichowski surmises, international rules governing states' behavior in cases of war would be applicable only on the condition that other states recognize the state of affairs and expand the applicability of international rules of war to this kind of international conflict. In reality, this would mean recognizing a newly created state on such a territory, either by international treaty or through connivance, as in the case of the recognition of Congo in 1885. In analyzing the question of domestic wars and revolts, Cybichowski tries to explain the international law of war's non-applicability to the Polish revolt of 1863, contrasting this mass movement with the case of the U.S. Civil War and the United Kingdom's recognition of the Boers as a party to war.

Beyond the issue of domestic wars and insurrections, Cybichowski asks whether the rules and customs of wars as recognized by the civilized world apply in cases of colonization, which is usually followed by bloody massacres and atrocities against the «less cultured» nations (*lud niższej kultury*) [1, P.20-22]. He observes that law regulates societal life and also originates from the society in the form of standards, and that can be effective only if the society knows and recognizes legal rules. However, Cybichowski stresses, even when a nation that is a belligerent party to a conflict does not acknowledge the rules of war as they are widely known in Europe, the moral and ethical rules that prohibit atrocities and cruelties must still apply: law regulates the external behavior of a people, whereas ethics and religion regulate its internal, personal dimension. At the same time, he holds that knowledge of international rules and customs of wars is mandatory for any nation that is preparing to fight, be it for independence or in order to defend itself.

On the question of the causes of wars, Cybichowski remarks, regarding the international law of his day, that although it does not identify cases in which wars ought to be declared, it nonetheless obliges states to use war only as the *ultima ratio* instrument, when all instruments of amicable solution of the conflict have already been set aside as ineffective remedies to resolve the dispute, and when the dispute by its nature is of utmost importance for at least one of the parties involved. Cybichowski also stresses the importance of the *Convention pour le règlement pacifique des conflits internationaux* of 1907¹, which reflected interstate accord about committing to peaceful settlement of international disputes via (among other mediations and negotiations) referral of such disputes—with regard to both acts and facts—to the newly established Hague Court².

As to the goals of wars, Cybichowski argues that they are twofold, defending either rights or interests. Regarding the 1907 Hague Convention for the Pacific Settlement of International Disputes, Cybichowski states that war must strive for justice, whether in legal affairs or in the field of important state interests [1, P.15]; thus a party's need to validate its rights is not in itself a legitimate goal of war and cannot be considered as such. However, he also underlines that international law has very general limitations, since rights and interests can be very broadly interpreted in the reality of the international relations.

¹ Known as the 1907 Hague Convention for the Pacific Settlement of International Disputes, available in English at <http://www.pca-cpa.org/upload/files/1907ENG.pdf>

² By «Hague Court» Prof. Cybichowski probably meant the Permanent Court of Arbitration, which was established by the Convention for the Pacific Settlement of International Disputes in 1899 (Art. 20); however, in 1907 the Hague Convention for the Pacific Settlement of International Disputes introduced amendments to the 1899 Hague Convention.

In the textbook on «*Prawo narodów. System prawa międzynarodowego*» [2, P.320-402] (Law of Nations) professor Cybichowski addressed the legal regulation of the state of war in the Chapter III, which is devoted to the analysis of the state crimes. He linked the state crimes to the state behavior on the international arena while discussing peaceful and not-peaceful conflict resolution practices in international relations. Before presenting the contemporary legal regulation on wars, he notices that wars are contradictory to the fundamentals of international law. Wars infringe fundamental rights of the states, namely the right to exist, the right to equality, the right to independence, the right to trade and the right for respect. Only in wars states can be deprived of their existence and independence; only in wars state symbols exposed to unpunished dishonoring conduct; only in wars state rights to equality and to trade experience different limitations. Cybichowski argues that wars have different meanings: a state, which is opposed to peace, and as state of use of military force. He points out, that beyond being a legal conflict (aiming to protect fundamental rights of the state under international law), wars occur to protect also state interests. In Cybichowski's perception, war is not only the application of military force; it can include hostile actions, which can be also conducted unilaterally by one conflict party (so-called unilateral war).

Within his book «*Międzynarodowe prawo wojenne*», Cybichowski focuses on institutions of the law of war like the proclamation of war, status of the belligerents, status of the combatants and civil population, property issues, and legal aspects of ending wars according to international law. The textbook itself includes an analysis of state practices and also of doctrinal approaches in this field, with relevant insights into the real international agenda of those times.

Wrapping up his concise presentation of international rules and customs of war, Cybichowski's concluding statements remain valid even in modern times: since world peace (in his words, eternal peace) has never yet been established and the near future holds no prospect of its emergence, knowledge of international rules and customs of wars seems an effective tool for those opposed to war and «war supporters» alike. He closes by looking ahead: «Those who work with law of wars, who spread the knowledge about it, can serve for their nation and human mankind in the future» [1, P.15].

Cybichowski also contributed to the development of international criminal law by investigating the question of individual criminal responsibility in various jurisdictions and patterns of interstate cooperation in this matter. While researching the nature of international criminal law he argued that it is part of international private law [3, P.9], thus suggesting that the rules of international private law apply in international criminal law. His writings moreover suggest that both international criminal law and international private law will by their nature decline [3, P.141] as it becomes increasingly possible to unify the different rules applicable to criminal matters in different legal systems across the globe. In this contribution Cybichowski analyses the nature of different legal principles, which determine the state jurisdiction in the case of the prosecution for the criminal offences, will initially be used for seeing relief in criminal cases with the international involvement. Identifying the territoriality principle and personality principles as the key elements of the interstate cooperation in criminal matters, Cybichowski also argued that the universality principle with regard to the jurisdiction in criminal matters contravenes to public international law, so his ideas in this direction do not seem to be followed nowadays.

Gustaw Roszkowski and Zygmunt Cybichowski, who both regarded the interstate community as unable to secure and guarantee worldwide peace, approached international law – its development and its role – differently with regard to its actual purpose, that is, supporting international and interstate communication. Both considered war an act of last resort by which states attain and restore their rights. Cybichowski, however, included the upholding of the state's interests as a legitimate objective of military actions. Cybichowski also noticed that state use different means in wartime, so do not limit themselves to using military force. Nowadays these unilaterally hostile actions of the state can be traced in the notion of a «*hybrid war*», when states try to achieve advantages in a conflict without being directly using the laws of war. Both seemed to underline the importance of solving the relevant issues of national minorities for maintaining the international legal order and guaranteeing the stability of interstate cooperation.

Despite their different positions on the origins and causes of wars, Roszkowski and Cybichowski agreed about the need to spread knowledge about the fundamentals of international humanitarian law (with different reasoning in the background), and both stressed the ethical dimension as an indispensable element in discussion of war and peace. They viewed the legal regulation of wars as naturally connected to the ethical aspects of warfare, particularly questions of just reasons for wars. In this perspective, their explanations of what makes wars just or unjust were linked more broadly to debates about the self-determination of peoples – a crucial right for Ukrainian and Polish communities unified in the Austro-Hungarian Empire where, as Stanislaw Dnistrians'kyi argues, the equality of rights proclaimed in constitutional provisions actually «was turned out into the reverse on being carried out» [4, P.5].

The Constitutional Dimension of Discussions about War and Peace

Multiethnic, multicultural Galicia, which formed part of the Austro-Hungarian Empire during its transformation into a constitutional monarchy, racked up considerable experience in dealing with the political, economic and social lives of different communities of ethnic and religious minorities over a century. For the minority Polish and Ukrainian communities, academic disputes about war and peace on a global scale were associated with a statehood agenda and a constitutional perspective on global developments.

At the university level, these discussions were evident in attempts to provide a native language university education. Instruction at the University of Lviv was originally in Latin, but from its re-establishment in 1784 until the mid-19th century, most education in the law was conducted in German as well. The law school at Lviv introduced Ukrainian-language instruction as early as 1862¹, and education in Polish became available there in 1867²; however, unrestricted official conduct of educational activities in local languages was not legitimized until 1871. The Austro-Hungarian Empire may have appeared to have resolved the language issue in 1871, but in reality this question fueled enormous tensions at the university throughout the interwar period, reflecting the societal debate on the region's minority issues. The ethnic Ukrainian population in the region attached the utmost importance to academic discussions of war and peace because of their impact on statehood and state-building traditions. Among the Lviv professors³ by whom legal disciplines were delivered in the Ukrainian, the most prominent figure is Stanislaw Dnistrians'kyi (1870–1935).

Renowned as an internationally engaged Ukrainian specialist in civil law and theory of law, Dnistrians'kyi did not return to Lviv after World War I. In 1919, he emigrated to Prague, where he was actively engaged into the academic life of Ukrainians in exile. He was one of the founders of the Ukrainian Free University in Vienna. Besides publishing numerous works on civil law, he also contributed to the development of Ukrainian constitutional traditions with such publications as «*Ukraine and the Peace Conference*» and «*The General Science of Law and Politics*», addressing issues of war and peace from the perspective of statehood and the state-building process in the region.

Professor Dnistrian'skyi started his work on Ukraine's issues at the Peace conference with a chapter titled «The Right of Self-Determination of Peoples» where he suggests that the most important task of the Allied Powers' Peace Conference is ensure permanent and stable peace after the Great War. He also argues that although this enormous task cannot be achieved by «merely proclaiming the ideas of 'right and justice' and the principle of self-determination of peoples»; these ideas aim to lead a mankind into the peaceful path of order and of pacific and due organized international traffic [4, P.1]. Further on, he suggests that the self-determination is not an arbitrary concept but one based upon historical developments and arising from the nature of modern people. Nation and people are, for Dnistrian'skyi, identical notions irrespective of the number of people belonging to them, and are based on two elements – nature and culture – that are perceptible [4, P.8]. A third element is the territory where the population is settled. Dnistrian'skyi argues that a population has the right to self-determination based on the so-called ethnographic principle, which combines the natural and cultural aspects and relates them to a territory and the people living on it. The Allied Powers at the Peace conference advised that this principle be followed in order to arrive at a just solution of the national problem [4, P.13]. This work is remarkable because Dnistrians'kyi often goes beyond the legal paradigm in an effort to find arguments that validate the need for, and justify the existence of, the Ukrainian people's right to self-determination and thus also to statehood.

The constitutional dimension of the debated issues around the need for self-determination should also be represented here. Of the many prominent Polish lawyers with direct connections to the University of Lviv, Stanislaw Starzyński (1853–1935) [7] and his approach to the essence of political law most deserve to be mentioned for influencing the debate on the sense and essence of constitutions in those times. A significant contributor to the development of science of constitutional law in Poland, Starzyński addressed issues of a constitutional nature from both practical and academic standpoints. He is known for his

¹ Introduced in 1862 for subjects required to be on the final exam: civil law, civil process and criminal law and process. For more detail see Marian Mudryi, *Spór o Ukraiński Uniwersytet we Lwowie na Przełomie XIX i XX stulecia i Ukraiński [Tajny] Uniwersytet 1921-1925*, in: A. Redzik (ed.), *Academia Militans. Uniwersytet Jana Kazimierza we Lwowie*, Kraków, 2015, p. 887-912.

² Partially introduced in 1853, when Professor Jozafat Zielonacki (1811–1884) was allowed to use Polish terminology in his lectures. For details see Adam Redzik, *Pierwsze wykłady w językach krajowych – pierwsze katedry polskie i ukraińskie*, in: Redzik, *Academia Militans. Uniwersytet Jana Kazimierza*, p. 397-410.

³ Legal disciplines in Ukrainian language were delivered Emil Łopuszanski (Lopushansky), Władysław Ritter von Srokowski (Srokovsky), Oleksandr Ogonowski (Ohonovsky), Iwan Dobrzanski (Dobriansky), Petro Stebelski (Stebelsky) and Volodymyr Werhanowski (Verhanovsky), who mostly specialized in civil law and process or criminal law and process.

contributions to and involvement in the elaboration of Polish constitutions in 1928¹ and 1935, as well as his support for the creation of a constitutional court in the country, his work on issues of citizens' rights and freedoms, and his activities as a member of parliament in Vienna. Starzyński's academic work, on the other hand, tends to focus mainly on constitutional issues connected to procedures and aspects of state building, and leaves the social and nationality-based discussions of the constitutional process in the region only fragmentarily addressed.

A constitutional debate on self-determination held at the University of Lviv was connected with the biggest national communities. These two populations' ultimate goals differed when it came to state-building and statehood: the Ukrainian population had to stress its right to self-determination and statehood in terms of political strategy and self-identification, whereas the Polish population, with its historical experience of statehood and independence, was merely focused on legalizing support and constitutionalizing of its independence within existing legal frameworks in international law and in the Austro-Hungarian Empire internally.

Conclusion

Issues of the customs of war, the understanding of peace and the international community's role in assuring the peace process, the legal nature of international institutions, international justice are now more heavily discussed than ever before in both the interwar contemporary practice of international relations and in the theory and practice of international law in modern times.

Nowadays the nature of wars has also become a widely discussed topic in the legal community, since the international legal order, established in the 20th century based on the idea of resolving disputes peacefully in any type of international conflict, does not seem to be working properly. The existing international conventional framework did not keep Russia from conducting military activities in Georgia in 2008 and more recently in Ukraine, and it has also proven ineffective at finding peaceful solutions in Africa and Asia.

Meanwhile, current debates also address the issue of just/unjust wars. Some people believe, as Roszkowski did, that wars must be eliminated, whereas some affirm Cybichowski's recognition that a war is an effective instrument of international politics and needs to be legitimized as such. Like the wars of the 19th and 20th centuries – which appear to have been tied to peoples' quests for self-determination and solutions to nationality-based conflicts – contemporary wars seem to be rooted in unresolved ethnic tensions, though in conjunction with rivalry over territory and natural and human resources.

Again, we see that the academic community in the field of public international law at the University of Lviv addressed these questions from the outset in their teaching and research. From the earliest days of the teaching of this discipline up through the 19th century, natural law and criminal law strongly influenced the discourse of public international law, both in teaching and from an academic perspective. Thereafter, though, this discourse became intertwined with debates on constitutional law that advanced the notion of prohibiting war as a legitimate tool of international relations, which in turn tied into the debate over the self-determination of peoples that proved essential to local communities' discussions of state, statehood and state-building. Adam Redzik suggests that the law school at the University of Lviv was the most influential center of legal thought in interwar Poland. As its teachers' legal positions on globalscale war, peace and justice took root, they were adapted to fit into the local perspective and serve the needs of local communities and have being aligned with world discourses about the future of the international law and international legal order.

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2. Cybichowski Z. Prawo narodów. System prawa międzynarodowego, Gubrynowicz i Syn, Lwów, 1915, 415 p.

3. Cybichowski Z., Międzynarodowe prawo karne. Kompetencja sądów do ściągania przestępstw zagranicznych / Z. Cybichowski. – Warszawa: Wydawnictwo Seminarjum Prawa Publicznego (Państwowego i międzynarod.) Uniwersytetu Warszawskiego. – 1927. – Nr. 8. – 145 s.

4. Dnistrianskyi S., L'Ukraine et la Conference de la Paix, Les Questions Ukrainiennes No 5. place of publication not given 1919.

¹ In 1928, Starzyński carried out his own project for a Polish constitution, which he tried to promote widely.

5. Pol K., Zygmunt Cybichowski, [in:] *Poczet Prawników Polskich XIX i XX w*, wyd. 2, przejrzał i uzupełnił A. Redzik, Warszawa, C. H. Beck, 2011, p. 995-1003.
6. Redzik A. (ed.), *Academia Militans. Uniwersytet Jana Kazimierza we Lwowie*. Wydawnictwo Wysoki Zamek, Kraków 2015, 1302 p.
7. Redzik A., *Stanisław Starzyński (1853–1935) a rozwój polskiej nauki prawa konstytucyjnego*, Warszawa, Kraków, 2012, 356 p.
8. Roszkowski G., *Über das Wesen und Organization der internationalen Staatengemeinschaft*, Erlangen 1893, 23 p.
9. Roszkowski, G. *O Oxfordzkim Projekcie prawa wojny lądowej w porównaniu z prawem franzuskiem, hollenderskiem and rosyjskiem oraz z deklaracją brukselską*, Krakow, Nakładem Redakcyj «Museum», 1881, p. 68, available at <https://polona.pl/item/o-oxfordzkim-projekcie-prawa-wojny-ladowej-w-porownaniu-z-prawem-francuzkiem,NzU4NjcyNzU/4/#info:metadata>, March 27, 2020.
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