

## Summary

*Si vis pacem para bellum.* This adage by Publius Flavius Vegetius, a Latin historian who lived in the 4<sup>th</sup> century A.D. is often viewed as a synthesis of Roman attitude towards other peoples. Is it correct? Declaring wars and establishing alliances has been an especially significant element of policy making by international institutions throughout the centuries. It was no different in the Roman Republic, whose diplomacy was based on predefined procedures. The Romans had a well-developed knowledge in the area of foreign political systems which, in their opinion, were worthy of equal treatment. Only with free and independent entities, although of different levels of organization, Rome would establish alliances, send messages through ambassadors or declare wars in a fair and appropriate manner, in accordance with their understanding of the ancient customs. In the subject literature, it is stressed that the source of success of the Romans lies in the skilful combination of military supremacy with diplomatic activity. However, few law historians have been studying this problem and as a result the normative aspect of Roman conquests has not been described in such detail as, for instance, the political, social or military side of Roman supremacy. As it turns out – it has been an omission.

The dissertation “*Ius belli et pacis in the Roman Republic*” focuses on the issues with regard to declaring wars and ending them by establishing treaties or by accepting surrender. The range of the present work does not include the description of the regulations implemented by the Romans in establishing colonies, municipalities and provinces. The creation of such entities was closely connected with the development of strong interdependencies between Rome and the other side, which in turn led to a significant curb on the sovereignty of the given territory and also to a limited application of international law.

The subject of the dissertation already indicates that the work describes the regulations implemented in the period of the republican form of government in Rome. Thus, the period under research starts with the beginning of the Republic, with the symbolic date of 509 BC when, according to legends, the last of the seven kings Tarquin the Proud was forced into exile. However, due to the character of the given regulations, that is the fact that they are based mainly on custom and tradition, it is necessary to refer to descriptions by Roman and Greek historians, which provide accounts of the establishing of the given

institutions in previous years. Ancient authors ascribe the creation of the given regulations to Roman kings, however, if those regulations are compared to ancient Roman, Etruscan and Greek customs, one cannot help but notice distinctive common elements, a fact which is also emphasized in the dissertation. The end date of the period under research is the time when Octavian combined all power in his own hands, that is circa the year 27 BC, which marks the actual end of the republic.

The dissertation contains descriptive labels for the subsequent periods in the history of the Roman Republic. The early period comprises the time between 509 BC to the end of the 4<sup>th</sup> Century BC, when Rome's relations with other communities were mainly limited to contacts with peoples living on the Apennine Peninsula. The period of conquering Italy spans from the 4<sup>th</sup> to mid-3<sup>rd</sup> century BC. The period of oversea expansion refers to the time beginning with the First Punic War (264 BC) and ending with the destruction of Numantia by Scipio Aemilianus (133 BC). The last period, that is the time from 133 BC until the end of the Republic is described as the decline of the republic. Occasionally, with regard to republican institutions, there are references to the first years of the principate.

However, it is worth emphasizing that some scholars assume that the period of development of international regulations ended in 146 BC. The Roman victory at Pydna, whose immediate result was the breaking of Macedonian supremacy, was to guarantee Rome an undisputed hegemonic position. Yet, the change was not revolutionary and alterations have been occurring on a piecemeal basis. As a result, this date cannot indicate the exact end of the research in question.

The main aim of the dissertation is to determine whether the Romans implemented international law in the period of the republic. On the basis of the conducted analysis and interpretation of the sources, it may be concluded that there existed norms and procedures which the Romans abided by in relations with other communities, and their application was accepted by both sides. At the same time, some reservation is warranted to the extent that in analyzing a given issue one should not attempt to adjust the current definitions, regulations and theories of public international law to the ancient solutions. Unfortunately, without reference to the currently used terminology and concepts, it is impossible to outline the characteristics of ancient institutions.

Additionally, the objective of the present dissertation is to present the types of international agreements and an attempt at their classification, a description of legal possibilities of declaring and ending wars and also a description of other institutions of international law as applied by the Romans. The work also outlines the extent to which the

discussed institutions were rooted in the Greek, ancient Latin or Etruscan tradition and indicates the evolutions which occurred in the given institutions due to social and political changes in the Roman Republic. Finally, next to the juxtaposition of the most important sources, which describe the institutions and procedures based on international customs, the author also presents the contemporary, often contradictory opinions on Roman imperialism and legal institutions used in Rome's foreign policy.

A specific character of the norms of international law creates the necessity for the explanation of the selected source material. The dissertation is based on juridical and non-juridical sources, especially literary, as well as epigraphic material.

In ancient literature one can find rich in detail, numerous descriptions of Roman dealings with other peoples. They were useful in analyzing their customs, which were the main source of the norms of international law, flourishing in the period of the republican government. The accounts which have to a large degree served as a basis for the present dissertation include Livy's *History of Rome*, as well as *The Histories* by Polybius. Additionally, in the dissertation there are references to the accounts by Appian, Dionysius of Halicarnassus, Cicero, Ovid, Sallustius or Suetonius. Apart from literary sources, the work is based on epigraphic material, that is inscriptions and texts carved in stone, referring to treaty-making or capitulations. In the case of the literary sources, it should be taken into account that they are mostly secondary sources, created by ancient historians on the basis of Rome's diplomatic archive, as well as histories of various families.

The dissertation also contains references to the sources of Roman law, both public and private. They are used as supplementary materials and their role was to indicate the existence of international institutions at a specific time (for instance, the Law of the Twelve Tables) or context (Gaius's *Institutes*, or Justinian's *Digest*) or to make the norms of international law more specific by internal regulations. As T. Holland rightly observes, the relations between ancient societies were often based on the solutions initially worked out in relations between individuals.<sup>1</sup> In Roman regulations it is especially visible in the procedure of declaring war and surrendering.

The work is divided into four chapters. The first chapter is a theoretical introduction whereas subsequent ones include an analysis of specific legal mechanisms used by the Romans in their relations with other entities. The first chapter ("International law in the times of the Roman Republic") is devoted to the very concept of international law

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<sup>1</sup> T.E. Holland, *Studies in International Law and Diplomacy*, Oxford 1898, p. 152.

and its possible transference onto the ground of ancient regulations, as well as to the characteristic features of the discussed norms. The chapter also includes an analysis of the selected sources on international law and elements of scholarly studies concerning the given sources, all of which allowed the author to point out the most important differences between the theory and practice of international regulations implemented in the period of the Roman Republic. It was also deemed necessary to discuss the most significant evidence with regard to Rome's foreign policy, together with its executors and their competences. A separate section is devoted to the *ius fetiale* and the college of priests responsible for overseeing and interpreting the law.

The second chapter ("The law of the war") focuses on the issues with regard to war. The chapter discusses the concept of war as a factual state of war, as well as the concept of just war (*bellum iustum*) used by the Romans and modified by Cicero, who, most importantly, made it famous. It elaborates on the practical aspects connected with declaring war, that is, the premises for proclaiming war, which Polybius described as "external appearances of righteousness," thus differentiating them from the real motives for starting conflicts. The ceremony of declaring war and the related sacral and legal aspects are also discussed here. On the basis of the available source material the author attempted to pinpoint the rules and guarantees implemented by the Romans during ongoing conflicts, as well as to present the possibilities of suspending the actual war activities (a suspension of arms and a promise of a military commander), which, however, did not imply the state of peace.

The third chapter ("The law of peace") concentrates on the issues with regard to the state of peace. Apart from discussing peace as a factual state and the terminology used with regard to peaceful relations, the chapter focuses on the specific types of international treaties. The first concept described here is that of hospitality (*hospitium*), an agreement, in which the way of its contracting, as well as the rights and obligations of the parties were defined with regard to the character of the given institution. Next, the dissertation concentrates on the issues of a peace treaty (*foedus*), that is its concept, its categories as presented by ancient historians, as well as the procedure of its contracting. Due to the fact that the regulations of the treaty could be freely established by the contracting parties, the most important clauses of the selected compacts over the centuries are also analyzed.

Finally, the fourth chapter is devoted to the issue of surrender (*deditio*) and its various aspects. Most importantly, apart from presenting the very concept of surrender and its types, the text attempts to delineate the legal character of surrender. In the subsequent sections of the chapter one can find a discussion of the consequences of surrender, that is its

immediate effects, procedures, the results of restoring freedom and restitution of ownership of the conquered people, as well as establishing a clientship relation between the surrendering party and the military commander receiving the act of surrender.

To sum up, it should be pointed out that the issues raised in the present dissertation revolve around the two main terms – peace (*pax*) and war (*bellum*), the two concepts which form a dialectic pair. For the Romans, both terms denoted a factual state, which implied specific legal effects. War was one of the ways of solving international disputes and apart from conventional restrictions there existed no other regulations which would restrain the will to declare war and conduct military activities. On the other hand, the state of peace between the parties provided for the strengthening of ties between communities. The relations between communities were based on the contracted treaties, whose regulations listed not only the mutual rights and obligations of the states, but also the rights of individuals, including the rules with regard to citizenship, family relationships or trade.