

TWO-VOICE REFLECTIONS ON THE SCIENTIFIC ACHIEVEMENTS OF PROFESSOR JANUSZ GILAS

Part I

1.

Janusz Gilas's first field of interest was a set of issues related to the prevention of armed conflict (collective security, disarmament and arms control, peaceful resolution of disputes). He dealt with these problems from historical (focusing on the League of Nations period) and contemporary perspectives, which can be described as the law of international peace and security, the *contra bellum* law. He devoted his PhD dissertation to these issues, written under the supervision of Professor Stanisław E. Nahlik, a recognised expert in the law of treaties, diplomatic law and international relations, and defended it in 1963.

Substantial portions of this dissertation, some of which were revised, were published in the form of the monograph *The Issue of Disarmament*, published in 1966. In the dissertation, Gilas discussed historical disarmament projects (starting in 1899) and disarmament precedents. However, he concentrated his attention on the concept of universal and complete disarmament, conducting an analysis in the American and Soviet draft treaties on the subject, presented in 1962. The author sought to establish the concept and legal substance of disarmament, examined disarmament negotiations after World War II and considered the general obligation of disarmament based on the UN Charter and the duties concerning a disarmament agreement.

His interest in the law of international peace and security also emerged in Janusz Gilas's later publications. This included studies on, amongst others, the fulfilment of obligations arising from the end of the Second World War and the preservation of the permanence of the Yalta-Potsdam arrangements. For example, the author undertook a critical analysis of the establishment of the Arms Control Agency of the Western European Union (together with Janusz Symonides).

In turn, in a study published in 1987 relating to the post-war order, he argued that, of the arrangements made by the victorious powers,

the principle of the co-responsibility of these powers for maintaining and strengthening peace and the principle of respect for territorial order in Europe were important. In other political conditions, he also pointed out that the modern time was not a time of *détente*, there was no place in it for an entente of the great powers, it was a time of confrontation between socio-military blocs in Europe. Professor Gilas believed, however, that the rivalry would be decided not by military factors (after all, he considered war likely and peace uncertain), but by the economic factor.

This research stream also includes works on nuclear non-proliferation, the use of nuclear energy in the context of collective security (in reference to the establishment of the European Atomic Energy Agency and Euratom), the dependencies between security and disarmament in the practice of Polish diplomacy in the inter-war period, the regulation of trade and production of arms, munitions and war material in the organs of the League of Nations.

Janusz Gilas was also interested in developing model solutions. This is evident in his publications on disarmament control and security. In the former case, in one article (written together with Janusz Symonides) he argued that model disarmament norms should be based on the principles of effectiveness (every international commitment, including in the sphere of disarmament, should be subject to international control) and state sovereignty. In his articles on security, Gilas addressed the issue of the legal understanding of security and its relationship to disarmament. In this context, he distinguished between models of security based on the balance of power, the balance of fear, the supremacy of a power or a group of them, and collective security providing for disarmament. He also related these models more specifically to European security in another study.

2.

The problems of international dispute settlement were also an area of interest for Professor Gilas. Although he published only articles in this area, they remain an important contribution to the development of international law in Poland. These include a study on the role of the peaceful resolution of international disputes in the maintenance of international security in the League of Nations and the United Nations, on conciliation, as well as studies relating to the resolution of disputes in certain areas, such as in the Convention on the Law of the Sea or in international economic law.

3.

The law of the sea and maritime law has become an important area of Professor Gilas's interest. In this field, the Author published an almost 150-page chapter on the status of maritime areas in the monograph *Maritime Law*. In it he analysed not only the status of maritime areas, including the resolution of maritime disputes and the protection of the marine environment, according to international law, but also the status of Polish maritime areas (1996). Here, Janusz Gilas perceived the law of the sea as a comprehensive field with autonomising features in relation to general international law (amongst others, its own axiology, including the concept of justice, closer to compensatory justice, a broader catalogue of sources of law – also acts of internal law, as well as subjects of law – also non-state actors, its own system of dispute resolution, in material terms – repartition of jurisdictional rights between the flag state, the coastal state and third states).

On the subject of the law of the sea, J. Gilas also published a monograph on transit through seaports in light of international law (1980),¹ as well as almost 40 articles. Noteworthy are studies (some of them also published in English) on the delimitation of borders in general,² as well as in relation to Poland,³ as well as the importance of the concept of equity in the law of the sea.⁴ It is also characteristic of the author to see the links between the law of the sea and international economic law. This manifests itself in studies on transit and shipping, the shipping market, the construction of maritime-international shipping connections, maritime fisheries, and – what was innovative at the time – offshore power plants (1982). In addition, Janusz Gilas was interested in maritime channels and bays (the Suez Canal during the armed conflict, 1968, the Gulf of Aqaba, 1968), protection

1 See later article on “Transit through Maritime Ports”, *Prawo Morskie*, 1991, vol. 5, 53ff.

2 “Equitable principles of the delimitation of continental shelf”, *Polish Yearbook of International Law*, 1991-1992, vol. 19, 61ff. (published also in: *Revista Europea de Derecho de la Navegación Marítima y Aeronáutica*, v. IX (1993), 1499ff.).

3 “Maritime Boundaries of Poland with its Neighboring Countries”, *Prawo Morskie*, 1998, vol. 11, 29ff; “Pomeranian Bay – an example of the resolution of disputes between Socialist Countries over natural resources in border areas”, *Transboundary Resources Report*, 1990, vol. 4, no. 1.

4 “Notion of Justice in the United Nations Convention on the Law of the Sea”, *Prawo Morskie*, 1988, vol. 2, 151ff.

of the marine environment of the Baltic Sea,⁵ spatial planning in the River Oder and Vistula Sea basins, military aspects of UNCLOS, and protection of Polish maritime interests. A number of works were related to private law or comprehensive aspects of maritime law (e.g. the problem of the law applicable to collisions at sea, the law-making powers of the International Maritime Organisation, the collision of international and national norms in the sphere of maritime law,⁶ and even the motives of maritime law in Joseph Conrad's novels). The author also assessed the state of Polish doctrine of the law of the sea and maritime law.

The unquestionable merit of Professor Gilas was the initiative to establish the Commission of Maritime Law at the Branch of the Polish Academy of Sciences in Gdańsk and the "Maritime Law" yearbook corresponding with its works, of which he was for many years the chairman of the editorial committee and which is still published. It is therefore not surprising that a special issue of this periodical was dedicated to him.⁷

4.

One of the most important fields of Professor Gilas's research activity is the theory of international law. In his case, it included reflections on the place of international law in international relations, its relation to other normative systems occurring in these relations, as well as to more specific areas of the international legal order. It was also a consideration of the sources of international law, including in particular the general principles of law, the norms of international law, especially *ius cogens*. He was also interested in certain general institutions of international law, such as the *pactum de contrahendo*, acquired rights, the standard of national treatment and the most favoured nation, privilege. He studied the universalism and particularism (especially regionalism) of international law.

Within these interests, an academic script first deserves attention, but one that contains a number of interesting contributions. This is *Introduction*

5 See "Legal Problems of the Protection of the Baltic Environment", *Polish Western Affairs*, 1977, no. 2, 330ff.

6 "Conflict of international and national norm in the Polish maritime law", *Revista Europea de Derecho de la Navegación Marítima y Aeronáutica*, 1990-1991, no. 5, 6ff.

7 See *Maritime Law*, 2018, vol. XXIV. Access to articles online: <https://journals.pan.pl/pm/125884#tabs>.

to the Science of International Relations (1975). The author situates the science of international relations within political science (he recalls that in 1948 UNESCO recognised that political science includes international relations, and that these include international politics, international organisations and international law), showing its development in some countries. In addition, he discusses the methods of science (especially interesting are the considerations relating to foreign policy analysis, the study of current events, the role of history and international law, ethics, the geopolitical approach, institutional analysis, the behavioural or economic approach; the author already recognised the importance of methods such as game theory, the field method, decision-making theory, political planning theory), its history and development. Professor Gilas also considers the issue of the organisation of international relations. He recognised the importance of many actors, including non-state actors as well as nations, in international relations. Gilas noted the importance of the civilisational factor in the formation of particular communities and the interest factor in the formation of circles of states. He also analysed the principles of cooperation and struggle, which included international praxeology, international morality and international law. Finally, he leans on the issue of economic integration. This approach allows Janusz Gilas to look at international reality in a systemic and comprehensive way, recognising the importance of the organisation of the international community and identifying its internal interactions and the rules governing them.

The second work, which has a special place in Professor Gilas's output, is *Normative Systems in International Relations* (1981). It is the culmination of more than ten years of research into the various systems governing the international community, a work at the interface of the sciences of international law and international relations. The work is divided into two parts. In the first, the author presents the normative systems (international praxeological rules, international political norms, international morality, international courtesy, external relations law normative systems, international unification of law, international law and regional normative systems, among them especially regional norms of morality, courtesy and international law;⁸ as the most important system Janusz Gilas considered international law, which displaced external relations law norms and absorbed

8 A book on regionalism in international relations (1978) was also published under his editorship (in Polish).

many moral and praxeological rules; he also drew attention to the emergence of new branches of the international order, including international economic, administrative and criminal law). In Part Two, Janusz Gilas presents values and normative assessments. He considers value systems in public and private international law (especially the importance of *ius cogens*), international economic law and within the framework of external relations law norms. Here he also characterises normative evaluations in international relations, as well as doctrines as sets of values and evaluations (political, strategic-political, economic, political-legal and legal-international doctrines; the author considered that each of these sets of doctrines is imbued with the intrinsic values of international law, a factor that these doctrines must take into account). It is regrettable that this monograph has not been translated into English and made available to foreign readers. Only small parts of it have been published in English.⁹

Within the theoretical issues of international law taken up by Professor Gilas, it is worth noting the theory of norms. This issue is not often distinguished in the science of international law. Only recently has its importance increased with the development of the work of the UN International Law Commission on *ius cogens* – the peremptory norms of general international law. However, the author not only formulated the original concept of the norm of international law (a rule of conduct in international relations that is the basis of rights and obligations, giving simultaneous expression to the values of equity, effectiveness and respect), but also developed research on their types and regulatory significance. Alongside the analysis of the norm, there were also considerations of standards of national and most favoured treatment (the author assumed that it is incorrect to regulate clauses; one must normalise standards of conduct). The issue of the progressive development and codification of international law, as well as the relationship of international law to national law, must also be viewed through the lens of norms. The study of the norm of international law has also been devoted by J. Gilas to a substantial chapter in a textbook on international law.

Interesting or pioneering works also include articles on the concept of the act in international law (in connection with the Articles of the UN International Law Commission on State Responsibility, but also against the background of the interface between praxeology and international

9 See “International Morality”, *Polish Round Table*, 1972, vol. 6, 81ff.

law), general principles of law (treated mainly as principles common to national legal orders, rules of a procedural or technical nature), *pactum de contrahendo*, acquired rights (in private and public international law; interesting characterisation of the transposition and applicability of private law concepts to public law – determination of the status of states; the author does not consider them as a general principle of law, nor as a customary rule, recognising the treaty basis for their validity).

5.

Private international law can also be found in Professor Gilas's extensive range of scientific interests. Their expression became a textbook, as well as several studies on the relationship between public international law and private international law (he argued, amongst others that private international law belongs neither to international law nor to national laws but is a complex field of autonomous character)¹⁰ and the conflict-of-law aspects of various relationships. Original elements of the textbook include the emphasis on the importance of recognition as a basis for the application of foreign law, attention to the relationship between private international law and international legal unification, the highlighting of demographic (human migration) and economic (international trade) factors for the development of private international law, the distinction of private international law of the European Union. Unlike in the dominant Polish doctrine of this law, he has also included in the textbook the problems of international civil procedure, including international commercial arbitration. As far as the articles on conflict of laws are concerned, one can note the articles on the international-private legal problems of the protection of the River Oder against pollution, the law applicable to collisions at sea, the application of international and national public order clauses in the sphere of international family law in the context of human rights.

¹⁰ "Public International Law and Private International Law", *Acta Universitatis Nicolai Copernici*, 1975, no. 70, 19ff.

6.

Finally, the doctrines of international law and the teaching of international law are within the sphere of Janusz Gilas's scientific reflection. Among other things, the author has published interesting studies on research and teaching in Poland, the United States, as well as in Cuba (here an important thread is the consideration of the Bustamante Code and its contribution to the development of private international law). He has also published an article on the correct methodology for developing an international law textbook. It is also worth noting that Professor Gilas was co-editor and co-author of the synthetic *Encyclopaedia of International Law and International Relations* (1976; he is the author of 65 entries on international relations and public, private and economic international law).

It is also worth devoting a few words to Professor Gilas's activity as a supervisor and reviewer of MA theses and dissertations (doctorates, habilitation and professorships). A distinguishing feature of this activity was his focus on key issues, i.e. the identification and solution of a scientific problem. The professor was never petty. His opinions were concise and his comments accurate. He did not spare, when necessary, critical assessments. He was a supervisor and a reviewer who was demanding but also able to appreciate work of a high standard.

An equally valuable sphere of Professor Gilas's activity was publishing reviews. His publishing reviews stand out in favour of the practice in Poland. Most international law specialists are reluctant to undertake publishing reviews or content themselves with a formal assessment of the work. The reasons for the reluctance are varied; publishing reviews are not regarded as part of scholarly achievements, do not build the academic standing of the reviewer, and are poorly remunerated.

Gilas combines two roles in the publishing review: the role of the reliable and harsh critic with that of the auxiliary. He points out the shortcomings and errors of the reviewed monograph and formulates suggestions and guidelines to eliminate the weaknesses. Gilas writes reviews, unlike many, very quickly and this helps in addition. Gilas's reputation was decisive for the fact that in the multi-stage procedures of scientific promotions in Poland, his publishing reviews was regarded as a guarantee of the scientific excellence of the monograph.

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