

FRITS KALSHOVEN: "THE LAW OF WARFARE"¹

The Henry Dunant Institute in Geneva and the publishing firm of A. W. Sijthoff in Leyden have undertaken to publish the series of courses which are organized by the Henry Dunant Institute and the International Institute of Human Rights and given at the University of Strasbourg. A review of the first volume issued in this series was published in *International Review*.²

A second book in the series has just been printed, this time on the law of warfare, containing the lectures given by Dr. F. Kalshoven, lecturer at the University of Leyden, a scholar eminently qualified for the task. We have already given an account³ of the impressive work which this expert has written on the problem of reprisals.

It is a happy circumstance that the course has been entrusted to a citizen of the Netherlands, since the law of war has found in the Hague Conventions its principal expression in writing, and its birth is historically linked to the humanitarian tradition of that peace-loving country.

Mr. Kalshoven has indicated in the sub-title to his book that he lays stress on the recent history of the law of warfare and on present trends in its development. In the last few years, under the impulsion of the ICRC, renewed efforts have been initiated with the aim of reaffirming and supplementing the Geneva Conventions, resulting in the convening by the Swiss Government for 20 February of this year of the Diplomatic Conference, for which the ICRC has prepared two draft Additional Protocols. Dr. Kalshoven has taken an active part in the preparatory work for the Conference. Although the object is primarily to elaborate the Geneva Conventions, certain texts of the law of The Hague will also be the subject of discussion on two important points: means of combat, and, in

¹ A. W. Sijthoff — Leyden; Henry Dunant Institute — Geneva, 1973, 138 pp.

² Jean Pictet: "Le droit humanitaire et la protection des victimes de la guerre", 1973, 152 pp.

³ Frits Kalshoven: "Belligerent Reprisals", 1971, see *International Review*, April 1971.

particular, the protection of civilian populations against effects of hostilities. For today, owing to the conditions under which war is now waged, the distinction between the law of Geneva and the law of The Hague is disappearing. The author has been careful to devote a large part of his study to topical considerations and to the development of the law in question, and for this we express our grateful acknowledgments.

In Chapter I of his book, Dr. Kalshoven defines the basic terms he uses: armed conflict, introduced here instead of the classic expression of "war", warfare, and the law of armed conflict. In this connection, he lays stress, quite rightly, for it cannot be too often repeated, on the fact that the law of armed conflict developed as customary law during the major part of its history; for it was not until 1868 that its codification commenced, with the Declaration of St. Petersburg, a few years after the first Geneva Convention launched the vast movement for the elaboration of relevant texts of law. Despite its having been put in writing, the law of armed conflict has kept, in large part, its character of customary law, which is one of the reasons for its strength.

The basic principles of the law of warfare are that belligerents shall not inflict on their adversaries harm out of proportion to the legitimate goals of warfare and that the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited.

In the two chapters that follow, the protection of the civilian population is discussed in considerable detail. It rests on the principle of the distinction between combatants and non-combatants, and between military objectives and civilian objects. This distinction, in spite of the strains it has received as a result of the practice of "total warfare", remains the basis of all rules of war, if one is to avoid sinking back into barbarity.

A further chapter deals with means and methods of combat, in particular chemical, biological and nuclear weapons. The author concludes that this subject evokes more questions than it provides answers.

But though the development of recent military techniques weakens the value of certain provisions, laid down in most cases over fifty years ago, the principles are clear, and it is common knowledge that the ICRC — parallel to its work on the improve-

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ment of the Geneva Conventions — has directed its efforts to “ weapons that may cause unnecessary suffering or have indiscriminate effects ”, a question that was the subject of a recent report drafted by a group of experts.

In the last chapter, Mr. Kalshoven examines the implementation of the law of warfare. He shrewdly analyses the factors militating in favour of, or against, its application, and reviews the means available for the law to operate positively. It is certain that, though the letter of international law often rises to the level of its spirit, it is in the sphere of sanctions that, notwithstanding constant progress, its weakness is most often to be encountered. It is here that both the grandeur and misery of the human condition are best understood.

There is no doubt that this book, thoughtfully planned and well written, will constitute an excellent summary for students of law and all those whose functions require them to know the laws of armed conflicts. Though these laws have so far rendered good service, the benefits that can be drawn from them in the years ahead can be greater still, for, far from being a memorial to the past, they have kept their full significance and are even now gathering renewed strength and vitality.

J. P.

ETHEL GROFFIER: “ TERRORISME ET GUERILLA. LA RÉVOLTE
ARMÉE DEVANT LES NATIONS. ”¹

This extremely topical book contains a number of documents and ideas that will interest those concerned with the application of humanitarian rules and principles in such controversial situations.

The writer quotes a wide range of views on present-day revolutionary violence, studies problems posed by guerrilla warfare in

¹ Editions Leméac, Ottawa, 1973, 181 pages.