

THE INTERNATIONAL DIMENSIONS OF HUMANITARIAN LAW

The literature of humanitarian law has been further enriched by the publication of *Les dimensions internationales du droit humanitaire* (The International Dimensions of Humanitarian Law).* This work, published by Unesco and the Henry Dunant Institute will not only gratify university circles, which will now have a real manual for teaching humanitarian law, but also disseminators in Red Cross and Red Crescent Societies who can use it for promotion of this law.

As a collective work prepared by the Henry Dunant Institute in co-operation with the ICRC, the book attempts to be as representative as possible of different schools of thought. It contains explanatory articles and essays by leading authorities in the fields of international public law, humanitarian law and human rights.

The first part is devoted to the *Nature of humanitarian law and its place in international law*.

As overseer of the work, *Mr. Jean Pictet*, former Vice-President of the ICRC, introduces the subject with his reflections on the universal character of humanitarian law, which he considers to be a law "for all men in all countries".

To demonstrate that humanitarian principles belong to all human communities and are deeply rooted in differing customs, moral attitudes, doctrines and religions, the editors asked the various authors to trace the

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development of humanitarian ideas in numerous schools of thought and cultural traditions, giving emphasis to their common denominators.

Mr. Adamou Ndam Njoya, former Minister of National Education of the Republic of Cameroon, elucidates in his contribution the sacred character of the human being in pre-colonial Africa and describes the code of honour of warriors, based on tolerance, compassion and humanity toward the weak and the vanquished. This was a humanitarian code with points in common with that of the Bushi warriors in twelfth-century Japan, it was pointed out by *Prof. Sumio Adachi* of the Japanese National Defence Academy. Shintoism, Buddhism and Confucianism had a decisive influence at that time and would continue to shape the "military philosophies" of the seventeenth and eighteenth centuries, the primary purpose of strategy being "to make justice, humanity, peace and public order prevail and avoid unnecessary deaths".

In a rigorous analysis of the Koran, *Mr. Hamed Sultan*, former professor of public law at the University of Cairo, demonstrates that the Islamic concept of humanitarian law requires combatants "not to transgress and never to exceed the limits of justice and equity, thus lapsing into tyranny and oppression". It also provides special protection for certain categories of civilians—children, women, elderly and sick people and monks.

Is there such a thing as a "western conception" of humanitarian law? This question is raised by *Mr. Karl Joseph Partsch*, professor emeritus of public law at the University of Bonn. As the fruit of the successive contributions of the Christian doctrine of charity and fraternity and of secular humanism fostered by the classic thinking of the age of enlightenment, he concludes that the western conception owes much to Henry Dunant, Gustave Moynier and Max Huber, whose programme of humanitarian action should be seen as the synthesis of a humanism which is completely neutral as regards Christian ideologies and secular ethics.

Christian humanism is not unassociated with the development of humanitarian ideas in the nations of Latin America, in the view of *Mr. José Ruda*, professor of international public law at the University of Buenos Aires. He describes how it inspired the doctrine of the nineteenth century, with Andrés Bello and Carlos Calvo, that "war must not silence Christian feelings or conscience. The disarmed, defeated and captive enemy becomes sacred, as a human being".

Finally, *Mr. Géza Herczegh*, dean of the faculty of law and professor of international law at the University of Pécs, Hungary, shows that socialist humanitarian law includes rules for the protection of the human person and respect for human rights, in time of peace and in time of armed conflict, and that its essential aim is the preservation of peace.

This series of essays, illustrated by many examples and enriched with quotations and bibliographic references, will assuredly help ordinary readers as well as scholars to understand better the *Foundations of international humanitarian law and its development*, the subject of the second part of the book.

Mr. G.I.A.D. Draper, professor emeritus of the University of Sussex, describes the slow evolution of humanitarian thought through the ages, up to the time of its codification. Giving particular emphasis to the nineteenth century, he outlines the way in which humanitarian law was successively fostered by religion and chivalry and the rationalism of the eighteenth century, before being penetrated by ideas of compassion toward the end of the nineteenth century. How were these currents of humanitarian thinking translated into the international code for controlling warfare? It was through the actions of three men who lit the way into the future, Henry Dunant, Francis Lieber and Frederic de Martens whose merit it was "to formulate the inspiration, theory and content of the humanitarian law of which our century is the heir".

Despite the flowering of nationalism and the advent of the legal concept of state sovereignty, the Hague Conferences of 1899 and 1907 found means to reconcile military requirements with humanitarian feelings. The author also gives a vivid reconstruction of the further advances of humanitarian law, embodied in the Geneva Conventions of 1949 and the Additional Protocols of 1977.

The third part, *The law of armed conflicts*, consists of a series of studies of various aspects of this law, applicable in international and non-international armed conflicts.

The logical structure of this part will be of great help to teachers and laymen alike, all the more so because of its many references to history and to the socio-political context of events.

It was the task of the late *Richard R. Baxter*, professor of law at Harvard University and a judge of the International Court of Justice, who died in 1980, to write about the behaviour of combatants and the conduct of hostilities. In a much valued analysis he sets forth with precision the various forms of armed conflict, describes the mechanisms for applying humanitarian law, without concealing the difficulties involved, and disentangles the complex questions of distinguishing combatants from non-combatants and defining the status of prisoner of war.

Mr. Hans Blix, former Swedish Minister of Foreign Affairs, discusses the means and methods of combat, the responsibilities of states in deciding the means and methods of legal warfare, and examines the protection of the environment and the problem of weapons.

Protection of the victims of armed conflicts, the wounded, sick and shipwrecked, of prisoners of war and of the civilian population is dealt with successively by *Mr. José Francisco Rezek*, professor of constitutional law at the University of Brasilia, the late *Mr. Claude Pilloud*, legal adviser and director of the ICRC, who died in 1984, and *Mr. Oji U. Umzurike*, professor in the faculty of law of the University of Nigeria.

In his essay on the protection of cultural objects, *Mr. Stanislaw Nahlik*, professor emeritus of international public law at the Jagiellonian University of Cracow, demonstrates that the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law,

1974-1977, was concerned with protecting the cultural and spiritual values of the whole of mankind.

Mr. Georges Abi-Saab, professor of international law at the Graduate Institute of International Studies in Geneva, in his essay on non-international armed conflict reviews the evolution of protection for the victims of internal conflicts and the resistance of states to any attempt to establish obligatory international regulations on the subject, prior to the adoption in 1949 of Article 3 common to all four Geneva Conventions. After describing the practical difficulties encountered in applying this article, he examines the mechanisms contained in Protocol II, with their advantages and weaknesses.

The fourth part on the *Implementation of international humanitarian law* offers an occasion for *Mr. Yves Sandoz*, head of the Department of Principles and Law of the ICRC, to explain the means available to states to put humanitarian law into effect—preventive means, means of supervision, the repression of violations, and the role of the ICRC. He concludes that, “In a world without any real tribunal or supranational power, persuasion based on honesty, neutrality and efficacy probably constitutes the main instrument for those who wish to contribute to the implementation of international humanitarian law”.

Finally, *Prof. Igor P. Blishchenko*, director of the department of international law at Patrice Lumumba University in Moscow, analyses the obligations of states with regard to repression of breaches of the laws and customs of war, stressing the originality of the provisions for this in Protocol I.

In these contributions, apart from their analyses of legal provisions, we find a common concern to show the progress made in protecting the victims of conflicts and the drawing together of humanitarian law and the law of human rights, “the two crutches” upon which man depends to resist physical and moral suffering, in the words of *Mr. Karel Vasak*, former director of the Division of Human Rights and Peace at Unesco.

Humanitarian law is truly a human right, at all times and in all places, says Vasak, who wrote the conclusion. It is a law of conciliation, a law of charity and a law of justice. If, like many other branches of international law, there is no machinery for its enforcement, it is nevertheless endowed with a mechanism strongly encouraging the application of its rules, as proved by the work of the International Red Cross and, in particular, the right of humanitarian initiative of the ICRC.

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As *Mr. Alexandre Hay*, President of the ICRC, writes in his preface to this work, “we must recognize that dissemination is like a building, and the work done in the universities is assuredly its cornerstone”.

This book is certainly one of the pillars of the structure to which Mr. Hay refers, and it goes far to meet the desire expressed for many years both at Unesco and within the International Red Cross that a truly international programme be developed for the teaching of international humanitarian law.¹

As an instrument of fundamental importance for the teaching of international humanitarian law, the work is more than a series of detailed analyses of the specific provisions of that law. Going beyond these analyses and the study of the origins of the law at different times and in different countries, it encourages reflection on the nature and future of humanitarian law as well.

In this respect, it concerns all of us.

Jacques Meurant

¹ On the initiative of the Swiss Government, the Eighteenth General Conference of Unesco in 1978 adopted a resolution inviting "governments to intensify their efforts to ensure that the entire population is familiar with the principles of international humanitarian law, and to provide special instruction concerning the humanitarian conventions in universities and establishments of higher education, the medical profession and para-medical bodies, etc." and instructed the Director General "to prepare, in close collaboration with the International Committee of the Red Cross and the specialist institutes, a programme designed to intensify teaching and research in international humanitarian law".

Pursuant to this resolution, Unesco asked the Henry Dunant Institute to undertake the production of the present book, which was carried out in close co-operation with the ICRC.