

BOOKS AND REVIEWS

ESSAYS ON THE MODERN LAW OF WAR *

This book is a collection of thirteen essays (two of them relating specifically to Canada), written in Green's usual precise and authoritative manner. The essays cover a number of topics including, for example, the medical profession in armed conflict, the problem of mercenaries and unlawful methods and weapons. Reflecting his particular interest, however, we find that six of the thirteen essays are devoted to the enforcement of the law, in particular war criminality, superior orders and the level of knowledge of the combatants.

Almost all the essays begin by an extensive and very interesting historical review of the particular branch of the law or practice under consideration, often beginning as far back as biblical times. A discussion of the more recent provisions then follows, including those of the two Protocols of 1977 additional to the Geneva Conventions of 1949. (In this respect, Green makes it quite plain in a number of essays that he disapproves of what he perceives as a departure from the rule of equal treatment of belligerents by the application of Protocol I to liberation movements. This is not the place to enter into a detailed discussion, but one could, *inter alia*, reply to Green that Article 96 (3) of the Protocol does much to introduce equality of duties on a factual level which does not exist outside the Protocol.

The essays on war criminality reflect the extensive study he has done on this subject and he very sensibly stresses the importance of realistic tuition to soldiers and in the event of a crime being committed, their being judged by military personnel who fully understand their situation. On the other hand, he shows in places a surprising cynicism on the modern law relating to the actual conduct of operations (which is not present in his study of war criminality), usually unaccompanied by detailed support for his contentions. Thus, for example, in his first essay on the general development of the law, he states that the general ban on area bombardment in

* Leslie C. Green, *Essays on the modern law of war*, Transnational Publishers, Inc., Dobbs Ferry, New York, 1985, 282 pp.

Article 51 (5) of Protocol I could be interpreted so as to prohibit aerial attack other than on troops in the field. He concludes that it was not surprising that France refused to accept this "since it might well inhibit a party's inherent right of self-preservation". This point of view is, however, false, as the provision in question clearly allows bombing by target selection, which is the method generally used these days in any case, and it should not be forgotten that the law not only limits or allows what one might wish to do to the enemy, but also what that enemy might wish to do to oneself.

Self-preservation also means having something left in both camps! Further, in his essay on lawful and unlawful weapons and activities, he states that after the Nuremberg judgment, "unrestricted submarine warfare has become so normal in modern warfare that it matters little what the black-letter law on the subject is". This statement ignores the fact that there has not been any "unrestricted" submarine warfare since the second world war. Another statement which may well be disputed is that "the *Convention on the Prohibition of the Development and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction 1972...* appears to have been completely disregarded by the major powers". No justification or explanation is given for the statement and it is certainly a gross exaggeration.

In his essay on aerial considerations in the law of armed conflict, on the other hand, the reverse tendency can be seen in that Green indicates certain prohibitions without reference to the existence of a controversy or legal difficulty, e.g. the shooting down of civilian planes in war time or the rule in Protocol I against the use of reprisals against civilians.

We must point out an error in his essay on human rights and armed conflict when he states that the European Court of Human Rights, in deciding on derogations by States, "took the line that the decision as to whether a public emergency existed or not was one which should be left to the country concerned". The case he referred to was that of *Ireland v. United Kingdom* of 18 January 1978 where the Court decided that "the existence of such an emergency [in Northern Ireland] is perfectly clear from the facts summarised above... and was not questioned by anyone before either the Commission or the Court". (Judgment of the Court, paragraph 205). In general, however, the question whether a state of emergency exists enabling a State to derogate from its obligations under Article 15 (not Article 16 as printed) of the European Convention on Human Rights is subject to scrutiny by the European Commission or Court of Human Rights and this was made clear in the case of *Greece v. UK* (1956), the *Lawless Case* (1961) and the *Greek Case* (1970). A detailed examination was not necessary in the case mentioned by Green for the reasons given by the Court which are quoted above. Apart from these reservations, the essays as a whole are informative and well written, although there is a certain amount of overlap in their content, obviously having been written at different times and for different purposes. Those which have not been

written recently have been updated in order to take into account developments under the Protocol and other instruments; nevertheless it would have been useful if the essays had been dated. In conclusion, the book in both form and content is clearly a collection of essays and not a textbook, but the material covered makes it nevertheless a useful source of knowledge and reflection.

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HUMANITARIAN AID AND DEVELOPMENT IN THE THIRD WORLD

To learn more about problems of humanitarian aid and development in Third World countries, the *Review* recommends the following two recent works: one is a special issue of the *Bulletin of Peace Proposals* devoted to the development of humanitarian organizations in the Third World,¹ the other is a collective work published by the Henry Dunant Institute entitled *Third World Organizational Development*². These two publications have practically identical themes and attempt to answer the fundamental questions posed by Mr. Maurice Aubert, Vice-President of the ICRC and President of the Henry Dunant Institute, who wrote the prefaces to these two works: "How to develop humanitarian organizations in the Third World, capable of handling on their own the consequences of conflicts and natural disasters and to become agents promoting the development of communities, the protection of human rights and the dissemination of a spirit of peace? What is the role and what are the means of action of governmental and non-governmental organizations in the development process of Third World communities and what are their relations with local organizations?"

Several experts from international, governmental and non-governmental organizations, from academic institutions and from the International Red Cross and Red Crescent Movement have attempted to reply to all these major questions.

At the outset, in the special issue of the *Bulletin of Peace Proposals*, Prince Sadruddin Aga Khan, Co-chairman of the Independent Commission on International Humanitarian Issues, clearly presents a concise and

¹ Humanitarian Organization-Building in the Third World, *Bulletin of Peace Proposals*, special issue, Norwegian University Press, Vol. 18, No. 2, 1987.

² *Third World Organizational Development, a comparison of NGO strategies*, by Jan Egeland and Thomas Kerbs (eds), Crystal Johnson, Suzanne Sande Mrlik and Sören Christian Prebensen, HDI Studies on Development No. 1, 1987, Henry Dunant Institute, 1987.