

RESCUING NATIONALS ABROAD THROUGH MILITARY COERCION AND INTERVENTION ON GROUNDS OF HUMANITY *

The controversy of the legal standing of humanitarian intervention and defence of nationals abroad has been tackled by Professor Ronzitti in this book in an admirably clear and cogent fashion. Unlike all too many writers, he begins by making the essential distinction between these two types of intervention and then considers the arguments in favour of the legality of each type of intervention based on different writers' interpretations of the United Nations Charter. Ronzitti refutes all these arguments and then correctly points out that international law has developed since the conclusion of the United Nations Charter, in particular with an increase in the number and scope of exceptions to the prohibition in Article 2, para. 4. The rest of the book is thus a study of the situation in customary law of these two types of intervention: for this he surveys actual interventions undertaken, the justifications given, State reaction and any other diplomatic statements.

His conclusion with regard to defence of nationals abroad is that there is insufficient State practice to support the legality of such intervention, but the extent of State practice in favour and the relatively limited amount of protest mean that such intervention may become legitimate *de lege ferenda*. The result of this conclusion is that such intervention is not contrary to a peremptory norm nor aggression and, basing himself on practice thus far, he outlines the likely features of such a possibly-emerging right. His conclusion with regard to humanitarian intervention is that State practice simply does not support the legality of this, but States sometimes nonetheless recognize the result of such intervention by means of a type of "amnesty" (e.g. Indian intervention in Bangladesh 1971, Tanzanian intervention in Uganda 1979). The relevance of consent to both types of intervention is considered, especially in connection with Article IV of the Treaty of Guarantee of Cyprus.

* Natalino Ronzitti, *Rescuing Nationals Abroad through Military Coercion and Intervention on Grounds of Humanity*. Martinus Nijhoff Publishers, 1985, xix + 216 pages.

Finally, different types of intervention at sea are analysed—in the territorial sea, exclusive economic zone and high seas—taking into account State practice and the law relating to piracy, self-defence and necessity.

It should be appreciated, however, that although Ronzitti's assessments are carefully made and convincing, the legality of these types of intervention remain controversial. The problem of defence of nationals abroad is particularly difficult: Ronzitti assumes that the United Nations Charter eliminated this right, thus requiring the development of a new customary rule allowing such intervention. One could, however, argue that a sufficiently large number of States, on concluding the Charter, did not intend to extinguish this right and that Article 51 did not embody the sum total of the right of self-defence but rather should be seen in its context of Chapter VII. Although it is true that Ronzitti's opinion that self-defence is only allowed after an "armed attack" is supported by the majority opinion of the ICJ in the *Nicaragua v. U.S.A.* case, the dissenting opinions refuting this of Judge Schwebel (quoting Waldock para. 173) and Sir Robert Jennings cannot be ignored. The same is true with regard to the definition of "armed attack": Ronzitti states that "armed attacks" within the meaning of Article 51 can take place only against symbols of state sovereignty i.e. territory and military craft, and yet appears to later contradict this, when considering intervention at sea, by including merchant vessels. Are nationals of a State, therefore, less important than a boat or a plane, even though the population is one of the constituent elements of statehood?

Another difficult subject is that of the Treaty of Guarantee of Cyprus which allows for "action" to be taken by the guarantor powers to protect the Constitution. Amongst several arguments, Ronzitti states that the consent of Cyprus to the treaty precludes the wrongfulness of military intervention. This, however, would be tantamount to saying that a bilateral treaty authorizing intervention in one of the parties can never be void for *jus cogens* because of the consent of one of them. Ronzitti finally supports the validity of the treaty by saying that it is not contrary to, but indeed supports, the right of self-determination. This is not so self-evident as it was imposed on Cyprus as a condition for independence and, in United Nations practice, self-determination is less concerned with a representative government in a recognized territorial unit. Further, Ronzitti pays very little attention to the fact that the Security Council disapproved of Turkish intervention in 1974 although there was in fact good reason for Turkey's initial action, and the fact that subsequent events there have illustrated the problem of treaties allowing unilateral military intervention.

Other difficult issues are the existence of the defence of "necessity" for intervention at sea, the legality for which Ronzitti provides only one secondary source, and the conclusion that liberation movements have no rights of naval warfare, which may well be questioned by those characterizing such conflicts as international.

Apart from these minor reservations, however, the book as a whole is very well written, clearly presented and thoroughly researched. The book was obviously written before the intervention of the U.S.A. in Grenada in 1983 and does not include this event. However, this in no way detracts from the validity of Ronzitti's conclusions which are, in the main part, carefully considered and convincing.

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THE LAW OF NON-INTERNATIONAL ARMED CONFLICT ¹

When H. S. Levie's *Protection of War Victims: Protocol I to the 1949 Geneva Conventions* ² was published in 1981, we presented its four volumes and supplement in which he described the preparatory work carried out for Protocol I.

His new work, *The Law of Non-International Armed Conflict* proceeds in the same way for Protocol II, i.e. documents which are sometimes difficult to find in the *Official Records of the Diplomatic Conference* (CDDH 1974-77) which adopted the Protocol are arranged in alphabetical order. This is useful because the *Official Records* order the documents not according to their subject but according to their type and according to the body which dealt with them during the Conference.

The book does not cover the preparatory work for the final provisions of Protocol II.

On the other hand, this work contains various additional documents which reflect the particular process whereby the Protocol was created and which will certainly prove useful. There is a table of cross references for article numbers, an index according to States, an index listing speakers and a subject index.

This book will no doubt be as much of a boon as Levie's previous works to all those doing research on Protocol II.

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¹ Howard S. Levie, *The Law of Non-International Armed Conflict: Protocol II to the 1949 Geneva Conventions*, xiii + 635 pp., Martinus Nijhoff Publishers, Dordrecht/Boston/Lancaster, 1987.

² Oceana Publications, Dobbs Ferry, New York, 1979-1981. For reviews of this book see the *International Review of the Red Cross*, No. 220, January-February 1981, p. 56; No. 221, March-April 1981, p. 118 and No. 250, p. 74.