

CIVIL WAR AND INTERNATIONAL LAW¹

In this book, Dr. Lombardi studies a major problem of the law of war, but one which—as he points out in the preface—has been practically neglected hitherto: the applicability of the rules of public international law in non-international armed conflicts.

In the first chapter, the author considers all aspects of civil war, from the sociological, and then from the strategic angle, before going on to tackle the problems of public international law, among which he emphasizes the lawful and legitimate character of civil war.

In the second chapter, he considers how far the intensity of an internal conflict can determine its nature and the “jus in bello” applicable to it.

The third chapter contains a very thorough analysis of what may be understood as the “internal affairs” of a State (“Innerstaatlichkeit”); he considers the problem of sovereignty, the traditional and contemporary doctrines on the subject, and how it is to be applied in the case of federal States, confederations of States and States which are not yet independent (the problem of mandates, trusteeship and decolonization).

Throughout this remarkable work, which omits no aspect of the problems discussed, Dr. Lombardi indicates the direction in which the criteria for the applicability of the rules of public international law in non-international armed conflicts must evolve.

Today State sovereignty is no longer as absolute as it used to be: in particular, as a result of the fact that the vast majority of States, by joining the United Nations, have surrendered what was a major attribute of sovereignty—the right to wage war. Recognition of the right of peoples to self-determination is described by the author as a “dynamic corrective” to State sovereignty.

¹Dr. Aldo Virgilio Lombardi: *Bürgerkrieg und Völkerrecht*, Ed. Duncker & Humblot, Berlin, 1976, 416 pp.

It remains, however, true that, unlike international wars, civil wars are not forbidden, and it would only be possible to forbid them if the international community had the right to investigate the constitutional legitimacy of existing governments and if the criteria of such legitimacy were defined. The 1966 Covenants on Human Rights were a small step in that direction, but we are still far from having attained such a situation. Dr. Lombardi further stresses that it is important, in existing conditions, not to exclude the possibility of armed resistance for peoples which cannot enforce their lawful rights by any other means.

It is clear, however, that the pretext of State sovereignty can no longer be arbitrarily invoked by governments which refuse to recognize the existence of hostilities. It is the intensity of such hostilities that should be the sole criterion for determining the nature of a conflict and the rules of "jus in bello" to be applied. The legal position of insurgents should not depend solely on the will of the government in power.

It has to be recognized, however, that there is no generally accepted arbiter in such situations and that there is no consensus in the international community for the establishment of an independent body which might act as such an arbiter. In this connection, the author rightly notes that the ICRC, to whom it might be thought that role could be assigned, would hesitate to assume such a delicate task, which might provide a pretext for accusations of partiality and thus be prejudicial to its humanitarian action in the field.

The absence of an adequate supervisory system and of an objective and unquestionable standard for defining internal conflicts in no way mitigates the illicit nature of high-handed action on the part of governments, and contemporary public international law no longer accepts an appeal to the principle of State sovereignty as an all-justifying excuse. This is the main lesson to be drawn from Dr. Lombardi's outstanding work.

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