

While being both a manual on humanitarian law and a personal critical assessment, Mr. Kwakwa's book is also very well written: the clarity of style makes it as easy to read as a novel. At a time when the teaching of IHL has higher priority than ever, we can but hope that this work will be translated into other languages.

## LA HUMANIZACIÓN DE LA GUERRA

### *International humanitarian law and the armed conflict in Colombia*

Alejandro Valencia Villa, joint winner of the 1991 Paul Reuter Prize, has published "La humanización de la guerra",<sup>1</sup> a work in which he examines from the historical, legal and political standpoint the development of international law and the law of armed conflict in his native Colombia. The book is intended to demonstrate from both a legal and historical perspective that implementing the basic principles and rules of humanitarian law allows better protection for civilians in a situation of ongoing guerilla activity. This book is in fact a passionate and convincing appeal for ratification by Colombia of the Protocols additional to the Geneva Conventions.

There is a certain similarity of approach between Valencia Villa and his fellow prize-winner Edward K. Kwakwa. Like Kwakwa, Valencia Villa is at pains to spell out the concepts of international law, and specifically international humanitarian law, that are sometimes confused in his country. Also like Kwakwa, he makes a point of sketching the history of humanitarian thought from ancient times up to the nineteenth century, with particular emphasis on the role played by three figures in Latin American history. The first is Simón Bolívar, *el Libertador*, who during the conflicts that broke out after Colombian independence proposed, negotiated and signed a treaty in 1820 with Pablo Morillo to regulate the conduct of hostilities — one of the first agreements of its kind. This was followed by a covenant governing the treatment of civilians, exchange of prisoners and burial of the dead. The second figure is Andrés Bello whose major work "*Principios de derecho de gentes*" in 1832 had a great impact on both military commanders and legislators in terms of the protection of women, children, the elderly, the wounded and the sick. Finally — again like Kwakwa — Valencia Villa devotes space to Francis Lieber, whose Lieber Code for the US army in 1863 marked the first attempt to lay down rules to make civil wars more humane.

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<sup>1</sup> Alejandro Valencia Villa, *La humanización de la guerra — Derecho internacional humanitario y conflicto armado en Colombia*, Ediciones Uniandes, Tercer Mundo Editores, Bogotá, 1991, 202 p.

These great humanists, alongside whom Villa places the Spaniard Diego García de Palacio, author of the first work in the Americas on the law of war,<sup>2</sup> paved the way for the codification that was to take place in 1864.

In his study of the development in Colombia of the law of armed conflict, Villa skilfully highlights original and relevant historical and, above all, legal texts (treaties, truce agreements, etc.) to illustrate the humanitarian traditions of both the Colombian military and government at times of acute crisis in the country's history — well before Solferino and the earliest Geneva Convention. He thus throws into sharp relief the divergence from this historical and legal tradition of recent governments and, above all, of the armed forces. Valencia Villa dwells upon the position of the Colombian delegation at the 1974-1977 Diplomatic Conference and explains why Colombia is not party to the Protocols, in particular Protocol II, citing the contradictory interpretation of arguments concerning the material criteria for applicability (Protocol II, Article I), the fear that the provisions in that article would grant guerillas the status of belligerents, and intervention by international organizations to restore internal public order.

Valencia Villa provides a detailed rebuttal of each of the government's arguments. Assessing the position of the dissident forces operating under the command of the *Coordinadora Guerrillera Simón Bolívar*, which has long called for ratification of the Protocols, the author voices doubt that a few rebel groups have any effective widespread control over the territory (he also doubts that they have any real desire to make the conflict more humane since they commit acts such as hostage-taking). But he is quite categorical in stating that the country has gone beyond the stage of 'internal disturbances and tensions' — the violence of the clashes between the armed forces and the guerrillas, the indiscriminate bombings and the massacres of civilians are plain evidence of an armed conflict in Colombia.

Despite the violations of the law, Valencia Villa feels that all the forces involved meet the criteria set out in Article 1 of Protocol II for that instrument's material field of application and that Colombia would do well to accede to it.

On the other hand, the author believes that humanitarian law cannot apply to the drug traffickers or paramilitary groups. Those situations do not constitute an armed conflict — however much the government may use the term "war" — but are quite simply crime and terrorism.

In the two final chapters, dealing respectively with the development of international law to cover a state of siege and with Colombian military legislation, Valencia Villa looks at the civil wars that have flared in the country since the middle of the nineteenth century and shows that the negotiations between the belligerents, i.e. the federal authorities and those of the break-away States, resulted in humanitarian agreements based on international law

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<sup>2</sup> Alejandro Valencia Villa dealt with this subject in "Diálogos militares by Diego García de Palacio: The first American work on the law of nations", *IRRC*, No. 290, September-October 1992, pp. 463-468.

and the law of war, agreements that the belligerents undertook to respect. Citing Colombian legislation and parliamentary declarations to the press, he shows how the conclusion of such agreements influenced legislators when they were drawing up the country's various constitutions. For example, Article 91 of the 1863 constitution and, above all, Article 121 of the 1886 constitution (still in force albeit with amendments made in 1910 and 1968) refer to international law as constituting an integral part of national legislation, its role being to "govern conduct in the event of civil war in particular" and to "bring an end to any civil war through agreements between the belligerents". Article 121 empowers the President to implement international law in the event of war with another country or internal disturbances (*conmoción interior*).

Finally, the author shows how the various codes of military conduct in Colombia have progressively introduced rules in keeping with the law of The Hague and the law of Geneva.

This stimulating study succeeds admirably in giving us a better understanding of Colombia, a country full of contradictions and paradoxes, a country where resorting to violence to settle differences is just as traditional as the desire to make armed conflict more humane. Its final message is simple: "Promoting humanitarian law means introducing an element of moderation and courage in relations between friend and foe, between soldier and guerrilla, between city dweller and farmer, in short between all Colombians. Implementing humanitarian law means beginning to acknowledge the right of others to be treated as human beings".<sup>3</sup>

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<sup>3</sup> "Propiciar el derecho humanitario es introducir una herramienta de moderación y de aliento, frente al amigo o al enemigo, al soldado o al guerrillero, al ciudadano o al campesino, al colombiano en últimas. Su aplicación significa reconocer en el otro su derecho a ser hombre" (pp. 191-192).