

TWO DOCTORAL THESES ON NON-INTERNATIONAL ARMED CONFLICT

Two interesting doctoral theses¹, both dealing with a specific aspect of international humanitarian law as it relates to non-international armed conflict, have been written in recent years under the supervision of Dietrich Schindler at the law faculty of the University of Zurich.

In her work on the civil war in El Salvador, Gabriela M. Wyss attempts to measure the influence that Protocol II additional to the four Geneva Conventions has had on the conduct of the parties — government and insurgent — to that conflict. This is a welcome contribution to the rather meagre body of literature that gauges the implementation of international humanitarian law in specific conflicts. Another circumstance that makes Miss Wyss's study particularly interesting is that the conflict in El Salvador is the first case ever in which Protocol II was applicable in practice.

After explaining the basic concepts of international humanitarian law applicable to non-international situations, Miss Wyss discusses the process by which Protocol II came into existence. She makes a realistic assessment of the outcome, concluding that the text that was finally adopted "covers the fundamental ideas and needs of international humanitarian law". She adds that the consensus achieved among all states increases the Protocol's acceptability.

The author's account of the history of El Salvador and that country's bloody civil war will be of particular use to lawyers attempting to categorize the conflict in legal terms. The author comes to the firm conclusion that the conditions for application of Protocol II are fulfilled. As she demonstrates by quoting UN General Assembly resolutions, sources in El Salvador, etc., this view is shared by many others, including the Salvadoran government and insurgents who have recognized the Protocol's applicability. Whether they actually comply with the provisions of humanitarian law is another matter, but

¹ Gabriela M. Wyss, *Der nicht internationale bewaffnete Konflikt in El Salvador, Die Anwendung des Zusatzprotokolls II von 1977 zu den Genfer Abkommen von 1949*, (The Non-International Armed Conflict in El Salvador — The application of 1977 Protocol II additional to the 1949 Geneva Conventions), Zürcher Dissertation, Winterthur 1989, 224 pp.

Felix Rajower, *Das Recht des bewaffneten nicht internationalen Konflikts seit 1949*, (The Law of Non-International Armed Conflict since 1949), Zürcher Dissertation, Zürich 1990, 314 + XXVI pp.

Both theses are in German.

the author believes that both sides can in any case be credited with good intentions.

In a chapter entitled "Making armed conflict more humane", Miss Wyss describes the work of the ICRC delegation in El Salvador: visiting detainees, tracing, assisting particularly vulnerable groups, promoting knowledge of the law of Geneva, etc. The author bases her description largely on the ICRC's Annual Reports, once again demonstrating that it is perfectly possible to write a lively account of the ICRC's work on the basis of public sources.

The particularly interesting and well documented final chapter concerns the justice system in El Salvador. Miss Wyss pulls no punches and criticizes the system severely on a number of counts. But she also believes that Protocol II has helped to improve the legal procedures. It should be noted, however, that the provisions of humanitarian law apply equally to both sides and an examination of the "people's justice" administered by the insurgents would therefore also be appropriate.

This work, enhanced as it is by historical and sociological analyses, is an instructive and welcome presentation of international humanitarian law in action.

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Felix Rajower's thesis on the law of non-international armed conflict since 1949 provides us with a complete presentation of the law as it applies to civil war. The author takes a very broad approach to the subject. He begins by considering the extent to which the law of non-international conflict contains an international law prohibition on the use of force, comparable with the UN Charter's ban on the threat or use of force in international relations. His remarks on the relationship between third states and individual parties to a conflict are thus also very valuable and certainly belong in a treatise on international humanitarian law. Most of his thesis, however, is taken up with an account of the law currently in force. Following the classic formula, he begins with a definition of war and ends with a detailed description of the rules applicable to internal conflict. These are principally Article 3, common to the four Geneva Conventions of 1949, and their Additional Protocol II of 8 June 1979.

Mr. Rajower's thesis is not only comprehensive but also incisively analytical and presented with remarkable clarity of expression; in short, it provides a good introduction to this difficult legal field. It is, moreover, the first time that the law of non-international armed conflict, including Protocol II, has been dealt with in a German-language publication.

In his analysis of the rules in force regarding civil war, the author often uses the law of international armed conflict as his starting point. In doing so, he has not always avoided the danger of extrapolating from the latter to reach conclusions as to the contents of the law of non-international conflict, in particular where a provision appears incomplete. Though this may produce the

sort of result that one would like to see, that result does not necessarily represent valid law. However desirable a rule may be, it cannot always be shown to be binding.

Mr. Rajower has opted for a theoretical approach in this work. He takes little interest in the practical implementation of the provisions he discusses, and therefore does not deal with the particular questions raised by the fact that in an internal conflict, one of the parties is not a State. Nonetheless, this work can be recommended as a good introductory survey of the law of non-international armed conflict.

The theses by Gabriela M. Wyss and Felix Rajower are evidence of the growing, and very gratifying, interest being shown by legal scholars in this branch of law.

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