

WAR, AGGRESSION AND SELF-DEFENCE

In his book *War, Aggression and Self-Defence*, Yoram Dinstein, an Israeli expert on international public law, gives the interested reader a comprehensive description of international law as it limits the use of force by States.* The author argues convincingly in favour of the realism and effectiveness of the United Nations Charter prohibition of the use of force, to which there are two exceptions: the right of self-defence, and collective security. The judgment of the International Court of Justice in the *Nicaragua case* also provides Dinstein (and quite rightly) with a wealth of material on the present-day interpretation of the prohibition of the use of force, especially as regards the right of individual and collective self-defence.

War, Aggression and Self-Defence merits inclusion in the book reviews published by the *International Review of the Red Cross* because Dinstein also clarifies the relation between the rules of international public law on the right of States to use force (traditionally called *jus ad bellum*) and international humanitarian law, or *jus in bello*, which limits the use of force for humanitarian reasons.

In the first part of this readable and judiciously compact book, Dinstein defines a number of concepts essential to an understanding of war and its legal consequences. The nature of war, the beginning of war, the termination of war by peace treaties or (what is more usual today) armistice agreements, the suspension of hostilities, neutrality, etc., are given a welcome clarification. It can be noted with satisfaction that Dinstein, too, refers to Additional Protocol I of 8 June 1977 in support of his conclusions and clearly acknowledges it as an authoritative text for extensive areas of international humanitarian law, even though it has as yet been ratified by only about half of all States.

Part II examines the prohibition of the use of inter-State force from the historical perspective and in contemporary international law. Of special interest

* Yoram Dinstein, *War, Aggression and Self-Defence*, Cambridge, Grotius Publications Limited, 1988.

is the explanation of the “just war” doctrine (*bellum justum*), which is admitted to have brought the development of the law of war to a *cul-de-sac*. The (allegedly) “just causes” for the use of force are no criteria whereby to differentiate between “lawful” and “unlawful” war, since no party to a conflict will ever question one of the causes it has invoked. The only legally tenable answer is to prohibit war (except in the above-mentioned cases, i.e. in self-defence). This was the step taken by the United Nations Charter, which prohibited the use of inter-State force (Article 2 [4]) after the 1928 Kellogg-Briand Pact had paved the way for such progress. Today the prohibition of the use of force is an integral part of (unwritten) customary international law, as was compellingly demonstrated by the judgment of the International Court of Justice in the *Nicaragua* case. Dinstein’s examination of this precedent-setting judgment and its consequences on how the prohibition of the use of force is to be construed is especially welcome. He shows the extent to which the prohibition of the use of force by international law reflects the modern thinking. *Jus ad bellum* has become *jus contra bellum*.

Of the many implications of the prohibition of the use of force which the author subjects to careful analysis, let us mention just one question of current interest. According to Dinstein, a State infringes this rule when it uses military might against another State on the grounds that the latter has violated human rights (“humanitarian intervention”).

After thoroughly analysing the criminalization of aggressive war—in the Nuremberg trials, aggressive war was held to be a crime against peace—the author reviews the exceptions to the prohibition on the use of force, first and foremost among them the right of individual and collective self-defence. This is the most important exception in practical terms, since States continue to wage war—despite the prohibition—invariably claiming that they do so in exercise of their right of self-defence. Self-defence is the lawful use of force against an unlawful attack. Numerous questions have repeatedly arisen in practice as to the scope of that right, which is also acknowledged as such by customary law, and the author examines them in detail. He looks, for example, at the controversial issue of to what extent the threat of force against a State justifies the preemptive use of force by that State. The author says it does not, although he allows that there are situations in which the threatened State may be justified in shooting first. He also makes interesting remarks on the question of how to judge attacks by armed groups launched from the territory of a third State.

Works which deal above all with the terms and conditions of the right of States to use force do not often speak extensively of international humanitarian law. It is pleasing to see (but by no means a matter of course) that the author makes the obvious connections between the two. For example, he quite rightly

states when discussing the concept of war that the rules of international humanitarian law must be implemented whenever force is employed between States. Above all, he demonstrates with all desirable clarity that international humanitarian law must always be respected, regardless of the (political) reason for the war. *Jus in bello* must similarly always be applied by all belligerents, without any restrictions.

Dinstein's newest book is a comprehensive work on the right to wage war and its limits. It is imbued with the conviction that international public law can help to promote peaceful relations between States. The book is a useful introduction to the subject.

Hans-Peter Gasser

FROM UTOPIA TO REALITY

Record of the Henry Dunant Symposium

Why hold a Symposium on Henry Dunant, seventy-five years after the death of this great Genevese philanthropist who founded the International Red Cross and Red Crescent Movement? For the academic interest of the subject, doubtless, and to take stock of the historical research concerning him, but above all in the belief that the message he has left us is astonishingly relevant to our times. In May 1985 the Henry Dunant Society celebrated its tenth anniversary by holding this symposium in Geneva. This, like the number of lecturers at the symposium—over twenty—and the subsequent publication of the *Record of the Symposium*,* was the hallmark of a vigorous society. The publication is a handsome volume containing high-quality essays whose value is enhanced by an index and fine illustrations. It makes highly interesting reading, and is a useful reference document.

All researchers start by making an inventory of the sources at their disposal. Thus the first two essays in this book are on what the archives of the International Committee of the Red Cross, the Swiss Red Cross and the Geneva Public and University Library have to say about Henry Dunant. The minutes of the Committee's meetings and his voluminous correspondence, particularly with his friend Rudolf Müller, the architect of his rehabilitation, contain invaluable and hitherto unpublished information on his life and thought.

* *De l'utopie à la réalité*. A record of the Henry Dunant Symposium (ed. Roger Durand), held in Geneva at the Palais de l'Athénée and the Chapelle de l'Oratoire from 3 to 5 May 1985; Geneva, Société Henry Dunant, Collection Henry Dunant No. 3, 1988, pp. 413.