

BOOKS AND REVIEWS

DOCUMENTS ON THE LAWS OF WAR*

Roberts and Guelff's *Documents on the Laws of War* was first published in 1982 (and mentioned in the November/December 1983 issue of the *Review*). This collection of treaties and other documents pertaining to the law of war soon became an invaluable tool for everyone interested in international humanitarian law in the broad sense. It is with great pleasure that the *Review* now draws the attention of its readers to the second edition of *Documents on the Laws of War*. Although the second edition does not add any further treaties to the selection included in the original volume, it nevertheless contains a wealth of new information. That alone justifies an announcement in the *Review*.

It is mainly a collection of treaties and other texts for scholars and legal practitioners who need to know the present state of codified international humanitarian law. The reader will therefore find all the treaties which are currently in force, together with a number of other relevant instruments, from the 1856 Paris Declaration onwards. In the reviewer's opinion, the selection made by the authors is well-nigh perfect. Furthermore, Roberts and Guelff have included several documents which, not being treaties, are not binding on States but which have had or still have an impact on the law (such as the 1923 Hague Rules of Aerial Warfare, the 1936 London Procès-Verbal on Submarine Warfare, and extracts from the Nuremberg Judgment), or are otherwise important for its understanding (e.g., the 1978 Red Cross Fundamental Rules of International Humanitarian Law). Although the editors' decision not to include resolutions of the UN General Assembly is generally sound, an exception in favour of Resolutions 2444 (XXIII) of 19 December 1968 and 2675 (XXV) of 9 December 1970 would have been welcome. These texts, too, would seem to be indicators of the state of customary law.

The text of each instrument is accompanied by a wealth of useful information: history of the treaty, basic information on the respective diplomatic conference, authentic languages, official source of the text and other publications, state of acceptance (list of States parties, reservations and declarations), etc. A short check reveals the accuracy of these most useful details. In a general introduction to the volume the editors give a brief outline of terminology, the source of humanitarian law (with an especially welcome reminder of the importance of customary law), the application of the law to States and to individuals in international and non-international armed conflicts and other relevant matters. The practitioner in humanitarian law is particularly happy to read the chapter on the practical impact of the law, in which the

* *Documents on the Laws of War*, edited by Adam Roberts and Richard Guelff, second edition, Clarendon Press, Oxford, 1989, 509 pp. + XI.

editors convincingly show that despite widespread pessimism about its role, humanitarian law *does* indeed influence the conduct of warfare.

A short bibliography and an index complete the volume, which is of quite manageable size (some 500 pages).

This revised and updated edition of Roberts and Guelff's *Documents on the Laws of War* is a most useful and judicious collection of essential instruments of international humanitarian law. The handy volume will be indispensable for all English-speaking scholars and practical lawyers, whether newcomers to the subject or seasoned practitioners.

Hans-Peter Gasser

HUMAN RIGHTS AND HUMANITARIAN NORMS AS CUSTOMARY LAW*

In this work the author, an eminent specialist in international human rights law and international humanitarian law, examines the relationship between these two branches of the law and the general rules relating to the formation of customary law on the one hand and to international responsibility on the other.

The first chapter deals with the influence of the provisions of international humanitarian law treaties on the development of customary law applicable in armed conflicts without, however, going into the general question of the nature and elements of customary law in the contemporary international community. The second chapter, which addresses the same problem in relation to human rights instruments, gives an extensive review of international and national (especially American) jurisprudence.

A definitive, although somewhat hesitant, trend emerges from these two chapters. Indeed, it would seem that when the customary nature of a norm has to be determined in the two domains mentioned above, more importance is attached in practice to *opinio juris* than to acts consistent with the postulated rule. More particularly, the treaty commitments entered into by States and the declarations they make in various international fora are increasingly considered as practice contributing to the development of customary law. It is in this context that the author analyses the judgment rendered by the International Court of Justice in *Nicaragua v. United States* merits. Professor Meron quite rightly criticizes the court, not for the conclusions it reached but for failing to justify those conclusions.

With regard to Protocol I additional to the Geneva Conventions, it is the author's view, referring to various statements made by the United States

* Theodor Meron, *Human Rights and Humanitarian Norms as Customary Law*, Clarendon Press, Oxford, 1989, 263 pp.