

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

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## 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

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

authorities, that the great majority of its rules are likely to qualify as customary law, once the Protocol is more universally accepted and if the whole of State practice *lato sensu* is analysed. On this last point one might beg to differ with Professor Meron, who gives decisive weight to the practice of the great powers and of States involved in armed conflicts. In the opinion of this reviewer, the customary nature of a rule of international humanitarian law can be assessed only by taking into account the practice of all States; the practice, again *lato sensu*, of States living in peace must have the same weight as that of actual or potential belligerents. In this connection we also feel that the author attaches too much importance to military manuals, which are certainly useful for demonstrating the *opinio juris* and the practice of a given State, but are much too uncommon and difficult to come by to serve as a guide to general practice.

As for the law applicable in internal conflict, the author observes that it will be difficult to derive customary rules from Protocol II; less so for the principles of human rights reaffirmed in this treaty than for the rules on the conduct of hostilities. In this sphere, rules deduced from principles must be combined with internal legislation and the reactions of third parties spurred by public opinion if any general law is to emerge.

In the third and last chapter the author shows that violation of a rule of humanitarian law or human rights law engages the international responsibility of a State, in accordance with the rules of general international law. Thus, by virtue not only of Article 1 common to the Geneva Conventions but also of the general concept of violations *erga omnes*, when a State violates a rule of humanitarian law (or is in serious breach of human rights law), the whole community of States is the victim of that violation. The States can then take the action provided for in the relevant instruments but, according to the text of the latter, in most cases they can also act on the basis of general rules. A counter-measure violating another customary or treaty-based obligation (not itself of a humanitarian nature) cannot therefore be ruled out.

The present review can mention only a few aspects, mainly concerning international humanitarian law, of this very instructive and admirably presented work whose arguments are supported by a wealth of references. By showing that international humanitarian law and human rights are both branches of international law governed by the general rules on sources and international responsibility, with the exception of some specific provisions, Professor Meron justifiably hopes to enhance respect for the individual in international society. He is always very prudent in putting forward his views and is careful to point out counter-evidence and opposite trends, thus making his propositions all the more convincing. The reader wishing to find more clear-cut conclusions and more definite replies to certain questions raised has failed to appreciate the fluid nature of international law, particularly as concerns the issues addressed in this work.

Marco Sassòli