

BOOKS AND REVIEWS

IM DIENST AN DER GEMEINSCHAFT

Festschrift für Dietrich Schindler zum 65. Geburtstag

In the service of the community

*Studies and essays in honour of Professor Dietrich Schindler*¹

In order to reflect the extent of his interests and areas of academic endeavour, this collection of texts in honour of *Dietrich Schindler* had to cover a wide range of legal topics. The 52 contributions to this book therefore relate to public international law, in particular international humanitarian law, the law of neutrality, international economic law, European law and constitutional law including the latter's history, theory and a number of issues raised in connection with it in Switzerland and abroad. The articles, written in English, French or German, provide valuable and lucid reading for those interested in these subjects.

As readers of the *Review* will understand, mention will be made here only of those texts dealing with international humanitarian law. To begin with, a rather pessimistic view is set out by *Friedrich Freiherr von der Heydte* (pp. 97-108, in German) in his study of the position of international law (including international humanitarian law) in the present-day international community.

Theodor Meron goes on to show that reactions to violations of a treaty protecting human rights can be based, where there is doubt, not only on the implementation of provisions contained in the treaty itself but also on the general rules on State responsibility (pp. 109-114, in English).

Fritz Münch then deals with the development of rules governing intervention by third States in non-international armed conflicts (pp. 115-125, in German).

Luigi Condorelli sets out to demonstrate the importance of international humanitarian law as, in his words, the law laboratory in which many of the ideas at the centre of present-day discussion in international law have been developed (pp. 193-200, in French). The examples he cites are codification and its influence on customary law, the rules on relations between a State and

¹ Walter Haller, Alfred Kölz, Georg Müller and Daniel Thürer (ed.), *Im Dienst an der Gemeinschaft, Festschrift für Dietrich Schindler zum 65. Geburtstag*, Helbing & Lichtenhahn, Basel/Frankfurt am Main, 1989, 826 pp.

its citizens, *jus cogens*, *erga omnes* obligations, the non-reciprocity of obligations and other aspects of State responsibility. Professor Condorelli's article should be read by those teachers of international law, alas too numerous, who neglect international humanitarian law in their teaching, considering it an area apart.

Felix Ermacora analyses the Afghan conflict in the light of international humanitarian law (pp. 201-214, in German). However, he fails to categorize the conflict clearly and sometimes intermingles the rules of law governing international conflict and those governing non-international conflict. This lack of precision leads him to state erroneously that the implementation of international humanitarian law in situations other than international conflicts is "optional" (p. 214). It should also be pointed out that, contrary to what one might conclude from certain passages (pp. 212-213), the status of "combatant" applies only to international conflict.

Jochen Frowein demonstrates that violations of international humanitarian law committed in an internal conflict are a factor to be taken into account by host countries in deciding whether to grant asylum (pp. 215-224, in German).

The contribution by *Hans-Peter Gasser* (pp. 225-240, in English) deals with the law of non-international armed conflict, in particular with the customary rules relating to the conduct of hostilities in such conflicts. Very judicious in his approach, the author analyses the practice of States, resolution 2444 of the UN General Assembly and a number of military manuals to compile an interesting list of general principles and customary rules. He never succumbs to the temptation to draw his conclusions by analogy with the existing rules governing international armed conflict.

Hans Haug examines an aspect of "Red Cross" law (pp. 241-254, in German). He outlines the historical development and describes the mandatory character of the Fundamental Principles of the Red Cross before analysing more particularly the difficult principle of neutrality. Admittedly neutrality, though necessary for preserving the Movement's unity and universality and a prerequisite for the immunity enjoyed by its components in times of armed conflict, does oblige those components to abstain from engaging in controversies of a political nature. But it does not prevent them from making pronouncements on issues of humanitarian concern, even if those issues are politically controversial. Professor Haug finally propounds the interesting idea that, unlike the ICRC's neutrality, the neutrality of a National Society is toned down by the need for the population of that country to be able to identify with it.

Antoine Martin describes the system of Protecting Powers and their substitutes provided for in the Geneva Conventions and their Additional Protocols (pp. 255-282, in French). His view is fairly pessimistic, feeling as he does that because better monitoring would only be effective if it did not require the consent of the State in question, it is ruled out by the present-day realities of international law.

Stanislaw E. Nahlik argues that, with two exceptions, international humanitarian law, including Protocol I, prohibits the use of nuclear weapons (pp. 283-299, in English).

Heinrich B. Reimann shows how the principles of international humanitarian law influence (and are in keeping with) the international rules or weapons of mass destruction (pp. 301-310, in German). However, his statement that only treaty-based rules can have any meaning in this area is somewhat questionable (page 303).

Jiri Toman analyses the development of protection for cultural objects in non-international armed conflict, in particular as provided by Article 19 of The Hague Convention of 1954 and Article 16 of Protocol II (pp. 331-339, in French).

Finally, in an exposé backed up by a wealth of historical, literary, philosophical, religious and legal references, *Michel Veuthey* reflects on the contribution of international humanitarian law to building peace and a better world (pp. 341-360, in French).

As ICRC President *Cornelio Sommaruga* reminds us in his foreword to this important book, Professor Schindler has been a member of the ICRC for many years and is furthermore Chairman of its Legal Commission. These studies and essays thus pay rightful tribute to him not only as an eminent scholar of international humanitarian law, but also as an expert on its practical application.

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