

Books and Reviews

PRINCIPLES OF THE LAW OF ARMED CONFLICT

Paul Reuter Prize 1994

Numerous though the publications are that have appeared in recent years in the sphere of the law of armed conflict, not one dealt with this whole body of law in both a thorough and an exhaustive manner. That shortcoming has been made good by this work from Professor Eric David, who has been awarded the Paul Reuter Prize for 1994.¹ No doubt the author, a professor at the Brussels Free University, would not approve this manner of describing his work. He tells us that, despite its 792 pages, his book is not a "treatise" but a "simple compilation of various principles and problems relating to the law of armed conflict". He adds that he "omitted to address many subjects" such as, in particular, the law of war at sea and the law of neutrality; moreover he assures us that his analysis of the doctrine is "far from exhaustive". It is true that these reservations are not wholly unfounded but let us admit that it would hardly be possible in our age of rapid change to write a classic treatise covering the entire field of the law of armed conflict currently in force. Professor David's book caters in the best possible way to the need for a work providing information on virtually the entire body of rules comprised in the law of armed conflict, while at the same time offering some well-balanced and pertinent thoughts on the problems they pose. This work is a most welcome supplement and update to the "Commentaries of the ICRC lawyers", which the author describes as the "Bible of the law of armed conflict"!

It would do the author poor justice to attempt to mention all the matters he touches upon. It will be more judicious to draw the attention of the reader of this review to the stand taken by Professor David on various current issues arising from the law of armed conflict. This we shall do by following the order of the chapters in his book.

Chapter I, which concerns "*The field of application of the law of armed conflict*", deals, *inter alia*, with the many questions relating to the *legal definition*

¹ Eric David, *Principes de droit des conflits armés* (Principles of the law of armed conflict), handbook of the Law Faculty of the Free University of Brussels, Bruylant, Brussels, 1994, 792 pp.

of armed conflicts, with special reference to the distinction between international and non-international armed conflict which is becoming increasingly blurred.

One of the situations that the author examines is that of a *non-international armed conflict in which several third-party States intervene* as allies of one or other of the parties in conflict. The author rejects the broadly held view whereby a conflict of that type should be classified according to the nature of the parties involved; that is to say, a conflict between a third-party State and the government grappling with rebels would be an international conflict, while one between the government in place and the rebels, or one between the third-party State and the rebels, would be a non-international conflict. The author highlights the "absurd consequences" to which this approach would lead and pleads in favour of considering any internal conflict as international once there is foreign intervention. It is to be feared, however, that these apt remarks will hardly suffice to overcome the resistance with which this attitude meets.

Another situation that Professor David examines is that of *UN peace-keeping forces which intervene in non-international armed conflicts* and which are authorized, within certain limits, to use arms against one or more of the parties to the conflict. According to the author, UN intervention has the same effects as State intervention. Once the UN forces clash with one of the parties to the conflict, the conflict is international. In response to the question as to whether the UN, not being a party to the Conventions governing armed conflict, is obliged to apply the provisions thereof, the author replies in the affirmative, giving three reasons for his view: (1) the UN, as a subject of international law, is bound by its general rules; (2) the UN, as a "power" within the meaning of Article 2, para. 3, common to the four Geneva Conventions, is bound by the Conventions *vis-à-vis* the States party provided that it "accepts and applies" their provisions, which it has done in undertaking to "respect the principles and spirit" thereof; and (3) the States bound by the law of armed conflict cannot confer on the UN or on any other organization the right not to refer thereto. The UN is hence bound by the commitments made by its members. These conclusions are important contributions to current debate even though, in placing the UN on the same footing as all other international organizations, the author is perhaps not taking sufficient account of the special nature of the institution.

Professor David notes that there is a *tendency to consider the law of armed conflict as being applicable in its entirety to non-international conflicts*. This tendency was already apparent at the end of the 1960s in certain UN General Assembly resolutions which stipulated that the basic principles of the law of armed conflict were applicable "to all armed conflicts". Since then, the Security Council has frequently called on parties to armed conflicts to respect humanitarian law, without regard to whether the conflicts in question were international or internal in nature.

Chapter II, which deals with the "*main 'substantive' rules of the law of armed conflict*", comprises a section on the law of The Hague and another on the law of Geneva. In the paragraphs concerning the prohibition of certain weapons, the

author highlights a principle which is rarely considered - *the ban on the use of arms which "render death inevitable"* - a principle that appeared in the preamble to the St Petersburg Declaration of 1868. As the purpose of war is not to kill the adversary but to put him out of action, a weapon which necessarily kills all those within its range is in breach of that purpose. The author considers several weapons in the light of that principle, for example nuclear weapons and precision or "surgical" weapons (such as those used in the Gulf War) which spare civilians but are more effective against military personnel, making their death inevitable. The principle at issue is also raised with respect to the US Army which, during that same war, used tanks and bulldozers to bury Iraqi soldiers alive in their trenches.

Another subject examined in Chapter II is the *right of victims to receive relief and the right and duty of States and private individuals to provide such relief*. This very topical problem is handled with the necessary distinction being drawn between the Geneva Conventions, their Additional Protocols and United Nations law.

Chapter III, devoted to the *implementation and monitoring of the law of armed conflict*, deals with the respective duties of States and the role of Protecting Powers and that of the ICRC and relief organizations, and reviews investigation mechanisms. It is the author's opinion, with regard to the duty of States to "ensure respect" for humanitarian law, that when a third-party State witnesses violations of the law of armed conflict, it must take action, "in particular by making representations to or registering protests with the State responsible".

Chapter IV on *Reparation for violations of the law of armed conflict* gives a complete account of the *criminal responsibility of individuals* and ways of repressing war crimes. The author examines, *inter alia*, the question as to whether the articles on grave breaches found in the "General Provisions" of the Geneva Conventions apply also to internal conflicts. He concludes that facts constituting grave breaches according to the General Provisions are punishable regardless of the nature — international or otherwise — of the conflict during which they are committed. But such a line of reasoning conflicts with the fact that Protocol II, in omitting to mention this matter, tends to show that States did not think of considering violations committed during non-international conflicts to be war crimes. The author nevertheless wonders whether there might not be a current trend towards regarding them as such. And, on this point, he refers to the resolutions adopted by the Security Council in connection with the conflict in the former Yugoslavia.

In Chapter V, entitled "*Why is the law of armed conflict so frequently violated?*", Professor David adopts the stand that "it is the failure to apply the simplest rules which is still the most common and the most shocking". He gives an extensive account of the many and complex causes of violations of the law of armed conflict. Here, he turns his attention from legal problems to focus on political, economic and social aspects and more especially on sociology, psychology, anthropology and the like. He makes statements such as, "Violence breeds

violence”, “horror gives rise to more horror” or “We live in a world which, despite its intrinsic violence, quite rightly makes peace and justice its supreme objective...” and “People are rarely taught how to behave when faced with violence”. As for solutions to the problem, the author states that there is “but one and it can be summed up in a single word: *training*”. He also points out that “Better knowledge of the factors leading to violations of the law of armed conflict should make it easier to prevent them”.

This book by Eric David, which contains a wealth of information and knowledge, makes a major contribution to improving respect for the law of armed conflict and also constitutes an essential reference work for all concerned with the subject.

Dietrich Schindler

Dietrich Schindler is Honorary Professor at Zurich University and has been a member of the ICRC since 1980.