

The book, which is richly illustrated with numerous photographs, has an appendix reproducing thirteen documents from the Spanish Archives.

Dedicated to the delegates of the ICRC who worked in Spain during the difficult years of the Spanish Civil War and to the members of the Commission for Spanish Affairs which was set up at ICRC headquarters, this work is not only a contribution to history but also a tribute to all those, Spaniards and foreigners alike, the famous and the less famous, who devoted themselves to alleviating the suffering of the victims of a particularly cruel war.

*Françoise Perret*

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## CHOICES MORE ETHICAL THAN LEGAL

### *The ICRC and human rights*

David Forsythe, an American political scientist from the University of Nebraska, has written extensively on Red Cross matters. Judging by its title, his most recent publication on the ICRC and human rights will command the attention of all those who are interested in knowing more about the ICRC and its policy.\*

This publication is timely because the Vienna Conference on Human Rights has challenged us all to give renewed thought to the relationship between the international protection of human rights and international humanitarian law.

In the first part of his paper the author sets out to demonstrate that humanitarian law is nothing other than international law for the protection of human rights in situations of armed conflict. Thus the author argues that “consistent with its tradition from 1863 of humanitarian help to victims of war, [the ICRC] works for what can be rightly termed fundamental human rights recognized in general international law”. Then follows an enumeration of human rights which are covered by the ICRC’s protection and assistance activities, both under the Geneva Conventions and outside their scope of application. At this level of abstraction nobody will take issue with such an analysis. As the author rightly points out, the ICRC itself has in recent times increasingly drawn attention to its own contribution to the realization of fundamental human rights. The author fails, however, to mention that several essential aspects of humanitarian law — and

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\* David P. Forsythe, “Choices More Ethical than Legal: The International Committee of the Red Cross and Human Rights”, in *7 Ethics & International Affairs* (1993) 131-151.

thus of the ICRC's activity — are definitely outside the domain covered by human rights law. The most obvious and also the most important of these are the rules known as "the Law of The Hague", i.e. regulations governing the conduct of military operations and rules on weapons and on their use.

The author then focuses on the extent to which humanitarian law influences or conditions the ICRC's operations. He vehemently denounces what he considers the exaggerated emphasis given to legal considerations. In his view, law should be treated as "a mostly background factor": it is "distinctly secondary to policy". If this is meant to underline that achieving compliance with international legal obligations is essentially a political affair, then it is difficult to object. But to treat humanitarian law as "soft law, to be implemented — or not implemented — by diplomats, politicians, and soldiers as part of world politics" seems to be a singular underestimation of the role and the power of law. It is strange to read that ICRC delegates do not use legal arguments when trying to achieve results in a situation where humanitarian law is applicable. While they may not often resort to technical legal language in their dealings with the powers that be, their requests will always be based on legal authority. If necessary, the delegate will not fail to pin down the government's formal responsibility to comply with obligations it is legally bound to fulfil. This is true with regard to what the author calls "procedural law", such as the delegate's right to act, and to substantive standards which the parties to an armed conflict have to respect. A delegate would be neglecting his duty if he failed to take advantage of legal arguments when such arguments may bring about an improvement in the victims' situation.

In the second part of his paper the author discusses various problems raised by some of the ICRC's operations, such as those conducted in the Middle East, in El Salvador and in Somalia. In particular, he analyses at some length the difficult question of whether ICRC delegates should continue visiting detainees in a given country, even if they do not have access to all of them or are allowed to visit them only after a certain period of time following their arrest or capture. A difficult question indeed. The Geneva Conventions give the ICRC the unconditional right to visit in their places of detention all persons deprived of their freedom in connection with an armed conflict, without setting any time limit. If a party to an armed conflict does not comply with its commitment to allow such access, the delegates have to determine the proper course of action while taking into account what they are actually allowed to do in other fields to assist the victims. Has the ICRC always taken the right decision? Scholarly studies, as the author suggests, may be useful in replying to this question, in particular by setting criteria for the evaluation of an ICRC operation. But it is hardly appropriate to say that, in El Salvador, "the ICRC was party to an agreement [concerning visits after an 8-day period] under which torture and mistreatment definitely occurred on a regular basis". The responsibility for discharging legal obligations lies with the parties to the armed conflict and not with the ICRC.

Finally, a comment on a footnote: Forsythe regrets the absence, in the *International Review of the Red Cross*, of controversial contributions. I hope that this book review will be further evidence to the contrary.

David Forsythe's study gives some insight into the way the ICRC fulfils its mandate under the Geneva Conventions. However, many questions remain unanswered and some of the answers are unconvincing.

Hans-Peter Gasser

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## THE RIGHT TO INTERVENE OR THE OBLIGATION TO REACT?

*What can be done to ensure respect for the  
rights of the individual  
in the light of the principle of non-intervention*

The book by Olivier Corten and Pierre Klein entitled *The right to intervene or the obligation to react? What can be done to ensure respect for the rights of the individual in the light of the principle of non-intervention* was published in 1992 by Bruylant.<sup>1</sup> Although the right to intervene has ceased to be newsworthy, the issue, or at least the specific aspects addressed by the authors, remains of major interest to jurists.

The work's two main sections illustrate the lines of thought of Mr. Corten and Mr. Klein. The first part deals with "permission in principle for an unarmed reaction" and the second with "prohibition in principle of an armed reaction". Questions as fundamental as the definition of constraint, the meaning of the notion of reserved domain, and the conditions governing the legality of reprisal measures are examined in the opening chapters. The second part considers the legal grounds for resorting to force in the light of recent resolutions of the United Nations Security Council and General Assembly. In this connection, it is worth reading the authors' analysis of Security Council resolution 688 which, they conclude, did not constitute a legal basis for the operation conducted by troops of several western States in Iraqi Kurdistan. The final chapter deals with the right of peoples to self-determination.

Although the book is concerned more with *jus contra bellum* than with international humanitarian law, the latter receives due mention in the introduction. The authors maintain that there is an obligation to react, deriving explicitly

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<sup>1</sup> Olivier Corten and Pierre Klein, *Droit d'ingérence ou obligation de réaction? Les possibilités d'action visant à assurer le respect des droits de la personne face au principe de non-intervention*, Emile Bruylant, Brussels, 1992, 283 pp. (*Collection de droit international*).