

## **Books and reviews**

---

### THE HANDBOOK OF HUMANITARIAN LAW IN ARMED CONFLICTS<sup>1</sup>

In view of the grave and frequent breaches of international humanitarian law, and the inability of the international community to put an effective stop to them, enforcement measures now tend to stress prevention. This fact was recognized by the Intergovernmental Group of Experts for the Protection of War Victims, which, when it met in Geneva in January 1995, called on the States to adopt their own national enforcement measures. An important move in this direction — and one supported by the ICRC through the advisory services it is now setting up — is the issue of national military handbooks. The fourth recommendation of the Intergovernmental Group of Experts calls on the States to issue national handbooks and, in this regard, to consult each other for purposes of harmonization. It is further suggested that the ICRC should draw up a model handbook.

In 1992, the Federal Republic of Germany issued just such a military handbook for the *Bundeswehr*, in the form of the *Zentraler Dienstvorschrift (ZDV) 15/2*, or Central Service Manual. This work was the fruit of years of preparation, in which intensive consultations with experts from other countries quite properly — and fully within the spirit of the later, above-mentioned recommendation — played an important part. Particularly progressive from a humanitarian point of view is Paragraph 211 of the manual, which instructs German servicemen to comply with the whole of international humanitarian law during military operations in non-international armed conflicts (i.e. not just in the international conflicts to which it already applies).

The handbook under review here, produced in cooperation with academic experts from Germany and abroad under the direction of Dieter Fleck, now provides a commentary on the ZDV 15/2. It is compulsory reading for anyone in the German-speaking world who is concerned with international humanitarian law. It is particularly useful, moreover, for people involved at a practical level, who have hitherto searched existing commentaries in vain for answers to ques-

---

<sup>1</sup> *Handbuch des humanitären Völkerrechts in bewaffneten Konflikten*, edited by Dieter Fleck in collaboration with Michael Bothe, Horst Fischer, Hans-Peter Gasser, Christopher Greenwood, Wolff Heintschel von Heinegg, Knut Ipsen, Stefan Oeter, Karl Joseph Partsch, Walter Rabus and Rüdiger Wolfrum, Verlag C.H. Beck, Munich 1994, XVI + 476 pp.

tions which cannot be readily assigned to some particular rule in the code of law. Now, furthermore, thanks to the welcome publication of an English language edition,<sup>2</sup> the handbook will become available to an even wider readership.

In Chapters 1 and 2, Christopher Greenwood provides a lucid exposition of the historical development, the legal bases and the scope of application of international humanitarian law, dealing in particular with *jus ad bellum*. Since the distinction between *jus ad bellum* and *jus in bello* is the crucial question on which international humanitarian law stands or falls, this aspect is examined in every detail. Greenwood's explanation of *jus ad bellum* itself is unassailable theory, although, or perhaps because, it offers a wealth of references to practice.

In a commentary which tends to concentrate on concepts and takes a somewhat critical view of the ZDV 15/2, Knut Ipsen explains the rules for combatants and non-combatants, the latter term referring not, as might be expected, to civilians but to forces not engaged in fighting. The distinction made in German law between combatants and non-combatants is apparently not just of much greater significance than in international law but is also somewhat harder to grasp. However, even taking all this into account, it is surely going too far for Ipsen (p.101) to describe as a "cardinal error" Para. 1017 of the ZDV, according to which "the parties to the conflict shall at all times distinguish between combatants and non-combatants". Moreover, it is difficult for the non-German reader to follow the discussion of the distinction between *bewaffneter Macht* and *Streitkräften* when both are translated from the same term in the original English and French texts.

In another chapter, which displays a profound knowledge of the practice deriving from Additional Protocol I and which provides exhaustive references to the literature, Stefan Oeter comments on the provisions relating to the means and methods of combat. On pages 138-147, he sets forth in detail the official NATO line on the permissibility of the use of atomic weapons, though understandably he cannot be too precise about the limits of such uses under the general international law recognized as applying. Nevertheless, he goes on to point out — rightly in my opinion — that: "Only by recourse to reprisals, which remains permissible under customary law, can current nuclear strategies be legitimated under international law" (p. 207). Yet, does the author seriously wish to claim (p. 144) that there is all the more scope for the use of atomic weapons (against an international adversary) on its own territory, when he writes that Article 49, paragraph 2, of Additional Protocol I is "undoubtedly new"? This very point is contradicted by Oeter himself with a reference to the undersigned in footnote 252.

---

<sup>2</sup> *The Handbook of Humanitarian Law in Armed Conflicts*, edited by Dieter Fleck in collaboration with Michael Bothe, Horst Fischer, Hans-Peter Gasser, Christopher Greenwood, Wolff Heintschel von Heinegg, Knut Ipsen, Stefan Oeter, Karl Joseph Partsch, Walter Rabus and Rüdiger Wolfrum, Clarendon Press, Oxford, November 1995, XVI + 589 p.

Whether the frequency of attacks designed to terrorize the civilian population is connected with the prohibition of reprisals, as Oeter suggests (p. 169), is open to question, in particular when we recall that the parties to the conflict in Yugoslavia, to whom he himself refers, plead reciprocity with almost pathological insistence in seeking to justify the gravest breaches of international humanitarian law.

Hans-Peter Gasser clearly states the case on the protection of the civilian population, especially in occupied areas, and backs this up with an abundance of references to practice. From the point of view of international law and for the non-German reader in particular, it is particularly welcome that, in discussing any problem, Gasser always mentions the legal provisions relevant to non-international conflicts. The German serviceman who seeks to understand the ZDV 15/2 will do well to remember that Para. 211 stipulates that his conduct in non-international conflicts should be the same as in international ones. In principle, this also holds true for Geneva law. However, two points should be noted. First of all, Para. 540 of the ZDV 15/2, referring to Article 6, paragraph 3, of the Fourth Convention, speaks of the cessation of the applicability of many provisions of the Fourth Convention, forgetting that this provision was superseded by Article 3, paragraph b, of Additional Protocol I, which permits full application of the Fourth Convention until the occupation is over. Secondly, it is stated (p. 194) that nationals of a neutral or co-belligerent State whose interests can be protected by diplomatic representatives are not protected persons. However, according to Article 4, paragraph 2, of the Fourth Convention, while this rule may apply in the sovereign territory of a party to the conflict, it does not apply in an occupied area.

Walter Rabus sets forth the position with regard to wounded, sick and shipwrecked persons and the rules on religious personnel. The complex subject of the protective emblem is explained simply, if perhaps rather too briefly.

Horst Fischer deals with the protection of prisoners of war. After a very interesting historical survey, he sets out the relevant rules, together with many references to most recent practice, including in the former Yugoslavia. It is to his credit that he did so, although it might well be wondered whether the conduct of the warring parties in Yugoslavia or that of the international community with regard to the situation there can serve as a basis for drawing conclusions as to the practice of the States in relation to the Third Geneva Convention. The conflicts in the former Yugoslavia started out, after all, as internal conflicts, and their precise designation remains a matter of dispute. Nevertheless, experience has shown that, any special agreements notwithstanding, in conflicts which the parties involved themselves see as internal disputes, the law relating to prisoners of war is the first to be applied only *mutatis mutandis*.

Karl Josef Partsch discusses the provisions for the protection of cultural property, including the often problematic relationship between the Cultural Property Convention of 1954 and the Additional Protocols of 1977.

Wolff Heintschel von Heinegg deals with the law of armed conflict at sea and provides abundant references to current and earlier practice. His contribution is particularly valuable since, as is well known, this area of international law has not been supplemented since the beginning of the century, despite the fact that the technical circumstances and practice changed radically during the two World Wars. In the "San Remo Manual on International Law Applicable to Armed Conflicts at Sea", experts and lay practitioners from all over the world sought to restate the law. Their efforts also affected the ZDV 15/2. Here, too, with regard to war at sea, the notion of "military objective" is made the focus of provisions on the conduct of hostilities. Heintschel von Heinegg, who himself made a substantial contribution to the San Remo Manual, offers proposals and possibilities for development which are not only innovative but also logical and, from the point of view of practice, unavoidable. These have also appeared in the San Remo Manual and in the commentary on it edited by Louise Doswald-Beck.

Michael Bothe has succeeded in the difficult task of presenting the law on neutrality. He does not ignore the fundamental tensions between the Charter of the United Nations and the fundamental principles of neutrality in armed conflicts, but nor does he insult those involved in practice with the useless information that everything is subject to controversies. While he does not hesitate to describe some of the rules codified in the Hague Convention of 1907 — including humanitarian ones — as superseded by customary law, he demonstrates thoroughly satisfactory solutions in terms of this same customary law. He rightly recalls that, in the triangle of *jus ad bellum* — the law of neutrality — *jus in bello*, even self-defence cannot serve to justify a breach of the law of neutrality.

Rüdiger Wolfrum deals very briefly with the Achilles heel of the law of war — namely the question of enforcement — without being drawn into theoretical debates on international law when discussing the role of the United Nations or Article 1 common to the Geneva Conventions. As in the ZDV 15/2, the emphasis — quite properly for a military manual — is on the punishment of war criminals. The ZDV and Wolfrum (lines 428-432) refer almost incidentally to breaches of law in non-international conflicts as being among "serious breaches" to be punished. However, the description of these as war crimes is certainly a welcome step and is in line with the latest developments of practice, such as the *ad hoc* international courts. However, whether they can simply be subsumed under the legal term "serious breach" is another matter.

The manual also contains some very useful appendices, including a list of other military manuals.

Overall it may be said that, while this work is intended as a commentary on the German service manual, it is also, to a large extent, a commentary on international humanitarian law which should be of interest to a worldwide readership. Discussions of specifically German law are relatively few, indeed perhaps too few for a work intended for practical use. A negative aspect of the international law approach is the fact that, with the exception of Horst Fischer's con-

tribution, limitations of the ZDV 15/2 going beyond international law are frequently played down. There is also some overlapping — e.g. between the chapter on means and methods of warfare and that on protection of the civilian population. Whereas in an academic work this might have raised eyebrows, a certain degree of redundancy makes sense in a manual because the practical user needs to be able to seek information on “his” problem from various points of view. However, this implies a degree of coordination between the commentators which is not always apparent in the handbook.

*Marco Sassòli*

---