

WAR AND LAW SINCE 1945

The British historian Geoffrey Best has written a work that affords new insights into war and its limits as defined by the law. In *War and Law Since 1945** he undertakes to show the relationship between civilization and war. His basic premiss is that civilization always seeks to impose restrictions on the violence of war in order to reduce to a minimum the resulting loss of life and destruction of civilian property. The author is interested above all in whether civilization succeeds in this: do the restrictions the law lays down actually exert a moderating influence on those who wage war, and do they make military operations less cruel and provide broad protection for those affected by the fighting? In short, to what extent are the rules of international humanitarian law actually reflected in practice?

This is not the first time that Geoffrey Best has ventured into this legal domain. In *Humanity and Warfare — the Modern History of the International Law of Armed Conflicts* (London 1980) he laid the basis for a more comprehensive view of international humanitarian law than can be accomplished by means of a purely rule-oriented analysis of existing texts. Taking the European Enlightenment as his starting point, Best told the recent history of humanitarian law. In his new 400-page book he continues his study of that law's place in history and explains the latest developments, casting new light on the provisions applicable today. The many cross-references concerning both military and general history as well as an incredible wealth of factual material make this book an interesting read. Best describes himself as a historian who specializes in the law of war and endeavours to explain things as clearly as possible. He explicitly disclaims the mantle of the lawyer, to whom he ascribes a limited and one-sided view, and reaches out to the non-specialist, more general reader to describe international humanitarian law as it really is.

Part I of the book sets the stage for his account of modern humanitarian law by giving a historical analysis of the ideas from which it stemmed. Best begins with Jean-Jacques Rousseau and ends with the war-crimes trials in Nuremberg and Tokyo. For example, he reminds his readers that the international humanitarian law applicable today derives almost exclusively from European and Mediterranean sources. Despite its regional origin, the well-developed European system of humanitarian law has spread world-wide, probably because the ideas and principles on which it is based do not seem alien to non-European cultures and civilizations but contain solutions to problems that arise in like or at least similar fashion everywhere, namely how to limit the violence of war so that survival is ensured.

* Geoffrey Best, *War and Law Since 1945*, Clarendon Press, Oxford, 1994, 434 pp.

Most of the book is devoted to the law's development since the Second World War: Part II, entitled "Reconstruction of the Laws of War, 1945-1950", is centred on the making of the four Geneva Conventions of 1949, whilst Part III, "Law and Armed Conflict since 1950", gives particular attention to the two Additional Protocols of 1977. For the law, the end of the Second World War prompted many changes, and the author endeavours to help us see the pattern that emerged. The founding of the United Nations, the adoption of its Charter as the basis for international law, the hearing finally given to demands for effective international protection of human rights, the war-crimes tribunals in Nuremberg and Tokyo and the recasting of international humanitarian law in the 1949 Geneva Conventions are but the most important elements in that pattern. It would be foolish to view these developments in isolation and the author gives an absorbing account of how each influenced the other. Best makes the relationship between protection of human rights and the rules of international humanitarian law particularly clear: he speaks of an enriching alliance between the two systems, with both aspiring to protect the human being *in extremis*. As we know, Article 3 common to all four Geneva Conventions unmistakably enshrined and convincingly legitimized this alliance. As a counter-example Best cites Article 5 of the Fourth Geneva Convention, which disregards the most fundamental human rights demands by allowing protected persons to be held *incommunicado* in occupied territory, and this despite the then very recent tragic experience of such unacceptable practices during the Second World War. The reader learns something of the background to this aberration by the lawmakers of 1949.

The table of contents for the two main sections of the book reads like a list of the legal issues that arise time and again when it comes to actually implementing international humanitarian law. The general reader will learn a great deal, not only about the rules themselves but also about the practical problems involved in their transposition into legal reality. The author has assembled much factual material from the Second World War and also from the 1990-91 Gulf War. Experts in international humanitarian law will find much stimulating discussion but nothing that will add substantially to their understanding of the Geneva Conventions or their Additional Protocols. Best largely shares the prevailing views on the principal issues raised in connection with these six humanitarian treaties and with the rules of customary law. But the book is enlightening and at times very impressive, for instance the author's remarks on the prohibition of perfidy — a perfect example of the insights that can be gained from an analysis penned by someone who is "more than a lawyer".

The international law expert may nevertheless wonder at times whether the often proclaimed broader approach really does yield so many new insights. He then also wonders whether sometimes too much is being 'understood', thereby merely justifying the *status quo*. An example is the disappointing commentary on the 1980 Weapons Convention, which can hardly be described as anything even half-way approaching an adequate remedy for such abominable practices as the use of anti-personnel mines. He may also be startled by the somewhat

superficial treatment, and ultimately negative assessment, of 1977 Additional Protocol II (on non-international armed conflict). Has Best been deserted by his sense of political and historical perspective when he judges a text to be unsatisfactory merely because it lays down too few specific rules? In Protocol II, has not political pressure brought into being a humanitarian treaty adopted by consensus and which, precisely because of its simplicity, has some chance of being complied with by the parties to civil war?

Geoffrey Best's new book gives much food for thought to anyone interested in humanitarian law. It is well worth reading.

Hans-Peter Gasser

THE GULF CRISIS

*From prohibition of the use of force
to its authorization**

Mr Sayegh's work is based on the thesis that he wrote for his doctorate in law soon after the second Gulf War. It was devoted not to the "war" but to "crisis" — something that may seem surprising to jurists unaccustomed to considering such concepts. The author has nevertheless done justice to his subject, aided by his knowledge of Arabic, French and English, as can be seen from the bibliography and the list of sources consulted. The study is intended to "help explore the development of the use of force and the changes that this has brought about in the United Nations system" (p. 26).

The chronology placed in the early pages of the study (pp. 16-19), even before the introduction, shows us the orientation of the author's research, which is confined to the "crisis" that lasted from 2 August 1990 (date of the invasion of Kuwait) to 16/17 January 1991 (beginning of the war against Iraq).

As we know, this was a period of unprecedented activity on the part of the United Nations Security Council, which adopted a series of resolutions, the first (resolution 660 of 2 August 1990) condemning the invasion and the last (resolution 678 of 29 November 1990) authorizing the use of "all necessary means" to implement the previous resolutions.

* Selim Sayegh, *La crise du Golfe: De l'interdiction à l'autorisation du recours à la force*, Librairie Générale de Droit et de Jurisprudence, Paris, 1993, 544 pp.