
Livres et revues

Books and reviews

Helen Durham and Timothy L. H. McCormack (eds)
**The Changing Face of Conflict and the Efficacy
of International Humanitarian Law**

Martinus Nijhoff Publishers, The Hague/London/Boston,
1999, 225 pages

International humanitarian law is attracting ever greater attention at all levels. Growing discussion of that law and of issues related to armed conflict is being encouraged by a variety of books, lectures and specialized articles. This thought-provoking book, which contains the papers presented during a conference held in 1997 at the University of Melbourne, Australia, to mark the 20th anniversary of the two 1977 Additional Protocols to the 1949 Geneva Conventions, is a case in point. Compiled and edited by Helen Durham, Legal Officer at the Australian Red Cross, and Timothy McCormack, Australian Red Cross Professor of International Humanitarian Law at the University of Melbourne, it is also the second volume of a new series on international humanitarian law which Kluwer Law International began publishing in 1999.

The book is divided into five parts and ten chapters, each of them written by experts on the respective subject, and examines developments in various fields of international law which may ensure a better implementation of international humanitarian law standards in the new situations encountered today. It does not seek to address the causes of, or problems related to, the different types of conflicts and crises that have arisen, in particular, since the end of the Cold War,

such as the ethno-national conflicts and the disintegration or collapse of State structures. The editor's preface clearly states that this reality "is taken as given". On the basis of that assumption, and considering the devastating effects of present forms of conflict mainly on the civilian population, an attempt is instead made to find out "how to maximise the efficacy of international humanitarian law" (p. xvii).

In an excellent overview Christopher Greenwood describes the intentions and the process that led to the two 1977 Additional Protocols to the Geneva Conventions. Analysing both their historical development and their content, he stresses the negative and positive results of those international norms. Despite some negative aspects, such as the introduction of "highly politicised considerations of the *jus ad bellum*" (p. 15) regarding wars of national liberation and guerrilla warfare, the author considers that the two Protocols are useful instruments, provided that wider ratification and concrete implementation can be assured. In his opinion, there is at present no need for further treaties. — Christine Chinkin makes a strong appeal for greater concern with regard to violence to women in war. In particular, she points out the little interest shown by international law instruments, such as the 1949 Geneva Conventions and the 1977 Protocols, in the protection of women against rape and other forms of sexual violence. In view of the jurisprudence of the ad hoc International Tribunals for Rwanda and the former Yugoslavia and of international bodies such as the Inter-American Commission on Human Rights, the author expresses some concern about the recognition of rape and sexual abuses as crimes affecting women as such. It would be better, she suggests, to elaborate a new protocol additional to the Geneva Conventions which specifically addresses the rights of women during armed conflict, following the example of the new Optional Protocol to the Convention on the Rights of the Child.

In Part II Daniel Thürer discusses several problems related to contemporary forms of conflict, in particular the situation of minorities as one of the main causes of conflict — the so-called "identity struggle". After examining both human rights law and international humanitarian law to check their adequacy for the protection of minorities, he concludes that international humanitarian law does not

provide specific protection for them, but that the concept of non-discrimination gives adequate protection to minorities in conflict situations. Problems arise in those unclear situations which precede or follow an armed conflict, situations of crisis and unstable peace, which are often characterized by attacks against specific groups and minorities. The author realizes that international humanitarian law is not equipped for creating new structures and institutions for the peaceful integration of minorities and for the construction of a multinational society within a State. Humanitarian agencies, such as National Red Cross or Red Crescent Societies, may, however, play an important role and "take preventive action regarding minorities if they constitute potentially vulnerable groups in a specific context" (p. 59). National Societies and the ICRC have an important role to play in establishing new values based on justice and non-discrimination.

The papers in Part III of the book are devoted to arms control, the effects of arms and the concept of superfluous injury and unnecessary suffering, in particular the SirUS Project.

Part IV deals with issues related to the law applicable to peace operations. As one of the authors says, "[t]he relatively new (on a larger historical scale) use of military forces in peacekeeping roles has created considerable legal confusion" (p.125). International humanitarian law is supposed to be applicable to armed conflict between States or factions. What is the situation in peacekeeping operations where there is no State engaged in conflict with another State? Garth J. Cartledge suggests that a specific code of conduct for UN peacekeeping operations should be drafted. This code should not be based exclusively on international humanitarian law, as peacekeeping forces are only exceptionally involved in combat situations, but should also reflect human rights principles and legal principles common to all nations. In this way "the minimum standard of legal behaviour in all likely situations" may be identified (p. 137). — In his paper on "Responsibility for public security in peace operations" Michael J. Kelly suggests that the Fourth Geneva Convention, in particular the provisions on belligerent occupation, should be accepted as a guideline. Does this approach mean that the Geneva Conventions are in general applicable to peacekeeping operations? Would States have an

interest in acknowledging that such operations are to be governed by international humanitarian law?

The final three papers examine issues related to enforcement of international humanitarian law: “National prosecution of war crimes and the rule of law”, by Gillian Triggs; “International criminal law and the *ad hoc* Tribunals”, by Helen Durham; and “Enforcement of international humanitarian law”, by Geoffrey J. Skillen.

The papers published by Durham and McCormack shed interesting light on some new trends and provide new answers to difficult issues concerning international law applicable to armed conflict situations. Particularly important is their consideration of the growing relationship between international humanitarian law and other areas of international law.

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