

REPORTS AND DOCUMENTS

The Paul Reuter Prize 2009, Presentation Ceremony, Geneva, 15 July 2010. Recipient: Dr. Théo Boutruche

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Address by Dr. Toni Pfanner, member of the Paul Reuter Fund Committee

On behalf of the Chairman of the Paul Reuter Fund Committee, Professor Paolo Bernasconi, it is a pleasure and a great honour for me to present the Paul Reuter Prize for 2009 to Dr. Théo Boutruche. Dr. Boutruche is currently a consultant on international human rights and international humanitarian law; he has worked with the Office of the UN High Commissioner for Human Rights and was a member of the Independent International Fact-finding Mission on the Conflict in Georgia.

The Paul Reuter Fund was set up in 1983 through a donation made to the International Committee of the Red Cross by the late Paul Reuter, Professor Emeritus at the University of Paris, a member of the Institute of International Law, and former Chairman of the United Nations International Law Commission. Its main purpose is to encourage the publication of works on international humanitarian law and other initiatives in that field.

The jury for the prize consisted of Professor Paolo Bernasconi, who is also a member of the governing body of the International Committee of the Red Cross, Professor Alejandro Lorite Escorihuela of the American University in Cairo, and Professor Julio Jorge Urbina of the University of Santiago de Compostela. With the support of several members of the ICRC staff, they unanimously decided to award Dr. Théo Boutruche the Paul Reuter Prize for his work entitled *L'interdiction des maux superflus*, a study of the prohibition of superfluous injury or unnecessary suffering.

In 2008, Dr. Boutruche defended his PhD thesis on the same subject at the Graduate Institute of International and Development Studies in Geneva and at the Aix-Marseille Faculty of Law in France, and it is for this thesis that he is today receiving the Paul Reuter Prize for 2009. It was written under the direction of Professor Andrew Clapham from the Graduate Institute and Professor Marie-José Domestici-Met of the University Paul Cézanne in Aix-Marseille III.

The subject of his work is the ban on causing ‘superfluous injury or unnecessary suffering’ laid down in international humanitarian law. As early as 1868, the St. Petersburg Declaration condemned the use of weapons ‘which uselessly aggravate the sufferings of disabled men’, as did the Regulations respecting the Laws and Customs of War on Land, annexed to the Hague Convention No. IV of 1907. In its Advisory Opinion on Nuclear Weapons, the International Court of Justice called it a ‘cardinal principle ... constituting the fabric of international humanitarian law and an intransgressible principle of international customary law’. It is accordingly prohibited to cause unnecessary suffering to combatants and to use weapons causing them such harm or needlessly aggravating their suffering.

The object of Dr. Boutruche’s work is to clarify the principle’s content and purpose in international humanitarian law. His ambitious attempt to define a central notion of this law is successful: the book is clearly the result of serious academic work and painstaking research, both in primary sources (especially the examination of the domestic regulations of states) and in secondary sources, and provides the first comprehensive analysis of the entire spectrum of the often neglected prohibition on causing unnecessary suffering.

The text is divided into three parts. The first concerns the principle’s scope of application, both material and personal. The second part sets out the content of the principle, with the aim of clarifying how ‘suffering’ and ‘unnecessary’ should be interpreted. The third part deals with the implementation of the principle, discussing its application to regulated weapons and the relationship to technological advances.

The author defends the principle on legal and moral grounds, and associates it with the idea of ‘lesser evil’. He explicitly favours a realistic approach, both in form – by linking the principle to new developments on the battlefield – and in legal substance. This is reflected methodologically by his consistent recourse to state practice in support of the points he makes, refraining from simply rehashing secondary literature.

Decisive conclusions reached by the author are that the principle is also applicable in non-international armed conflicts; that it covers not only means of combat, such as weapons, but also methods of combat and specifically the tactical and strategic use of weapon systems; and that it furthermore covers civilians who directly participate in hostilities. The last part, on ‘Implementation’, is a major contribution in itself, in that it not only discusses new weapons, such as non-lethal ones, but also presents specific cases of implementation of the principle to highlight more general issues of humanitarian law.

Théo Boutruche’s thesis was chosen because it addresses a matter of great importance and examines virtually every case in which the prohibition on causing

superfluous injury or unnecessary suffering has been or could be applied and interpreted in an original way. The Paul Reuter Fund Committee is convinced that it will be a standard reference work on this subject.

The quality and usefulness of Dr. Boutruche's work render it worthy indeed of a prize that commemorates that great jurist, that generous and committed individual, the late Professor Paul Reuter, who contributed so much to the development of international law, as the members of the United Nations International Law Commission present will testify.

This is the ninth time that the Paul Reuter Prize has been awarded for outstanding work in the field of international humanitarian law. It is therefore my great pleasure to present the Paul Reuter Prize for 2009, and the accompanying diploma, to Dr. Théo Boutruche.