Durch seine bloße Existenz wird dieses Streitregelungssystem, so ist zu hoffen, zum Frieden auf den Meeren beitragen, denn es schafft für die meisten Seerechtsstreitfälle Justitiabilität anstelle der bisher häufig üblichen (militärisch/politischen) Konfrontation. Ein internationales Gerichtsurteil wird in der Regel in der internationalen Praxis auf größere Akzeptanz stoßen als eine einseitige militärische Aktion.
Ein Schönheitsfehler mag sein, daß der Hamburger Seegerichtshof als obligatorische Urteilsinstanz nicht immer und automatisch zum Zuge kommen wird. Als attraktiv für die Praxis werden sich voraussichtlich die Schieds- und Vermittlungsverfahren erweisen, für die der ISGH sein Know-how und seine Richter im Einzelfall als Streitschlichter anbieten kann. So wird es für die Bedeutung des Seegerichtshofs entscheidend darauf ankommen, das Vertrauen der Vertragsparteien in seine Objektivität und Sachkunde zu gewinnen.
Der vorliegende Kommentar ist somit in seiner Art einzigartig und zum richtigen Zeitpunkt erschienen. Er wird für alle, die mit der Errichtung des Seegerichtshofs zu tun haben, für alle zukünftigen Nutzer der seerechtlichen Streitregelung sowie für Forschung und Lehre für längere Zeit unentbehrlich bleiben.

Uwe Jenisch

Antonio Tanca
Foreign Armed Intervention in Internal Conflict
Martinus Nijhoff Publishers, Dordrecht 1993, 243 pp., £ 57.00

Tanca's aim is to inquire into the system of norms regulating the "internationalization" of internal conflicts, his topic is ever important. Despite the fact that there is quite a lot of literature on this or related topics this one is especially well-researched and presented and certainly deserves special praise. Antonio Tanca has had the distinct advantage of having done his research and work on his doctoral thesis in Cambridge and Florence and carried out revision work at the Max-Planck-Institut in Heidelberg where he had acccess to excellent teachers and libraries.
"Through a careful examination of all relevant cases of 'internationalized' internal conflict from 1956, an attempt will be made to reassess the validity of the traditional framework of rules concerning foreign intervention in internal conflict. At the same time, the applicability to these situations of the rules typical of international conflicts will be analyzed with a view to proving the existence of continuum between the two situations, not only as a matter of fact but also with respect to their legal regulation." (p. 1)
In his introduction Tanca emphasizes the ban on use of force in the UN Charter, describes the 'grey areas' and elaborates on Art. 39. "(...) the Security Council has seldom acted as the 'protective arm' of the world community. Preservation of world peace has thus come to be entrusted to individual States by means of a rather rudimentary set of rules. The obvious

consequence of this is that State sovereignty is returned to centrestage (...)." (p. 6). The author discusses the term 'general interest' and argues that the very existence of a 'general interest' may be called into question. Therefore a clear distinction is necessary.

In theory the internationalization of internal conflicts is no problem, yet in practice it can be difficult to identify the legitimate government, e.g. in a situation of anarchy, or when the legitimate government no longer wields effective power. This identification is of utmost importance when it comes to the right to request foreign intervention. One can easily see that in the current set-up of the UN Charter the system offers no satisfactory solutions as there are no generally accepted criteria for identifying who is to speak on behalf of the State. "The crucial question here obviously centres on the behaviour of third States: on whether they are allowed to do anything in such cases, and, if so, under what conditions." (p. 7)

Following his introduction, Tanca explains the purpose of his research (he offers three hypotheses) and his methodological approach. His well-structured work is divided into two major parts and a conclusion, the first focuses on the two principal justifications for foreign armed intervention, consent of the victim state and self-defence, and the second one on additional justifications – that is to protect nationals abroad as well as the alleged right of counter-intervention.

The author's main conclusions can be found from page 135 onwards. Perhaps not surprising, they are sound and well-stated. He elaborates on the "uncertainties and loopholes" (p. 137) in the existing legal regulation, comments on legitimacy as the legal basis for consent as well as its development, the self-defensive character of most armed interventions and the rising importance of the "Peoples", especially in the area of self-determination and humanitarian intervention.

In his remarks on the pursuit of international peace and protection of state sovereignty, Tanca states that "despite the uncertainties (...), and the caveats (...), the overall coherence of the system of rules concerning armed intervention does not, at the moment, at any rate, seem seriously impaired. The making and operation of these rules is still firmly in the hands of individual States, and operates in the interest of their rulers." (p. 142)

"How it is possible to ensure the prevalence of the 'common interest' of world peace in cases of controversy over the application of a generally accepted rule? What is needed is a mechanism capable of marking the point at which the individual interest must give way to the general interest." (p. 143) Tanca offers a possible solution to the dilemma: the non-escalation principle, where he asks what the consequences of the Security Council's failure to take action are and whether the ban on force and its exceptions bind individual States.

"In a system which lacks the authority to intervene automatically in order to decide what is right and who is wrong, the right to react by force against the use of force (and to be helped upon request) automatically contains the seeds of escalation. Thus the enforcement power available to individual States must necessarily be weaker than the range of possible unlawful uses of force." (p. 144)

Tanca's principle of non-escalation enjoins a State to refrain from using armed force, with the exception of a few pre-determined situations, even in the face of blatant violations of this very principle by other States, which means it produces a self-imposed limitation by States of the sanctioning power traditionally afforded to them. "Nonetheless, a demonstration that a non-escalation principle is necessary in theory and that it can be deducted from existing rules is not the same thing as proof of its existence in practice." (p. 145) He shows the limitations and adds that research is important precisely in those areas where a 'circumvention' is most likely.

Finally Tanca returns to his three hypotheses and affirms the last one – that prohibition against the use of force remains substantially unimpaired even in the cases just mentioned, because States (and other relevant entities) tend to behave in accordance with it, and violations are not so numerous, or of such magnitude, as to represent sufficient evidence of a change of the law – while there is some room for alterations. Before he delves into the case studies, he questions the ban of force as the way to achieve world peace and boldly sums it all up by saying that the present normative system is unable to find a satisfactory answer.

In the appendix he gives short comments on thirty cases from 1956 to 1992 stating the facts and drawing attention materials and readings. His observations are straight to the point. (If they were in larger print they would be easier to read!)

Antonio Tanca has produced a very good first book with a fine bibliography. Students may want to wait for a paperback edition, which will hopefully appear soon.

Dagmar Reimmann

Alexander H. Stopp
Die Behandlung ethnischer Minderheiten als Gleichheitsproblem
Nomos Universitätsschriften Recht, Band 134
Nomos Verlagsgesellschaft, Baden-Baden 1994, 165 S., DM 58,--

Die Probleme des Minderheitenschutzes sind vielschichtig. Die Auseinandersetzung in der Sache beginnt schon bei der Definition des Rechtsbegriffs Minderheit, der wesentlich geprägt ist durch das jeweilige Verständnis von Staat, Nation und Volk, woraus sich Vorentscheidungen hinsichtlich Schutzwürdigkeit und Schutzumfang ergeben, die unausgesprochen in die Definition einfließen. Grundlegend ist der Unterschied zwischen einem die Minderheit als Kollektiv erfassenden Schutzansatz und dem beim Individuum ansetzenden Schutz vor Benachteiligung wegen seiner ethnischen Identität. Die These von Stopp lautet, daß nur der allgemeine Gleichheitssatz in Verbindung mit Wertungsgesichtspunkten, die sich aus den besonderen Gleichheitssätzen ergeben, die formale Flexibilität vorhält, derer es für die Bewältigung des vielschichtigen Problems bedarf. Angesichts der Formalität des