

Ige F. Dekker / Harry H.G. Post

The Gulf War of 1980 - 1988. The Iran - Iraq War in International Legal Perspective

Martinus Nijhoff Publishers, 1992, 314 pp., £ 66.50, US \$ 112.50

"In any armed conflict, violations of the law will occur. In the Iran-Iraq war, the blatant disregard of a number of fundamental rules has been a major concern. The indifference of the world at large, however, should be considered even more distressing" (p. 128).

"But the spectacular feature of this conflict, a 'first' perhaps in the entire history of warfare, was the involvement of states, which, without any actual sympathy for the cause of either state, massively sold arms, gave technological assistance and provided military intelligence simultaneously to both camps" (p. 281).

The astonishingly recent publication of this work suggests that there is absolutely no getting away from a comparison between the 1980-88 Gulf War and the 1990/91 Iraq - Kuwait crisis. Then the Security Council took more decisions in ten weeks than it took in eight years previously when a different, actual war was raging.

"(...) it can only be safely assumed that the Iraqi invasion of Kuwait in August 1990 and the military and other reactions triggered by that operation, can only be fully understood in the light of the Iraqi experiences and losses in the war with Iran" (p. 1). The Iran - Iraq war of 1980-88 was an almost classic international war, which "has refocused the interest of international lawyers on some matters that for a long time seemed to have lost their place of prominence. Important examples are the law of neutrality and some parts of the law of international armed conflict, in particular the law of naval warfare and several aspects of the law governing the conduct of war (...)" (p. 3).

The essay collection edited by Dekker / Post addresses a number of paramount international legal aspects, but raises questions of morality and responsibility as well.

In part I the *casus belli* is described, the fight over the Shatt-al-Arab waterway; a review of the legal history of the boundaries between the two countries and aspects of the law of treaties and the law regarding the determination of frontiers are studied. *Ius ad bellum* or *ius contra bellum*: international principles and laws on the use of force, analysis of principles and laws concerning the prohibition of aggression and intervention and the right of self-defence.

In parts II and III traditional issues of *ius in bello* are scrutinized, the law of neutrality, means and methods of warfare used in the conflict as well as the repercussions of the outside world are commented on. In the light of humanitarian law *Paul Tavernier* does a review of the distinction between, and the treatment of combatants and non-combatants during the war, including the issue of POWs and child-soldiers. Furthermore, the law of armed conflict at sea, rules of naval warfare and the law of neutrality are discussed.

The sensitive question of criminal responsibility is raised and, most impressive perhaps, in Part IV, the Islamic conception of international law is brilliantly and fairly explained by *Mohammed Bedjaoui*. He gives an analysis of war in terms of Islamic International Law,

cites the relevant passages from the Koran and points out the unlawfulness of war between two Muslim states, as well as the exceptions of this principle of the banishment of war. Judge Bedjaoui ends with the possibilities of a co-existence of a universal legal order and an Islamic regional order, and, surprisingly, shows how one arrives at virtually the same legal analysis of the 1980-99 Gulf War, whatever 'key' be used. This essay is especially meaningful as it does in no way take sides – the author does not even mention who the belligerent countries are.

This is a high-quality essay-collection on topics that seem to have been ignored for quite some time.

Dagmar Reimann

Paul Tavernier (ed.)

Nouvel Ordre Mondial et Droits de L'Homme. La Guerre du Golfe

Editions Publisud, Paris, 1993, 211 S., 236 FF

Das 1993 erschienene Buch ist von Paul Tavernier, dem Direktor des 'Centre de recherches et d'études sur le droit humanitaire' (CREDHO) der Universität von Rouen herausgegeben und dem Juristen Frédéric Maurice gewidmet worden, der nach seinem Einsatz im Golfkrieg sein Leben 1992 an der Spitze eines medizinischen Hilfskonvois in Sarajevo verlor.

Nach einem Vorwort des Pariser Professors *Bettati* und einer allgemeinen Vorbemerkung des Herausgebers ist das Werk in fünf Kapitel unterteilt. An jedem haben namhafte Juristen, Professoren und Praktiker, aus Frankreich, Belgien, der Schweiz, Kanada und Tunesien mitgearbeitet. Jeweils ein Experte analysiert ein Thema, andere stellen in einem kurzen Abriß ihre Ansichten dazu dar.

Die Arbeit entstand nach einem Kolloquium in Rouen und "constitue les Actes de la Journée d'études du CREDHO qui s'est tenue le 22 may 1992 (...) et portait sur 'La Guerre du Golfe: recul ou progrès pour les droits de l'Homme?'" (S. 13).

In seiner Vorbemerkung schreibt Tavernier: "Le but de notre réflexion était de partir d'une expérience encore récente, celle de la crise Koweïtienne, qui a commencé le 2 août 1990 et s'est poursuivie par les hostilités au début de l'année 1991 et la défaite de l'Irak devant les coalisés, pour essayer de déterminer parmi les nombreuses données fournies par le conflit les éléments positifs ou négatifs qu'on peut en tirer dans la perspective de la protection des droits de l'Homme." (S. 13)

Die Themen sind 'Sanctions Economiques et Droits de L'Homme', 'Droits / Devoir d'Ingérence', 'Crimes de Guerre, Crimes contre L'Humanité', 'Les Minorités' und 'Conclusions Générales'.