

Book Review:

Bhuiyan Md JH and Khan BU (eds) *Revisiting the Geneva*

Conventions: 1949-2019 (Brill Nijhoff Leiden 2019)

ISBN 978 90 04 37553 6 (cased); 978 90 04 37554 3 (eBook)

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Online ISSN
1727-3781

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Date Submission

22 January 2020

Date Revised

22 January 2020

Date Accepted

22 January 2020

Date published

24 April 2020

Editor Prof O Fuo

How to cite this article

Rautenbach C Book Review:
Bhuiyan Md JH and Khan BU (eds)
Revisiting the Geneva
Conventions: 1949-2019 (Brill
Nijhoff Leiden 2019) ISBN 978 90
04 37553 6 (cased); 978 90 04
37554 3 (eBook)" *PER / PELJ*
2020(23) - DOI
<http://dx.doi.org/10.17159/1727-3781/2020/v23i0a7843>

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DOI

<http://dx.doi.org/10.17159/1727-3781/2020/v23i0a7843>

Abstract

This contribution reviews the book titled *Revisiting the Geneva Conventions: 1949-2019*, edited by two legal scholars, namely Md Jahid Hossain Bhuiyan and Borhan Uddin Khan. The book is a commemoration of the 70th anniversary of the Geneva Conventions. It contains a collection of Asian perspectives on challenges of the 21st century.

Keywords

Geneva Conventions; war; conflict; aliens; armed conflict; prisoners of war

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Review

The Geneva Conventions are the basis on which rest the rules of international law for the protection of the victims of armed conflict.¹

International efforts, most notably that of the Red Cross, aimed at the protection of victims of war since the 1800s culminated in the four Geneva Conventions dated 12 August 1949: the *Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*; the *Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*; the *Convention relative to the Treatment of Prisoners of War*; and the *Convention relative to the Protection of Civilian Persons in Time of War*.

This publication is "intended as a global commemoration of the 70th anniversary of the adoption of the four Geneva Conventions" listed above.² Although the date of 1949 was chosen as the birth date of the four Conventions, their precursors had already seen the light of day in 1864 with the adoption of the *Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field*. In 1906 the provisions of the Convention were expanded to include the sick and wounded at sea and in 1929 they were developed even further to include prisoners of war.

The 1949 revisions were necessitated by the Second World War, while more changes were brought about in 1974 to 1977 as a result of the establishment of liberation movements in Africa and Asia as well as the Vietnam War that introduced guerrilla warfare.³ Two additional protocols followed in 1977, and a third in 2005. Together the protocols and the four Conventions form the core of international humanitarian law known as the "Geneva Law". The Geneva Law regulates the conduct of armed conflict with the aim of limiting its deleterious effects.

This publication is a compilation of eleven chapters and an introduction that deal with various aspects of the Geneva Law. Many of the authors as well as the editors are from Asian institutions and much of the content is written from an Islamic point of view, which makes this publication quite unique.

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¹ Pictet Jul 1951 *The American Journal of International Law* 462.

² Bhuiyan and Khan (eds) *Revisiting the Geneva Conventions* 1.

³ Bhuiyan and Khan (eds) *Revisiting the Geneva Conventions* 1.

In the introduction, which is titled "International Legal Protection of Persons Affected by War: Challenges and the Way Forward", the editors provide a background to the inception of the Geneva Law and explains the aims of the book. They illustrate that the Geneva Conventions and their protocols have not been entirely effective in achieving what they have set out to achieve, namely the "legal protection of persons affected by war". However, all is not doom and gloom and they conclude on a positive note:⁴

Examining the future of [international humanitarian law] in no way means that the basic principles and rules of this branch of international law are to be outlawed. Such examination could be the start of a very necessary debate – not about whether the Geneva Conventions are still relevant, but about how to strengthen and respect them.

Chapter 1 provides a discussion of "The Development of the Geneva Conventions" by Khan and Bhuiyan.⁵ They track the development of the Geneva Conventions from their initiation in 1864 to their latest manifestation in 2018 by identifying five phases: adoption (1859-1864); prior to the First World War (1865-1914); during and post the First World War (1915-1938); during and after the Second World War (1939-1977); and contemporary developments (1978-2018). They illustrate that the Geneva Conventions remain relevant even today, but that they need to adapt to modern needs.

In chapter 2 Bhuiyan deals with "The Legal Status and Protection of the Rights of Prisoners of War".⁶ The author points out that "fighters of the Taliban, Al Qaeda and ISIS" should also be regarded as prisoners of war, because they "are lawful combatants under the four Geneva Conventions" that are regularly involved in conflicts. They also "belong to the armed forces of that group",⁷ take instructions from superior officers and are easily distinguishable by their wearing of headgear and beards.

In chapter 3 Henry discusses "The Prohibition of Deportation and Forcible Transfer of Civilian Populations in the Fourth Geneva Convention and Beyond."⁸ He illustrates that international community has often been ineffective in preventing mass displacements resulting from armed conflict.

The title of chapter 4 by Arai-Takahashi is "Persons aboard Medical Aircraft Who Fall into the Hands of a Neutral Power – the Scope of Their Liability to Detention under the 1949 Geneva Conventions and the 1977 Additional Protocol I". He explores the circumstances in which members of armed

⁴ Bhuiyan and Khan (eds) *Revisiting the Geneva Conventions* 11.

⁵ Bhuiyan and Khan (eds) *Revisiting the Geneva Conventions* 12.

⁶ Bhuiyan and Khan (eds) *Revisiting the Geneva Conventions* 40.

⁷ Bhuiyan and Khan (eds) *Revisiting the Geneva Conventions* 52.

⁸ Bhuiyan and Khan (eds) *Revisiting the Geneva Conventions* 75.

forces and civilians who are aboard a medical aircraft and who fall into the hands of a neutral power "are considered liable to detention under the law of neutrality".⁹

Chapter 5, by Sánchez, deals with the "Forced Transfer of Aliens during Armed Conflicts". He comes to the conclusion that it might sometimes be necessary to remove people forcibly in order to protect them from the consequences of armed conflict.¹⁰

In Chapter 6 Higgins discusses "The Geneva Conventions and Non-International Armed Conflicts".¹¹ The application of the Geneva Conventions in non-international conflict is becoming more and more important to prevent people from being subjected to warlike atrocities within their own countries.

Chapter 7 provides a third world view on the Geneva Conventions. Burra, the author of this chapter titled "Four Geneva Conventions of 1949: a Third World View", argues that the Conventions were drafted and adopted within a certain historical context without the input of third world countries, which necessitates their re-evaluation.¹²

Criminalising the widespread sexual crimes committed during armed conflict is the theme of chapter 8 titled "Criminalising Rape and Sexual Violence in Armed Conflicts: Evolving Criminality and Culpability from the Geneva Conventions to the Bangladesh International Crimes Trial".¹³ The author, Islam, argues that the international community failed to protect the human rights of victims during the Pakistani war of 1971.

Kamal maintains that the principles of distinction and proportionality, and the precautions contained in the Geneva Conventions are compatible with Islamic law, in chapter 9 titled "Principles of Distinction, Proportionality and Precautions under the Geneva Conventions: the Perspective of Islamic Law".¹⁴ Therefore, there is an obligation on Islamic states who are parties to the Geneva Conventions to abide by them in good faith.

The implementation of the Geneva Law remains a challenge, as illustrated by Khan and Nasrullah in chapter 10, which is titled the "Implementation of International Humanitarian Law and the Current Challenges".¹⁵ This is

⁹ Bhuiyan and Khan (eds) *Revisiting the Geneva Conventions* 115.

¹⁰ Bhuiyan and Khan (eds) *Revisiting the Geneva Conventions* 146.

¹¹ Bhuiyan and Khan (eds) *Revisiting the Geneva Conventions* 168.

¹² Bhuiyan and Khan (eds) *Revisiting the Geneva Conventions* 190.

¹³ Bhuiyan and Khan (eds) *Revisiting the Geneva Conventions* 215.

¹⁴ Bhuiyan and Khan (eds) *Revisiting the Geneva Conventions* 244.

¹⁵ Bhuiyan and Khan (eds) *Revisiting the Geneva Conventions* 262.

exacerbated by the fact that member states lacks the willpower to comply with their responsibilities in terms of the Conventions.

The final chapter, authored by Jinks, confirms that compliance with international humanitarian law is a serious problem.¹⁶ Chapter 11 is titled "The Geneva Conventions and Enforcement of International Humanitarian Law" and deals with the challenges of enforcement.

In conclusion, the book is meant to be a commemoration of the 70th birthday of the Geneva Conventions, so there is no obvious link between the different chapters besides the fact that they all deal with different aspects of the Conventions and their protocols. To be honest, while each chapter is a neatly parcelled package, it would have made more sense to find a common thread that could eventually connect them and lead to a carefully considered conclusion. However, the work is a valuable contribution to every international law lawyer's or scholar's bookshelf, and it would also be worthwhile for governments to take note of its content.

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¹⁶ Bhuiyan and Khan (eds) *Revisiting the Geneva Conventions* 300.