PRÉFACE

Having been able, as a member of the International Court of Justice, to experience first hand the care taken by the Court to secure the homogeneity of the edifice of international law constructed by its jurisprudence, I am convinced that the notorious paragraphs in the Tehran Hostages judgment in which the Court spoke of “self-contained regimes” in order to protect certain rules of diplomatic law were never meant to give this concept the meaning attributed to it by scholarly voices in search of originality. Misunderstood as having received the blessing of the International Court, its employment out of systemic bounds in part of the literature broke loose a debate later on joined by that on “fragmentation” – altogether a remarkable exercise in international legal hypochondria, only partly explicable as a reaction against admittedly overly facile acceptance by our discipline’s mainstream of international law constituting a genuine “system”.

In the more recent literature, however, what we can see is a return to normalcy, so to speak, an emphasis to explain the very phenomenon which had led to such efforts at deconstruction in the positive light it deserves: the progressive diversification, “sophistication”, of international law in order to enable it to (better) cope with new challenges. The present work contributes substantially to this “normalization”. It does so with regard to a branch of international law to be treated with special care, in particular need of protection against academic radical chic, that is, international humanitarian law. In a series of profound and well documented studies mostly authored by younger Francophone scholars, it sets out to explore and demarcate the degree of “self-containedness”, or autonomy, developed in international humanitarian law while resisting the temptation to overemphasize its specificities. International humanitarian law thus appears not as “a world apart”, but as a subsystem whose development is traced in a sequence of stories on the creation of leges speciales and particular practices of determining the law necessary (actually or allegedly) to secure its functioning. To indicate just a few of these specific features as described
and thoroughly analyzed in this collective volume: the widening of the understanding and scope of international legal personality by international humanitarian law thus embracing entities as different as the International Committee of the Red Cross, national liberation movements and armed groups/regimes in effective occupation of territory (with regard to whose endowment with a measure of functional personality I would be less hesitant than the author of the respective chapter); as concerns the sources of international humanitarian law, the priority given to words over deeds in the determination (particularly by the International Committee of the Red Cross) of customary international law in the field and the (in my view, rather cavalier) approach to international customary law displayed by international criminal tribunals pulling themselves up by their own bootstraps and thus happening to find rules, e.g., in the field of their procedural law, which do not possess the necessary pedigree; or in the field of State responsibility for violations of international humanitarian law, the broadening of attribution already anchored in the Hague rules and the development of a regime of individual entitlements to compensation for severe breaches of international humanitarian law in UN General Assembly soft law parallel to, but in substance far ahead of, the (still negative) hard law on the matter to which the International Court of Justice in its recent judgment on Jurisdictional Immunities of the State (Germany v. Italy) did not find it necessary to turn its attention.

From the way in which I have described some of the noteworthy results of the studies contained in the present work it becomes apparent that I do not agree with all of the authors’ conclusions. But I strongly welcome and applaud the object and purpose, as it were, of the entire undertaking: to remind the observer, and thus confirm the validity, of specific features of international humanitarian law developed as a matter of functional necessity to keep this fragile branch of international law alive and up-to-date.

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