
Book Reviews

Michael Riepl. ***Russian Contributions to International Humanitarian Law: A Contrastive Analysis of Russia's Historical Role and Its Current Practice.*** Baden-Baden: Nomos, 2022. Pp. 407. £177.68. ISBN: 9783848773077.

This book could not be more timely: it had just published in early 2022 when, on 24 February 2022, Russia started a large-scale war of aggression against Ukraine, during which numerous war crimes have been reported and even accusations of genocide made. Reading the book against the backdrop of Russian atrocities committed in Ukraine leaves one with an eerie feeling because the book's narrative makes comprehensible these Russian violations in terms of previous practices and mentality. So much in the history of international humanitarian law (IHL) in Russia and the former Soviet Union is once again alive and relevant in the current context of Russia's war against Ukraine. Thus, the book reads like a prophecy that has unfortunately come true.

The author, Michael Riepl, looks for patterns in the Tsarist Russian, Soviet and post-Soviet Russian approaches to IHL. The book was initially defended as his doctoral thesis in law at the University of Cologne under the supervision of Angelika Nußberger, formerly a judge at the European Court of Human Rights. Riepl's main conclusion is straightforward: while in the 19th century, Tsarist Russia was a pioneer in the progressive development of, and at least partial compliance with, IHL, both the Soviet Union and post-Soviet Russia have tended to view IHL through the prism of state sovereignty and military advantage and have looked for ways to evade IHL's norms and control mechanisms. In his book, Riepl asks whether Russia has turned from 'Paul to Saul' in the context of IHL – from advancing IHL in the late 19th century to later evading it. He also examines the potential reasons for this quite dramatic change for the worse. In this sense, the narrative of the book is built on a historical contrast.

It is a remarkable book for a number of reasons. First of all, it is written in lively language: Riepl avoids dry and overly technical academic legal jargon, without becoming at the same time superficial or overly simplifying. Metaphors and colourful citations are abundant. This is good because the book is accessible not only for professional international lawyers but also for military personnel, humanitarian activists and other interested stakeholders. The book is also noteworthy because it does not currently have any competitor in its subject of IHL and Russia. The last serious academic investigation on Russia, the Soviet Union and IHL was an unpublished doctoral dissertation in French written by Jiri Toman in 1997 in Geneva. Toman's work has many historical merits but obviously cannot account for the post-Soviet developments in 21st-century Russia that are in many ways at the heart of Riepl's book.

Moreover, to complete a study such as Riepl's requires not only good knowledge of IHL but also a strong knowledge of the Russian language, Russian (legal) culture,

Russian history and so on. A successful study in this subject area needs to be a combination of international law and area studies on Russia and Eastern Europe. This combination of knowledge is rare in the field of international law but, fortunately, Riepl has excelled in his effort. Legal developments are presented in their political and cultural context, which in the case of Riepl's book means a good account of the Russian and Soviet history concerning IHL.

There is a further aspect that makes Riepl's book remarkable. No one in today's Russian Federation could have written such an honest and critical book on the historical evolution and current reality of IHL in Russia. Riepl has managed to express open and systematic criticism that would be too dangerous to put on paper for Russian jurists, especially concerning the conduct of the Russian army. Unfortunately, the current political climate means that the scholar of such a study had to come from outside the Russian Federation. It is notable, though, that this study was prepared in Germany. Considering how many inhibitions Germans have had, for understandable reasons, when addressing the history of warfare in the Soviet Union and Russia, this book constitutes a breakthrough of sorts. Sufficient time has passed from World War II that it has become acceptable for Germans to write about contemporary Russia and IHL as things are, critically and without historical inhibitions. For a long time, the moralizing argument of the Soviet contribution to the Allied victory in World War II, and the massive Soviet and Russian propaganda related to it, created a successful rhetorical shield that silenced critical voices and prevented the international community from talking honestly about the problematic reality of Soviet and post-Soviet Russian approaches to IHL. Riepl's work, in this sense too, marks a significant change.

Riepl's account of the evolution of IHL in Russia is generally reliable, and his knowledge of the history of international law and contemporary IHL, especially in terms of illuminating their mutual influences, is impressive. In the following discussion, I will go through some of Riepl's main points but also enter critically into dialogue with some aspects of his narrative. These are not meant as serious criticisms but more like questions and comments on aspects of his overall compelling narrative.

In the first part of the book (which spans 137 pages), Riepl recounts the history of IHL in the Russian Empire and the Soviet Union, including imperial Russia's decisive role at the adoption of the St. Petersburg Declaration in 1868 and at The Hague Peace Conferences in 1899 and 1907. He also discusses how rules of IHL played out in wars such as the Russo-Turkish War of 1877–1878 and the Russo-Japanese War of 1904–1905. He argues that Tsarist Russia made a concerted effort in these wars to observe rules of IHL. In Riepl's narrative, the Russian 'Paul' of this time has a concrete personification: Feodor Feodorovich Martens, a professor at St. Petersburg University and a counsellor at the Russian Ministry of Foreign Affairs, who was a well-known face in the late Russian imperial *politique juridique extérieure*. However, recent historical research has also shown that Martens was a far more complex figure: he was not only a great humanitarian but also a European and Russian colonialist.¹ Imperial

¹ See, e.g., Mälksoo, 'The Legacy of F.F. Martens and the Shadow of Colonialism', 21 *Chinese Journal of International Law* (2022) 55.

Russia had its own colonial wars and conquests, and Martens did not seem to think that the Russian Empire was bound by IHL in these wars, at least before the Russo-Japanese War, for example in the Caucasus or Central Asia. Another historical question relates to problematic Russian imperial practices during World War I in Galicia (today's Ukraine, which was then part of the Austro-Hungarian Empire but occupied by Russia). Martens' ambivalence and Russia's practice in Ukraine suggest that to view the idea that Tsarist Russia was a law-abiding Paul who would later turn into a sovereignty-obsessed Saul who disrespected IHL may be a stylized simplification. Also, if one goes further back in history than the emergence of IHL in the 19th century, Russia's (Muscovy's) earlier wars against its European neighbours in the West such as the Livonian War (1558–1583) and the Great Nordic War (1700–1721) were not remembered for chivalry towards civilians, prisoners of war and so on.

One of the puzzles in Riepl's story is to what extent Tsarist Russia, Soviet Russia from 1917 (extended, in 1922, to the Soviet Union) and post-Soviet Russia are 'the same' state. They are the same in the sense of international legal personality: the Soviets did not argue that old Russia became extinguished as a subject of international law. However, there are important differences, and the Soviet Union, in particular, wanted it to be understood that it did not consider itself identical with Tsarist Russia in the constitutional and class sense. Riepl's narrative shows how the Soviets also created ambiguities regarding Tsarist Russia's obligations under IHL, whether they saw them as binding or not. In particular, Riepl recounts how the Soviets created the doctrine of 'socialist international law', which, in his view, shook to the core 'the traditional concept of universality in international law' (at 85). However, international law was not really considered 'universal' at the time when Russian lawyers such as Martens pleaded for a distinction between the civilized and the uncivilized. Historically, we cannot call the early 20th-century international law universal so, in this sense, it is doubtful whether the concept of universality could really be said to have been 'traditional' before the Soviets began to register their own doctrinal and practical reservations against international law as it was understood in capitalist Europe.

Returning to the motif of German historical narratives of the Soviet Union and World War II, in particular, it has sometimes been observed that, perhaps unconsciously, the German discourse equates the Soviet contribution in World War II with 'Russia', even though, for example, Soviet Ukraine and Belarus also suffered tremendously from (and contributed significantly to) the Soviet World War II effort. Of course, things are more complex because many Ukrainians also fought against the Soviet army in World War II and afterwards, in guerrilla warfare, in the Ukrainian Insurgent Army. This conflation occasionally also comes up in Riepl's narrative – for example, when he observes *in passim* that, in 1941, Nazi Germany attacked 'Russia' when in reality the attack took place against the Soviet Union (at 99).

In a similar vein, Riepl's narrative jumps a bit too easily from Joseph Stalin's era before the beginning of World War II on 1 September 1939 to the German attack against the Soviet Union in June 1941. Riepl notes that 'the death toll of Stalinism was immense. It was, however, not a concern of IHL, because the indiscriminate killing concerned Stalin's *own* people and happened in peacetime' (at 106, emphasis in original).

This statement, however, overlooks the fact that Stalin's first violations of IHL took place in September 1939 in countries that Moscow annexed in the aftermath of the secret protocol of the Nazi-Soviet Non-Aggression Pact of 23 August 1939. Riepl tells the important story of the Soviet killing of more than 20,000 Polish officers in Katyn. However, besides Katyn, the Soviets did not show much respect for either The Hague rules of occupation or the rights of civilians, for example in the annexed Baltic States and Bessarabia. Clearly, the Soviet Union's conduct in Poland, Bessarabia and the Baltic States during 1939–1941 – for example, the disregard for private property, the mass arrests and the deportations – was a matter of international law, not just a domestic affair of the Soviet Union; the total Soviet disregard of The Hague rules of occupation had begun already in 1939. It is also important to understand why the Soviet Union had such difficulty in accepting the 'bourgeois' rules of warfare and occupation and that this opposition was quite principled and consequentially thought through. For example, the leading Soviet international law publicist in the 1930s, Yevgeny Pashukanis, in his 1935 book, gave a whole list of reasons why the old 'bourgeois' IHL would be problematic from the perspective of the Soviet state, including in the context of the rights of prisoners of war (at 199).² True to this spirit, the attitude not only of the Germans but also of the Soviets towards the rights of prisoners of war in World War II, including, on the Soviet side, the rights of one's own citizens who had become prisoners of war, was in violation of the underlying ideas and norms of IHL.

These minor comments aside, Riepl's central observation regarding World War II is important: 'Soviet war crimes *did* happen on a large scale. Addressing this question remains a taboo in Russia up until today' (at 107, emphasis in original). One may add that it is not only a taboo but that it is currently a punishable offence in the Russian Federation. Riepl reminds us that only half of the around 3.2 million Germans that fell into captivity returned after the war – an incredible 1.3 million are still missing and unaccounted for (at 108). According to Riepl, the core reason for this taboo is the conflation of *jus ad bellum* and *jus in bello* in Soviet thinking and propaganda. The Soviets, so the argument runs, often consciously disregarded *jus in bello* rules because they considered their war to be just. Put differently, since Germany was the attacker in 1941, for the Soviets, there were no limits to the conduct of their 'just' or 'holy' war. After the Soviet victory, prisoners of war were often sentenced to extensive prison sentences just for having fought in the enemy's army, even where no violation of IHL could be attributed to them. I leave aside the question as to what extent the Soviet war could really be considered a clean-cut 'just war', but note that Moscow had itself violated the terms of the 1933 Convention against Aggression against several East European countries in 1939–1940.³ None of this calls into question the fact that, as Riepl repeatedly points out, German violations of IHL usually matched and often 'surpassed' the Soviet ones during World War II. (It is important to emphasize that nothing in Riepl's narrative is constructed as an attempt to excuse in any way Nazi Germany's violations of IHL during World War II.)

² E. Pashukanis, *Очерки по международному праву*, Moscow: Sovetskoe zakonodatel'stvo (1935), at 189–199, reprinted as E.B. Pašukanis, *Umriss des Völkerrechts*, edited by T. Schweisfurth (1971).

³ Convention on the Definition of Aggression, London, 3 July 1933, 148 LNTS 79.

Moving to the post-World War II period, during the Geneva negotiations in 1949, Moscow opposed any effective implementation mechanism to the Geneva Conventions (at 126).⁴ When suppressing the Hungarian uprising in 1956, the Soviet Union negated the application of IHL in relations between socialist countries (at 130). Since 1979, in Afghanistan, the Soviet Union has denied any violations of IHL, and, in its dialogue with the International Committee of the Red Cross, a spokesman of the Soviet foreign ministry replied that whatever problems there might be should be discussed with the Afghan authorities because the Soviet Union did not participate in combat (at 135). Riepl's appraisal is tough: 'Just like in Hungary in 1956, but on a much larger scale, we see a strategy of absolute denial, not just of the violations, but of the very application of IHL' (at 135). However, Riepl also concludes that this strategy backfired for the Soviet Union in Afghanistan. At the end of the historical part of the book, Riepl comes approvingly back to Toman's conclusions by noting that the Soviet Union supported rules of IHL only to the extent that Moscow considered them as supporting its larger political interests (at 136–137). Of course, one can critically ask whether this is not true of most powerful countries and their attitudes towards IHL.

Following the historical account, the bulk of the book is dedicated to IHL issues in Russia's post-Soviet era (at 139–382). Riepl observes right away that, both in terms of the development of IHL and the question of compliance mechanisms, Russia 'is a stumbling stone, rather than a driving force' (at 140). For example, in comparison with other states, the number of treaties ratified by Russia is very low (at 142). Russia is always among the most vocal critics of new weapons treaties (at 152), and it has successfully avoided international compliance mechanisms in IHL (at 162). In terms of domestic implementation of IHL, the Russian Criminal Code only includes a single article on war crimes (Article 356), which is much less comprehensive than war crimes covered in the Rome Statute (at 186).⁵

Considering the generally pessimistic conclusions offered in the book, there are somewhat unexpected outbursts of optimism and praise – for example, when Riepl observes that 'Russia has always been very progressive in terms of IHL education – not only with regard to its armed forces' (at 191). One wonders whether this can really be true when there are so many violations and evasions of IHL in the practice. Or perhaps IHL is taught but in a way that mostly concerns other powers and their violations: with IHL perhaps presented as a Russian or Soviet gift to the rest of the world? In any event, his occasional outbursts of optimism do not affect the general thrust of Riepl's argument. As he notes in another critical metaphor, '[a]nalyzing the implementation of IHL through the Russian judiciary often means listening to the sound of silence' (at 193). In particular, Riepl criticizes the lack of any registered convictions under the Criminal Code's Article 356 since it was introduced in 1996 (at 201). Especially in

⁴ Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 1949, 75 UNTS 31; Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea 1949, 75 UNTS 85; Geneva Convention III relative to the Treatment of Prisoners of War 1949, 75 UNTS 135; Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War 1949, 75 UNTS 287.

⁵ Rome Statute of the International Criminal Court 1998, 2187 UNTS 90.

the context of the non-international armed conflict in Chechnya, perpetrators have enjoyed immunity, and Article 356 has remained dead letter law (at 208).

In light of Russia's ongoing war in Ukraine, Riepl's following conclusions are the most pertinent. Based on Russia's practice, Riepl observes that Russia uses a toolbox of evasion tactics (at 211ff). First, by blurring legal lines, Russia often denies the very existence of an armed conflict and, thus, the applicability of IHL (Riepl calls it the 'paintbrush' approach). Second, by outsourcing warfare to proxies, Russia seeks to avoid responsibility for its actions (Riepl speaks of 'the apprentice'). Third, if neither of these two strategies works, Russia resorts to a crude denial of facts concerning the IHL violation of which it stands accused (the 'sledgehammer' approach). The application of these behavioural patterns to Russia's 2022 war against Ukraine is a fascinating exercise that alone already makes the study of his book very worthwhile. As seen with the proclamation of breakaway 'republics' in other sovereign state territories, Moscow's strategy has been designed to avoid the framework of occupation (at 245). Moreover, Russian private military companies like Wagner operate in a legal grey zone whose goal is again to evade IHL by outsourcing certain tasks to Russian private companies (at 300ff). Russia's outsourcing policy to these private companies is an attempt to outmanoeuvre the law of state responsibility (at 340). In many cases, however, Russia has also systematically denied facts – for example, concerning the use of cluster munitions or attacks on hospitals and health care workers in Syria (at 364ff). Riepl's overall conclusion is quite condemning: 'IHL's remaining role is reduced to a showcase rule – a rule that exists for others but does not apply to Russia' (at 382).

Having presented his pessimistic conclusions and occasional outbursts of optimism, Riepl asks why Russia's attitude to IHL has changed over time (at 389). Apparently, this is related to important changes in warfare in IHL and in international law generally as well as in Russia as a country. Riepl argues that, in the 19th century, Russia had multiple reasons to promote IHL: idealism, diplomatic pride, military strategy, economic interest and Russian ingenuity (at 401). By contrast, he concludes that none of these motives that led imperial Russia to promote IHL exist in the same way as they did in the 19th century (at 406). In my own view, there are further fundamental reasons. In the late 19th century, countries like Russia made efforts to 'humanize' war, while to go to war itself remained legal. A Eurasian empire of the size of Russia could not rule out war as such, and, in this sense, the *jus in bello* developed in a context of a relatively liberal *jus ad bellum*. Moreover, promoting emerging IHL rules in the late 19th century was also a way of educating one's own soldiers – who were often illiterate soldiers in the Russian Empire – rather than just holding the moral high ground in discussion with other European powers. Tsarist Russia in the late 19th century also wanted to impress other 'civilized' European powers as, paradoxically, the civilized were entitled to even more conquests at the cost of the 'uncivilized'.

Paul turning into Saul also implies significant changes in the Russian state's political identity. The Soviet Union wanted to overturn the old, capitalist order, and, even if it propagandistically claimed otherwise, it was not genuinely interested in the maintenance of the rules of the old world, including in IHL, wherein, for example, the rules of occupation were meant to respect private property. When aggressive war became

prohibited during the 1920s and 1930s, the Soviets enthusiastically agreed to it in 1929 and 1933, only to act contrary to their legal obligations in 1939 in an early version of Riepl's 'sledgehammer' option. An empire that is the size of the Soviet Union could in reality not afford to abandon war; it just never admitted to it and, to the contrary, understood the military activities that it had started as 'liberation'. In this sense, *jus ad bellum* and *jus in bello* are deeply and often problematically interconnected. The rise of *jus ad bellum* in some contexts has led to the decline of *jus in bello*, at least when imperial territorial interests of some countries were concerned. In Ukraine in 2022, the Russian Federation, in its official self-understanding, is not so far engaging in war; Moscow speaks of a limited 'special military operation'.

Michael Riepl has written an important book. Personally, I see the most useful future for international law scholarship in studies like Riepl's. We need more detailed studies on what international law means concretely – in concrete historical-spatial circumstances and settings. Therefore, besides the obvious interest that this book presents for students of IHL, Riepl's work is a successful example of how to usefully combine the study of international law with a knowledge of area studies.

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Emilia Justyna Powell. ***Islamic Law and International Law: Peaceful Resolution of Disputes***. New York: Oxford University Press, 2020. Pp. 314. \$78. ISBN: 978-0-19-006463-1.

The point of departure in Islam for the settlement of disputes among Muslims is the obligation to use peaceful means. This is enshrined in several verses of the Qur'an. The preferred method both in pre-Islam Arabia and after the birth of Islam was a mixture of arbitration, conciliation and mediation. However, in disputes between Islamic and other nations, war and diplomacy were for centuries the dominant option.

Emilia Justyna Powell presents an ambitious project to study the peaceful resolution of disputes in Islam. This she does through a comprehensive text of seven chapters. In addition to the introduction and the conclusion, the substantive part of the study includes in Chapter 2 a general presentation of international law, Islamic law and international Islamic law; the categorization of Islamic states, the role of Islamic law in Islamic states and the current significance of Islamic law and its relevance for international law. This is followed by a discussion in Chapter 3 of similarities and differences between Islamic law and international law. Chapter 4 addresses the question of the peaceful resolution of disputes in Islam, while Chapter 5 focuses on Islamic states' practice regarding the specific issue of peaceful resolution of territorial disputes. The