

*La guerra civil española y el orden jurídico internacional* [The Spanish Civil War and the International Legal Order]. By Carlos R. FERNÁNDEZ LIESA (Thomson Reuters, Madrid, 2014) 202 pp.

Carlos R. Fernández Liesa's book *La guerra civil española y el orden jurídico internacional* makes a highly opportune contribution to the field of the Spanish Civil War studies. Although recent years have seen the subject analysed from a variety of historiographical and political viewpoints, it still lacked an overall study from the perspective of international law, despite the great importance of this legal order in orienting its international treatment. The book is prefaced by two prologues, one by Enrique Moradiellos (Professor of Contemporary History at the University of Extremadura) and another by Cástor Miguel Díaz Barrado (Professor of Public International Law at Madrid's King Juan Carlos University). The numerous international law issues tackled in the book can be broken down into four main thematic groups.

I. Firstly, it covers the main international law principles and institutions of the time that had a general influence upon the conduct of third-party countries and the League of Nations during the conflict (Chapter II, 'Nature and applicable principles'). The author attaches particular importance to the rules of *recognition of belligerency*, the *principle of sovereignty over natural resources*, the *prohibition of the use of force*, the *principle of freedom of navigation* and that of the *peaceful settlement of disputes*. He notes how the discretion available to third parties in not granting recognition of belligerency to the warring parties in an essentially internal armed conflict was employed as a highly useful formula by third-party powers for the purposes of avoiding the full application of certain rules of the laws of war applicable to international armed conflicts (e.g. the right of seizure on the high seas or the possibility of declaring naval blockades). Another aspect highlighted is how the *financing of the war effort* by the two opposing sides also took the application of the principle of sovereignty over natural resources to its legal extremes. The Nationalists settled their debts with Italy and (to a lesser extent) Germany by entering into trading agreements on certain mineral and agricultural resources under their control, in addition to the issuing of future debt. The Republicans signed an international agreement with the USSR for the latter to act as the depositary for all the Bank of Spain's gold reserves, whose gradual sale (until their exhaustion) was used to pay for a large part of the Republican's war expenses. The rule of the *prohibition of war as an instrument of international policy* leads the author to analyse the direct involvement in combat of the Italian and German air forces on the Nationalist side, which he classifies as an act of aggression.

II. The second theme would be the position of the "international community" with regard to the civil war (Chapters II.5 and III). This includes a summary of the political positions adopted by the European Powers with regard to the civil war, with special emphasis on the *Non-Intervention Agreement* proposed by Great Britain and France, and backed by the League of Nations in December 1936, and the ineffectiveness of the control mechanisms for the Agreement articulated there (the Non-

Intervention Committee). Chapter III analyses other international legal aspects that had to be addressed during the civil war, such as the protection of diplomatic and consular missions in Spain; the Nationalists' wish to secure diplomatic recognition from other countries during the conflict; or the deterioration of Spanish diplomatic services aboard due to the resignations, dismissals, etc. caused by the internal political split. This chapter also contains a brief description of the political isolation of Franco's Spain at the time of the beginnings of the United Nations (1945).

III. A third thematic area would be the regulatory and political issues raised by the establishment of a *de jure* Republican government in exile (Chapters IV and VI.3). After losing the war, refugee status was the best condition to which Spanish exiles could aspire. Although, formally, the President of the Republic and other members of the government in exile had a French diplomatic passport and received further formal deference in France and Mexico, generalised recognition of the government of the winning side in the civil war quickly condemned the remains of the former Spanish government to a marginal role, whose main value to exiles was to provide them with a degree of financial assistance during their long exile and to ensure that their status as refugees was respected. The author covers the key content of some recent Spanish laws that acknowledge this injustice and that seek to repair some of its permanent harm (Act 3/2005, recognising economic benefits for citizens of Spanish origin displaced aboard during their minority as a result of the civil war, and the Historical Memory Act 52/2007, which creates entitlements to opt for Spanish citizenship for the children and grandchildren of those refugees).

IV. The last set of issues studied would be those regarding the application of international humanitarian law with regard to the conduct and instruments of combat of the armies during the war, in particular, and, more generally, on the humans rights abuses committed by both sides (Chapters V and VII). The legal starting point is irreproachable: neither the Hague Conventions (of 1899 and 1907) nor the Geneva Convention (1929) were directly applicable to internal armed conflict, which means that, from a strictly legal standpoint, it is impossible to apply the normative categories of "war crimes" or "crimes against humanity" to the atrocities carried out during the conflict. Other regulatory developments regarding the instruments of war had not been ratified by Spain. However, the Spanish experience was used as one of the main arguments behind the subsequent incorporation of Article 3, common to the Geneva Conventions of 1949, the current minimum standard for humanitarian protection in armed conflicts that are not international in nature. The author's analysis of these issues allows him to make accurate assessments of some recent judicial developments (the ruling of Judge Garzón of 16 October 2008, generally covering crimes against humanity attributed to the Nationalist side, and the suit given leave to proceed by the Barcelona Provincial High Court on 23 January 2013, on the Italian bombing of Barcelona). Generally speaking, these legal actions have a fundamental problem of non-retroactivity of the relevant international offences, since their establishment as such by international law was subsequent to the event in question.

This book by Carlos R. Fernández Liesa is well worth reading: nonetheless, as with any *tour de force*, its virtues mean that it also has some limitations. The book's 180 pages look at all the most significant international legal aspects arising out of the Spanish Civil War of 1936-1939 and even

attempt to tackle other subsequent issues (Franco's government at the UN, the life of the Government of the Republic in exile, recent cases of Spanish case law, etc.). It thus provides a valuable overall vision and presents the key points of the doctrinal treatment of the many aspects analysed, and is therefore a good point of reference for the general study of the impact of international law on the Spanish Civil War and vice versa. But this also means that some issues are not dealt with in sufficient detail. For example, the author accepts the Republican government's argument before the League of Nations that the Non-Intervention Agreement, supported by the League itself, was "contrary to public international law" (pp. 75 ff.). Nevertheless, the book does not take an in-depth look at the principle of non-intervention in internal affairs, so firmly embodied in public international law. While there is no doubt that the Republican government's powers to suppress the rebels or internal insurgents formed part of its domestic jurisdiction, it is more difficult to argue—even acknowledging the existence of arms trade treaties such as that in force between France and Spain (1935)—that this internal authority could entail a general obligation on the part of other countries to guarantee this repression by means of the free sale of arms to the Republican government. The same is the case of the analysis of the application of Spain's 1977 Amnesty Act to those events (pp. 183-5). The subject is dealt with very succinctly in the book's closing pages, without deeply analyzing some important legal decisions in this regard by both the Spanish Supreme Court and the ECHR.

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