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DOCUMENTS ON THE LAWS OF WAR

Third Edition

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DOCUMENTS ON THE LAWS OF WAR

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For Captain Pierre Henri Guelff, SC, USN

Note on Third Edition

This is an extensively revised and expanded edition of this book. The first edition (498 pp.) appeared in 1982 and the second (509 pp.) in 1989. The many new documents and other changes in this edition reflect the wide range of new developments in this field in the 1990s. This edition incorporates developments and depositary information (lists of states parties to treaties) which is up to date as of 12 August 1999, the fiftieth anniversary of the adoption of the four 1949 Geneva Conventions.

There are six new treaty documents. In chronological order: the 1994 Convention on the Safety of UN and Associated Personnel (the relation of which to the laws of war is discussed in the prefatory note); the 1995 Protocol IV on Blinding Laser Weapons, which is annexed to the 1980 Convention on Certain Conventional Weapons (CCW); the 1996 Amended Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, annexed to the same Convention; the 1997 Ottawa Convention Prohibiting the Use, Stockpiling, Production and Transfer of Anti-personnel Mines; the 1998 Rome Statute of the International Criminal Court (extracts); and the 1999 Second Hague Cultural Property Protocol.

We have also included seven new non-treaty documents: the pocket card of US Rules of Engagement used in the 1991 Gulf War; the 1993 Statute of the Yugoslavia tribunal, and the 1994 Statute of the Rwanda tribunal (extracts in both cases); the 1994 San Remo Manual on armed conflicts at sea; the 1994 guidelines on the protection of the environment in war drawn up by the International Committee of the Red Cross and the UN General Assembly (both the latter documents are authoritative but informal guides to the law); the 1996 Advisory Opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons (extract); and the 1999 UN Secretary-General's Bulletin on observance by UN forces of international humanitarian law.

Two documents in the first two editions have been excluded: the 1907 Hague Convention VI on the status of enemy merchant ships at the outbreak of hostilities, and the 1971 Zagreb Resolution of the Institute of International Law on the application of the laws of war to UN forces. We have also excluded the second edition's brief postscript to the 1925 Geneva Protocol providing extracts from the final declaration of the January 1989 Paris Conference on the Prohibition of Chemical

Weapons. An exposition of the principles underlying the inclusion and exclusion of documents, and the basis on which the lists of states parties have been compiled, is contained in the Introduction.

The editorial matter from the second edition has been revised to take into account the many diplomatic, legal, and military developments since 1989, and new writings in the field. In particular, the Introduction has been rewritten and expanded, with new sections on historical origins of the law; on application of the law in situations which may not constitute armed conflicts; on rationales and criticisms of the law; and on the arrangement, titles, and texts of documents. The prefatory notes to all of the documents contain numerous changes, including more extensive cross-references to other relevant documents and to commentaries. The concluding notes, with the lists of states parties, have been revised and updated. There is a new appendix on internet websites and CD-ROMs. The bibliography and index have been extensively revised.

The texts of the treaties as published in the second edition have not required amendment other than one letter in Article 27, paragraph 1, of the 1907 Hague Regulations ('buildings' instead of 'building'), and two transposed letters in 1907 Hague Conventions VII and VIII.

In this edition we have ascribed treaties to the year in which the text was adopted, rather than (where different) the year of opening for signature: regarding the treaties that were included in the second edition, this change affects only the 1976 ENMOD and 1980 CCW Conventions.

Acknowledgements

We could not have prepared any of the three editions without incurring many debts of gratitude. A work such as this depends on advice, information, and expert assistance from a wide range of institutions and individuals.

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In Geneva, our thanks are first and foremost to the International Committee of the Red Cross, whose library contains many materials not obtainable elsewhere, and whose staff gave much help and advice. We are particularly grateful for the assistance given, for all three editions, by Dr Hans-Peter Gasser; for the first two editions, by Bruno Zimmermann; and, for this edition particularly, by Antoine Bouvier, François Bugnion, Louise Doswald-Beck, Marion Harroff-Tavel, Louis Maresca, Jean Perrenoud, Anne Ryniker, and Yves Sandoz. In Geneva we also received generous encouragement and advice for all three editions from Dr Jiri Toman, who himself has collaborated on an extremely useful comprehensive work in this field, and who has left the Institut Henry-Dunant and is now a professor at the University of Santa Clara in California. In Geneva, we also used the resources of the libraries of the Institut Henry-Dunant, the Graduate Institute of International Studies, and the United Nations.

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In preparing all three editions, the role of the Depositaries of the various treaties contained in this book has been of critical importance. The foreign ministries of France, the Netherlands, Switzerland, the UK, and the USSR/Russia, the Treaty Section of the UN, and the Office of International Standards and Legal Affairs of UNESCO, all provided very full information for the various editions of this book. We are especially grateful to the officials there, who are too numerous to name individually, for their painstaking responses to our numerous queries on matters relating to Depositary functions.

In preparing the second and third editions, we relied especially on three resources at Oxford University: the Bodleian Law Library, the official papers section of the Bodleian in the Radcliffe Camera, and the Codrington Library at All Souls College. We are very grateful to the staff of all these and many other libraries for their assistance. We also owe special thanks to Marga Lyall, Secretary of the Centre for International Studies in Oxford University, without whose unfailing assistance this edition might never have seen the light of day.

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September 1999

Adam Roberts
Richard Guelff

Principal Abbreviations

<i>AJIL</i>	<i>American Journal of International Law</i>
<i>BFSP</i>	<i>British and Foreign State Papers</i>
Cd., Cmd. & Cmnd.	Command Papers, laid by command of the Crown before UK Parliament
CCW	Certain Conventional Weapons (1980 UN Con- vention on)
CTS	<i>Consolidated Treaty Series</i> , ed. Clive Parry
ENMOD	Environmental Modification Techniques (1976 UN Convention on)
ICBS	International Committee of the Blue Shield
ICC	International Criminal Court
ICJ	International Court of Justice, in The Hague
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IFRC	International Federation of Red Cross and Red Crescent Societies
ILC	International Law Commission (of the UN)
<i>ILM</i>	<i>International Legal Materials</i>
<i>IRRC</i>	<i>International Review of the Red Cross</i>
<i>LNTS</i>	<i>League of Nations Treaty Series</i>
<i>Martens NRG</i>	G. F. Martens, <i>Nouveau Recueil Général de Traités</i> , published in several series
NATO	North Atlantic Treaty Organisation
<i>UK Misc.</i>	UK Miscellaneous Papers
<i>UKPP</i>	<i>UK Parliamentary Papers (House of Commons and Command)</i>
<i>UKTS</i>	<i>UK Treaty Series</i>
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
<i>UNTS</i>	<i>United Nations Treaty Series</i>

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Introduction by the Editors

This book is a comprehensive collection of documents and other basic factual information on the 'laws of war', that is, the part of international law relating to the conduct of armed conflict and military occupations, including the protection of civilians, wounded, and prisoners of war.

The focus of this book is on the laws of war as they are currently applicable and, therefore, we have included two kinds of document:

1. The texts of treaties which are formally in force today (plus two not yet in force), along with lists of the states which have signed and/or become parties to them, and any reservations, declarations or objections that have been made.
2. Certain documents which, while not constituting treaties, are authoritative expositions of the law, shed light on a particular issue, and have clear contemporary relevance.

This introduction is intended to review, by no means definitively, a number of issues relating to the laws of war, and to explain the contents and format of the book. It is divided into the following sections:

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A. THE TERM 'LAWS OF WAR'

The term 'laws of war' is taken in this volume as referring to the rules governing the actual conduct of armed conflict (*jus in bello*) and not to the rules governing the resort to armed conflict (*jus ad bellum*). For most purposes, *jus ad bellum* is a separate question meriting separate attention. The reason for this lies in the cardinal principle that *jus in bello* applies in cases of armed conflict whether or not the inception of the conflict is lawful under *jus ad bellum*.

However, *jus ad bellum* and *jus in bello* overlap at a number of points. Each

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contains aspects of the principle of proportionality, in the former relating to the right of self-defence, and in the latter relating to the conduct of hostilities.¹ In addition, serious violations of *jus in bello* (for example, massacres of civilians) have in several instances been viewed by states and international organizations as a justification for direct military intervention, thus providing a further link with *jus ad bellum*. There are other points of overlap as well.

The application of the laws of war does not depend upon the recognition of the existence of a formal state of 'war', but (with certain qualifications) comprehends situations of armed conflict whether or not formally declared or otherwise recognized as 'war'. For this reason, many treaties concluded since the Second World War refer to 'armed conflict' rather than 'war'. Reflecting this development, the term 'international law of armed conflict' has come to be used to describe this body of law.² However, the older term 'laws of war' is also widely used and understood. Both terms are commonly (and in our view correctly) viewed as encompassing not just international law on the conduct of armed conflict and military occupation, but also the law on genocide and on crimes against humanity.

Another term, 'international humanitarian law', sometimes with the suffix 'applicable in armed conflicts', has become widely accepted, including by the International Committee of the Red Cross (ICRC), and also in discourse at the United Nations; and it has appeared in several international agreements.³ This term has merits which explain the growth of its use. It focuses attention on the central issue of the treatment of the individual, whether civilian or military. In some views, in addition to being used more or less synonymously with the term 'laws of war', 'international humanitarian law' can also encompass relevant parts of the international law of human rights. A possible disadvantage of the term is that it could be thought to exclude some parts of the laws of war (such as the law on neutrality) whose primary purpose is not humanitarian. Indeed, the term 'international humanitarian law' could be seen as implying that the laws of war have an exclusively humanitarian purpose, when their evolution has in fact reflected various practical concerns of states and their armed forces on grounds other than those which may be considered humanitarian.

¹ Article 51 of the UN Charter, which has to be read in conjunction with Article 2(4) prohibiting 'the threat or use of force . . .' recognizes 'the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations'. In numerous conflicts, including those between Israel and Arab states, the 1982 Falklands War, and the naval operations in the Gulf in 1987–8, the targeting and scale of particular uses of force have been extensively discussed in terms of whether they constituted necessary and proportionate measures of self-defence.

² The term 'international law of armed conflict' is used in the 1998 Rome Statute of the International Criminal Court, Articles 8(2)(e)(iii) and 21(1)(b). The term 'law of international armed conflict' (which does not cover civil wars) is used in the 1994 Convention on the Safety of UN and Associated Personnel, Article 2(2).

³ The term 'international humanitarian law' is used in the title and text of the 1977 Final Act of the diplomatic conference which concluded the 1977 Geneva Protocols I and II; the 1993 ICTY and 1994 ICTR statutes, Article 1 in both cases; and the 1997 Ottawa Mines Convention, preamble. See also the definition in the 1994 San Remo Manual, para. 13(a).

B. HISTORICAL ORIGINS

The idea that the conduct of armed hostilities is governed by rules appears to have been found in almost all societies, without geographical limitation.⁴

The regulation of armed conflict has occupied the attention of scholars, statesmen, and soldiers for thousands of years. The Greeks and Romans customarily observed certain humanitarian principles which have become fundamental rules of the contemporary laws of war.⁵ During the Middle Ages, a law of arms was developed in Europe to govern discipline within armies as well as to regulate the conduct of hostilities.⁶ As the body of international law began to develop in Europe, early writers (such as Legnano, Victoria, Belli, Ayala, Gentili, and Grotius) gave priority to consideration of hostility in international relations.⁷ In the work of Grotius, one of the first systematic treatments of international law, the laws of war played a principal part. Equally important, the practice of states led to the gradual emergence of customary principles and rules regarding the conduct of armed hostilities. These principles and rules were incorporated in a number of texts intended to have binding effect. For example, the Articles of War decreed by King Gustavus Adolphus of Sweden in 1621 contained a number of rules that fall within the laws of war.⁸

While this volume focuses on the laws of war as they are currently applicable, their historical development has had an important impact on their

⁴ For example, see UNESCO, *International Dimensions of Humanitarian Law*, Martinus Nijhoff, Dordrecht, 1988; S. V. Viswanatha, *International Law in Ancient India*, Longmans Green, Bombay, 1925, pp. 108–200; Emmanuel Bello, *African Customary Humanitarian Law*, Oyez, London, 1980, pp. 1–62; and Majid Khadduri, *War and Peace in the Law of Islam*, Johns Hopkins Press, Baltimore, Maryland, [1955], pp. 83–137.

⁵ See Coleman Phillipson, *The International Law and Custom of Ancient Greece and Rome*, Macmillan, London, 1911, vol. II, pp. 166–384.

⁶ See Maurice Keen, *The Laws of War in the Late Middle Ages*, Routledge and Kegan Paul, London, 1965.

⁷ Giovanni da Legnano, *De Bello, de Represaliis et de Duello*, Bologna, 1477; Franciscus de Victoria, *Relectiones Theologicae*, Lyons, 1557; Pierino Belli, *De Re Militari et Bello Tractatus*, Venice, 1563; Balthazar Ayala, *De Jure et Officiis Bellicis et Disciplina Militari*, Douay, 1582; Alberico Gentili, *Commentationes de Jure Belli*, London, 1588–9, and *De Jure Belli, libri tres*, Hanau, 1598; and Hugo Grotius, *De Jure Belli ac Pacis, libri tres*, Paris, 1625. These and/or other works of all these writers were published with English translations in the ‘Classics of International Law’ series of the Carnegie Institution of Washington/Carnegie Endowment for International Peace, published by Oxford University Press between 1912 and 1950.

⁸ The 150 ‘Articles of War’ were signed by King Gustavus II Adolphus of Sweden on 15 July 1621 on the eve of regiments of the Swedish army departing to fight Russian forces in the Baltic provinces. The incorporation of restraints on the conduct of military operations as just one part of a body of rules covering a wide range of other issues as well is typical of early codes. Six of the articles (88, 90, 91, 95, 99, and 100) contain rules on classic laws of war matters: assaults on women, unauthorized attacks on towns or villages, theft, and pillage or burning of churches and hospitals. An English translation is in *The Swedish Discipline, Religious, Civil, and Military*, London, 1632, second part, pp. 55–7. This work also contains at pp. 69–73 twenty additional articles promulgated in 1632. See also Kenneth Ögren, ‘Humanitarian Law in the Articles of War decreed in 1621 by King Gustavus II Adolphus of Sweden’, *IRRC*, July–August 1996, pp. 438–42.