

**Ingrid Detter**

**The Law of War**

Cambridge, Cambridge University Press, 2nd ed., 2000,  
516 pages

International humanitarian law and the study of rules related to armed conflicts are getting more and more attention in international academic research and publications. In the last few years, several excellent new books have been published and new editions of previous works have appeared.<sup>1</sup> This book by Professor Detter is the second edition of a work first published in 1987. A recognized expert in international law, she is an Emeritus Professor at Stockholm University and a Senior Member of St Anthony's College, Oxford, and is the author of many works on humanitarian law and on general international law.<sup>2</sup>

The present book contains a comprehensive description and analysis of the rules applicable to armed conflict and deals with the laws on weaponry, humanitarian law and all related issues. Professor Detter clearly explained her purpose in its first edition: "there is now a homogeneous body of rules applicable to the modern state of war" (p. xvii).

The book is divided into three main parts: "General Principles", "Rules on Belligerence" and "Consequential Aspects of the Law of War". The first part deals with all general issues concerning the concept and types of war; the prohibition and prevention of war in international law; the war-waging machinery — including the question of belligerence and combatants; the nature, history and content of the law of war; and the spatial application of the law in the event of armed conflict. It starts with an interesting standpoint as to the concept of war, which is viewed as being "essentially a relationship [governed] by armed force between individuals, subjected in varying degree[s] to the Law of War" (p. 5). At the same time, Professor Detter notes — correctly — that the term "war" can be used as a "figure of speech" and, as in the case of the "Cold War", can be considered as a

“war of minds, without physical hostilities” (p. 9). But in giving this specific example, she does not seem to take into account the fact that actual international “wars” fought in Vietnam and Korea, not to mention many “internal wars” in Central America and Africa, took place during and were implicitly connected to the Cold War.

The author also prefers to use the word “war” instead of the generally agreed international term “armed conflict” on the ground that “not all armed conflicts amount to war”, and that “attempting to make a distinction between war and armed conflict is not really fruitful since it is not a question of type but one of scale and degree” (p. 21). So the term “war” has been chosen “to include certain armed conflict of certain dimensions” (p. 20). The justification is based on a narrow concept of war “to avoid the artificialities of the ambiguous concept of ‘armed conflict’” (p. 81). But in dealing with non-international armed conflict the author uses the old expressions “civil war” and “internal war” (pp. 39–46), discussing them in two different paragraphs, as two different types of war (p. 38).

This position creates more confusion, as she also uses the expression “internal conflict”. This issue of definition and threshold needs further discussion, because it does not correspond to the general trend in international law doctrine and, in particular, the position of the International Committee of the Red Cross.

Contemporary international humanitarian law is considered to be a combination of two branches of law, the Law of The Hague and the Law of Geneva.<sup>3</sup> The concept of armed conflict is of

<sup>1</sup> More recent publications include: E. David, *Principes de droit des conflits armés*, 2nd ed., Bruylant, Brussels, 1999; L.C. Green, *International Humanitarian Law*, 2nd ed., Manchester University Press, Manchester, 2000; J. Gardham (ed.), *Humanitarian Law*, Ashgate, Aldershot, 1999; D. Fleck, *Handbook of Humanitarian Law in Armed Conflicts*, Oxford University Press, Oxford, 2001; F. Kalshoven and L. Zegveld, *Constraints on the Waging of War: An Introduction to International Humanitarian Law*, 3rd ed., ICRC, Geneva, 2001.

<sup>2</sup> Her relevant works include: *Law Making by International Organisations*, Norstedt & Söners Förlag, Stockholm, 1965; *Essays on the Law of Treaties*, Norstedt & Söners Förlag, Stockholm, 1967; *International Law and the Independent State*, 2nd ed., Gower, Brookfield, 1987; *The Concept of International Law*, 2nd ed., Norstedt & Söners Förlag, Stockholm, 1994.

<sup>3</sup> See François Bugnion, “Droit de Genève et droit de La Haye”, *International Review of the Red Cross*, No. 844, Vol. 83, December 2001, pp. 901-922.

course a broader concept than “war”. It includes all kinds of hostilities among States and other contenders, such as belligerent groups, insurgents and rebels. This is not just a matter of definition and terminology, which seems to be the author’s understanding of it. In many cases it has, on the contrary, major consequences for the concrete application of international humanitarian law and thus for providing better protection to the victims of and participants in hostilities — the main objective of the body of laws under examination. It is true that the International Committee of the Red Cross, academics and international institutions use the expressions “international humanitarian law”, “law of armed conflict” and “law of war” with a wide meaning and usually regard them as synonymous. But it is also true that international organizations, legal experts, academics and States tend to use the expression “international humanitarian law” (or simply “humanitarian law”), whereas the other two expressions tend to be used by the armed forces as more “traditional” and “technical” terms.

In this book the use of the expression “laws of war” can be considered appropriate, mainly because the author deals not only with the primary issues related to the conduct of hostilities and the protection of victims of armed conflict, but also with other relevant matters that are “naturally” linked to the phenomenon of “war”, such as prohibition of the use of force in international law, prevention of war and the legal consequences of war, including implementation, denunciation, breaches and sanctions. If construed thus, the use of the term “laws of war” can be considered justified in this particular case.

Another interesting aspect of Professor Detter’s book is the definition of war formulated in it: “a sustained struggle by armed force of a certain intensity between groups of a certain size, consisting of individuals who are armed, who wear distinctive insignia and who are subjected to military discipline under responsible command” (p. 26). This definition is interesting because it builds on the essential definition of combatant provided by the 1949 Geneva Conventions, *trying to avoid any subjective state of mind of belligerent parties*. At the same time, it does not sufficiently clarify one of the most important issues, namely the “threshold” — the level of “intensity” — of hostilities that determines the existence of an armed conflict. In many

cases that determination is the main trigger for the concrete application of humanitarian law. This part requires greater clarification in order to distinguish between “war” and “armed conflict”.

In the second part, the rules on belligerence are analysed. They include the specific rules on weapons restrictions and prohibited methods of warfare and the humanitarian rules governing the protection of combatants and civilians. The narrow concept of “humanitarian law” adopted by the author limits this term to the rules for the protection of the human person. The reason given is that “[i]t is not in the interest of consolidation of the Law of War if humanitarian rules include heterogeneous rules, such as rules on targets for attack, as they are more akin to other rules on methods of warfare” (p. 316). For this reason, the rules concerning the protection of civilians and persons *hors de combat*, cultural property, military targets, etc. are included in the general section on belligerence, in the chapter on “Prohibited methods of warfare”.

It is not clear whether limiting and restricting the applicable rules to only some situations in which armed force is used, such as “war-type” situations, is increasing or weakening the protection of the victims. It seems that international institutions dealing daily with situations of armed conflict prefer a wide application of the rules to “all kinds of situations” where the use of force can affect, in many ways, the people directly or indirectly involved. Situations that fall short of “war” may create a very dangerous “grey zone”<sup>4</sup> in which the type of legal protection applicable is uncertain. The third part of the book deals with the effects of the war on State relations, application of the Law of War during conflicts, *inter alia* by peacekeeping actions, suspension of application of the law, sanctions, responsibility for breaches and individual responsibility.

The advantage of the book is that it provides a thorough analysis of war-related issues, presenting the phenomenon of war through the wide and complex perspective of international law. Of particular interest are the topics that are not always dealt with by other

<sup>4</sup> See T. Meron, *Human Rights in Internal Strife: Their International Protection*, Grotius Publications, Cambridge, 1987.

works on humanitarian law. Some parts give useful insights, such as the analysis of the relationship between war and terrorism (p. 21), the content and ethics of the law of war (Chapter 5), and the limitation and legitimization of the use of force (Chapter 2).

To sum up, this excellent book provides the reader with a complete analysis of what the application of the international rules in the event of war entails. It is clearly structured and imparts a comprehensive understanding of the fundamental issues and problems related to armed conflicts. The author's view of the law of war is that of a set of "universally evident rules on ethics, humanity and civilised standards, binding by common recognition" (p. 438).

The final conclusion that "rules on warfare, humanitarian rules and human rights in general, are 'binding', even outside treaties and even on individuals" (p. 422) is evidence that "individuals, both with regard to the Law of War as well as with regard to human rights, are, without any State as intermediary, direct subjects of international law" (p. 442). This statement is welcome, as it endorses the trend towards the subjectivity of individuals in international law. The finding that international rules are directly binding on individuals, as also affirmed by recent international jurisprudence, needs further authoritative support like this to prevent the commission of international crimes and to provide effective remedies for violations of international humanitarian rules.

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