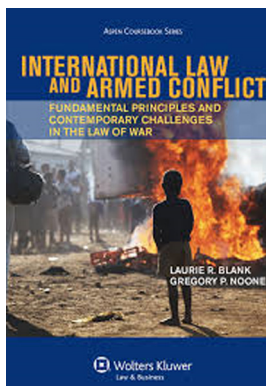


BOOK REVIEW



International Law and Armed Conflict: Fundamental Principles and Contemporary Challenges in the Law of War

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Knowledge of law is an essential condition for its effective application ...: man should be made familiar from childhood with the great principles of humanity and civilization, so that they may become deeply rooted in his consciousness.

Jean Pictet¹

Many will readily agree with Jean Pictet that in-depth knowledge of international humanitarian law (IHL) – also often referred to as the law of armed conflict (LOAC) or the laws of war – is necessary for lawyers, members of the armed

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forces, humanitarian practitioners and others involved in or working on issues related to armed conflicts. Few will generally advocate for a broad, non-targeted dissemination among the public at large. And yet, some degree of understanding of the basic rules and principles applicable in situations of armed conflict may also be valuable for anyone interested in world politics and international affairs. What is the nature of the conflict in Afghanistan today, and why does that matter? Is the Islamic State an organized armed group? How does the law protect the civilian population in Syria or in the Central African Republic? Are chemical weapons prohibited, and if so, how? These are only some of the questions that any well-informed citizen may ask on a daily basis, and IHL provides the answers to all of them.

This being said, IHL remains a complex body of law, and the appropriate amount of information one needs to receive to answer such questions will vary greatly depending on the audience's profile and the direct relevance of IHL for their respective professions. For that reason, very few publications manage to address a broad range of audiences at once. Here, Laurie Blank and Greg Noone have actually succeeded in the almost impossible task of offering an IHL textbook which both experts and laypersons will find worthwhile. *International Law and Armed Conflict: Fundamental Principles and Contemporary Challenges in the Law of War* is a welcome new resource on IHL that anyone interested in learning more about this body of law should have within reach on their bookshelves.

One may at first assume that the book is but another addition to an already long list of existing manuals and textbooks on IHL/LOAC – but this would be a mistake. This new publication is distinct from other works in many respects, and the back cover rightly presents it as “an innovative and integrated resource”. While these seem to be commonly used promotional terms, they could not have been more appropriately used than for Blank and Noone's work. One of the book's main qualities indeed lies in its creative structure: the typical chapter titles one would see elsewhere, such as “Conflict Classification”, “Protection of the Civilian Population” or “Means and Methods of Warfare”, have disappeared, to be replaced by the much more self-explanatory and intuitive “five Ws” (or rather, in this case, four Ws and one H): Why, What, When, Who, and How. Following a very pedagogical approach, the reader is taken on a journey through the detailed rules and principles of IHL, while always being reminded of what the question is that they are seeking to answer.²

Secondly, in the authors' own words, the manual is designed to “bring LOAC to life in the classroom”.³ And indeed, every section is accompanied by

1 Jean Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949, Vol. I: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, International Committee of the Red Cross (ICRC), Geneva, 1952, p. 348.

2 Indeed, the book is structured as follows: Part I, “Why” (looks at the basic principles and the history of IHL); Part II, “What and When” (includes chapters on the definition of armed conflict, the classification of conflicts, and occupation); Part III, “Who” (with clear chapters on combatants and civilians, followed by a chapter on battlefield status in NIAC); Part IV, “How” (mainly split into three chapters dealing with conduct of hostilities); Part V, “Implementation and Enforcement”.

3 *International Law and Armed Conflict*, Preface, p. xxiv.

several excerpts taken from relevant practice and case law, which all contribute to persuading the reader that IHL is not just the sum of the Geneva Conventions and other relevant instruments, but is actually a lively and rapidly evolving body of law. The wide array of supporting documents shows the authors' perseverance and commitment in always finding the most appropriate texts to support their theoretical explanations. Professors, students and laypersons will be able to find the now unavoidable cases, those that have undoubtedly contributed to advancing IHL, such as the various decisions made by the Trial and Appeals Chambers of the International Criminal Tribunal for the former Yugoslavia (ICTY) in the famous *Tadić* case,⁴ the International Court of Justice's (ICJ) *Wall* case advisory opinion,⁵ and the US Supreme Court's decision in *Hamdan v. Rumsfeld*.⁶ At the same time, scholars and researchers looking for additional sources will be introduced to less commonly cited but equally relevant resources. To mention but a couple of examples, the book contains excerpts from a decision by a Belgian military court regarding the UNOSOM II operation in Somalia,⁷ and passages from a constitutional review of Additional Protocol II to the Geneva Conventions by the Colombian Constitutional Court.⁸ The wealth of the sources also lies in their variety, both in terms of types of documents (ranging from court decisions to military manuals, and from positions of the International Committee of the Red Cross (ICRC) to personal accounts from former Judge Advocates General) and in terms of their geographical provenance (the book includes materials from the US, the UK, France, Israel, Colombia, Russia and South Africa, in addition to a range of international courts and tribunals).

On this last point, the prevalence of documents emanating from US case law, legislation or practice may give some readers the impression that the book is overly US-centric. The authors have voluntarily (and rightly) included considerations from, and discussions on IHL's interaction with, other branches of law, in particular international human rights law, international criminal law and national security law. While the perspective of the first two branches will be useful to readers around the globe, national security law is inevitably linked to domestic legislation. Many of these considerations thus relate to US constitutional law and will only

4 ICTY, *Prosecutor v. Tadić*, Case No. IT-94-1, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, reproduced in *International Law and Armed Conflict*, pp. 93–96, 137–138, 155–156, 593–598; ICTY, *Prosecutor v. Tadić*, Case No. IT-94-1-T, Judgment, 7 May 1997, reproduced in *International Law and Armed Conflict*, pp. 107–110; ICTY, *Prosecutor v. Tadić*, Case No. IT-94-1-A, Appeals Judgment, 15 July 1999, reproduced in *International Law and Armed Conflict*, pp. 139–143, 286–288.

5 ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, *ICJ Reports*, 9 July 2004, pp. 136, 215, reproduced in *International Law and Armed Conflict*, pp. 30–31.

6 US Supreme Court, *Hamdan v. Rumsfeld*, 548 US 557, 2006, reproduced in *International Law and Armed Conflict*, pp. 162–164.

7 Tribunal Militaire (Belgium Military Court), *Ministre Public et Centre pour l'égalité des chances et la lutte contre le racisme c. C. et B.*, *Journal des Tribunaux*, 4 April 1998, p. 286, reproduced in *International Law and Armed Conflict*, p. 119–121.

8 Colombian Constitutional Court, *Constitutional Review of Additional Protocol II*, Ruling C-225/95, Re: File No. LAT-040, reproduced in *International Law and Armed Conflict*, pp. 48–49.

sound familiar to an American audience. This being said, complex references to national security law remain occasional in the book, and the overwhelming majority will be as useful to non-US readers as it will be to US ones. In the end, the book is an extremely comprehensive resource for American readers willing to understand the various legal ramifications at play in situations of armed conflict, and will introduce non-US readers to national security considerations which are essential to apprehend the decisions and legal interpretations of a country that has been a prominent influence on the development of IHL in recent decades.

A third challenge, for any new IHL/LOAC textbook, is to find the right balance between theory and operational reality. Professors and students need to be provided with the correct theoretical background, with the conventional and customary rules and principles that form the foundations of any body of law. Humanitarian practitioners and military members will at the same time need to feel that the writers understand the challenges of application and implementation in concrete situations. Here, *International Law and Armed Conflict* stands out from other IHL/LOAC textbooks and manuals, which often (necessarily) target specific audiences. The book indeed integrates several perspectives and accordingly manages to speak to a large public. This is undoubtedly the result of the authors' diverse expertise: they combine thirty-five years of practice working in the military, think tanks and academia. Their in-depth comprehension of these actors underlies the whole manual, and ensures that it is a realistic presentation of the operational environment in which such actors evolve. As Michael Schmitt notes in the Preface, the structure itself "mirror[s] the analytical approach that militaries take to the application of the law of armed conflict, often termed the 'right kind of conflict, right kind of person' approach".⁹ This is particularly laudable in a world where academia and the military often criticize one another for being ignorant of their respective realities. Blank and Noone have avoided this pitfall and have managed to offer an excellent theoretical resource while still doing justice to the crucial idea that studying and teaching IHL cannot be separated from the way it will be applied.

Of course, a textbook should not be evaluated only on the basis of the quality of the sources it contains. With their new publication, Blank and Noone not only confirm their profound knowledge of contemporary history, as attested by the numerous references to past conflicts, but also demonstrate a sense of discernment in identifying tomorrow's unanswered questions and challenges. Several sections in the book are devoted to cyber-operations, for instance, with an interesting discussion on the status of "hacktivists" and whether their conduct could ever amount to direct participation in hostilities resulting in a loss of protection against direct attack.¹⁰ The authors also address the question of the standards for detention in non-international armed conflict (NIAC), within the chapter on battlefield status in NIAC. While the ICRC is currently working on a four-year-long process aimed at strengthening the legal protection of victims in

9 *International Law and Armed Conflict*, Preface, p. xxiv.

10 *Ibid.*, p. 350, para. 8.

NIAC, which should bring forward new proposals for developing the law of NIAC, the authors already offer a discussion highlighting the main issues arising from the lack of conventional provisions regulating internment in NIAC.¹¹ In general, the lists of “questions for discussion” included at the end of each section provide a good opportunity to assess the theoretical knowledge just acquired, to apply it to contemporary practice, and to broaden the debate by including references to additional resources.

Furthermore, despite the relative US-centrism of the references, the authors have refused to follow the positions of the successive US administrations, and have made sure to also include controversial voices. For instance, the discussion of Articles 43 and 44 of Additional Protocol I, which redefine the definitions of combatant and prisoner-of-war status – and thus constitute one of the reasons why the US has refused to ratify the Additional Protocol – includes a presentation of the ICRC letter sent to President Reagan to explain why Article 44(3) actually represents progress in IHL.¹²

In the end, the only suggestion for improvement one could pass on to the authors is that aspects related to the protection of persons in the hands of the enemy could be expanded. The book currently seems to focus more on aspects related to conduct of hostilities, and overall dedicates surprisingly few pages to the question of detention and internment. While the status and treatment of prisoners of war is extensively discussed,¹³ civilian internees and protected civilians detained on suspicion of having committed offences are only briefly covered, and mainly through document excerpts.¹⁴ The authors present in detail the concept of protected civilians, including through relevant case law, but quickly move on to discussing the protection of the civilian population against attacks. This is probably the only regret one may have when reading *International Law and Armed Conflict* – although it remains a negligible one.

In conclusion, one can only commend Blank and Noone for offering a well-written, nuanced and multidisciplinary book that will prove useful to readers from a wide variety of backgrounds. The concern mentioned in the book’s preface that “the good news is that today attention is being devoted to the law of armed conflict to an unprecedented degree ... but the bad news is that much of the material produced is of substandard quality”¹⁵ has been addressed: those who are learning IHL through Blank and Noone’s book will gain a knowledge of that body of law which will definitely be of a high standard. The authors have not only succeeded in bringing the law to life in the classroom, but their conviction, accompanied by a natural, easy-to-read style, will often make the reader want to continue the discussions in person.

11 *Ibid.*, Chapter 9, “Battlefield Status in Non-International Armed Conflict”, Part C, “Standards for Detention in NIAC”, pp. 386–392.

12 *Ibid.*, Chapter 7, “Combatants”, pp. 235–240.

13 *Ibid.*, Chapter 7, “Combatants”, Part C, “Prisoners of War: Purposes and Protection”, pp. 255–276.

14 *Ibid.*, Chapter 6, “The Law of Belligerent Occupation”, pp. 196–198.

15 *Ibid.*, Preface, p. xxxix.

