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## Robert Kolb and Richard Hyde, *An Introduction to the International Law of Armed Conflicts*

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(348 pages including tables of cases and treaties, bibliography and index)

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The international law of armed conflict (or *jus in bello* or, euphemistically, international humanitarian law) has gained a significant part in international legal discourse during the 1990s. The destructive conflict in the area of ex-Yugoslavia was a major impetus for this trend, which continued as other humanitarian catastrophes in the form of non-international armed conflicts were taking place around the world, especially in the African region. The so-called ‘war on terror’ and the subsequent armed conflicts in Afghanistan and Iraq preserved and renewed the interest of legal scholarship, as many contentious topics arose, such as the entitlement of prisoner-of-war status, the distinction between international and non-international armed conflicts, the interpretation of the rules on conduct of hostilities and so on.

The book is divided in two parts. The first one, serving as introduction, explains the position of the law of armed conflict in the context of public international law and its separation from the law on the use of force (also known as *ius ad bellum*). The role of this separation relates mostly with “equality and non-discrimination between the belligerents in warfare” and is not “strict and all-encompassing” (p. 26). Certainly it persists even if one of the belligerents is fighting a just war, as the motives behind the conflict are hardly relevant for the applicability of international humanitarian law.

The second part covers virtually the whole spectrum of the law of armed conflicts: the sources and basic principles of this legal regime, the distinction of the conflicts between international and non-international, the material, personal, spatial and temporal scope of the law, the rules on the conduct of hostilities and the norms

relating to conduct towards civilians and prisoners of war to name a few. Additionally it offers (short) answers to several problems/topical subjects of the law of armed conflict. With regard to a conflict when an international organization intervenes, the authors opt for its qualification as international (p. 81). They also characterize the label “war against terrorism” as (p. 82):

“confusing and dangerous [because] it could connote the wrong idea that all terrorists are adverse warriors and would possibly be endowed with combatant immunity, which is not the case”.

Not surprisingly, they also reject the idea that “irregular combatants” in this context would be stripped from any right, since the residual clause of article 75 of Additional Protocol I<sup>1</sup> would apply (p. 205)<sup>2</sup>.

The widening of the definition on military objectives finds the authors on the opposing side, as (p. 131):

“the advantage concerned should be substantial and relatively immediate, and [...] an advantage that is hardly perceptible or which would only appear in the long term should be disregarded”.

This comes in sharp contrast with the efforts to legitimize attacks to virtually any military object or civilian objects with a political, economic, social or psychological importance<sup>3</sup>. The example of the attack on the radio-television station in Belgrade, during the 1999 air campaign against Serbia, is analyzed (p. 133-5), in order to give the proper meaning to the rules on the conduct of hostilities. The authors also share the position<sup>4</sup> that there is no legal obligation to use (and therefore to acquire) precision weapons (p. 137). They also propose, with regard to nuclear weapons, that Western nuclear states should commit not to use nuclear weapons as a first strike, so that the only exception would be an answer to a nuclear attack (p. 158).

Some other points worth mentioning include the rejection of applicability on rules of belligerent occupation when an international organization administers territory or in the so-called peaceful occupations (p. 229). They also implicitly seem to reject the ideas on “transformative occupation”, since the maintenance of the *status quo* is a main feature of the law on belligerent occupation (p. 231), although they note the difficulties of tuning the law to long-lasting occupations. They also dismiss the validity of the one-year applicability of certain stipulations from the Geneva Convention IV<sup>5</sup>, mainly on the ground that the respective customary rules do not have a relevant limitation (p. 231).

A further interesting issue arises when the authors discuss the interrelation between human rights law and the law of armed conflict. Here they identify their intersection in three ways (pp. 270 ff):

“coordination by way of subsidiary application, coordination by way of reference from one branch of public international law to the other and a sort of merger by which a new law is shaped”.

Nonetheless the “subsidiary application” approach does not seem convincing, as it refers to situations of emergency which are not armed conflicts proper and where the law of armed conflict does not apply at all. Equally the “merger approach” is debatable, to the extent that whenever international human rights bodies (Commissions and Courts) examined the situation of human rights in armed conflicts, they did not really take humanitarian law into account. This merger approach is

mostly evident, as the authors note, in the emergence of “minimum humanitarian standards”<sup>6</sup>, which however, have not transposed in positive law so far.

In light of the prevalence of non-international armed conflicts in contemporary realities, the authors could devote more space. There are bits and pieces within the book, including contestable issues such as the dubious legality of reprisals in non-international armed conflict (p. 176-7) and the uncertainty on whether international armed conflict rules on sea warfare, not of common occurrence, apply in non-international armed conflicts (p. 253-4). Some topics though remained unanswered, such as the temporal scope of the law’s applicability in a non-international armed conflict, although the approach of the International Criminal Tribunal for the former Yugoslavia in the *Tadic* decision<sup>7</sup> (with regard to peaceful settlement) is hardly clear; there is uncertainty on the legal standards applicable in cases of a lasting ceasefire and/or a substantially long decrease in violence without any form of agreement between the fighting parties. The possibility that human rights law could apply in the conduct of armed non-state actors, either in parallel or as a substitute, is not mentioned, as well as other issues relevant to the applicability of human rights law during armed conflicts, such as extra-territoriality. Understandably there is also no section on air warfare, which will probably be included in a second edition of the book, in light of the Manual on International Law Applicable to Air and Missile Warfare<sup>8</sup>.

The difficulty of implementation is noted in the book (p. 283) as well as the various tools which are used to address this issue. In this regard the role of prior dissemination of the law is crucial and should include the general population apart from the military. A non-international armed conflict would probably be a confrontation between the national army and a part of the civilian population taking up arms against the government. Consequently the prior dissemination of the rules to civilians might ‘pre-empt’ violations of the law during the conflict period. As for the role of third states in a conflict, the authors agree that the provision of common article 1 of the Geneva Conventions “allows third states to intervene, but does not oblige them to do so” (p. 288). The role of the International Committee of the Red Cross is also given substantial scrutiny (pp. 113-123), as it has served in practice as an alternative to the protecting power system. The proposal that the means of implementation in international conflict should (or could) apply by analogy to non-international conflicts is certainly one possibility, although even in the former type of conflicts the success of these mechanisms is debatable.

The educational role of the book is evident, as each section, covering roughly 5-15 pages, includes a learning objective, an analysis of the topic discussed and a comprehension check with questions and answers. This last part is equally interesting and worth the reading, as it provides further clarifications of the law or gives practical examples on how the law should be interpreted and applied in practice. The reason for this structure lies to the fact that the book was originally conceived as a training course for the Swiss Military, as noted in the preface. However the book is not technical, as it is written in simple and accessible language for every student or professional, who is interested in humanitarian law and is not familiar with the topic. Additionally it could serve as a textbook for academic use or as a tool of dissemination of humanitarian law rules to the general public. As the title reveals, it is an *introduction* and therefore it is not addressed to people with substantial prior knowledge in the law of armed conflict. On the other hand it offers much more than just a basic introduction, while it is also comprehensive enough, without the need to

resort to the text of the relevant treaties. One of its particular strengths is the extensive bibliography (pp. 295-335), covering languages other than English and giving, therefore, the possibility to explore the legal interpretations of other schools of thought. Overall the book provides the essential information on the law of armed conflict, while it functions as an appetizer for a deeper study of this area.

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<sup>1</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Geneva, 8 June 1977.

<sup>2</sup> See also the persuasive discourse in support of articles 43-44 of the Additional Protocol I.

<sup>3</sup> See also the widening of the proportionality principle, as several states, including the UK, Canada, France, Germany, Italy, Spain and Australia, have made reservations to articles 51 and 57 of Additional Protocol I, according to which “the military advantage anticipated from an attack is intended to refer to the advantage anticipated from the attack considered as a whole and not only from isolated or particular parts of the attack”. Even the Rome Statute for the International Criminal Court, 17 July 1998, through article 8(2) (b) (iv) seems to depart, to a certain extent, from the relevant provision of Additional Protocol I. Collateral damages should “be clearly excessive in relation to the.....overall military advantage anticipated”. The inclusion of “overall” in the military advantage permits a broader interpretation of the rule, possibly assessing the general operational picture rather than focusing on a single incident, despite its destructive outcome.

<sup>4</sup> Sassoli, M & Cameron, L. (2005) ‘The Protection of Civilian Objects – Current State of the Law and Issues *de Lege Ferenda*’, in Ronzitti, N & Venturini, G (eds.), *Current Issues in the International Humanitarian Law of Air Warfare*, (Utrecht: Eleven) p. 70 and Schmitt, M (2005) ‘Precision attack and International Humanitarian Law’ 87 *International Review of the Red Cross* 461.

<sup>5</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949.

<sup>6</sup> See Lillich, R. (1985) ‘The Paris Minimum Standards of Human Rights Norms in a State of Emergency’ 79 *American Journal of International Law* 1072-1081 and Meron, Th & Rosas, A. (1991) ‘A Declaration of Minimum Humanitarian Standards’ 85 *American Journal of International Law* 375-381.

<sup>7</sup> *Prosecutor v. Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, par. 70, “an armed conflict exists whenever there is a resort to....protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends .....in the case of internal conflicts, [until] a peaceful settlement is achieved”.

<sup>8</sup> Program on Humanitarian Policy and Conflict Research at Harvard University, Bern, 15 May 2009.