

## Preface

It used to be a simple thing to fight a battle. . . . In a perfect world, a general would get up and say, “Follow me, men,” and everybody would say, “Aye, sir” and would run off. But that’s not the world anymore. . . . [Now] you have to have a lawyer or a dozen.<sup>1</sup>

General James L. Jones, U.S. Marine Corps, while Supreme Allied Commander, Europe

This is a textbook for law students and upper-division undergraduates. A military background is not required. The text takes the interested reader from the essentials of the law of armed conflict (LOAC) to an awareness of some finer points of battlefield law. The text refers to hundreds of cases, including American courts-martial. Many are dealt with in detail, most only in passing, but all contribute to an understanding of LOAC or, as civilians refer to it, international humanitarian law (IHL). (I often follow the lead of the Geneva Conventions in referring to it as the law of armed conflict.) The text concentrates exclusively on *jus in bello* – law on the battlefield – to the exclusion of *jus ad bellum*, the lawfulness of the resort to force. It does not include law of war at sea or law of air warfare.

This is not a national security law text nor a history book, nor an ethics study. Elements of those are inextricably included, particularly history, but they are not the main focus. The essentials are here: Exactly, what are “the law of armed conflict” and “international humanitarian law”? What LOAC/IHL applies to particular armed conflicts? What is the legal status of the participants in an armed conflict? What constitutes a war crime? What is a lawful target, and how are targeting decisions made? What are rules of engagement, and what role do they play on the battlefield? Torture is defined and its futility explained. The text is liberally footnoted so that readers will have a broad reference base if they wish to study an issue more deeply.

The book was born in the classrooms of the United States Military Academy and shaped in Georgetown University Law Center seminars. At West Point, knowing that my cadet students would soon put these lessons into practice in combat gave focus to the book’s formation. Discussing and arguing LOAC/IHL issues with soldiers and Marines fresh from duty in Iraq, Afghanistan, Kosovo, and Africa honed arguments and conclusions in the text. My twenty-six-year Marine Corps career provided insights as well.

<sup>1</sup> Lyric Wallwork, “A Marine’s toughest mission,” *Parade Magazine*, Jan. 19, 2003.

Some will disagree with interpretations included here. Occasionally, conclusions are drawn when international consensus may not be fully formed – little in public international law is clearly black or white. That is not to suggest that one should form conclusions merely for the sake of dispelling ambiguity. Where the weight of authority in my view indicates a conclusion in an unsettled area, that conclusion is stated. Appellate opinions and legal materials are included to illustrate how *jus in bello* concepts have been applied.

LOAC/IHL is not particularly arcane or complex but, contrary to the expectations of some, neither is it merely instinctive. One cannot “know” the law of war through a cursory presumption of what sounds morally right or wrong. In a few courses offered at some universities and law schools, LOAC/IHL is little more than an international law course with a couple of lessons on the Geneva Conventions added to it. It’s not that easy. Still, in its general outlines, LOAC/IHL is a relatively narrow aspect of public international law, not particularly arduous or opaque.

In a world where combat is broadcast worldwide in real time, warfighters are expected to meet a high standard of conduct and judgment. In unclear situations, when death is the rule and violence the norm, how do combatants decide, instantly and under fire, what is right and what is wrong – not only morally, but legally? A knowledge of LOAC/IHL provides some of the answers.

The text is heavily United States weighted, but it is more than a statement solely of American positions. It incorporates lessons from the British, Dutch, Israelis, and others. Cases from around the world are included. Some recent U.S. LOAC/IHL positions have been, to phrase it gently, open to question. Those are discussed as well.

My hope is that this textbook will contribute to the betterment of armed forces everywhere and to the intellectual understanding of students, civilian and military, who read it.