INTERNATIONAL CONFLICT
AND SECURITY LAW

Hilaire McCoubrey wrote extensively in the area of armed conflict law (governing the use of force in international relations, and the conduct of hostilities), and on the issues of collective security law and the law relating to arms control. Although he died at the early age of forty-six in 2000 he had contributed significantly to the separate study of these areas, but also to the idea of studying the issues as a whole subject. The collection covers difficult and controversial issues in the area of conflict and security law. Within a coherent framework provided by extracts from Hilaire’s own work, the contributors, drawn both from academe and practice, provide expert analysis of many aspects of the law governing armed conflict and collective security. These include the application of international humanitarian law in the operational context; the duty to educate in humanitarian law; superior orders; command responsibility; the protective emblem; the relevance of international humanitarian law to terrorism; and legitimate military targets. The book then moves from a consideration of the laws of war to the law of peace with a consideration of the application of human rights law in international armed conflict law. An essay on democracy as an aspect of peace and security widens the human rights debate out further and takes us into regional security regimes. The essays then move on to discuss aspects of collective security law. As well as providing a fitting tribute to the main aspects of Hilaire’s contribution to knowledge, the volume provides a coherent reconsideration and development of key aspects of conflict and security law at a time when that law is being applied, breached, debated or reformed on almost a daily basis.

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JUSTIN MORRIS is Senior Lecturer in International Politics at the University of Hull. He is co-author (with the late Professor Hilaire McCoubrey) of Regional Peacekeeping in the Post-Cold War Era (2000).
INTERNATIONAL CONFLICT
AND SECURITY LAW

 Essays in Memory of Hilaire McCoubrey

Edited by

RICHARD BURCHILL, NIGEL D. WHITE
AND JUSTIN MORRIS

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for International Law
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BIOGRAPHY

The Reverend Professor Hilaire McCoubrey 1953–2000

Hilaire was educated at Hymers College, Hull (1962–8) and Portsmouth Grammar School (1968–72). He studied for a law degree at Trinity College Cambridge (1972–5), and qualified as a solicitor in 1978 after serving his articles with the Greater London Council. He was appointed by Professor Sir John Smith to a lectureship in the Law Department at the University of Nottingham in 1978, and was promoted to a Senior Lectureship in 1991. He taught mainly Public International Law, Legal Theory and Planning Law while at Nottingham and wrote extensively in these areas, as shown by the bibliography of his work. His specialization in conflict and security law, evidenced by his seminal book International Humanitarian Law published in 1990, led him to establish the Centre for International Defence Law Studies in 1991. Its chief publication – The International Law and Armed Conflict Commentary – became the Journal of Armed Conflict Law in 1996 published by Nottingham University Press, and then the Journal of Conflict and Security Law published by Oxford University Press from 2000. While at Nottingham he completed a Ph.D in 1990, the thesis being published as The Obligation to Obey in Legal Theory. Between 1992 and 1995 Hilaire studied part-time for a Diploma of Theological and Pastoral Studies and was ordained as a deacon in the Church of England in 1995. He became a non-stipendiary minister in the Parish of Rowley and Skidby after moving to Beverley, Yorkshire. This was after his appointment to a Chair at the University of Hull in 1995 where he also became Director of Postgraduate Studies in the Law School. He relocated the Centre for International Defence Law Studies to Hull and continued to produce numerous books and articles on humanitarian law and more widely on collective security issues, as well as significantly expanding the postgraduate curriculum in Public International Law at Hull. He was a member of numerous bodies and organizations, playing an active role in the British Red Cross, the
International Committee of the Red Cross, the British Institute for International and Comparative Law, the International Law Association, the Political Studies Association, the San Remo Institute of International Humanitarian Law and the International Society for Military Law; and was invited to give lectures and papers around the globe. It was on a lecturing visit to Pakistan in April 2000 that he died at the age of forty-six.

McCoubrey Centre for International Law

Following Hilaire’s death the University of Hull Law School felt it would be appropriate to create a Centre that would carry on his work in international law and relations. The Centre was instituted in 2001 with the goal of promoting the study and research of international law and relations. The Centre hosts a number of guest speakers through its International Law Seminar Series and the Hilaire McCoubrey Memorial Lecture. Further information about the Centre and its activities may be found at www.hull.ac.uk/law/research/intlaw.html

Dr Neil Boister is Senior Lecturer at the School of Law, University of Canterbury, New Zealand. He is the editor of two volumes of the South African Yearbook of Human Rights and author of Penal Aspects of the UN Drug Conventions (Kluwer Law International, 2001). He has delivered numerous papers on aspects of criminal, international and transnational criminal law and is the author of numerous articles in refereed journals including most recently ‘Transnational Criminal Law?’, (2003) 14(5) European Journal of International Law 953 and ‘The Trend to “Universal Extradition” over Subsidiary Universal Jurisdiction in the Suppression of Transnational Crime’, [2003] Acta Juridica 287. He has been a Contributing Editor to the South African Journal of Criminal Justice (Jutas, CTO), and is a member of the founding editorial team of the New Zealand Yearbook of International Law.

Dr Richard Burchill is Director of the McCoubrey Centre of International Law, University of Hull. His research focuses on the role of international organizations in the promotion and protection of democracy in international law. His publications include The European Union, International Law and the Promotion and Protection of Democracy (Hart Publishing, 2005); ‘The European Union and European Democracy: Social Democracy or Democracy with a Social Dimension?’, (2004) 17(1) Canadian Journal of Law and Jurisprudence 185; ‘The Role of Democracy in the Protection of Human Rights: Lessons from the European and Inter-American Human Rights

Scott Davidson is Professor of International Law, Pro Vice Chancellor and Dean of the Law School at the University of Canterbury, New Zealand. He has been an occasional consultant to the New Zealand Ministry of Foreign Affairs and Trade and a number of law firms. He represents New Zealand on the Maritime Cooperation Working Group of the Council for Security and Cooperation in Asia Pacific and is a member of the editorial and advisory boards of the International Journal of Marine and Coastal Law, the New Zealand Yearbook of International Law and the New Zealand Journal of Public and International Law. Publications include Contemporary Issues in International Law: A Collection of the Josephine Onoh Memorial Lectures edited with David Freestone and Surya Subedi (Kluwer, 2002); New Zealand Handbook on International Human Rights (Ministry of Foreign Affairs and Trade, 1998).

Gary J. Edles is a Visiting Professor at the University of Hull Law School and a Fellow in Administrative Law and Adjunct Professor of Law at American University Washington College of Law, Washington, DC. A retired career civil servant, he is co-author of Federal Regulatory Process: Agency Practices and Procedures (Prentice Hall, 1987, revised 1997).

Colonel Charles Garraway, CBE, retired in 2003 after thirty years in Army Legal Services. He is now a Senior Research Fellow at the British Institute of International and Comparative Law and a Visiting Professor in
Law at King's College, London. He is due to take up the Stockton Chair in International Law at the United States Naval War College in August 2004. His publications include contributions to Roy Lee (ed.), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (Kluwer Law International, 1999), as well as a number of articles on international criminal law and the law of armed conflict.

Michael Meyer is the Head of the International Law Department at the British Red Cross. He is a member of the Council of the International Institute of Humanitarian Law in San Remo, Italy, and a member of the UK Group of the International Society for Military Law and the Law of War. His publications include *Reflections on Law and Armed Conflicts*, co-edited with Hilaire McCoubrey (Kluwer, 1998); 'The Relationship between the Red Cross and the Armed Forces: A Partnership for Humanitarian Purposes', in Liesbeth Lijnzaad et al. (eds.), *Making the Voice of Humanity Heard* (Martinus Nijhoff, 2004), and 'The Role of the International Red Cross and Red Crescent Movement: Problems Encountered', in Peter Rowe (ed.), *The Gulf War 1990–91 in International and English Law* (Routledge, 1993).

Justin Morris is Senior Lecturer in International Politics and Deputy Dean in the Faculty of Arts and Social Sciences at the Department of Politics and International Studies, University of Hull. From 1997 to 2003 he was Secretary of the British International Studies Association. He was co-author (with Hilaire McCoubrey) of *Regional Peacekeeping in the Post-Cold War Era* (Kluwer, 2000), and has written articles and book chapters on Security Council reform, humanitarian intervention and the role of international law in international relations. He is currently working on a book on Security Council reform.

Gordon Risius is a circuit judge, currently on temporary secondment to the Immigration Appeal Tribunal as a Vice President. A solicitor by training, he was commissioned into the Army as a legal officer in 1973 and served for thirty years, the last six as Director of Army Legal Services in the rank of major general. Until his retirement from the Army in January 2003 he was a Vice President of the International Society for Military Law and the Law of War as well as an instructor at the International Institute of Humanitarian Law in San Remo, Italy. His publications include 'Prisoners of War in the United Kingdom', in Peter Rowe (ed.), *The Gulf War 1990–91 in International and English Law* (Routledge, 1993), pp. 289–303 and 'The Protection of Prisoners of War Against Insults and Public Curiosity', (1993) 295 *International Review of the Red Cross* 298, with Michael Meyer.


A. P. V. Rogers is Yorke Distinguished Visiting Fellow of the Faculty of Law and Fellow of the Lauterpacht Research Centre for International Law, University of Cambridge; formerly Director of Army Legal Services; author of the prize-winning book, Law on the Battlefield (2nd edn, Manchester University Press, 2004).

Dr Nigel White is Professor of International Organisations in the School of Law at the University of Nottingham. His publications include Keeping the Peace: The United Nations and the Maintenance of International Peace and Security (Manchester University Press, 1997); The UN System: Toward International Justice (Lynne Rienner, 2002) and The Law of International Organisations (Manchester University Press, 1996). He edited a collection of essays on Collective Security Law (Ashgate, 2003). He was co-author of three books on international law with Hilaire McCoubrey: International Law and the Use of Force (Dartmouth, 1992), International Organizations and Civil Wars (Dartmouth, 1995) and The Blue Helmets: The Legal Regulation of United Nations Military Operations (Dartmouth, 1996). He has written numerous articles and essays including a contribution to the American Society of International Law project on Democratic Accountability and the Use of Force in International Law, co-edited by Charlotte Ku and
Harold Jacobson (Cambridge University Press, 2002). He is co-editor with Eric Myjer (Utrecht) of the *Journal of Conflict and Security Law* published tri-annually by Oxford University Press. The *Journal* covers the areas of arms control law, humanitarian law and collective security law, and endeavours to explore the interfaces between them.
FOREWORD: THERE ARE MEN TOO GENTLE TO LIVE AMONG WOLVES

GARY EDLES

Hilaire McCoubrey was an expert on the law of armed conflict or the law of war. Those terms themselves appear to be an oxymoron, and his relationship to them seems incongruous for such a gentle man. But if you give the subject its current, more fashionable name – ‘humanitarian law’ – Hilaire’s association with the subject is thoroughly understandable. His purpose, after all, was to inject humanitarian principles into a hostile environment. That was both his professional calling and an essential element of his character. During the brief period of our association, before his untimely death, I came to admire and respect him as a colleague and genuinely value him as a friend.

Hilaire had exceptional academic achievements and encouraged others to think and write about the subjects with which he was concerned. Other commentators in this compendium are better equipped than I to address these matters. But Hilaire’s character and spirit were equally, if not more, impressive. He was a full-time academic and an ordained Anglican priest. He pursued both callings simultaneously with equal devotion. At his death, he was assistant curate of St Mary’s Church in Beverley.

Hilaire came relatively late to his clerical calling. He studied for the priesthood after having first established himself as a legal scholar and teacher at the School of Law at the University of Nottingham and as a qualified solicitor. His capability as a clergyman was tested almost immediately upon his ordination. Virtually his first pastoral activity, which coincided with his appointment to the Law School at Hull in 1995, was to preside over the funeral of Raymond Smith, a distinguished member of staff and former Dean of the Law School. Despite his being quite a novice clergyman, Hilaire performed with characteristic kindness and sensitivity that everyone appreciated.

His first ecclesiastical post, which he held for three years, was as the assistant curate at Rowley Parish Church. He was once again quickly tested, and again carried out his duties superbly. When the full-time vicar left the community, Hilaire took over his responsibility for Rowley.
and the neighbouring churches of Skidby and Bentley. Not only did Hilaire drive from village to village every Sunday morning to take the service at the various churches, he served fully as spiritual leader of the communities. He performed marriage services, presided at funerals and provided pastoral counselling that occupied a considerable portion of his time. On numerous occasions, despite a long day in the classroom or otherwise coping with his considerable Law School responsibilities, he would be awakened during the night because a member of one of his parishes had died and he was needed to oversee arrangements. He did so unflinchingly and was always available to his parishioners. It was a full-time job on top of his full-time job. At all times he served the Church without remuneration. That was thoroughly in keeping with his personality. Service to his God and his community required no financial reward.

Hilaire’s unassuming manner camouflaged his eclectic interests and sophisticated tastes. He played both the piano and organ and was a member of the Malt Whiskey Society. We both lived in Beverley and on several occasions I would drive him to the local fish and chip shop so he could pick up a take-away evening meal. But, when my wife and I were dinner guests at his home, we had the opportunity to sample his considerable culinary talents. He had a special interest in maritime matters. On the evening of our visit, we discussed turn-of-the-century shipping lines and I made a passing reference to the vessel that took my grandparents from Europe to America nearly a century ago. Hilaire took the time to search his personal archives to find information about, and a picture of, the ship that transported them. His intellectual interests ranged far beyond the law and he was both resourceful and unfailingly helpful.

His cluttered desk belied an extraordinarily sharp mind. I never attended any of his lectures. But I once attended a service at St Mary’s at which Hilaire was the officiant. He delivered a thoroughly integrated and rather poignant thirty-minute homily entirely without notes. As the Reverend David Hoskin, Vicar of St Mary’s, noted in his eulogy, one of Hilaire’s great strengths was an ability to render complex or technical issues understandable to those less familiar with the subject.

Hilaire had a wry and ironic sense of humour. David Hoskin tells a story about the period when Hilaire was both teaching at Nottingham and studying for the priesthood. While a student in the ordination course, Hilaire led an ‘organised truancy from a boring lecture’ to go to the pictures and for an Indian meal. Totally in character, this event
was re-enacted annually thereafter as a reunion for his year group on the course, according to Revd Hoskin.

James Kavanaugh, the American author and poet, himself a former priest, penned a poem whose thoughts may capture some of Hilaire’s special qualities. Kavanaugh wrote:

There are men too gentle to live among wolves
Who prey upon them with IBM eyes
And sell their hearts and guts for martinis at noon.
There are men too gentle for a savage world
Who dream instead of snow and children and Halloween
And wonder if the leaves will change their color soon . . .

There are men too gentle for a corporate world
Who dream instead of candied apples and ferris wheels
And pause to hear the distant whistle of a train . . .

There are men too gentle for an accountant’s world
Who dream instead of Easter eggs and fragrant grass
And search for beauty in the mystery of the sky . . .

James Kavanaugh,
*There are Men too Gentle to Live Among Wolves*
(Nash Publishing, 1970)

Hilaire McCoubrey was a gentle man whose compassion for the victims of injustice was not purely academic. He was a Council Member of the International Red Cross, where he put his compassion into practice. He now rests in the graveyard outside the church at Rowley, alongside his father. It is a tranquil and dignified setting that befits this kindly human being. He was truly a man too gentle to live among wolves. So he devoted his ample intellect and energy to civilizing the wolves.
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<tr>
<th>Abbreviation</th>
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<tr>
<td>ALS</td>
<td>Army Legal Services</td>
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<tr>
<td>CSCAP</td>
<td>Council for Security Cooperation in Asia Pacific</td>
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<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<tr>
<td>ECOWAS</td>
<td>Economic Community of West African States</td>
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<td>ECtHR</td>
<td>European Court of Human Rights</td>
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<tr>
<td>EEZ</td>
<td>exclusive economic zone</td>
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<td>FRY</td>
<td>Federal Republic of Yugoslavia</td>
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<tr>
<td>HCNM</td>
<td>High Commission on National Minorities (OSCE)</td>
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<td>HQ ARRC</td>
<td>Allied Command Europe Rapid Reaction Corps</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<td>ICTR</td>
<td>International Criminal Tribunal for Rwanda</td>
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<td>ICTY</td>
<td>International Criminal Tribunal for the former Yugoslavia</td>
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<tr>
<td>IHL</td>
<td>international humanitarian law</td>
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<td>ILC</td>
<td>International Law Commission</td>
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<td>IMB</td>
<td>International Maritime Bureau</td>
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<td>IMO</td>
<td>International Maritime Organisation</td>
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<td>IMT</td>
<td>International Military Tribunal</td>
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<td>LOAC</td>
<td>law of armed conflict</td>
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<td>MDA</td>
<td>Magen David Adom</td>
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<td>MPC</td>
<td>Model Penal Code</td>
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<td>NIMA</td>
<td>US National Imagery and Mapping Agency</td>
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<tr>
<td>OAS</td>
<td>Organization of American States</td>
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<tr>
<td>OSCE</td>
<td>Organization for Security and Cooperation in Europe</td>
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<tr>
<td>POW</td>
<td>prisoner of war</td>
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<tr>
<td>ROE</td>
<td>rules of engagement</td>
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<tr>
<td>SLOC</td>
<td>sea lines of communication</td>
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<td>SOFA</td>
<td>status of forces agreement</td>
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<td>SUA</td>
<td>Convention for the Suppression of Unlawful Acts Against the Safety of Navigation 1988</td>
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<td>Abbreviation</td>
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<tr>
<td>SUAPROT</td>
<td>Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf 1988</td>
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<tr>
<td>UNCLOS</td>
<td>UN Convention on the Law of the Sea</td>
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<tr>
<td>UNMOVIC</td>
<td>UN Monitoring, Verification and Inspection Commission</td>
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<tr>
<td>UNPROFOR</td>
<td>UN Protection Force (Croatia)</td>
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<td>UPD</td>
<td>Unit for the Promotion of Democracy</td>
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<td>WMD</td>
<td>weapons of mass destruction</td>
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