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Yoram Dinstein

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## NON-INTERNATIONAL ARMED CONFLICTS IN INTERNATIONAL LAW

This dispassionate analysis of the legal implications of non-international armed conflicts explores the rules regulating the conduct of internal hostilities, as well as the consequences of intervention by foreign States, the role of the Security Council, the effects of recognition, State responsibility for wrongdoing by both Governments and insurgents, the interface with the law of human rights and the notion of war crimes. The author addresses both conceptual and specific issues, such as the complexities of 'failing States' or the recruitment and use of child-soldiers. He makes use of the extensive case law of international courts and tribunals, in order to identify and set out customary international law. Much attention is also given to the contents of available treaty texts (primarily, the Geneva Conventions, Additional Protocol II and the Rome Statute of the International Criminal Court): what they contain and what they omit.

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CONTENTS

|   |           |
|---|-----------|
| <i>Preface</i>  | page xiii |
| <i>Table of cases</i>   | xv        |
| <i>Table of treaties</i>  | xviii     |
| <i>Table of Security Council resolutions</i>                    | xxvi      |
| <i>Table of General Assembly resolutions</i>                    | xxvii     |
| <i>Abbreviations</i>  | xxviii    |
| <b>1 The framework</b>  | <b>1</b>  |
| I. Introduction   | 1         |
| A. NIACs and IACs   | 1         |
| B. LONIAC   | 3         |
| C. No NIAC <i>jus ad bellum</i>                                 | 4         |
| II. The legal strata of NIAC law                                | 6         |
| A. Treaty law   | 6         |
| B. Customary international law                                  | 9         |
| III. The triple classification of violence during a NIAC        | 11        |
| A. Hostilities  | 11        |
| B. Ordinary crimes  | 12        |
| C. War crimes   | 13        |
| D. The triple classification and wilful killing                 | 16        |
| E. The disparate perspectives of domestic and international law | 16        |
| IV. Motives and goals of a NIAC                                 | 17        |
| A. Motives  | 17        |
| B. Goals  | 18        |
| <b>2 The preconditions of a NIAC</b>                            | <b>20</b> |
| I. NIACs as armed conflicts                                     | 20        |
| II. NIACs distinguished from internal disturbances              | 21        |
| A. Isolated and sporadic acts of violence                       | 21        |
| B. The law enforcement paradigm                                 | 22        |

|   |           |
|---|-----------|
| III. The dichotomy of NIACs and IACs                                  | 23        |
| IV. The territorial dimensions of NIACs                               | 24        |
| A. A NIAC as an armed conflict within the territory of a single State | 24        |
| (a) The internal character of a NIAC                                  | 24        |
| (b) Extra-territorial spillover                                       | 25        |
| (i) The high seas   | 25        |
| (ii) Cyber space  | 26        |
| (iii) Cross-border hostilities on land                                | 26        |
| (c) The ‘war’ on terrorism  | 27        |
| (d) Divided nations   | 27        |
| V. A clash between organized armed groups <i>inter se</i>             | 28        |
| VI. A modicum of organization of the insurgents                       | 30        |
| A. Insurgency distinguished from mob violence                         | 30        |
| B. Insurgents as a party to the conflict                              | 31        |
| VII. Protracted violence  | 32        |
| A. The temporal element   | 32        |
| B. Revolutions and <i>coups d’Etat</i>                                | 33        |
| C. How much time is required?   | 33        |
| VIII. Intensity of the fighting                                       | 34        |
| A. Terrorist activities   | 34        |
| B. Intensity as an independent criterion                              | 34        |
| C. Indicia of intensity   | 35        |
| <b>3 Thresholds and interaction of armed conflicts</b>                | <b>37</b> |
| I. The thresholds of armed conflicts                                  | 37        |
| A. Below-the-threshold violence                                       | 37        |
| B. Over the first threshold   | 38        |
| C. Over the second threshold  | 39        |
| (a) Government armed forces   | 40        |
| (b) Dissident armed forces  | 40        |
| (c) Other organized armed groups under responsible command            | 41        |
| (i) The constituent elements  | 41        |
| (ii) The five factors of organization                                 | 43        |
| (d) Control over territory  | 45        |
| (e) Sustained and concerted military operations                       | 46        |
| (f) Capacity to implement AP/II                                       | 47        |
| (g) Permutations  | 47        |
| D. The end of a NIAC  | 48        |
| E. Over the third threshold   | 50        |
| II. Interaction between armed conflicts                               | 52        |

|   |           |
|---|-----------|
| A. Two or more NIACs  | 52        |
| B. Combinations of NIACs and IACs   | 54        |
| (a) Simultaneous combinations   | 54        |
| (b) Consecutive combinations  | 55        |
| <b>4 Insurgent armed groups and individuals</b>                                     | <b>58</b> |
| I. Direct participation in hostilities  | 58        |
| A. The concept  | 58        |
| B. The meaning  | 60        |
| (a) Activities  | 60        |
| (b) Members of organized armed groups   | 61        |
| (c) Individuals   | 62        |
| II. Why are insurgent armed groups bound by LONIAC?                                 | 63        |
| A. The axiom  | 63        |
| B. The rationale  | 64        |
| (a) Treaty law  | 64        |
| (i) Non-State bearers of obligations and rights                                     | 65        |
| (ii) Non-State actors and treaties  | 68        |
| (iii) Agreements between Governments and insurgents                                 | 70        |
| (b) Customary international law   | 72        |
| <b>5 Foreign intervention in a NIAC</b>   | <b>74</b> |
| I. The principle of non-intervention  | 74        |
| A. The principle and the practice   | 74        |
| B. 'R2P'  | 75        |
| II. Military intervention by a foreign State in support of the incumbent Government | 76        |
| A. The requirement of consent   | 76        |
| (a) Consent as a door-opener to foreign intervention                                | 76        |
| (b) The position of the <i>Institut de Droit International</i>                      | 76        |
| (c) The general practice of States  | 78        |
| (d) The validity and parameters of consent  | 79        |
| (e) Consent by treaty   | 81        |
| (f) Revocation of consent   | 81        |
| (g) Constraints   | 82        |
| B. 'Failing States'   | 83        |
| III. Military intervention by a foreign State against the incumbent Government      | 84        |
| A. Use of <i>de facto</i> organs  | 84        |
| B. Military assistance to insurgents  | 84        |
| IV. The applicable law  | 86        |
| A. LONIAC or IAC <i>jus in bello</i> ?  | 86        |

|  |            |
|--|------------|
| B. Some outstanding problems                                 | 87         |
| V. Intervention by the Security Council in a NIAC            | 88         |
| A. The UN Charter  | 88         |
| B. The case of Libya   | 90         |
| C. The range of the Security Council's intervention          | 91         |
| D. Peacekeeping forces                                       | 93         |
| <b>6 Recognition</b>   | <b>95</b>  |
| I. Recognition of an insurgent Government                    | 95         |
| A. Conditions for the existence of a State and a Government  | 95         |
| B. Recognition of a new Government                           | 96         |
| C. Issues related to recognition of Governments              | 98         |
| (a) The three main scenarios                                 | 98         |
| (b) Formation of an insurgent Government                     | 98         |
| (c) Only one Government can be recognized at any given time  | 99         |
| (d) Premature and artificially prolonged recognition         | 99         |
| (e) <i>De facto</i> recognition                              | 100        |
| (f) Implied recognition                                      | 101        |
| (g) Recognition as a step towards intervention               | 102        |
| (h) Democracy and constitutionality                          | 103        |
| (i) Avoiding recognition                                     | 104        |
| (j) Government-in-exile                                      | 105        |
| D. Action by the Security Council                            | 106        |
| II. Recognition of a new State                               | 107        |
| III. 'Recognition of belligerency'                           | 108        |
| A. 'Recognition of belligerency' by the incumbent Government | 108        |
| B. 'Recognition of belligerency' by foreign States           | 109        |
| C. Implied 'recognition of belligerency'                     | 111        |
| (a) By the incumbent Government                              | 111        |
| (b) By foreign States  | 113        |
| IV. 'Recognition of insurgency'                              | 113        |
| <b>7 State responsibility</b>                                | <b>115</b> |
| I. The ILC Draft Articles                                    | 115        |
| II. Attribution of acts to the State                         | 116        |
| A. Organs of the State                                       | 116        |
| B. Private persons   | 117        |
| C. <i>Ultra vires</i> acts                                   | 117        |
| III. Due diligence   | 118        |
| A. The concept   | 118        |



CONTENTS ix

|   |            |  |
|---|------------|--|
| B. Prevention   | 118        |  |
| C. Punishment   | 120        |  |
| IV. Mob violence and riots                                    | 120        |  |
| A. Reasonable precautions                                     | 120        |  |
| B. Attacks against foreigners                                 | 121        |  |
| V. Insurgency   | 122        |  |
| A. Unsuccessful insurgents                                    | 123        |  |
| (a) Non-attribution to the State of insurgent acts            | 123        |  |
| (b) Failure to exercise due diligence                         | 124        |  |
| (c) <i>Force majeure</i>                                      | 125        |  |
| B. Successful insurgents                                      | 126        |  |
| (a) A new Government  | 126        |  |
| (i) Attribution of insurgent acts                             | 126        |  |
| (ii) Retroactivity  | 127        |  |
| (iii) Limitations   | 127        |  |
| (iv) Dual attribution   | 128        |  |
| (v) Change of Governments                                     | 129        |  |
| (b) A new State   | 129        |  |
| VI. Foreign intervention                                      | 130        |  |
| A. Responsibility of the foreign State for acts of its organs | 130        |  |
| B. Vicarious responsibility                                   | 131        |  |
| <b>8 The principal LONIAC treaty provisions</b>               | <b>132</b> |  |
| I. Common Article 3   | 132        |  |
| A. The text   | 132        |  |
| B. Analysis   | 133        |  |
| II. AP/II   | 136        |  |
| A. Comparisons  | 136        |  |
| (a) AP/II and Common Article 3                                | 136        |  |
| (b) AP/II and AP/I  | 137        |  |
| B. Humane treatment   | 139        |  |
| (a) Fundamental guarantees                                    | 139        |  |
| (i) Collective punishments and belligerent reprisals          | 140        |  |
| (ii) The protection of children                               | 142        |  |
| (b) Internment  | 143        |  |
| (c) Penal prosecutions  | 143        |  |
| C. Wounded, sick and shipwrecked                              | 145        |  |
| (a) Protection and care                                       | 145        |  |
| (b) Medical and religious personnel                           | 146        |  |
| (c) The emblem  | 147        |  |
| D. The civilian population                                    | 147        |  |
| (a) Protection from attack                                    | 147        |  |
| (b) Starvation of civilians                                   | 149        |  |

|           |  |            |
|-----------|--|------------|
|           | (c) Works or installations containing dangerous forces       | 149        |
|           | (d) Cultural property  | 150        |
|           | (e) Forced movement of civilians                             | 150        |
|           | (f) Relief action  | 151        |
| <b>9</b>  | <b>Additional treaty texts</b>                               | <b>154</b> |
|           | I. Treaties explicitly apposite to NIACs                     | 154        |
|           | A. Cultural property   | 154        |
|           | B. Weapons   | 155        |
|           | C. Child-soldiers  | 157        |
|           | II. Treaties implicitly apposite to NIACs                    | 159        |
|           | A. Enforced disappearances                                   | 159        |
|           | B. Weapons treaties  | 159        |
|           | (a) Biological weapons                                       | 159        |
|           | (b) Chemical weapons   | 160        |
|           | (c) Other weapons  | 161        |
|           | III. Search for definitions                                  | 161        |
|           | A. IAC definitions   | 162        |
|           | (a) Attacks  | 162        |
|           | (b) Wounded, sick and shipwrecked                            | 162        |
|           | (c) <i>Hors de combat</i>                                    | 164        |
|           | (d) Medical and religious personnel                          | 164        |
|           | (e) Medical units and transports                             | 165        |
|           | B. General treaty definitions                                | 165        |
|           | (a) Slavery and the slave trade                              | 166        |
|           | (b) Torture  | 167        |
|           | (c) Taking of hostages                                       | 169        |
|           | (d) Acts of terrorism  | 171        |
| <b>10</b> | <b>NIAC war crimes</b>                                       | <b>173</b> |
|           | I. Individual criminal responsibility                        | 173        |
|           | A. The nexus to a NIAC                                       | 173        |
|           | (a) Crimes against humanity and genocide                     | 173        |
|           | (b) The growth of NIAC war crimes                            | 174        |
|           | B. The Statutes of the <i>ad hoc</i> international tribunals | 175        |
|           | II. The Rome Statute of the ICC                              | 177        |
|           | A. NIAC war crimes based on Common Article 3                 | 178        |
|           | (a) The crimes   | 178        |
|           | (b) Scope of application                                     | 181        |
|           | B. Additional NIAC war crimes                                | 181        |
|           | (a) The crimes   | 181        |
|           | (b) Analysis   | 182        |
|           | (c) Interaction with AP/II                                   | 188        |

|   |            |
|---|------------|
| (d) Scope of application  | 190        |
| (e) The Kampala amendment   | 192        |
| III. The Second Protocol to the CPCP  | 193        |
| IV. Prosecution in a foreign State and extradition                                | 194        |
| A. Universal jurisdiction   | 195        |
| B. Extradition  | 196        |
| (a) Political offences  | 196        |
| (b) NIAC war crimes   | 197        |
| V. Post-NIAC amnesties  | 199        |
| A. AP/II on amnesty   | 200        |
| B. Amnesty and impunity   | 201        |
| (a) The validity of an amnesty for NIAC war crimes                                | 201        |
| (b) The Rome Statute of the ICC   | 203        |
| (c) The exercise of universal jurisdiction  | 204        |
| <b>11 LONIAC customary international law</b>                                      | <b>205</b> |
| I. The evolution of LONIAC customary law  | 205        |
| A. The pace of the evolution  | 205        |
| B. <i>Lex lata</i> and <i>lex ferenda</i>   | 205        |
| II. The temporal and spatial scope of application                                 | 206        |
| III. The customary standing of LONIAC treaty provisions (beyond Common Article 3) | 207        |
| A. AP/II  | 207        |
| B. Other treaties   | 209        |
| (a) Weapons   | 209        |
| (b) Cultural property   | 210        |
| IV. The process of osmosis from IAC <i>jus in bello</i>                           | 211        |
| A. Convergence of LONIAC and IAC <i>jus in bello</i> ?                            | 211        |
| B. General principles   | 213        |
| (a) Distinction   | 213        |
| (b) Unnecessary suffering   | 215        |
| C. Specific norms   | 216        |
| (a) Indiscriminate attacks  | 216        |
| (b) Proportionality   | 217        |
| (c) Precautions   | 218        |
| (d) Perfidy   | 218        |
| V. Divergence from IAC <i>jus in bello</i>  | 219        |
| A. POW status   | 219        |
| B. Neutrality   | 221        |
| C. Additional hurdles   | 222        |

12 LONIAC and human rights law 224

- I. The inter-relationship between LONIAC and human rights law 224
  - A. Coexistence of LONIAC with human rights law 227
  - B. LONIAC as *lex specialis* 227
  - C. Derogations from human rights 230
    - (a) The right to derogate 230
    - (b) Non-use of the right to derogate 231
    - (c) Non-derogable human rights 232
  - D. Limitations built into human rights 233
- II. Some concrete aspects of interaction between LONIAC and human rights law 234
  - A. Human rights law within LONIAC 235
  - B. Human rights treaties *dehors* LONIAC 237
    - (a) Explicit impact 237
    - (b) Implicit impact 239
- III. Non-discrimination 240
  - A. Illicit grounds of discrimination 240
  - B. Nationality 241
- IV. Refugees and ‘non-refoulement’ 241
  - A. The flow of refugees 241
  - B. Refugees and war crimes 243
  - C. Fear of persecution 243
  - D. ‘Non-refoulement’ 244

Conclusions 246

Index of persons 249

Index of subjects 254

Cambridge University Press

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Yoram Dinstein

Frontmatter

[More information](#)

xiv

PREFACE

many treaty provisions, but sometimes custom either goes beyond treaty law or falls short of it.

The present book serves as a companion to three other volumes published by Cambridge University Press, dealing respectively with the *jus ad bellum*,\* the *jus in bello* in international armed conflicts\*\* and the law of belligerent occupation.\*\*\* When taken together, the four volumes – largely speaking – cover the general spectrum of the law of armed conflict in its various aspects. To minimize repetition, matters explored in detail in the companion volumes are not rehashed here.

There is one important omission, namely, the treatment of internees (either in international or in non-international armed conflicts). The reason is that the topic calls for a juxtaposition and analysis of international legal rules affecting diverse categories of civilian detainees – in peacetime and in armed conflict; in inter-State as much as in intra-State strife; and in occupied territories – plus the special status of prisoners of war. Such a comparative survey has to be done methodically, and it will not be undertaken in the present book (just as it was not attempted in the companion volumes).

The numerical cross-references in the text of the book (as distinct from the indices) are to paragraphs and not to pages.

To facilitate syntax, generic pronouns relating to individuals are usually drawn in masculine form. This must not be viewed as gender-specific.

January 2014

\* Y. Dinstein, *War, Aggression and Self-Defence* (5th edn, 2011).

\*\* Y. Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (2nd edn, 2010).

\*\*\* Y. Dinstein, *The International Law of Belligerent Occupation* (2009).

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Yoram Dinstein

Frontmatter

[More information](#)

## TABLE OF CASES

(References are to page numbers)

- Abella case (Argentina) (Inter-American Commission on Human Rights), 33–4
- Aguilar-Amory and Royal Bank of Canada Claims (Arbitration), 97
- Akayesu, Prosecutor v. (ICTR, Appeals Chamber), 14, 62  
(ICTR, Trial Chamber), 30, 35, 168
- Aleksovski, Prosecutor v. (ICTY, Trial Chamber), 180
- Armed Activities on the Territory of the Congo, Case Concerning (Congo v. Uganda) (ICJ), 78, 80–2, 85
- Blagojević, Prosecutor v. (ICTY, Trial Chamber), 150
- Blaškić, Prosecutor v. (ICTY, Appeals Chamber), 61, 208
- Bolívar Railway Company case (Arbitration), 127
- Boškoski *et al.*, Prosecutor v. (ICTY, Trial Chamber), 30, 35–6, 43–4
- Brima *et al.*, Prosecutor v. (SCSL, Trial Chamber), 185–6, 207–8
- Compagnie Générale des Asphaltes de France (Arbitration), 112
- Continental Shelf, Case Concerning the (Libya/Malta) (ICJ), 9
- Delalić *et al.*, Prosecutor v. (ICTY, Trial Chamber), 10, 13–14, 16, 56, 168, 179
- Đorđević, Prosecutor v. (ICTY, Trial Chamber), 62
- Fofana *et al.*, Prosecutor v. (SCSL, Appeals Chamber), 140–1, 148
- Furundžija, Prosecutor v. (ICTY, Trial Chamber), 168, 175, 184, 201, 207
- Galić, Prosecutor v. (ICTY, Appeals Chamber), 208  
(ICTY, Trial Chamber), 61, 217–18
- German Interests in Polish Upper Silesia, Case Concerning Certain (Merits) (Germany/Poland) (PCIJ), 7
- Gombo, Prosecutor v. (ICC, Pre-Trial Chamber), 25, 35
- Hadžihasanović *et al.*, Prosecutor v. (Decisions) (ICTY, Appeals Chamber), 43, 215  
(ICTY, Trial Chamber), 222
- Halilović, Prosecutor v. (ICTY, Trial Chamber), 51
- Hamdan v. Rumsfeld (US Supreme Court), 27
- Haradinaj *et al.*, Prosecutor v. (ICTY, Trial Chamber), 35
- Home Frontier and Foreign Missionary Society of the United Brethren in Christ (United States) v. Great Britain (Arbitration), 124
- Iloilo Claims (Arbitration), 123

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Yoram Dinstein

Frontmatter

[More information](#)

xvi

## TABLE OF CASES

- Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Difference Relating to, Advisory Opinion on (ICJ), 116
- Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging (Special Tribunal for Lebanon), 171
- Isayeva v. Russia (ECHR), 229, 231–2
- Jansen v. Mexico (Arbitration), 99
- Jurisdiction of the Courts of Danzig (Pecuniary Claims of Danzig Railway Officials Transferred to the Polish Service), Advisory Opinion on the (PCIJ), 66
- Kallon *et al.*, Prosecutor v. (Decision on Jurisdiction) (SCSL, Appeals Chamber), 49, 65–6, 71, 202, 204
- Kayishema *et al.*, Prosecutor v. (ICTR, Trial Chamber), 14, 173
- Koi *et al.*, Public Prosecutor v. (UK Privy Council), 109
- Krnojelac, Prosecutor v. (ICTY, Appeals Chamber), 208  
(ICTY, Trial Chamber), 207
- Kunarac *et al.*, Prosecutor v. (ICTY, Appeals Chamber), 14, 166, 207  
(ICTY, Trial Chamber), 166, 169, 224–5, 228
- Kupreškić *et al.*, Prosecutor v. (ICTY Trial Chamber), 214
- Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion on the (ICJ), 88
- Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion on (ICJ), 227
- Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion on the (ICJ), 213, 215–16, 227–8, 231
- Limaj *et al.*, Prosecutor v. (ICTY, Trial Chamber), 44, 47
- Lubanga, Prosecutor v. (ICC, Trial Chamber), 59–60, 185, 191
- McCann *et al.* v. UK (ECHR), 38, 225
- Martić, Prosecutor v. (ICTY, Trial Chamber), 141
- Milošević, Dragomir, Prosecutor v. (ICTY, Appeals Chamber), 61
- Musema, Prosecutor v. (ICTR, Trial Chamber), 22, 25
- Nicaragua, Case Concerning Military and Paramilitary Activities in and against (Merits) (Nicaragua/USA) (ICJ), 10, 51, 54, 74, 76, 78, 85, 133, 205
- Norman, Prosecutor v. (Decision on Jurisdiction) (SCSL, Appeals Chamber), 64, 208
- North Sea Continental Shelf cases (Germany/Denmark; Germany/Netherlands) (ICJ), 9
- Noyes case (Arbitration), 121
- Nuremberg Judgment (IMT), 68
- Pinson (France) v. Mexico (Arbitration), 126
- Puerto Cabello and Valencia Company case (Arbitration), 128
- Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal) (ICJ), 168
- Réclamations Britanniques dans la Zone Espagnole du Maroc (Arbitration), 124–5

TABLE OF CASES xvii

Rutaganda, Prosecutor v. (ICTR, Trial Chamber), 20  
Sambiaggio case (Arbitration), 122, 124  
Sarropoulos c. Etat Bulgare (Arbitration), 121  
Sesay *et al.*, Prosecutor v. (SCSL, Appeals Chamber), 171  
Short (US) v. Iran (Iran-US Claims Tribunal), 127–9  
Strugar, Prosecutor v. (ICTY, Trial Chamber), 211  
Tadić, Prosecutor v. (Decision on Jurisdiction) (ICTY, Appeals Chamber), 9–10, 30,  
32, 34, 50–1, 89, 136, 155, 174, 177, 190, 206–7, 209–10, 213, 216, 218–19  
(Judgment) (ICTY, Appeals Chamber), 43, 56  
(Judgment) (ICTY, Trial Chamber), 34–5, 56  
Tehran, Case Concerning United States Diplomatic and Consular Staff in (ICJ), 117  
Velásquez Rodríguez case (Inter-American Court of Human Rights), 118  
Yeager (US) v. Iran (Iran-US Claims Tribunal), 116–17  
Youmans case (Arbitration), 118



# TABLE OF TREATIES

(References are to page numbers)

|      |  |
|------|--|
| 1899 | Hague Convention (II) Respecting the Laws and Customs of War on Land (and Annexed Regulations)             |
|      | Regulation 23, 140, 186  |
|      | Regulation 27, 183   |
|      | Regulation 28, 140   |
|      | Regulation 56, 183   |
| 1907 | Additional Convention to the General Treaty of Peace and Amity   |
|      | Article 1, 104   |
| 1907 | Hague Convention (IV) Respecting the Laws and Customs of War on Land (and Annexed Regulations)             |
|      | Regulation 23, 140, 186  |
|      | Regulation 27, 183   |
|      | Regulation 28, 140   |
|      | Regulation 56, 183   |
| 1907 | Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land |
|      | Article 2, 221   |
|      | Article 5, 221   |
| 1923 | General Treaty of Peace and Amity  |
|      | Article 2, 104   |
| 1926 | Slavery Convention   |
|      | Article 1, 166   |
|      | Article 5, 167   |
| 1928 | Pan American Convention Concerning the Duties and Rights of States in the Event of Civil Strife            |
|      | Article 1, 242   |
| 1933 | Montevideo Convention on the Rights and Duties of States   |
|      | Article 1, 95  |
| 1945 | Charter of the United Nations  |
|      | Article 2, 5–6, 89   |
|      | Article 25, 88   |
|      | Article 27, 90   |

TABLE OF TREATIES

xix

|      |  |  |
|------|--|--|
|      | Article 39,  | 88   |
|      | Chapter VII,   | 63, 88–90, 92–4, 107, 161, 209   |
| 1945 | Statute of the International Court of Justice (Annexed to the Charter of the United Nations)                                 |  |
|      | Article 38,  | 9  |
| 1947 | Iraq-Transjordan, Treaty of Brotherhood and Alliance   |  |
|      | Article 6,   | 86, 242  |
| 1948 | Convention on the Prevention and Punishment of the Crime of Genocide   |  |
|      | Article 1,   | 173  |
|      | Article 2,   | 67   |
| 1949 | Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field             |  |
|      | Article 2,   | 51   |
|      | Article 3,   | 7–8, 10, 16, 20, 24, 28, 30–1, 34, 38–40, 43, 47, 51–2, 58–60, 63–6, 71–2, 78, 87, 127, 132–6, 139–43, 145–6, 151, 154, 156, 161–2, 164, 167, 169–70, 174–9, 181, 184, 190–1, 197, 200–1, 205–7, 220, 235, 240–1 |
|      | Article 15,  | 138, 145   |
|      | Article 50,  | 174  |
| 1949 | Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea |  |
|      | Article 2,   | 51   |
|      | Article 3 <i>See</i> Geneva Convention (I)   |  |
|      | Article 51,  | 174  |
| 1949 | Geneva Convention (III) Relative to the Treatment of Prisoners of War  |  |
|      | Article 2,   | 51   |
|      | Article 3 <i>See</i> Geneva Convention (I)   |  |
|      | Article 130,   | 174  |
| 1949 | Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War   |  |
|      | Article 2,   | 51   |
|      | Article 3 <i>See</i> Geneva Convention (I)   |  |
|      | Article 147,   | 174  |
| 1950 | European Convention for the Protection of Human Rights and Fundamental Freedoms  |  |
|      | Article 2,   | 224  |
|      | Article 15,  | 230  |
| 1951 | Convention Relating to the Status of Refugees  |  |
|      | Article 1,   | 243, 245   |
|      | Article 32,  | 244  |
|      | Article 33,  | 244–5  |
| 1954 | Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (CPCP)                               |  |

|      |   |
|------|---|
| XX   | TABLE OF TREATIES   |
|      | Article 1, 210–11   |
|      | Article 4, 141, 154–5   |
|      | Article 16, 211   |
|      | Article 19, 8, 10, 24, 31, 38, 65, 154, 210   |
|      | Article 28, 193   |
| 1956 | Supplementary Convention on the Abolition of Slavery, the Slave Trade, and<br>Institutions and Practices Similar to Slavery |
|      | Article 1, 166  |
|      | Article 7, 166  |
| 1957 | European Convention on Extradition  |
|      | Article 3, 197  |
| 1957 | Pan American Protocol to the Convention on Duties and Rights of States in the<br>Event of Civil Strife                      |
|      | Article 2, 110  |
| 1961 | Vienna Convention on Diplomatic Relations   |
|      | Article 22, 119   |
| 1963 | Vienna Convention on Consular Relations   |
|      | Article 31, 119   |
| 1965 | Protocol of Entry into Force of Amendments to the UN Charter, 90  |
| 1966 | International Covenant on Civil and Political Rights  |
|      | Article 1, 67   |
|      | Article 2, 240  |
|      | Article 4, 230–2  |
|      | Article 6, 228  |
|      | Article 14, 143–4, 232, 235–6   |
|      | Article 15, 144, 235–6  |
|      | Article 21, 234   |
|      | Article 27, 67  |
| 1966 | International Covenant on Economic, Social and Cultural Rights  |
|      | Article 1, 67   |
| 1967 | Protocol Relating to the Status of Refugees, 243  |
| 1968 | Convention on the Non-Applicability of Statutory Limitations to War Crimes<br>and Crimes against Humanity                   |
|      | Article 1, 196  |
| 1969 | American Convention on Human Rights   |
|      | Article 27, 230   |
| 1969 | Vienna Convention on the Law of Treaties (VCLT)   |
|      | Article 2, 6–7  |
|      | Article 7, 68   |
|      | Article 11, 68  |
|      | Article 34, 70  |

TABLE OF TREATIES xxi

|      |   |   |
|------|---|---|
| 1972 | Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (BWC)         |   |
|      | Article I,  | 159   |
|      | Article III,  | 83  |
|      | Article IV,   | 160   |
|      | Preamble,   | 159   |
| 1976 | Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD Convention),                                       | 161   |
| 1977 | European Convention on the Suppression of Terrorism,  | 197   |
| 1977 | Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (AP/I)       |   |
|      | Article 1,  | 52  |
|      | Article 8,  | 162–5   |
|      | Articles 8–20,  | 138   |
|      | Article 10,   | 138   |
|      | Articles 24–30,   | 137   |
|      | Article 35,   | 137   |
|      | Article 37,   | 218   |
|      | Article 41,   | 164   |
|      | Article 42,   | 137   |
|      | Article 46,   | 223   |
|      | Article 49,   | 162   |
|      | Article 51,   | 137, 217  |
|      | Article 52,   | 137, 214  |
|      | Article 54,   | 138   |
|      | Article 55,   | 137   |
|      | Article 57,   | 137   |
|      | Articles 61–7,  | 137   |
|      | Article 74,   | 138   |
|      | Article 77,   | 142   |
| 1977 | Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (AP/II) |   |
|      | Article 1,  | 8, 21, 23–4, 28, 39–41, 43, 87, 181, 191                                      |
|      | Article 2,  | 50, 240   |
|      | Article 3,  | 4, 74   |
|      | Article 4,  | 58, 60, 139–40, 142, 157–8, 164, 166–9, 171, 179, 183–4, 189, 207–8, 233, 238 |
|      | Article 5,  | 143   |
|      | Article 6,  | 143–4, 180–1, 194, 200, 235   |

|      |  |                          |
|------|--|--------------------------|
|      | Article 7,   | 138, 145                 |
|      | Article 8,   | 138, 145–6               |
|      | Article 9,   | 146–7, 164               |
|      | Article 10,  | 146–7                    |
|      | Article 11,  | 146–7, 165               |
|      | Article 12,  | 147, 189                 |
|      | Article 13,  | 59, 147–8, 182, 208, 214 |
|      | Article 14,  | 138–9, 149, 189          |
|      | Article 15,  | 149, 189, 208            |
|      | Article 16,  | 150, 183                 |
|      | Article 17,  | 150–1, 186, 208          |
|      | Article 18,  | 149, 151–3, 183          |
| 1979 | International Convention against the Taking of Hostages  |                          |
|      | Article 1,   | 170–1                    |
|      | Article 12,  | 170                      |
|      | Article 13,  | 170–1                    |
| 1980 | Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (CCCW) |                          |
|      | Article 1,   | 21, 156                  |
|      | Protocol I,  | 156                      |
|      | Protocol II,   | 156                      |
|      | Protocol III   |                          |
|      | Article 2,   | 156–7, 206, 215          |
| 1982 | United Nations Convention on the Law of the Sea (LOS Convention)   |                          |
|      | Article 18,  | 113                      |
|      | Article 25,  | 113                      |
|      | Article 101,   | 25–6                     |
|      | Article 102,   | 41                       |
| 1983 | Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty                            |                          |
|      | Article 1,   | 240                      |
|      | Article 2,   | 240                      |
| 1984 | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)   |                          |
|      | Article 1,   | 167–9, 180               |
|      | Article 2,   | 167                      |
| 1988 | Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation  |                          |
|      | Article 3,   | 26                       |
| 1989 | Convention on the Rights of the Child (CRC)  |                          |
|      | Article 38,  | 238–9                    |

TABLE OF TREATIES

xxiii

|      |  |  |
|------|--|--|
| 1989 | International Convention against the Recruitment, Use, Financing and Training of Mercenaries   |  |
|      | Article 3,   | 241  |
| 1989 | Second Optional Protocol to the International Covenant on Civil and Political Rights   |  |
|      | Article 1,   | 239  |
| 1990 | Protocol to the American Convention on Human Rights to Abolish the Death Penalty   |  |
|      | Article 1,   | 240  |
| 1993 | Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC)   |  |
|      | Article I,   | 22–3, 83, 160  |
|      | Article II,  | 23   |
|      | Preamble,  | 160  |
| 1994 | Convention on the Safety of United Nations and Associated Personnel  |  |
|      | Article 2,   | 94   |
| 1995 | Protocol IV to the CCCW,   | 156  |
| 1996 | Amended Protocol II to the CCCW  |  |
|      | Article 1,   | 21, 156–7  |
|      | Article 3,   | 141, 215–18  |
| 1997 | International Convention for the Suppression of Terrorist Bombings   |  |
|      | Article 19,  | 172  |
| 1997 | Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction |  |
|      | Article 1,   | 157, 161, 209  |
|      | Preamble,  | 216  |
| 1998 | Rome Statute of the International Criminal Court   |  |
|      | Article 6,   | 67   |
|      | Article 7,   | 159, 174, 182, 184   |
|      | Article 8,   | 4, 8, 21, 24, 30, 32, 39, 58, 60, 150, 152, 168–9, 171, 174–5, 177–93, 219 |
|      | Article 9,   | 150  |
|      | Article 10,  | 174–5  |
|      | Article 17,  | 203  |
|      | Article 19,  | 203  |
|      | Article 25,  | 68   |
|      | Article 27,  | 178  |
|      | Article 29,  | 178, 196   |
|      | Article 30,  | 175  |
|      | Article 53,  | 203  |
|      | Article 89,  | 197  |
|      | Preamble,  | 203  |

|      |  |
|------|--|
| xxiv | TABLE OF TREATIES  |
| 1999 | International Convention for the Suppression of the Financing of Terrorism<br>Article 2, 171–2   |
| 1999 | Second Protocol to the CPCP<br>Article 6, 155, 215<br>Article 7, 155, 218<br>Article 10, 155, 194<br>Article 11, 155<br>Article 15, 193–5, 198–9<br>Article 16, 195, 198<br>Article 17, 197–8<br>Article 18, 198<br>Article 20, 199<br>Article 22, 8, 21, 24, 65, 74, 154, 195 |
| 2000 | Agreement between the UN and Sierra Leone on the Establishment of the SCSL, 203  |
| 2000 | Optional Protocol to the Convention on the Rights of the Child (CRC) on the Involvement of Children in Armed Conflict<br>Article 1, 157–8, 186, 237<br>Article 2, 158<br>Article 3, 158<br>Article 4, 158  |
| 2001 | Amendment to the CCCW, 21, 156   |
| 2002 | Durban Protocol Relating to the Establishment of the Peace and Security Council of the African Union, 81   |
| 2002 | Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty in All Circumstances<br>Article 1, 240  |
| 2003 | Protocol V to the CCCW, 50, 156  |
| 2005 | International Convention for the Suppression of Acts of Nuclear Terrorism<br>Article 4, 172  |
| 2005 | Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem (Protocol III)<br>Article 2, 147   |
| 2006 | Convention on the Rights of Persons with Disabilities<br>Article 11, 237   |
| 2006 | International Convention for the Protection of All Persons From Enforced Disappearance<br>Article 2, 159   |
| 2008 | Dublin Convention on Cluster Munitions<br>Article 2, 161, 209<br>Preamble, 64–5  |

TABLE OF TREATIES XXV

|      |   |
|------|---|
| 2010 | Kampala Amendments to the Rome Statute of the International Criminal Court, 24, 81, 156, 192–3, 209 |
| 2010 | Optional Protocol to Convention on the Safety of UN and Associated Personnel, 94                    |
| 2013 | Arms Trade Treaty<br>Article 6, 83  |



TABLE OF SECURITY COUNCIL RESOLUTIONS  
(References are to page numbers)

|                            |               |
|----------------------------|---------------|
| Resolution 688 (1991),     | 89            |
| Resolution 733 (1992),     | 93            |
| Resolution 814 (1993),     | 93            |
| Resolution 827 (1993),     | 93            |
| Resolution 836 (1993),     | 93            |
| Resolution 955 (1994),     | 93            |
| Resolution 1127 (1997),    | 92            |
| Resolution 1132 (1997),    | 107           |
| Resolution 1383 (2001),    | 107           |
| Resolution 1540 (2004),    | 209           |
| Resolution 1546 (2004),    | 107           |
| Resolution 1564 (2004),    | 63            |
| Resolution 1970 (2011),    | 90            |
| Resolution 1973 (2011),    | 90–1, 102     |
| Resolution 2043 (2012),    | 90            |
| Resolution 2098 (2013),    | 92            |
| Resolution 2100 (2013),    | 92–3          |
| Resolution 2118 (2013),    | 111, 160, 209 |
| Resolution 2127 (2013),    | 92            |
| Statute of the ICTY, 1993, | 173–4, 176–7  |
| Statute of the ICTR, 1994, | 27, 175–6     |

TABLE OF GENERAL ASSEMBLY RESOLUTIONS

(References are to page numbers)

Resolution 217 (III) [Universal Declaration of Human Rights], 235, 240  
Resolution 2625 (XXV) [Friendly Relations Declaration], 74  
Resolution 3314 (XXIX) [Definition of Aggression], 80–1, 103  
Resolution 60/1 [World Summit], 75

ABBREVIATIONS

|                  |  |
|------------------|--|
| <i>AC</i>        | Appeal Cases   |
| <i>AFLR</i>      | Air Force Law Review   |
| <i>AIDI</i>      | Annuaire de l'Institut de Droit International  |
| <i>AJIL</i>      | American Journal of International Law  |
| <i>AP/I</i>      | Additional Protocol I [to the Geneva Conventions]  |
| <i>AP/II</i>     | Additional Protocol II [to the Geneva Conventions]   |
| <i>ATT</i>       | Arms Trade Treaty  |
| <i>AUILR</i>     | American University International Law Review   |
| <i>AUJILP</i>    | American University Journal of International Law and Policy  |
| <i>AULR</i>      | American University Law Review   |
| <i>Berk.JIL</i>  | Berkeley Journal of International Law  |
| <i>BUIIJ</i>     | Boston University International Law Journal  |
| <i>BWC</i>       | Convention on [the Prohibition of the Development, Production and Stockpiling of] Bacteriological (Biological) Weapons |
| <i>BYBIL</i>     | British Year Book of International Law   |
| <i>Can.YIL</i>   | Canadian Yearbook of International Law   |
| <i>Car.LR</i>    | Cardozo Law Review   |
| <i>CAT</i>       | Convention against Torture   |
| <i>CCCW</i>      | Convention on [Prohibitions or Restrictions on the Use of] Certain Conventional Weapons                                |
| <i>Chi.JIL</i>   | Chicago Journal of International Law   |
| <i>CLF</i>       | Criminal Law Forum   |
| <i>Coll.</i>     | Collegium  |
| Common Article 3 | Article 3 Common to the four Geneva Conventions  |
| <i>Cor.IIJ</i>   | Cornell International Law Journal  |
| <i>CPCP</i>      | Convention for the Protection of Cultural Property   |
| <i>CRC</i>       | Convention on the Rights of the Child  |
| <i>CSR</i>       | Convention Relating to the Status of Refugees  |
| <i>CWC</i>       | Convention on [the Prohibition of the Development, Production, Stockpiling and Use of] Chemical Weapons                |

ABBREVIATIONS

xxix

|                                 |  |
|---------------------------------|--|
| <i>CWRJIL</i>                   | Case Western Reserve Journal of International Law  |
| <i>Den.LJ</i>                   | Denver Law Journal   |
| <i>DPLR</i>                     | DePaul Law Review  |
| <i>DukeJCIL</i>                 | Duke Journal of Comparative and International Law  |
| ECA                             | European Conventions and Agreements  |
| ECHR                            | European Court of Human Rights   |
| <i>EJIL</i>                     | European Journal of International Law  |
| <i>Em.LJ</i>                    | Emory Law Journal  |
| <i>Fl.FWA</i>                   | Fletcher Forum of World Affairs  |
| <i>Fo.IJL</i>                   | Fordham International Law Journal  |
| <i>Ga.JICL</i>                  | Georgia Journal of International and Comparative Law   |
| <i>Ger.YIL</i>                  | German Yearbook of International Law   |
| <i>HILJ</i>                     | Harvard International Law Journal  |
| HPCR                            | Harvard Program on Conflict Research   |
| <i>HRQ</i>                      | Human Rights Quarterly   |
| <i>Human Rights Instruments</i> | <i>The Raoul Wallenberg Compilation of Human Rights Instruments</i> (G. Melander and G. Alfredsson eds., 1997)                                       |
| IAC                             | international armed conflict   |
| ICC                             | International Criminal Court   |
| ICJ                             | International Court of Justice   |
| <i>ICJ Rep.</i>                 | Reports of the International Court of Justice  |
| <i>ICLQ</i>                     | International and Comparative Law Quarterly  |
| <i>ICLR</i>                     | International Community Law Review   |
| <i>ICRC</i>                     | International Committee of the Red Cross   |
| ICTR                            | International Criminal Tribunal for Rwanda   |
| ICTY                            | International Criminal Tribunal for the [Former] Yugoslavia  |
| <i>IJRL</i>                     | International Journal of Refugee Law   |
| ILC                             | International Law Commission   |
| <i>ILC Ybk</i>                  | Yearbook of the International Law Commission   |
| <i>ILM</i>                      | International Legal Materials  |
| <i>ILQ</i>                      | International Law Quarterly  |
| <i>ILR</i>                      | International Law Reports  |
| <i>ILS</i>                      | International Law Studies  |
| IMT                             | International Military Tribunal  |
| <i>Ind.JIL</i>                  | Indian Journal of International Law  |
| <i>Int.Aff.</i>                 | International Affairs  |
| <i>Int.Leg</i>                  | <i>International Legislation: A Collection of the Texts of Multipartite International Instruments of General Interest</i> (M.O. Hudson ed., 1931–50) |
| IRA                             | Irish Republican Army  |

| xxx                            | ABBREVIATIONS  |
|--------------------------------|--|
| <i>IRRC</i>                    | International Review of the Red Cross  |
| <i>Is.LR</i>                   | Israel Law Review  |
| <i>Is.YHR</i>                  | Israel Yearbook on Human Rights  |
| <i>It.YIL</i>                  | Italian Yearbook of International Law  |
| <i>JCSL</i>                    | Journal of Conflict and Security Law   |
| <i>JICJ</i>                    | Journal of International Criminal Justice  |
| <i>L&amp;E</i>                 | Law and Equality   |
| <i>Laws of Armed Conflicts</i> | <i>The Laws of Armed Conflicts: A Collection of Conventions, Resolutions and Other Documents</i> (4th edn, D. Schindler and J. Toman eds., 2004) |
| <i>LCP</i>                     | Law and Contemporary Problems  |
| <i>LJIL</i>                    | Leiden Journal of International Law  |
| <i>LNTS</i>                    | League of Nations Treaty Series  |
| <i>LONAC</i>                   | law of non-international armed conflict  |
| <i>LOS Convention</i>          | Convention on the Law of the Sea   |
| <i>LPIC</i>                    | Law and Practice of International Courts and Tribunals   |
| <i>Man.LJ</i>                  | Manitoba Law Journal   |
| <i>Mel.JIL</i>                 | Melbourne Journal of International Law   |
| <i>Mil.LLWR</i>                | Military Law and Law of War Review   |
| <i>Mil.LR</i>                  | Military Law Review  |
| <i>MINUSMA</i>                 | United Nations Multidimensional Integrated Stabilization Mission in Mali   |
| <i>MPEPIL</i>                  | <i>The Max Planck Encyclopedia of Public International Law</i> (2nd edn, R. Wolfrum ed., 2012)   |
| <i>MPYUNL</i>                  | Max Planck Yearbook of United Nations Law  |
| <i>NATO</i>                    | North Atlantic Treaty Organization   |
| <i>NDLR</i>                    | Notre Dame Law Review  |
| <i>NIAC</i>                    | non-international armed conflict   |
| <i>NILR</i>                    | Netherlands International Law Review   |
| <i>NSAIL</i>                   | Non-State Actors and International Law   |
| <i>NTC</i>                     | National Transitional Council  |
| <i>NYUJILP</i>                 | New York University Journal of International Law and Politics  |
| <i>PASIL</i>                   | Proceedings of the American Society of International Law   |
| <i>PCIJ</i>                    | Permanent Court of International Justice   |
| <i>PGM</i>                     | precision-guided munitions   |
| <i>POW</i>                     | prisoners of war   |
| <i>R2P</i>                     | responsibility to protect  |
| <i>RCADI</i>                   | Recueil des Cours de l'Académie de Droit International   |
| <i>RDI</i>                     | Rivista di Diritto Internazionale  |
| <i>RGA</i>                     | Resolutions of the General Assembly  |