

MILITARY NECESSITY

What does it mean to say that international humanitarian law (IHL) strikes a realistic and meaningful balance between military necessity and humanity, and that the law therefore ‘accounts for’ military necessity? To what consequences does the law ‘accounting for’ military necessity give rise? Through real-life examples and careful analysis, this book challenges received wisdom on the subject by devising a new theory that not only reaffirms *Kriegsräson*’s fallacy but also explains why IHL has no reason to restrict or prohibit unnecessary military conduct on that ground alone. Additionally, the theory hypothesises greater normative significance for humanitarian and chivalrous imperatives when they conflict with IHL rules. By combining international law, jurisprudence, military history, strategic studies and moral philosophy, this book reveals how rational fighting relates to ethical fighting, how IHL incorporates contrasting values that shape its rules, and how law and theory adapt themselves to war’s evolutions.

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The Art, Morality and Law of War

NOBUO HAYASHI

United Nations Interregional Crime and Justice Research Institute



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ABBREVIATIONS

ABiH	Army of Bosnia and Herzegovina
API	Additional Protocol I
COIN	Counterinsurgency
C-o-S	Chief of Staff
EBO	Effects-based operations
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECtHR	European Court of Human Rights
EMP	Electromagnetic pulse
EoC	Elements of Crimes
FARC	Fuerzas Armadas Revolucionarias de Colombia
HCJ	High Court of Justice
HVO	Croatian Defence Council
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICL	International criminal law
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IDF	Israel Defence Forces
IHL	International humanitarian law
IHRL	International human rights law
ILC	International Law Commission
IMT	International Military Tribunal
IS	Islamic State
JNA	Yugoslav People's Army
LOAC	Law of armed conflict
LOIAC	Law of international armed conflict
MICT	International Residual Mechanism for Criminal Tribunals
NATO	North Atlantic Treaty Organization
PCIJ	Permanent Court of International Justice
POW	Prisoner of war

LIST OF ABBREVIATIONS

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SCSL	Special Court for Sierra Leone
SS	Schutzstaffel
TO	Territorial defence
UK	United Kingdom
UKHL	House of Lords of the United Kingdom
UKSC	Supreme Court of the United Kingdom
UN	United Nations
UNESCO	United Nation Educational, Scientific and Cultural Organization
UNTS	United Nations Treaty Series
US	United States

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