THE MILITARY COMMANDER’S NECESSITY

The idea of military necessity lies at the centre of the law of armed conflict and yet it is less than fully understood. This book analyses which legal limits govern the commander’s assessment of military necessity and it is argued that military necessity itself is not a limitation. Military necessity calls for a highly discretionary exercise: the assessment. Yet, there is little guidance as to how this discretionary process should be exercised, apart from the notions of ‘a reasonable military commander’. A reasonable assessment of ‘excessive’ civilian losses are presumed to be almost intuitive. Objective standards for determining excessive civilian losses are difficult to identify, particularly when that ‘excessiveness’ will be understood in relative terms. The perpetual question arises: are civilian losses acceptable if the war can be won? The result is a heavy burden of assessment placed on the shoulders of the military commander.

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The Military Commander’s Necessity

THE LAW OF ARMED CONFLICT AND ITS LIMITS

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Preface

The picture on the cover page of this book shows the Norwegian Chief of Defence watching the hoisting of the flag at Akershus Fortress on the Norwegian liberation and veteran day. This book has been made possible thanks to my years in the Norwegian Armed Forces, at the University College located at Akershus Fortress. The topic of the military commander’s necessity has matured while teaching staff officers for more than ten years. I have had the unique experience of the meeting between law and operational realities in these premises and I am sincerely grateful for the lessons taught to me by Norwegian officers. All armies probably have room for improvement, and mistakes occur, but my main sentiment after twelve years among tomorrow’s commanding officers is genuine pride. To all of you in uniform out there on our behalf: you have impressed me by your ability to be pragmatic and fix things, to be brave and show concern – and to be true to our humane principles when that is required.

This book is based upon my PhD book On military necessity: And the commander’s assessment of military necessity under the international law of armed conflict during conduct of hostilities, submitted at the University of Oslo in 2017. The road from undertaking this task, while I was working at the Norwegian Defence University College and up until today, has been a long journey.

I was at a stumbling, early stage, but with a clear interest for the topic chosen, when Professor Yoram Dinstein accepted my request to supervise the writing of my PhD. Writing a doctoral book under his supervision has been, to me, like attending an exclusive research academy. His tireless, precise, prompt and constructive comments for almost six years have been invaluable. Professor Dinstein’s ability to see my desired aim and firmly, yet delicately, helping me to see the way forward in order to reach this aim the best I can, has
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To live every day with a research project hanging over you requires a sense of humour in order not to turn insane. For this – and for combining scholarly discussion with discussions on life itself – I am ridiculously grateful for the help from my previous colleagues at the Norwegian Defence University College: Camilla Guldahl Cooper, Bödvar Ingvarsson, Jo Sannem, Thomas Slensvik, Tor Arne Berntsen, Harald Høiback, Roar Wold – and my superior (after Tom) Andreas Wangberg.

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Needless to say, all errors in this book are mine alone.
Finally, my parents have been my invaluable back office for years. You have been babysitters, you have done homework, picked up from the kindergarten, driven to and from school, gone to numerous museums and cinemas and read endless goodnight stories. But most of all, you have raised me to believe that the most important thing when it comes to profession is to choose from one’s desires and not pure reason. I have always felt that I could not have been provided with a better balance between sense and sensibility than what you have always offered me.

To you, my precious son, Axel: for laconically pointing out that ‘she might have finished her book, but she will find something new to write’. I dedicate my book to you and hope you will be able to do everything you want in life.
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