

Contents

<i>Table of Cases</i>	xxxix
<i>Table of International Instruments and National Legislation</i>	xxxvii
<i>Note to the Reader</i>	xlix
1. The Multiple Meanings of War	1
1.1 Meanings of War Today	1
1.2 Early War and Just War	10
1.3 Some Well-Known Definitions of War	20
1.4 The Significance Today of a State of War in the International Legal Sense	30
1.5 The Meaning of the Word 'War' in a Selection of Other Treaties	34
1.6 Talking about War away from the World of Law	38
2. Declarations of War and Neutrality	41
2.1 Declarations of War	41
2.1.1 The Obligation to Declare War as a Matter of International Law	44
2.1.2 Authority to Declare War under National Law	46
2.1.3 The Future of Declarations of War	48
2.2 The End of War: Peace Treaties, Armistices, Cease-Fires, Truces and Agreements with Non-State Actors	51
2.3 War and Neutrality	53
2.3.1 The Obligations and Rights of Neutral and Belligerent States	54
2.3.2 The Rights and Duties of All Third States to Have their Territory Protected from the International Armed Conflict	62
2.3.3 The Humanitarian Protection Provisions for the Protection of Victims of War in Neutral States	65
2.3.4 Rules Related to Neutral Status in a Strict Sense: Abstention, Prevention and Impartiality	66
2.3.5 The Question of the Rights of a Belligerent State over Ships and Aircraft from Neutral States	75

3	Outlawing War	80
3.1	Hague Convention (II) Respecting the Limitation of the Employment of Force for the Recovery of Contract Debts (1907)	84
3.2	Hague Conventions (I) on the Pacific Settlement of Disputes (1899, 1907) and other Treaties Prohibiting Resort to War	85
3.3	The Covenant of the League of Nations and the Prohibition of Resorting to War	86
3.3.1	Article 10: Respect for Territorial Integrity and the Emerging Crime of Aggression	89
3.3.2	The Covenant Scheme for Sanctioning Illegal War	92
3.3.3	The Italian Bombardment and Seizure of Corfu 1923 and Reprisals Short of War	96
3.4	The Kellogg-Briand Pact 1928	101
3.5	The League Determines Whether Italy has Resorted to War	107
3.6	Non-Recognition of Territory Taken or Ceded as the Result of Force	112
4	The Use of Force after the UN Charter	119
4.1	The UN Charter 1945 and the Prohibition on the Threat or Use of Force	119
4.1.1	Self-Defence under Article 51 of the UN Charter	122
4.1.2	Armed Attack as a Condition for Self-Defence	125
4.1.3	Anticipatory Self-Defence	130
4.1.4	Necessity and Proportionality of Self-Defence	134
4.2	Authorizations and Demands from the Security Council	143
4.2.1	Authorizations and Demands for Member States	143
4.2.2	Authorizations for UN Forces	146
4.3	Intervention by Invitation and the Rule of Non-Intervention in Internal Affairs	150
4.3.1	Invitation from One Government to Another	150
4.3.2	Assistance to Non-State Actors Fighting in an Internal Armed Conflict	153
4.4	The Individual Crime of Aggression	155
4.4.1	From War of Aggression to Crimes Against Peace	155
4.4.2	The Crime of Aggression in the Rome Statute	156
4.5	Humanitarian Intervention and Responsibility to Protect	161
5	War Powers in National Law	169
5.1	National Authorization of Deployment of Force Abroad	169
5.1.1	The US Congress's Constitutional Role in Declaring War and the President's Power to Make War	170
5.1.2	The US War Powers Resolution 1973	176

5.1.3	Other Examples of Political War Powers in National Legislation	183
5.1.4	The War Prerogative in the United Kingdom and the Emergence of the Parliamentary Convention	187
5.2	Legal Effects in National Law of Declared War	193
5.2.1	Enemy Aliens and the Procedural Incapacity to Sue in the UK Courts	195
5.2.2	Trading with the Enemy and the UK Law	198
5.2.3	The Enemy Alien Disability Rule and the Alien Enemy Act in the United States	201
5.2.4	Trading with the Enemy Act (US)	206
5.2.5	The UK Foreign Enlistment Act 1870 and Similar Legislation in Other Jurisdictions	208
5.3	Internment of Enemy Aliens under the Royal Prerogative in the United Kingdom	211
5.4	Detention by the United States in the War on Terror	213
5.5	The Political Question and Enemy Property Doctrines	219
5.6	Treason	222
5.7	A Word of Warning about Inherent War Powers	233
6	Triggering the International Law of Armed Conflict	234
6.1	Declared Wars	235
6.2	Armed Conflicts between States	242
6.3	Belligerent Occupation	246
6.4	Recognized Belligerency	247
6.5	Wars of National Liberation under Additional Protocol I	252
6.6	Non-International Armed Conflicts	253
6.7	Conflicts Involving UN Mandated Peacekeeping Operations	258
7	Warfare – the Conduct of Hostilities	262
7.1	Privileged Belligerents and Combatant Immunity	265
7.2	Distinction	279
7.2.1	Military Objectives and Civilian Objects	279
7.2.2	The Prohibition on Attacks on Civilians	288
7.2.3	Indiscriminate Attacks and Proportionality	290
7.3	The Morality of Killing in Contemporary Warfare	295
7.4	Necessity	304
7.4.1	Necessity as an Excuse	304
7.4.2	Necessity is Rejected in Submarine Warfare Against Merchant Ships	308
7.4.3	Necessity as an Extra Layer of Restraint in Warfare	311
7.5	The Weapons of War	317
7.6	The Necessity of Shortening the War	322

8	Belligerent Rights and the Future of Naval Economic Warfare	324
8.1	Introduction to Naval Warfare and the Capture of Property at Sea	324
8.2	Angary	331
8.3	Booty	333
8.4	Bounty	337
8.5	Prize	339
8.5.1	Reprisals, Letters of Marque, Prize and the distribution of Prize Money	340
8.5.2	Contraband of War as Prize	347
8.5.3	Attacks on Merchant Vessels	348
8.5.4	Modern Prize Court Legislation	350
8.6	Blockade	357
8.6.1	Is Blockade Limited to a State of War (in the Legal Sense)?	359
8.6.2	Do the Belligerent Rights in Blockade Apply Beyond Inter-State Armed Conflicts?	365
8.6.3	The Impact of Blockade	367
8.6.4	The Israeli Prize Court Adjudication over the Protest Ships attempting to Reach Gaza	368
8.6.5	Final Thoughts on Blockade	372
8.7	Some Suggestions for Reform	373
8.7.1	Seizure for Breach of Blockade	378
8.7.2	Interference with Neutral Shipping and Seizure of Contraband Goods and Neutral Ships	381
8.7.3	Seizure of Enemy Merchant Ships, Aircraft and Cargo	385
9	Victims of War	391
9.1	Protected Persons and Property in International Armed Conflict	395
9.1.1	Medical Personnel and Equipment, the Wounded, Sick and Shipwrecked (International Armed Conflict)	397
9.1.2	Prisoners of War (International Armed Conflict)	401
9.1.3	Civilians in the Hands of the Enemy (International Armed Conflict)	407
9.1.3.1	Civilian Aliens in the Territory of the Enemy (International Armed Conflict)	408
9.1.3.2	Civilians under Occupation (International Armed Conflict)	414
9.1.4	Civilians in Unoccupied Territory Undergoing Hostilities (International Armed Conflict)	423

9.2	Protection in a Non-International Armed Conflict	425
9.2.1	Fighters, Direct Participation in Hostilities and Continuous Combat Function	425
9.2.2	Detention in Non-International Armed Conflict	432
9.3	The Role of the International Committee of the Red Cross	436
9.3.1	ICRC Access and Visits	437
9.3.2	Confidentiality, the Privileged Status of ICRC Information and Evidence, and the Option of Denunciation	438
9.4	The Use and Misuse of Emblems	440
9.4.1	The Emblem of the Red Cross, the Red Crescent or the Red Crystal	440
9.4.2	Other Emblems	441
9.4.3	Misuse of Emblems Constituting a War Crime	442
10	Accountability for Violations of the Laws of War	444
10.1	The First World War	446
10.2	The Second World War	451
10.3	Claiming Reparations in the Contemporary World before National Courts	454
10.4	The UN Compensation Commission	464
10.5	Eritrea–Ethiopia Claims Commission	467
10.6	International Criminal Law	472
10.6.1	The Nuremberg and Tokyo International Military Tribunals	477
10.6.2	Contemporary Prosecutions for International Crimes Committed in Times of Armed Conflict	481
10.7	War Crimes	483
10.7.1	Grave Breaches of the Geneva Conventions and Protocol I (International Armed Conflicts)	484
10.7.2	Other War Crimes in International Armed Conflicts	488
10.7.3	Serious Violations of Common Article 3 (Non-International Armed Conflict)	491
10.7.4	Other War Crimes in Non-International Armed Conflict	492
10.8	Crimes Against Humanity	494
10.9	Genocide	496
10.10	Beyond Prosecution for International Crimes	500
10.11	Belligerent Reprisals	507
10.12	War in the Mind of a War Criminal	511
	Conclusion	513
	<i>Index</i>	525