

# CONTENTS

<i>Table of Cases</i>	xvii
<i>Table of Treaties and Other Instruments</i>	xxvii
<i>Abbreviations</i>	xxxvii

<b>Introduction</b>	<b>1</b>
---------------------	----------

## PART I

<b>1. Understanding International Human Rights Law</b>	
1. Introduction	1.01
2. The Relevance of Human Rights Law to the Activities of Armed Forces	1.04
3. Features that Distinguish Human Rights Law from the Law of Armed Conflict	1.08
3.1. The Origins of Human Rights Law and the Law of Armed Conflict	1.08
3.2. Asymmetric Application of Human Rights Law v. Symmetric Application of the Law of Armed Conflict	1.10
3.3. Contrasting Compliance Mechanisms for International Human Rights Law and the Law of Armed Conflict	1.12
3.4. Key Differences Between the Operation of the Law of Armed Conflict and Human Rights Law	1.17
4. Understanding Human Rights Law	1.23
4.1. State Obligations in Respect of Human Rights	1.24
4.2. Limitations to Human Rights	1.25
5. Human Rights Law Instruments	1.26
5.1. UN Treaties and Institutions	1.28
5.1.1. The Human Rights Council	1.30
5.1.2. The Office of the High Commissioner for Human Rights	1.32
5.1.3. Special Procedures of the Human Rights Council and Special Representatives of the UN Secretary-General	1.33
5.1.4. Treaty bodies (and the Main UN Human Rights Treaties)	1.35
5.2. Other Treaties and Standards	1.60
5.3. Regional Treaties and Arrangements	1.62
5.3.1. European Convention on Human Rights 1950	1.63
5.3.2. European Union Charter of Fundamental Rights 2000	1.69

---

5.3.3. American Declaration of the Rights and Duties of Man 1948	1.71
5.3.4. American Convention on Human Rights 1969	1.72
5.3.5. African Charter on Human and Peoples' Rights 1981	1.75
5.3.6. Arab Charter on Human Rights 2004	1.78
5.3.7. ASEAN Intergovernmental Commission on Human Rights 2009	1.79
5.4. Customary International Law	1.80
6. Liability and Responsibility	1.82
7. Pleadings Before Human Rights Courts and Other Bodies	1.87
<b>2. Identifying, Defining, and Classifying the Activities of Armed Forces</b>	
1. Introduction	2.01
2. International Armed Conflict	2.03
3. Non-international Armed Conflict	2.06
3.1. Common Article 3 and Customary International Law	2.06
3.1.1. Intensity of Violence	2.10
3.1.2. Degree of Organization of Non-State Armed Groups	2.13
3.2. Additional Protocol II	2.14
3.3. Distinction Between Additional Protocol II and Common Article 3	2.16
4. The Interface Between Non-international Armed Conflict and International Armed Conflict	2.19
4.1. Participation in a Non-international Armed Conflict by an External State	2.19
4.2. Military Assistance by a State to a Non-State Armed Group	2.22
4.3. Extra-territorial Use of Force Against Individuals	2.27
5. Occupation	2.28
6. Other Military Activity	2.30
6.1. Peace Support Operations	2.30
6.2. Humanitarian Assistance/Disaster Relief Operations	2.33
6.3. Military Operations in the Air and in the Maritime Environment	2.34
6.4. Multinational Operations	2.35
7. The Classification of Military Activity	2.36
<b>3. The Extra-Territorial Applicability of International Human Rights Law</b>	
1. Introduction	3.01
1.1. Jurisdiction in International Human Rights Treaties	3.07
1.2. The Approach of Human Rights Treaty Bodies to the Extra-territorial Applicability of Human Rights	3.10
1.3. 'Dividing and Tailoring' Human Rights Obligations	3.19
1.4. Obligations to Respect, Protect, or Fulfil	3.24
1.5. Human Rights Obligations in Difficult Operational Circumstances	3.25
1.6. The Role of the Law of Armed Conflict	3.27

2. Categories of Territorial and Extra-territorial Jurisdiction	3.28
3. Territorial Jurisdiction	3.34
3.1. Jurisdiction on Vessels and Aircraft	3.36
4. ‘Effective Control’ Over an Area	3.39
4.1. Occupation	3.43
4.2. Indirect ‘Effective Control’	3.51
4.3. The Exercise of Temporary Control During Military Operations	3.56
5. State Agent Authority and Control	3.59
6. Considerations for the Practitioner	3.67
<b>4. The Relationship Between the Law of Armed Conflict and International Human Rights Law</b>	
1. Introduction	4.01
2. The Case Law	4.08
3. The Model Used in This <i>Guide</i> : The ‘Active Hostilities’ and ‘Security Operations’ Frameworks	4.25
3.1. The ‘Active Hostilities’ Framework	4.30
3.2. The ‘Security Operations’ Framework	4.33
3.3. International Armed Conflict	4.36
3.4. Non-international Armed Conflict	4.41
3.5. Belligerent Occupation	4.56
4. Determining the Balance Between the Law of Armed Conflict and International Human Rights Law Under the ‘Active Hostilities’ and ‘Security Operations’ Frameworks	4.61
4.1. Complementary Obligations Under the Law of Armed Conflict and International Human Rights Law	4.64
4.2. Rule-silence Under One Body of Law	4.67
4.3. Potentially Conflicting Obligations Under the Law of Armed Conflict and International Human Rights Law	4.69
5. Derogation from International Human Rights Law Treaties	4.72
5.1. Derogation in International Armed Conflict	4.73
5.2. Derogation in Non-international Armed Conflict	4.75
6. Conclusions	4.78
<b>PART II</b>	
<b>5. Conduct of Hostilities and Targeting</b>	
1. Introduction	5.01
1.1. When Should the ‘Active Hostilities’ and ‘Security Operations’ Frameworks Be Applied?	5.03
1.1.1. International Armed Conflict	5.05
1.1.2. Non-international Armed Conflict	5.08

1.1.3. Belligerent Occupation	5.16
1.1.4. The Extraterritorial Use of Force Against a Non-State Armed Group in the Territory of a Third State Not Party to an Armed Conflict	5.20
1.2. Key Human Rights Law Provisions Relevant to the Conduct of Hostilities and Targeting	5.21
1.2.1. The Right to Life	5.22
1.2.2. The Right to Respect for the Home and the Right to Property	5.29
2. Principles of Targeting	5.35
2.1. The ‘Active Hostilities’ Framework	5.35
2.2. The ‘Security Operations’ Framework	5.46
2.2.1. The Use of ‘Less-lethal’ Force	5.53
3. Precautions in Attack	5.57
3.1. Target Verification	5.58
3.1.1. The ‘Active Hostilities’ Framework	5.58
3.1.2. The ‘Security Operations’ Framework	5.63
3.2. Choice of Methods and Means	5.64
3.2.1. The ‘Active Hostilities’ Framework	5.64
3.2.2. The ‘Security Operations’ Framework	5.69
3.3. The Rule of Proportionality	5.75
3.3.1. The ‘Active Hostilities’ Framework	5.76
3.3.2. The ‘Security Operations’ Framework	5.83
4. Precautions Against the Effects of Attacks	5.88
4.1. The Removal of Civilians	5.93
4.2. The Location of Military Objectives	5.98
4.3. Other Measures: Post-operation Evacuation and Medical Assistance	5.102
5. Unusual Conditions of Combat	5.108
6. Starvation, Objects Indispensable to Survival	5.114
7. Prohibition of Environmental Modification	5.121
8. Environmental Protection	5.127
8.1. Methods and Means of Warfare	5.131
8.2. Precautions in the Conduct of Military Operations	5.134
8.3. The Principle of Proportionality	5.137
9. Intelligence Gathering	5.140
10. Reprisals	5.147
11. Sieges and Encircled Areas	5.150
12. Human Shields	5.158
12.1. Status of Human Shields	5.161
12.2. Obligations Placed on Armed Forces Conducting an Attack in Which Human Shields Are Present	5.163

13. Persons <i>Hors de Combat</i>	5.165
14. Denial of Quarter	5.169
15. Assassination	5.171
16. Pillage	5.172
<b>6. Rules of Engagement</b>	
1. Introduction	6.01
2. The Obligation to Provide an Appropriate Framework to Regulate the Use of Force	6.05
3. Drafting Rules of Engagement	6.07
<b>7. Weapons</b>	
1. Introduction	7.01
2. General Provisions	7.03
3. Specific Weapons	7.11
3.1. Bacteriological or Biological Weapons	7.11
3.2. Booby-traps	7.12
3.3. Chemical Weapons	7.13
3.4. Dum-dum Bullets	7.14
3.5. Explosive or Incendiary Bullets	7.15
3.6. Fragmentation Weapons	7.16
3.7. Incendiary Weapons	7.17
3.8. Landmines	7.18
3.9. Laser Weapons	7.19
4. Legal Review of New Weapons	7.22
<b>8. Prisoners of War and Internment</b>	
1. Introduction	8.01
2. Prisoners of War	8.02
2.1. Jurisdiction Over Prisoners of War	8.08
2.2. Recording Identity	8.09
2.3. Unusual Conditions of Combat	8.10
2.4. Status Review	8.11
2.5. Treatment of Prisoners of War	8.13
2.5.1. Evacuation of Prisoners of War and Location of Prisoner of War Camps	8.14
2.5.2. Humane Treatment	8.15
2.5.3. Questioning of Prisoners of War	8.22
2.5.4. Penal and Disciplinary Sanctions Against Prisoners of War	8.23
2.5.5. Use of Weapons Against Prisoners of War	8.28

2.5.6. The Provision of Free-of-charge Maintenance and Medical Care	8.31
2.5.7. Quarters	8.37
3. Internment	8.45
3.1. Procedural Safeguards Regulating Internment	8.52
3.1.1. Recording Identity	8.52
3.1.2. The Grounds for Internment Must Be Established by Law	8.53
3.1.3. Information Relating to the Reason for Internment	8.56
3.1.4. Review of Internment	8.59
3.1.5. Promptness and Frequency of Internment Review	8.64
3.2. Treatment of Internees	8.68
3.2.1. Location of Internment Camps	8.69
3.2.2. Penal Sanctions Against Internees	8.70
3.2.3. Disciplinary Sanctions Against Internees	8.76
3.2.4. The Use of Force Against Internees	8.81
3.2.5. The Provision of Free-of-charge Maintenance and Medical Care	8.84
3.2.6. Places of Internment	8.91
3.2.7. Provision of Food and Clothing	8.98
4. Other Forms of Detention	8.101
4.1. The Provision of Information Regarding Reasons for Detention	8.108
4.2. Release of Detainees	8.109
5. Children in Detention	8.110
5.1. Education	8.112
5.2. Places of Detention	8.114
<b>9. Protection of Civilians in the Hands of a Party to the Conflict</b>	
1. Introduction	9.01
2. Basic Standards of Treatment Applicable to All Civilians in the Hands of a Party to the Conflict	9.09
2.1. Humane Treatment	9.10
2.2. Prohibited Acts	9.11
2.3. Arrest and Detention	9.15
2.4. Conditions of Detention	9.24
2.5. Trial	9.31
2.6. Protection of Women	9.44
2.7. Protection of Children	9.50
2.8. Family News	9.54
2.9. Relief Supplies	9.55
3. Evacuation of Children	9.56
4. Protected Persons Who Are Aliens in the Territory of a Party to the Conflict	9.60
4.1. Right to Leave	9.60
4.2. Compulsory Employment	9.65

5. Restrictions on Protected Persons	9.69
5.1. Loss of Privileges	9.69
5.2. Assigned Residence	9.75
<b>10. Occupation</b>	
1. Introduction	10.01
2. The Definition of Occupation	10.06
2.1. Determining the Existence of an Occupation	10.09
3. Resistance to Occupation	10.12
4. The Administration of Occupied Territory	10.14
4.1. Legislative Authority of the Occupying Power	10.17
4.2. Censorship and Limitations on Communication	10.26
4.3. Restrictions on Movement, Association, and Assembly	10.29
4.4. Searches	10.36
4.5. The Administration of Criminal Law	10.43
4.6. Religion	10.44
4.7. Children and Education	10.47
4.8. Medical Care	10.55
4.9. Food and Other Essential Supplies	10.60
4.10. Labour	10.64
4.11. Transfer, Deportation, and Evacuation of Civilians	10.70
5. Property	10.78
<b>11. Peace Support Operations</b>	
1. Introduction	11.01
2. The Law Applicable to Peace Support Operations	11.03
3. PSO Forces That Are Parties to an Armed Conflict	11.10
4. PSO Forces That Are Not Parties to an Armed Conflict	11.16
5. The Use of Force for the Protection of Others	11.19
6. Responsibility	11.25
7. Protection Accorded to Peace Support Operation Forces Not Parties to an Armed Conflict	11.30
<b>12. Humanitarian Assistance</b>	
1. Introduction	12.01
2. Relevant Legal Requirements	12.02
3. The Delivery of Humanitarian Assistance	12.10
4. Cooperation with Other Actors	12.14

<b>13. Air Operations</b>	
1. Introduction	13.01
2. General Provisions	13.02
3. Basic Rules and Target Discrimination	13.10
3.1. Enemy Aircraft Exempt from Attack	13.14
3.2. Other Enemy Aircraft	13.15
3.2.1. Only Military Aircraft May Carry Out an Attack	13.16
3.2.2. Enemy Civil Aircraft	13.19
3.2.3. Enemy Military Aircraft	13.23
3.3. Neutral Civil Aircraft	13.24
3.4. Precautions Regarding Civil Aircraft	13.28
4. Methods and Means of Warfare	13.29
4.1. Air-to-surface Missiles	13.30
4.2. Incendiary Weapons	13.32
4.3. Laser Weapons	13.33
4.4. Blockade	13.35
4.5. Other Weapons-related Issues	13.36
4.6. War Zone Restrictions	13.37
4.7. Air-to-air Combat	13.39
4.7.1. Enemy Military Aircraft	13.40
4.7.2. Method of Attack	13.42
4.7.3. Surrender by Enemy Aircraft	13.43
4.8. Aircraft in Distress and Aircrew in Enemy-held Territory	13.45
5. Measures Short of Attack: Interception, Visit, Search, Diversion, and Capture	13.47
5.1. Determination of Enemy Character of Aircraft	13.48
5.2. Interception, Visit, and Search of Civil Aircraft	13.52
6. Medical Aircraft	13.62
6.1. Interception of Enemy Medical Aircraft	13.63
6.2. Landing and Inspection of Medical Aircraft	13.64
7. The Control of Airspace in Non-international Armed Conflict and Situations Short of Armed Conflict	13.67
8. Air Security Operations	13.71
<b>14. Maritime Warfare</b>	
1. Introduction	14.01
2. General Provisions	14.02
3. Basic Rules and Target Discrimination	14.10
3.1. Enemy Vessels Exempt from Attack	14.14
3.2. Enemy Warships	14.17
3.3. Enemy Merchant Vessels	14.18
3.4. Neutral Merchant Vessels	14.23



## *Contents*

---

4. Methods and Means of Warfare	14.28
4.1. Missiles and Other Projectiles	14.29
4.2. Torpedoes	14.30
4.3. Mines	14.31
4.4. Blockade	14.33
4.4.1. International Armed Conflict	14.35
4.4.2. Non-international Armed Conflict and Situations Not Constituting Armed Conflict	14.42
4.5. Security Zones	14.45
5. Measures Short of Attack: Interception, Visit, Search, and Capture	14.47
5.1. Determination of Enemy Character of Vessels	14.48
5.2. Visit and Search of Merchant Vessels	14.52
5.3. Diversion for the Purposes of Visit and Search	14.62
5.4. Measures of Supervision	14.63
5.5. Capture of Enemy Vessels and Goods and Neutral Vessels and Goods	14.64
6. Protected Persons, Medical Transports	14.65
7. Maritime Security Operations	14.68
<b>15. Cyber Operations</b>	
1. Introduction	15.01
2. Cyber Operations as an ‘Attack’ Within Armed Conflict	15.06
3. Determining the Applicable Legal Framework	15.12
4. Relevant International Human Rights Law Requirements	15.20
4.1. Monitoring-based Cyber Activities	15.21
4.2. Effects-based Cyber Activities	15.39
5. Cyber Operations and Direct Participation in Hostilities	15.41
5.1. Identifying the Source of a Cyber Operation	15.46
5.2. The Possibility That a Computer May Be Manipulated to Participate in a Cyber Operation Without the Owner’s Knowledge	15.47
6. Cyber Operations Involving Non-State Actors Occurring in the Context of Armed Conflict	15.48
<b>16. Multinational Operations</b>	
1. Introduction	16.01
2. The Legal Basis for Multinational Operations	16.02
3. The Law Applicable to Multinational Operations	16.07
4. The Conduct of Multinational Operations	16.16

5. The Use of Force for the Protection of Others	16.22
6. Responsibility	16.23
<b>17. Enforcement</b>	
1. Introduction	17.01
2. Investigations	17.03
2.1. Criminal Investigations	17.05
2.2. Non-criminal Investigations	17.08
2.3. Operational Reviews	17.09
2.4. Preliminary Assessments	17.10
2.5. Information Regarding Suspected Violations	17.12
2.6. Recording Information	17.14
3. Circumstances Giving Rise to the Obligation to Investigate	17.15
3.1. 'Active Hostilities'	17.17
3.2. 'Security Operations'	17.23
4. Rules Regulating How an Investigation Is Conducted	17.27
4.1. Independence	17.32
4.2. Thoroughness	17.36
4.3. Promptness	17.39
4.4. Public Scrutiny	17.41
4.5. Investigations in Difficult Security Conditions	17.43
5. Reparation	17.45
6. Judicial and Quasi-judicial Bodies	17.52
7. Reprisals	17.55
<i>Index</i>	343