



Case Western Reserve Journal of International Law

Volume 9 | Issue 1

1977

Introduction

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Recommended Citation

Richard R. Baxter, *Introduction*, 9 Case W. Res. J. Int'l L. 7 (1977)
Available at: <https://scholarlycommons.law.case.edu/jil/vol9/iss1/2>

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INTRODUCTION

*Richard R. Baxter**

Twenty-five or even fifteen years ago, a collection like this of essays on the law of war would have been unthinkable.

In the wake of the Second World War, much was written about the Nuremberg and Tokyo Trials and about war crimes in general. The adoption of the Geneva Conventions for the Protection of War Victims of 1949 brought a small flurry of articles about the new treaties. Thereafter interest in all aspects of the law of war fell away to the point of indifference or mild hostility. The threat or use of force against the territorial integrity or political independence of states had been outlawed by Article 2(4) of the Charter, and the use of force was justified only if undertaken in pursuance of Article 51 of the Charter, in the exercise of the inherent right of individual or collective self-defense, or under an authorization or order from a competent organ of the United Nations. The very concept of "war" was banished, because "war" had been outlawed as an instrument of national policy. It belonged, in the popular view, to a discredited theory that states had a "right" to resort to war and to exercise belligerent "rights." Moreover, there was a lingering fear that any attention given to the law of war would tend to make war palatable, by suggesting that individuals could still be protected amidst the barbarism of war. At the most extreme, hostility to the law of war flowed from revulsion against the very word "war."

The emphasis placed on the law of the Charter meant that, even if the law of war could be accepted, the law would operate in favor of the state resorting to the use of force lawfully, and the state unlawfully employing force would be subject to the obligations, but could not benefit from the rights conferred by the law of war, including the Geneva Conventions of 1949. This reversion to the theory of the "just war" was fundamentally incompatible with the view that belligerents should be treated on a basis of equality and that the law should bring succor to the "just" and "unjust" alike. In the long run, there was probably more to be feared from this skewed operation of the law than from indifference and neglect.

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In the intervening years, there were occasional monuments of scholarly interest in the subject of the law of war. The most notable of these in the common law world were the great treatises of Julius Stone on *Legal Controls of International Conflict* and McDougal and Feliciano on *Law and Minimum World Public Order*.

The revival of interest in the law of war in the United States owes its origin to the war in Vietnam more than to any other cause. But the ground had been prepared by a growing awareness that war or other forms of resort to the use of force had not in fact been abolished by the Charter. On the contrary, the incidence of armed conflict has been as high under the Charter as it had been under the League of Nations Covenant. The conflict in the Middle East, the Korean War, the Nigerian Civil War, and the United Nations operation in the Congo, the outbreak of violence between the People's Republic of China and India reminded the world that international conflict was not a thing of the past and that modern conflicts are often, in part at least, internal ones. Work on human rights, particularly on the two Covenants on Civil and Political Rights and on Economic and Social Rights, had inspired people to think about human rights in time of war as well as in time of peace. Indeed, the prod to the concern of the United Nations with international humanitarian law and to the activity of the International Committee of the Red Cross and of the Swiss Government in preparing new treaties was the resolution on human rights in armed conflict adopted at the Tehran Conference on Human Rights in 1968.

For the past 6 years, the Diplomatic Conference on International Humanitarian Law in Geneva and its two predecessor Conferences of Government Experts have been attempting to modernize the law of war through the medium of two Protocols to the Geneva Conventions of 1949, one dealing with international armed conflicts, the other with noninternational armed conflicts. A certain amount of scholarly attention has been directed to these sessions, but much yet remains to be recorded and analyzed.

Interest in the law of war will undoubtedly continue to wax and wane with the decades, but one must be thankful that we are living in a period in which renewed attention is being given to the measures that may be taken for the protection of the victims of war. The present issue of the *Case Western Reserve Journal of International Law* is on that account most welcome.