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YORAM DINSTEIN, THE CONDUCT OF HOSTILITIES UNDER THE LAW OF INTERNATIONAL ARMED CONFLICT

CAMBRIDGE UNIVERSITY PRESS, SECOND EDITION, 2010.

*Adam Hayes**

Regardless of one's opinion on the necessity of international armed conflict, most would agree that it has a definite presence within current international affairs and human rights discussions. As battle stories from various nations make their way to the front page of the newspapers each week in vivid detail, average civilians are brought further into the dialogue, becoming more aware of war's apparent chaos. However, while most civilians are very aware of the existence of war and its atrocities, most probably are not aware of the extent to which international laws and treaties govern all aspects of international armed conflict, attempting to create order out of the virtual disorder. It is within this context that Professor Yoram Dinstein's second edition of *The Conduct of Hostilities under the Law of International Armed Conflict* enters the stage, playing an invaluable role in educating legal professionals, soldiers and even ordinary civilians about this ever present aspect of humanity.

Within the first chapter, Dinstein makes it clear that the law of international armed conflict (LOIAC) is a branch of international law quite different from any other, mainly because it codifies "incalculable infractions and abuses [that] can be perpetrated by an extraordinary number of persons"¹ These persons are not limited to combatants, but include civilians as well, making it incredibly important that "every combatant – and as many civilians as possible – [] be familiarized with these norms."² However, few resources that cover this branch of law in a simplified but academically stimulating way exist as a foundation for training the everyman. Thankfully, this book's modest size and concise structure form an

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¹ YORAM DINSTEIN, *THE CONDUCT OF HOSTILITIES UNDER THE LAW OF INTERNATIONAL ARMED CONFLICT* 30 (Cambridge University Press, 2d ed. 2010).

² *Id.*

exceptionally valuable resource that could be that starting point for the training Dinstein envisions.

Human rights activists and humanitarians, however, should be forewarned that a flowery, idealistic discussion of the theories governing international armed conflict are not to be found within the pages of this book, but neither are the aggressively profound rants of a warmongering academic. Instead, Dinstein walks a very objective line, a balancing act that reflects LOIAC's own balancing act. While LOIAC may reflect humanity's desire for less carnage in wartime, Dinstein notes that it must also "march in lockstep with the compelling demands of reality."³

Dinstein makes it known in the very beginning that violence is "a vital ingredient of hostilities" ⁴ While we desire a "relief from the tribulations of war," he writes, we must do so "bearing in mind that war is fought to be won."⁵ From this cold reminder set forth within a beautifully outlined "general framework," Dinstein leads the reader through more than fifty cases and over 100 years of treaties regarding international armed conflict, as well as the human rights, environmental, and cultural aspects of war. Issues as broad and deceptively simple-sounding as "proportionality," or as specific as the proper occasion for destroying cultural property, are explored in intricate detail within the confines of fact, never sparing the reader from the multi-faceted realities of war.

A particularly interesting concept that Dinstein puts forth, one crucial to understanding many parts of LOIAC, is the notion that on occasions when LOIAC is called international humanitarian law (IHL), it is wrong to assume it encompasses human rights.⁶ Dinstein emphasizes that "human rights" cover only the protection of rights given to individual humans, while "humanitarian law" concerns the general mitigation of "human suffering" during wartime.⁷ Furthermore, while "LOIAC (or IHL) contains norms protecting human rights, many . . . are granted exclusively to states and not to individual human beings."⁸ Despite the existence of numerous treaties that expressly fill in this possible gap by guaranteeing human rights to individuals, the subtext seems to be that the consideration of individual human rights is taken for granted as ever present in the background, and not necessarily a consideration involved in the formation of these laws.

³ *Id.* at 297.

⁴ *Id.* at 1.

⁵ *Id.* at 5.

⁶ *Id.* at 19.

⁷ *Id.* at 19-20.

⁸ *Id.* at 20.

Dinstein's discussion on "belligerent reprisals" illuminates an example of a lawful hostile act that may directly manifest human rights considerations. A belligerent reprisal is when B attacks A after A had attacked B in a way breaching customary LOIAC. The law, however, allows B to launch this reprisal proportional to the breach committed by A, but B is required to cease once A has ceased its own breach of LOIAC.⁹ This concept is heavily complicated if A's initiatory breach of LOIAC involves human rights violations, and Dinstein concedes that the "eye for an eye" rule "paramount" to deterring breaches of LOIAC¹⁰ is "utterly alien to the contemporary law of human rights."¹¹ Even if A kills prisoners of war from B's state, B is not allowed to then kill prisoners of war from A's state in reprisal. As Dinstein explains, "[t]he LOIAC-induced human right of a lawful combatant to the protection of his life when captured by the enemy cannot be denied only because the [b]elligerent [p]arty in whose armed forces he serves has acted in breach of LOIAC."¹² Nevertheless, while individual human rights may not be violated, B still has options for reprisal. Dinstein believes that when A causes massive death among B's civilian population, B should not be prevented from launching a massive reprisal upon A's civilian *objects* – especially government buildings.¹³ To Dinstein, LOIAC's requirement that B spare civilian objects is premised on the "unreasonable expectation that . . . State B would turn the other cheek to State A."¹⁴ This expectation, the professor laments, "sounds more like an exercise in theology than in the laws of war."¹⁵

In addition to protecting innocent civilians, Dinstein also highlights LOIAC's terms for the preservation of innocent cultural property. Within chapter six's section exploring the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict,¹⁶ cultural property is therein defined as "movable or immovable property of great importance to the cultural heritage of every people," and is protected from attack along with the "buildings whose main and effective purpose is to preserve the movable cultural property . . ."¹⁷ However, Dinstein explains that this pro-

⁹ *Id.* at 254.

¹⁰ *Id.*

¹¹ *Id.* at 259.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 260.

¹⁵ *Id.*

¹⁶ *Id.* at 174.

¹⁷ *Id.* (quoting Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict art. 1(a), May 14, 1954).

tection is not absolute and can be evaded under the right circumstances, a reflection of the delicate balancing act LOIAC performs as it tries to take in cultural considerations with the reality that war is fought to be won. To reduce complication for the reader, Dinstein uses an example pulled from an event during the Gulf War where the United States decided not to attack enemy fighter aircraft positioned next to the ruins of the ancient temple of Ur.¹⁸ In making its decision, the United States balanced military interests and cultural interests, and found that the latter outweighed the first.¹⁹ However, Dinstein asserts that had there been an “operational runway within reach,” the United States could have attacked the aircraft in full disregard of any possible damage it would cause to the cultural property nearby.²⁰ This illustration is but one of the many Dinstein peppers throughout the book in an easy-to-understand fashion to articulate the complexity of LOIAC.

Despite the overall quality and craft of this book, there is a small issue worth addressing. If this book is, as its preface states, to be used as a reference “not only for international lawyers, but also as a tool for the instruction of military officers,”²¹ and perhaps even for ordinary citizens not trained in the language of law, there is one small addition Dinstein might consider making in his next edition: a small glossary of French and Latin legal terms. Although the authoritative material cited by Dinstein uses terminology of law, it sometimes includes phrases in French and Latin that a wider audience may neither recognize nor be accustomed to. The author has already included a table of cases and treaties, an index of persons and subjects, and a list of abbreviations for the reader’s convenience; thus, adding a glossary would not detract from the academic quality, but further enhance an already well-structured reference. While the average law professional may not need to refer to such a glossary, it would arguably make an already concise reference of complicated material that much more accessible for the lay reader lacking familiarity with such terms.

In barely 300 pages, Dinstein manages to outline, summarize and lightly analyze the wealth of law governing international armed conflict, pulling not only from primary sources of statutory and case law, but offering valuable interpretation and commentary. The wealth of material covered in this book seems daunting at times, but Dinstein’s organization and explanation helps guide the reader with ease while subtly challenging him with stimulating academic substance.

¹⁸ *Id.* at 176.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at xiii.

As law students, we are taught to think through issues logically, seek out arguments in favor of both sides, scale over our ideals and personal opinions, and quell our emotions. Perhaps no branch of law represents this goal of objectivity more clearly than the law of war, and Yoram Dinstein has honored this tradition well in writing this book. While it would be incredibly easy to trail off on idealistic tangents concerning warfare and international law, Dinstein crafts subtle yet blunt critiques, encouraging the reader to truly consider the implications of a given rule. Undoubtedly, Dinstein has created an outline for discussion on the past, present, and future of LOIAC – a discussion that is important for, and can be understood by, the very soldiers and citizens this area of law affects.

