

Preface to the Second Edition

Humanitarian law seeks to limit the wreckage of war. It forbids deliberate attacks against civilians, homes and schools, and safeguards the soldiers who must enter into battle, by taking account of their human claims when they are wounded or made prisoner. In protecting against international spoilers, democracies seek to deploy armed force within the law.

But especially in war, reputation and sociability may not be sufficient to persuade an opponent to abide by protective norms. The monitoring work of the International Committee of the Red Cross has been a key device for calling combatants to account, yet some actors may be heedless, especially in total war. The precedent of war crimes tribunals also may seem distant to belligerents struggling to win.

After September 11, 2001, the international community faces the further challenge of a new form of warfare. The attacks of al Qaeda have proved that non-state-actors can mimic the destructive power of states. By targeting civilians en masse and seeking weapons of mass destruction, non-state belligerents can rupture a community that has relied, in the past, on some sense of self-restraint by states.

It is thus a likely time to seek counsel from a wise and moral teacher of humanitarian law, on the problem of enforcement. Professor Frits Kalshoven of Leiden University enjoys enormous regard among practitioners and scholars of the law of armed conflict, not least for his pathbreaking work during the war in the former Yugoslavia as a member of the international experts commission. His scholarly work is equally renowned, for its historical fidelity and practical judgment.

Professor Kalshoven's magisterial volume on *Belligerent Reprisals* was first published in 1971, and is foundational in the field. It asks whether "tit for tat" is ever a respectable tactic, in order to bring an adversary back to the observance of the law of armed conflict. Should a victim of law violation have to fight in a legally asymmetric conflict, or can he match the violation as a form of coercion, seeking a return to the legal mean?

Professor Kalshoven is a realist, recognizing that states still "perform acts of authority in international society," including acts of normative enforcement. And in a desperate war, faced with an opponent that seeks to gain a

strategic advantage by abandoning the law, states may not agree to suffer continuing disadvantage.

But his study also gives a careful account of the attempts to limit when states can stoop to reprisals, from the Brussels Conference of 1874 to the Hague Peace Conferences, to the 1929 and 1949 Geneva Conventions and 1954 Hague Convention on Cultural Property. He takes a searching and critical look at the reprisals of World War Two which altered the practice of both sides in regard to merchant shipping and area bombing. He notes the danger of reprisals spiraling out of control. As an unflinching historian, Professor Kalshoven also notes those instances where belligerents have used reprisals in problematic ways, including the World War II decision by the French Forces of the Interior to execute German prisoners at Annecy, just miles from Geneva, in response to the execution of French prisoners. He acknowledges that the threat of reprisals may in fact dissuade some adversaries from carrying out actions against the law of war, even where reprisals are legally forbidden.

Professor Kalshoven has carried his study forward, in an article on "Belligerent Reprisals Revisited," published in volume 21 of the *Netherlands Yearbook of International Law*. Though the topic is one that states often prefer to avoid in open discussion, the reader will be aware of recent incidents that draw on this tradition of law. In the 1991 Gulf War, the United States was faced with an adversary that already had used chemical weapons against its own population and against Iran. Any repetition was deterred by the promise of a devastating response. In considering the 1977 Geneva Protocol that prohibits reprisals against most non-military objects, the United Kingdom also made a striking reservation to the treaty, apparently accepted by other state parties as not inconsistent with the protocol's object and purpose. The British government declared, as to future conflicts, that "If any adverse party makes serious and deliberate attacks against the civilian population or civilians or against civilian objects, the United Kingdom will regard itself as entitled to take measures otherwise prohibited to the extent that it considers such measures necessary for the sole purpose of compelling the adverse party to cease committing violations, but only after formal warning to the adverse party requiring cessation of the violations has been disregarded and then only after a decision taken at the highest level of government." Other scholars and experts such as Françoise Hampson, Christopher Greenwood, and Guy Goodwin have shared the view that the threat of reprisals, and perhaps their practice, cannot be entirely disowned by states that wish to see the law of armed conflict provide real protection. This view from the law of war must also be reconciled with the unsettled domain of modern human rights law.

Professor Kalshoven's signal contribution to the field is appropriately celebrated by the re-publication of this classic and essential work. Its realism is balanced by its dedication to the humane aspirations of international law.

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