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**PRECISE OF THE LAWS OF**  
**ARMED CONFLICTS**

**Ph.D. Thesis Abstract**

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## INTRODUCTION

The *Precise of the Laws of Armed Conflicts* is a book published at the end of 2004 while working on the credit requirements of my doctoral program at Pázmány Péter Katolikus Egyetem under the directorship of my supervisor, Judge, Pr. (Hab.) Kovács Péter, previously Head of the Department of International Law.

This book is presented in lieu of a dissertation because it represents countless hours of research, writing, condensing and clarifying in the aim of providing a practical, yet scholarly, instrument of meeting the commitment of the Geneva Conventions to spread the knowledge of international humanitarian law.

Not only does it present the laws of armed conflicts at large in an effort to encompass the largest measures possible of the applicable laws, but it does attempt to present debates and false debates that are currently drowning the real message of humanitarian law in order to bring the clock back to the spirit of the laws of armed conflicts and not solely its letter.

Doing so, it contributes to legal science by attempting to bring a working and applicable knowledge of the law as it currently stand - not barring future development but indeed encouraging them as long as they do not lower the bar of the protections already part of what I would term the '*acquis*' of the international community.

Therefore, allow me to introduce hereby: I. the aim of my research; II. the methods and sources of the research; III. the results of the research and possibilities of application, as well as IV. my contributions in the field of international humanitarian law.

**I.**  
**AIMS OF MY RESEARCH**

It has always been my desire as a serving soldier and as a private individual, that the profession of arms always meet the highest standard of conduct in what is the most violent and yet most honorable profession : the Brotherhood of War. While its members resolve the conflicts of their peoples, nations or countries on the battlefield, they should be able to do so in the knowledge that honor will always prevail and that the necessity of inflicting harm will not over-ride the basic principles of our humanity.

As I first started to get interested in the laws of armed conflicts, I was introduced to the Geneva Conventions by the Canadian Forces as a candidate officer. Not without irony, they were not referred to as 'Conventions', but as the Geneva 'Convention'. The use of the singular signal immediately the lack of knowledge of what the laws of armed conflicts consists of and the truth is that even in most professional Western armed forces the working level of the laws is abysmal.

I became an 'in-house' expert in my Regiment because I was also taking my law degree and therefore saw this as an opportunity of research for my legal development while profiting my comrades in arms.

As I completed my degree, I was selected to attend the Royal Military College of Canada for a Master Degree in War Studies. Doing so, I participate at the elaboration of a new department, then named The Office of Continuing Studies, which aims was to further educate our officers after the most sad debacle of the Somalia Peacemaking/Peacekeeping mission where the non-respect of the laws of armed conflicts by the Canadian Airborne Regiment highlighted the lack of knowledge of the requirements of the laws and the lack of education of our officers (which up to 1996 only required high-school as academic qualifications to be commissioned by Her Majesty as officers).

Working as an academic counselor and later as Staff Officer responsible for all the undergraduate studies, I asked my commander why we were not teaching the laws of armed conflicts, even as an optional course, much less as a mandatory one.

The answer was that the formation given in recruit courses on the requirement of the laws of armed conflict was deemed sufficient, but that indeed as an optional course it might have an interest.

I therefore brushed up on my previous knowledge of the conventions and started researching the treaties, the historical examples and the work of renowned scholars. But as my role was to address soldiers and not jurists, I tried to keep the legal language to a minimum and commenced accumulating my own reading of the Geneva Conventions, Additional Protocols and previous instruments.

Hence I started accumulating notes in order to teach the Laws of Armed Conflicts in French and English at the Royal military College of Canada in Kingston, then at the National Defense Headquarter in Ottawa and further by correspondence across the world for our service members deployed on missions across the world.

The aim of my teaching was at first to communicate the do(s) and don't(s) of acceptable behavior on the battlefield. Meanwhile, I pursued a LL.M. In Human Rights Law, which in truth continued my training on the laws of armed conflicts and increase my knowledge.

But as I left the Canadian Forces in 2003 after sustaining injuries while deployed in Bosnia, I decided to revert to my legal training in order to re-orient my career towards law.

Since my interests in military affairs remains, it was normal for me to pursue my previous interests. I therefore turned to my course notes and brought them about together in a more comprehensive and legalistic approach while aiming to retain the simplifying approach necessary for comprehension by military members who concerned with time and precision.

My aims were therefore to ring together both the clear and comprehensive approach of the soldier with the explanatory and scholastic explanation of the reason why the laws of armed conflicts has evolved to attain the status it has today and to clearly communicate not only its letter, but most importantly its spirit.

This, to me, is perhaps the most important aspect of this work: not only to state the Conventions but to explain the origins of some particular decisions and explain how to respect the laws of armed conflicts even without knowing the precise legal rule.

It is this balance that I tried to strike between ease of use and scholastic comprehension that explains the aims I tried to meet in applying my method of writing.

These aims were all subordinated to one: while conflicts, humans and indeed the world can be cruel, I believe that education is the key to reduce suffering and prevent evil. I surely will not function in every case.

For every situation where one life was saved because a soldier understood his role as manager of violence and the limits expected of him through laws of armed conflicts, I will have prevented evil - just that time.

Still, and evidently, my work could not have been a collection of hopes and pleadings. This would have been not only ineffective but even counter-productive as a soldier desires to know why and how he must do something.

## II. METHODS AND SOURCES OF RESEARCH

This work had to be more than a pleading and a collection of intentions passed to the readers. This would have been not only inefficient, but also counter-productive. Soldiers desire to know what, how and why they must do something. A methodology for writing with this in mind had to impose itself.

First, it did so at the research level in a manner to pass the understanding of the progressive development of international humanitarian law. For this, it is not an analysis of the secondary source from the doctrine that was the focus, but rather the treaties as primary sources, encompassing all conventional sources that pertain to international humanitarian law and the laws of armed conflicts as such. A clear distinction is made from the start to separate the first, which aims at protecting individuals, from the second, which concerns licit and illicit methods and means of warfare.

It is therefore in the reading of the applicable treaties (Hague Conventions, Geneva Conventions, but also experts' opinions such as the Oxford Manual) and political and juridical instruments (Moscow Declaration of August 8, 1943) and their comparison that I proceeded to put down the bases of the existence of the protection regime of international humanitarian law.

Therefore, to render comprehension easier but the legal content completed, I decided to separate the book in 13 chapters, starting logically with the evolution of the laws of armed conflicts, relating mostly to the *Jus ad Bello*, and include within not only the past history of *Jus in Bellum*, but also the current debate of attempt to extend the doctrine of anticipatory self-defense which, I argued, runs counter to establish *opinio juris* and state practice, even if an argument can be made for its existence.

From this point, I take on the central point of the law: the protection of persons in armed conflicts. In Chapters 2 and 3, I deal solely with the concepts of combatants and non-combatants, through the prism of prisoner of war or protected persons and the rights and obligations attached to these status.

I then move in Chapter 4 and 5 to differentiate legal and illegal military objective through the notions of obligations relative to property. This includes as much good and buildings as concepts such as 'safety zones' which, while abstract at first, are given definite geographical boundaries in practice.

From this I enter into Chapters 6 and 7 to the notions of permitted, limited and prohibited weapons. Through it, I also attempt to explain the guiding principles of preventing collateral damages and then demonstrate Canada's approach in prevention and repression of breach of the obligations met in these four previous chapters. I further continue with the dualism of the limited/prohibited weapons categories as different regimes apply to different countries. This point is of particular importance to understand that the progress of laws of armed conflicts, in a debate as old as it founding principles themselves, it must be made clear that there are different stages of development depending on which country has submitted itself to which international obligation, or to which it is nonetheless subjected to its *erga omnes* or *jus cogens* status.

It is at this point that the differentiation between weapons and means of warfare comes most handy to comprehend problematic area of the laws of armed conflicts, one of which is clearly the use of nuclear weapons.

Building on these rules, which apply to all settings of warfare, I move to naval and air operations due to the peculiarities of their own rules in Chapter 8. Maritime law remaining a most profound and wide field of law on its own, I therefore build on the notion of the Second Geneva Convention, but only

through its relation of the San Remo Manual which most completely define the full range of applicable law.

In Chapter 9, I give direction of the applicable law concerning what are deemed the special cases of children-soldiers and mercenaries, as well as spies, traitors and indeed 'illegal combatant'.

In Chapter 10, I move to the notion of non-international armed conflict and try to present the most comprehensive rules applicable as well as explaining the causes of the non-respect of the laws of armed conflicts in such context. It is important to specify that the particular teaching on this type of conflict had been previously interdicted to me by the authorities in the Canadian Forces as this reflected the official position of the Ministry of Foreign Affairs and of the Department of National Defense that such conflict did not exist because they were internal affair.

In defiance to orders, I had introduced notions relating to these in my course and when I wrote this book I decided to expand upon it as it was clear that more than any other type of conflicts, it is non-international armed conflicts that present the most difficult challenge in the applicable of law and should be regarded most pressing in the teaching of its applicable rules - however few they might be.

It is from there that I tried to break ground in Chapter 11 and 12 with the traditional view of the LOAC and bring about an exploratory view of the expansion of the law as well as debate the current problems facing troops in battles in diffuse situations where a mix of international and non-international armed conflicts are brought about under an geographic theatre of operations, with all the ensuing and arising problems.

This is why Chapter 11 is entitled The New Laws of Armed Conflict, due to progress recently made but also with a view for future battleground, which will come about regardless of the time-line attached to it.

Nonetheless, I attach myself to the present in Chapter 12 in breaching the subject of International Terrorism and Armed Conflicts resulting from, being extended with, or used in conjunction to an armed conflict. I use the examples of Iraq and, mostly, Afghanistan and its links to Al-Quaeda to bring about an all-encompassing jurisdiction of international humanitarian law and the most fundamental notions of human rights in the concentrating lenses of the International Criminal Court while comparing this with ad hoc tribunal, notably the Statute of the Iraqi Special Tribunal.

It is in these Chapters that my research reverts to a more 'classic' approach, in the sense that I join here the opinion of experts from the doctrine in a manner that makes the questions of future challenges penetrate the mind of the reader. I place particular emphasis on the need to understand that international humanitarian law is foremost reactive: it is always establish in relation to the catastrophes of the last conflict. I therefore try to pose the questions of the existing and future challenges and force the reader to adopt an anticipatory attitude to eventual solutions.

On this note, I bring about a conclusion to my book in explaining why the laws of armed conflicts are often breached and offering solution to partially help in their respect. I explain these in terms of human nature, macro-social and micro-social conditions and try to convey a final message to those interested in the laws of armed conflicts: that despite the complexity of the legal regimes, the beast of the human nature and the direness of a situation, human being have been blessed with the notions of 'free choice' and 'conscience'. And when these are followed in relation to the core values given by one's family, it is rare that a wrong judgment is made.

Sense of values may be pervaded by manipulations and lies. Exhortations to breach social and personal values may win over long-time exposition or due to traumatic events, but in the end it is clear that the core values of all major religions rest on compassion, understanding and tolerance.

When one follows one's true core value, he or she can rest assure that without the full knowledge of the law, they will act lawfully.

### III.

#### **RESULTS OF THE RESEARCH AND POSSIBILITIES OF APPLICATION**

Clearly, a book aiming at establishing the state of applicable law cannot be done under the usual pattern of ‘thesis-hypothesis-synthesis’ in order to try to confirm or infirm a basic proposition. Instead, it aims at creating an instruction mechanism that is both juridical and practical.

However, this does not preclude it from contributing to the legal science. This is confirmed in part by the acquisition of the book by some libraries with serious engagement in international humanitarian law, such as the University of Montreal and the Peace Palace Library in the Netherlands. Also, the notions of the book have been largely adopted by the Royal Military College of Canada.

Further to this, I bring two major interpretations in the field, apart from a general contribution to the general knowledge of international humanitarian law.

Firstly, in the case of anticipatory self-defense, I bring a conclusion of the existence of this doctrine under international law, despite this existence remaining arguable, but also conclude that no cases brought forth since the original case of the Caroline Affair meets the stringent requirements established. I therefore restate the yardstick, by which an explicit recognition of this doctrine may be accepted, but also the criteria that must be met to fill its requirements.

Secondly, I conclude on the status of prisoner of war and its interpretation in the matter of terrorism, internal disturbances and armed conflicts.

I conclude my book with another contribution that relates to the need to understand both the macro and micro-social causes that are responsible for the violation of international humanitarian law, bringing a holistic approach of the requirement to understand the psychology that brings a social entity to use armed force and the educational aspects that can bring tangible results in order to either prevent or, at least, reduce their negative impacts. Notably, I present the theory of the ‘fight for food’ in the context of a ‘perspective of survival’. These ideas are not my own, but I adapt them to explain the context creating armed conflicts and thereby proposing manners by which to join together psychology with a more aggressive approach toward transforming international humanitarian law into a pro-active legal regimes ; denoting trends of future conflicts and their challenges. In this way, I aim at contributing to creating a movement whereby there would be a retaking of the initiative for international humanitarian law, since this initiative appears to me as having fallen into the hands of those who oppose the codification of its rules.

If a criticism of this work is made, it one of its easiest angle of attack is clearly that I have filled it with a clear ideology whereby humanity as a value and humanism as a philosophy prevails. Opposition to this approach is warranted by those who do not share it. But I would have never have written this book without it and while I will accept challenges to this approach, I would never accept it to be otherwise.

All it takes for evil to win is for good men to do nothing. I have written this book due to my experience on the ground, due to my belonging to the brotherhood of war and to my legal training. Even with my bad leg, I would again go tomorrow to prevent idleness because I refuse to do nothing and this book is one little thing forward to further help us help one another.



**IV.**  
**PUBLICATIONS IN THE FIELD**

**BOOKS & BOOK SECTIONS**

1. *Precise of the Laws of Armed Conflicts*, iUniverse Publishing, Lincoln (NE), 2004, 336 pages, ISBN 059533301X.
2. “Anticipatory Self-Defence in Contemporary International Law” in Kovács, Péter (ed.), *History in International Law*, Tome II, Collection Studia Iuris Gentium Miskolcincensia, Bíbor Kiadó, Budapest, 2004, 364 pages, at 129-147, ISBN 963-9466-84-0

**ARTICLES**

1. “Le droit à l’intervention armée lors d’opérations d’aide humanitaire”, (2006) 2(1) *Free Law Journal* 205
2. “Misinterpreting the The Prohibition of Torture under International Law: The Office of Legal Counsel Memorandum”, (2005) 21(1) *American University International Law Review* 1
3. “Les normes de droit de la personne lors de situations d'exceptions” (2005) 2(2) *Eastern European Humanitarian Law Journal* 15.
4. “Canada’s Prevention and Repression of War Crimes”, (2005) 2(1) *Miskolc Journal of International Law* 43.
5. “Les conflits armés non-internationaux internationalisés”, (2005) 2(1) *Eastern European Humanitarian Law Journal* 56.
6. “Anticipatory Self-Defence in Contemporary International Law”, (2004) 1(2) *Miskolc Journal of International Law* 104.
7. “The Statute of the Iraqi Special Tribunal”, (2004) 1(2) *Eastern European Humanitarian Law Journal* 1.
8. “The Combatant Status of the Guantanamo Detainees”, (2004)1(2) *Eastern European Human Rights Law Journal* 1.
9. “Le droit à l’intervention unilatérale pro-démocratique”, (2004) 1(1) *Eastern European Humanitarian Law Journal* 1.

**CITATIONS OF MY WORK**

1. Kirs, Eszter, “Louis-Philippe F. Rouillard: Precise of the Laws of Armed Conflicts”, (2006)3(1) *Miskolc Journal of International Law* 54.
2. Kovács, Krisztina, “A Terrorizmus Elleni Védekezés” (2005)2(3) *Debreceni Jogi Műhely* footnote 46, at [http://www.law.klte.hu/jogimuhely/02\\_hun\\_index.htm](http://www.law.klte.hu/jogimuhely/02_hun_index.htm). (consulted 1 May, 2006).

3. Wikipedia, "Caroline Affair" at [http://www.en.wikipedia.org/wiki/Caroline\\_Affair](http://www.en.wikipedia.org/wiki/Caroline_Affair). (consulted 1 May, 2006).
4. Glazier, Dave, utilisation de l'article "The Caroline Case" comme matériel de cours au *Center for National Security Law of the University of Virginia* (contact Dave Glazier at [dwg4p@virginia.edu](mailto:dwg4p@virginia.edu)).
5. Pippan, Christian, "The Use of Force in International Law", matériel de cours au *Institut für Völkerrecht, Karl Franzens Universität, Graz*, available at [www.kfunigraz.ac.at/vrewww/deutsch/mitarbeiter/assignments.doc](http://www.kfunigraz.ac.at/vrewww/deutsch/mitarbeiter/assignments.doc). (consulted 1 May, 2006).
6. Gasper, Brandie, "Examining the Use of Evidence Obtained under Torture: The Case of British Detainees May Test the Resolve of the European Convention in the Era of Terrorism", (2005) 21 *American University International Law Review* 277, footnote 92.
7. Supervielle, Manuel E.F., "Islam, The Law of War, and the U.S. Soldier", (2005) 21 *American University International Law Review* 191, footnote 78.
8. Frangi, Anwar, "The Intra-Nationalised Armed Conflict", (2005) 1 (2) *Free Law Journal* 43, 44 footnote 4.
9. Gómez Sanchez, Francisco Fálcon, "Los Detenidos de Guantánamo", (2005) 13 *Revista Iberoamericana de Filosofía, Política y Humanidades*, 1 footnote 10.