## War and Law Since 1945

GEOFFREY BEST

CLARENDON PRESS · 1994

## Contents

	Abbreviations, Short Titles, and Archive References	xiii
	PART I: THE BACKGROUND TO THE LAWS OF WAR	
ı.	Introduction	3
	War, Law, and the Laws of War	3
	Public International Law, and the Law of War as Part of It	5
	Objectives, Methods, and Limitations of This Book	·IO
	Terminology and Abbreviations	12
2.	The Laws of War from Early Modern Times to	
	the Second World War	14
	Grotius, Rousseau, and the Non-Combatant	26
	Invasion and Occupation, Blockade and Bombardment	34
	Expansion and Codification of the Law	39
	Non-Combatants and Civilians: Dawn of the Modern	
	Dilemma	44
	The War of 1914-1918 and its Aftermath	47
	The War of 1939–1945	60
	PART II: RECONSTRUCTION OF THE LAWS OF WAR, 1945-1950	
3.	The United Nations and the New Legal Order of the World	67
4.	The Geneva Conventions of 1949	80
	Approaches to the Diplomatic Conference	80
	The Diplomatic Conference: What Happened, and	•
	What did not Happen	99
5.	Making the Geneva Conventions	115
	The Protection of Civilians	115
	The Security of Belligerents	123
	Wounded, Sick, and Shipwrecked	132
	Prisoners of War	135
	Application and Enforcement	142
	Repression of Violations	158
	Non-International Armed Conflicts	168

xii Contents

6.	The Contribution of the Courts: Nuremberg, Tokyo,	
	and the Rest	180
	War on Land	185
	Military Necessity	187
	Superior Orders and Command Responsibility	188
	Hostages, Collective Punishments, and Reprisals	192
	War at Sea	195
	War in the Air	199
	Entr'acte. How the Development of International Society	5
	Differed from the Legislators' Expectations	207
	PART III: LAW AND ARMED CONFLICT SINCE 1950	ŕ
7.	Humanitarian Practice and the Laws of War	235
	The Supposed Equality of Belligerents and Impartiality of	, ,
	Humanitarian Relief	235
	Military Necessity's Moral Anchor in the jus ad bellum	241
	The Spirit of Humanitarianism and the Letter of Law	247
8.	Methods and Means	253
	Combatants, Non-Combatants, and Civilians	253
	Permissions and Prohibitions	266
	Permissions: Military Objectives	272
	Prohibitions:	
	Terror, Indiscriminate Bombardment, and Starvation	276
	Cultural property and the environment	283
	Perfidy	288
	Prohibited weapons	293
	Reprisals	311
	Safety zones	318
	Precautions and Proportionality	323
	Combatants and Prisoners	333
	The Legislation of the 1970s: The Additional Protocols	341
	Prisoners, Detainees, and the ICRC	347
9.	Application, Implementation, and Enforcement	37°
	Epilogue	403
	Multilateral Politics	408
	Humanitarian Public Opinion	410
	The CDDH, 1974–1977	414
	Suggestions for Further Reading	423
	Inday	