

MARCO SASSÒLI & ANTOINE A. BOUVIER
UN DROIT DANS LA GUERRE?
(GENÈVE : COMITÉ INTERNATIONAL DE LA CROIX-ROUGE, 2003)

*By Natalie Wagner**

In 1999, the International Committee of the Red Cross [ICRC] published the first book of its kind in the field of International Humanitarian Law [IHL], *How Does Law Protect in War?* It provides university professors, practitioners, and students with a comprehensive collection of the most contemporary documents on IHL, including an important selection of over one hundred and ninety cases. The publication of this book coincides with the mandate of the ICRC to promote the understanding and dissemination of IHL. This is a task to which the ICRC attaches great importance; the fate of victims of armed conflict depends to a large extent on combatants' knowledge and understanding of IHL. Thus, for a number of years the ICRC has endeavored to promote the teaching of IHL, first and foremost to armed forces, and to the general public.

Academic communities, and particularly higher education institutions, play an integral role in this because they are the milieu within which future political leaders and government officials often receive their academic training. It is important that such institutions familiarize their students with the laws and customs of war. A number of parties to conflicts and other actors, including the United Nations Security Council, increasingly refer to IHL. However, despite considerable improvement in recent years and the increasing number of situations to which IHL applies, the teaching of this particular body of international law is not sufficiently widespread. In universities - whether as a specific course or within the general framework of other courses, including law, political science, history, or journalism – the teaching of IHL remains exceptional.

This *lacuna* is perhaps due to a lack of educational materials that could be of interest to both teachers and students alike. Published in 2003, *Un droit dans la guerre?*, the French language version of its 1999 English counterpart, seeks like its predecessor to fill this void by gathering a vast array of documents pertaining to the most recent information on different cases. The methodology of the book is based on one of the fundamental principles of the ICRC: neutrality. The authors present to the reader a neutral overview of the cases, and limit themselves to identifying the questions raised, rather than adopting a position or providing answers thereto. As the casebook aims to be used universally, discussions that ensue reflect historical, cultural, and political diversities while avoiding a predetermined discourse. This

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methodology should appeal to universities and foster the teaching of and research in IHL. Ultimately, the hope is that it will also contribute to a greater respect for the laws and customs of war.

IHL forms an integral part of the international judicial system. As such, the laws and customs of war, like all rules of law, must be strictly respected so as to ensure a more cohesive and functional international community. However, this body of law is not an instrument reserved solely for legal specialists, for it is at the very core of armed conflict, suffering, and life and death. In order to ensure greater protection for the victims of armed conflict - who increasingly comprise the civilian population - combatants, public officials, and the population in its entirety must all have a better knowledge of IHL.

The ICRC also believes that it is indispensable to teach IHL “preventively” to the political elite and to the decision makers of the future: university students. Greater emphasis is thus placed by the authors on the “relevance, realism and mode of operation of International Humanitarian Law”, particularly regarding what students learn about the law, rather than focusing on specific rules of behaviour prescribed by IHL. The authors of *Un droit dans la guerre?* have taken this into consideration in guiding students to introductory texts, suggested readings, legal thinking and, most importantly, to “elementary considerations of humanity” and “dictates of public conscience.”¹ The importance of these last considerations to IHL can not be underestimated.

Un droit dans la guerre? is divided in two volumes containing three parts. Part I consists of a detailed outline of IHL, including the most important themes and topics of IHL. Part II, “Cases and Documents”, and Part III, which provides a series of teaching outlines on IHL for university professors, are found in the second volume. The book contains both a general and detailed table of contents, a table of abbreviations, and a list of internet sites, including sites for the ICRC, the Red Crescent, various United Nations bodies, regional and non-governmental organizations, international treaties, on-line journals, and sites relating to international justice. *Un droit dans la guerre?* also includes a table of national and international court cases, and an index referring to the relevant passages in Part I.

Each theme in Part I features a brief summary of the relevant elements and an introductory text that outlines important, non-controversial elements of each specific topic. This introductory text is followed by a synopsis indicating subsidiary subjects or sub-titles of the theme. For each sub-title, the book then refers to the

¹ The *Marten's Clause* : *Convention relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, 75 U.N.T.S. 287, at Preamble 8-9, s.158(4); *Convention relative to Wounded and Sick in Armed Forces in the Field*, 12 August 1949, 75 U.N.T.S. 31, at s. 63(4); *Convention relative to Wounded and Shipwrecked in Armed Forces at Sea*, 12 August 1949, 75 U.N.T.S. 85, at s. 62(4); *Convention relative to the Treatment of Prisoners of War*, 12 August 1949, 75 U.N.T.S. 135, at s. 142(4); *Protocol I additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts*, 8 June 1977, 82 R.G.D.I.P. 329, at s. 1 (2). See Marco Sassòli & Antoine A. Bouvier, *Un droit dans la guerre?* (Genève : Comité international de la Croix-Rouge, 2003) at 29.

relevant cases and documents, which are reproduced in Part II. A selective bibliography for each sub-title is also made available to the reader.

Part II is the most important and voluminous of the three parts of *Un droit dans la guerre?*. Here, the reader will find cases and documents that classified chronologically and geographically. Because the nature of each case or document varies according to the topic, the reader is presented with a variety of different sources, including national and international jurisprudence, Security Council resolutions, and extracts from an array of documents, articles, or press releases. However, the cases and documents do not represent an equal geographic distribution, because certain armed conflicts give rise to more court cases, United Nations documents, press articles, and scholarly debate.

Nevertheless, IHL applies equally to both publicized and less-publicized events. In fact, it is the less-publicized events that, according to the authors, may produce more victims and give rise to more violations of IHL than the publicized ones. Even when selecting materials from the same body of jurisprudence of, for example, the ad hoc international criminal tribunals for the Former Yugoslavia [ICTY] and that for Rwanda [ICTR], the authors base their choice on the materials' particular relevance to the book, rather than on either their historic importance or achieving a balance between the two. Moreover, included in Part II are some cases where the solutions clearly violate IHL; in these specific cases, the authors stress that neither they nor the ICRC can be identified with the opinions expressed therein. Such cases are nevertheless worthy of discussion, if only to put forth a challenge to display more humanity in armed conflict, according to the authors.

The originality of this section thus lies in the Discussion section of each case, where the authors pose questions that raise issues relating to the particular circumstances before the reader. These questions serve as a forum for discussion; accordingly, the authors have refrained from providing answers. Instead, they draw the reader's attention to issues arising within the framework of IHL and in connection with a given case. Although *Un droit dans la guerre?* does not reproduce the Geneva Conventions or their Additional Protocols, references are made to the relevant provisions in order to help the reader answer the questions. Also notable is the fact that the documents in Part II are not followed by a discussion, unlike the cases.

In relation to the discussion, certain questions could, given their complexity, become the subject of a separate thesis. Such an array of questions and the complexity of IHL itself demonstrate the innumerable possibilities of conducting further research in this important field. Indeed, the cases and documents and the discussion thereof "aim at relating law to practice", giving *Un droit dans la guerre?* both content and reality.² However, in so doing, students will note the difference in law and practice between the well-developed, codified rules of IHL on the one hand, and the practice of belligerents in places such as Kosovo, Bosnia, the Great Lakes region, Chechnya, Liberia, Sierra Leone, Afghanistan and Sri Lanka, on the other. Rather than ignoring

² Marco Sassòli & Antoine A. Bouvier, *Ibid.* at 27.

this gap between theory and reality, it must instead be explained, for the main objective of the book is precisely to discuss it through the cases and documents reproduced.

According to the authors, the tasks of the academic teacher are to relate practice to both concepts and theory, and to give the law a meaning and direction by placing it into a greater conceptual context in courses and seminars. The use of case studies as the teaching method illustrates the book's underlying message: to make students respect IHL in the future by demonstrating the law's relevance and its applicability to specific, practical situations arising in armed conflicts. According to the ICRC, the practice-related teaching of IHL in the academic world best fulfills the obligation of States "in a time of peace and in a time of armed conflict [...] to encourage the study thereof by the civilian population."³ Part III of *Un droit dans la guerre?* thus contains reference materials and a series of teaching outlines for university professors interested in teaching a course on IHL. Although the course outlines are primarily meant for law faculties, they would also be useful for studies in journalism, political science, and the teaching of IHL within the context of more general courses on international law, such as international human rights law. Part III also contains nine course outlines developed by experts in the field of IHL, including outlines that are addressed to the military and to magistrates.

Also included in *Un droit dans la guerre?* is a user's guide that explains the optimal way in which to use the book, according to either a specific topic or to a particular conflict. In finding information with regards to a specific topic, the reader can refer to the table of contents or to the index, both of which will then refer to the appropriate section in Part I. There are four types of information that may be available once the reader has found the topic in Part I: according to the topic or sub-topic there is a relevant introductory text, bibliographic references, one or many quotes, and a list of cases and documents. The book may also be used to study legal questions that arise during certain conflicts. The reader will find the page reference to a particular conflict that may be of interest to him in the table of contents of Part II. Reference is then made under a specific country or conflict to several cases or documents reproduced in the second volume.

In terms of the type of materials included in *Un droit dans la guerre?*, the reader will find public documents of States, inter-governmental and non-governmental organizations, the majority of which include public documents of the ICRC. A greater preponderance of ICRC documents is favoured because of the

³ *Protocol I additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts*, *supra* note 1 at s. 83(1). *Convention relative to the Protection of Civilian Persons in Time of War*, *supra* note 1 at s. 47; *Convention relative to Wounded and Sick in Armed Forces in the Field*, *supra* note 1 at s. 48; *Convention relative to Wounded and Shipwrecked in Armed Forces at Sea*, *supra* note 1 at s.127; *Convention relative to the Treatment of Prisoners of War*, *supra* note 1 at s. 144 (which request High Contracting Parties to include it if possible in programs of civilian instruction); *Protocol II additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non- International Armed Conflicts*, 8 June 1977, 82 R.G.D.I.P. 329 at s. 19 (which prescribes to disseminate it "as widely as possible"). See Marco Sassòli & Antoine A. Bouvier, *supra* note 1 at 28.

ICRC's international mandate related to the application of IHL and because from a teaching point of view, these documents view reality through the perspective of IHL. As well, a number of news articles on specific armed conflicts and situations are included where no other relative primary source exists. Despite the fact that these articles do not discuss the events from a legal perspective, the authors justify their inclusion on the basis that the aim of the book is to encourage students and future journalists to recognize instances of IHL in daily news reports.

The book also contains judicial precedents, but these are rare and cover only certain problems. According to the authors, a reliance on such documents would have given the reader a false impression of the real sources of IHL. Moreover, their role remains marginal in comparison to the pivotal role that they play in, for example, a Common Law system. Thus, despite the abundance of jurisprudence in recent years from the ICTR and the ICTY, the authors only reproduce a limited choice of judgment extracts because they concern only two contexts and are easily accessible electronically. Despite this limitation, *Un droit dans la guerre?* contains a relatively high proportion of judicial decisions that from a teaching point of view, have the invaluable advantage of referring to the facts and assessing them from a purely legal perspective.

Although *Un droit dans la guerre?* is a book based on the English version, its authors note that it is not simply a translation; rather, it is illustrative of the contemporary practice in IHL. For example, Part I has been updated in order to take into account important developments in the field of IHL since 1999. Bibliographic and other references have also been revised. In addition, Part II has been systematically reviewed and updated and now contains a selection of more than two hundred cases and documents. Almost forty new cases and documents, representative of the continental judicial system or relating to the most recent practice of IHL, have been added. In this regard, the authors note that it is necessary to avoid giving the reader a static, dated impression of IHL.⁴ Part III has similarly been revised, as the teaching outlines have been updated to include a series of course outlines devised by a number of experts in the field. The authors note that, due to the rapidity of new cases of armed conflict emerging, *Un droit dans la guerre?* was already in print when the United States and the United Kingdom intervened militarily in Iraq on March 19, 2003. The reader is directed to internet sites that contain information from an IHL perspective on the armed conflict and ensuing occupation of Iraq, as well as to texts that summarize the law applicable.

Un droit dans la guerre? is one of a kind in the field of IHL published in the French language. To the authors' knowledge, there exist no other francophone publication containing cases and other issues relative to the contemporary practice in IHL. Also, a number of the additional cases and documents have been translated into French for the first time. Whether learning about or teaching IHL, *Un droit dans la*

⁴ The authors refer the reader to less recent documents on International Humanitarian Law, including Leon Friedman, ed., *The Laws of War, A Documentary History*. (New York: Random House, 1972) or Howard S. Levie, *Documents on Prisoners of War*, vol. 60 (U.S. Naval War College: International Law Studies, 1979). See Marco Sassòli & Antoine A. Bouvier, *supra* note 1 at 30.

guerre? is an indispensable reference tool for students and practitioners alike; it encapsulates in the most comprehensive of ways both the theoretical and practical rules of the laws and customs of war.