PREFACE

Gravely mistaken are those who think that law and war are incompatible phenomena. Throughout human history warfare has been subject to some form of normative regulation – be it religion, ethics, or (more recently) law. And while it may be the case that the laws of war are sometimes honoured more in the breach than the observance, it is the presence of rules that distinguishes warfare from terrorism and other kinds of mindless slaughter. Accordingly, knowledge of and respect for the law of war – referred to as the law of armed conflict or international humanitarian law in more modern parlance – form an important part of the ethos of the military professional

The Estonian National Defence College, as an institution dedicated to educating leaders for the Estonian Defence Forces, and the Martens Society as a professional association promoting the teaching of international law have an obvious mutual interest in deepening knowledge of the law of armed conflict in Estonia. Both organisations would like to see Estonian soldiers and commissioned and non-commissioned officers set an example to others through their respect for the rule of law in military operations. To that end, the ENDC and the Martens Society have embarked on a collaboration which led to a joint conference on the law of armed conflict in Tartu in late 2009, and now to the publication of this collection of essays. This volume presents a series of papers that in many ways seeks to highlight the continued relevance of principles devised many decades and centuries ago for very different conflicts, and show a historical continuity in the law of armed conflict despite changing times and circumstances.

This volume opens with the text of the Fourth Friedrich Martens Memorial Lecture. The Martens Society has established a tradition of organising annual or biennial public lectures to celebrate the life and work of Friedrich Fromhold Martens (1845–1909), a world-renown Estonian-born international lawyer and diplomat. The lectures, delivered alternatingly by a notable Estonian scholar and a notable foreign scholar, have tended to touch on the humanitarian aspects of international law – after all, Martens himself suggested that "the purpose of international relations is the protection of the [human] person". This fourth lecture was delivered by *Arthur Eyffinger*, a prominent Dutch legal historian and perhaps the leading authority on the development of The Hague into the legal capital of the world. Most appropriately, Dr Eyffinger discussed in his eloquent and elegant talk the role

of Martens in the emergence of what he calls *l'Oeuvre de la Haye* or "The Hague Tradition" – the peaceful settlement of international disputes and the amelioration of the calamities of war.

In the following chapter, *Erkki Holmila* takes the reader on a historical journey and shows how the reliance on private actors in warfare has been regarded in different eras – from Ancient Egypt up to the French Revolution. This discussion serves as a useful backdrop when reflecting upon the increased use of private military contractors in modern conflicts.

Next, *Rain Liivoja* looks at chivalry as a source of rules of warfare. He argues that the modern law of armed conflict is infused with the influences of the medieval military code of honour (code of chivalry). Consequently, he argues, all rules of the law of armed conflict cannot simply be reduced, as is commonly done, to a balance between military necessity and humanitarian principles.

The subject of *Martin Arpo*'s contribution is a particular aspect of Friedrich Martens' legacy, namely the Martens Clause which is a provision found in a number of treaties whereby, in the absence of formal rules of warfare, civilians and combatants "remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience". Arpo highlights the role that the Clause has played in the post-Cold War efforts of the Baltic States to bring some of the authors of Soviet-era atrocities to justice, thereby vividly demonstrating the continued relevance of a legal principle more than a century old.

Erki Kodar also takes his cue from the Martens Clause when he examines the applicability of the law of armed conflict to computer network attacks. After careful assessment of a number of specific legal principles and their application to cyber warfare, he suggests that the existing law of armed conflict, though largely drafted and codified before the dawn of the "Internet Age", may indeed be flexible enough to govern cyber attacks.

Turning next to the enforcement of the law of armed conflict, *Annika Talmar-Pere* provides a brief assessment of the domestic law measures that implement these international law rules in Estonia. Focusing on dissemination efforts as well as administrative and penal measures, she concludes that that there is much room for improvement. Talmar suggests that Estonia would particularly benefit from the formation of a national humanitarian law commission.

The final contribution in this volume comes from *René Värk* who gives an accessible overview of the current state of the doctrine of superior responsibility for international crimes. He notes that international lawyers

continue to struggle with the very concept: for example, is superior responsibility a form of accessorial liability or a separate offence of dereliction of duty? Having discussed the recent jurisprudence on superior responsibility, Dr Värk concludes on a somewhat sombre note that the concept has not proven to be a "silver bullet" for dealing with international offences as many would have hoped.

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