BOOK REVIEWS

Identifying the Enemy: Civilian Participation in Armed Conflict by Emily Crawford [OUP, Oxford, 2015, 255pp, ISBN 978-0-19-967849-5, £60.00 (h/bk)]

It is an ironic contemporary fact that while international courts recognize the cardinal and intransgressible nature of the principle of distinction, modern developments in the conduct of warfare challenge both the interpretation of, and compliance with, that principle. A sober, informed and thorough evaluation of where the principle stands in the second decade of the twenty-first century is therefore of critical legal importance, and in her new book Emily Crawford provides this. As the book notes, the principle relies on the assumption that civilians can clearly and easily be distinguished from combatants, yet civilians continue to take a direct part in hostilities and States have complicated matters by evolving rules that turn certain irregular fighters into combatants while studiously ignoring the need to clarify the circumstances in which a civilian loses protection from attack.

The numerous complex issues that these tensions in the law generate are addressed logically, clearly and concisely. Policymakers, strategic thinkers, academics, students and others with an interest in the implications of the developing and deepening roles of civilians in armed conflict will all find useful insights in this text.

In Chapter 1 the legal and philosophical foundations of the principle are put under the microscope. Does its basis lie in the protection of those who cause no harm or is this an inadequate answer? As noted at page 24, it is, after all, clearly 'untenable to suggest that civilians should be targeted for their tangential or incidental contribution to the war effort'. Chapter 2 charts the evolution of norms that, over the last century and a half, have incrementally extended combatant protection to certain irregular participants in armed conflict. While this process may have been driven by the growth in number and kinds of such participants, it is interesting that States have responded to it by extending the scope of combatant protection rather than by taking a more restrictive line. Maybe that response has also been influenced by the inability, or disinclination, of States to achieve an agreed interpretation of direct participation in hostilities (DPH). It is simplistic to say that civilians lose their protection from attack if and for such time as they take a direct part in hostilities. Defining what that means, the time period during which protection is lost, how protection can be regained and associated issues constitute the detail where the 'devil' lies.

So the discussion of DPH in Chapter 3 is of value. After explaining the emergence of the notion as part of extant IHL, the relevant jurisprudence, soft law texts and academic approaches are all assessed with clarity. There is then a balanced and practical assessment of the ICRC DPH Guidance, a document that at the time of its publication generated heated controversy in which this reviewer was involved. Citing the relevant jurisprudence and noting the impracticality of the complex decision-making prescribed by the Guidance, the author's reasoned preference for a case-by-case approach has much to commend it. At this point, the book considers three contentious issues arising from civilian involvement in armed conflict. The law associated with the deliberate and premeditated killing of specified persons is comprehensively examined in the Targeted Killings chapter by reference to the practice and statements of Israel, Russia and the United States. Specific attacks are considered and self-defence, jus in bello and human rights law frameworks are applied to reach measured, even-handed conclusions.

Notions of remote warfare, in the form of drone operations and cyber warfare, are considered in the next chapter. The apparent and intriguing legal contradictions inherent in the US employment of civilians in the former, and the difficulties in applying current understandings of DPH to diverse kinds of civilian involvement in the latter are rigorously exposed. Then the discussion moves to private military and security companies. So, for example, the legally sensitive and ambiguous situation of contractors' employees deployed to safeguard mission-essential property—is their use of force lawful action in self-defence or does it constitute direct participation in the

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hostilities—is set forth clearly and succinctly and the difficulties all of this poses both for parties to armed conflicts employing private military and security companies (PMSCs) and for adverse parties confronting such use are set forth.

The last of the analytical chapters tackles legally challenging notions of 'criminal' armed conflict. By taking the situations in Mexico and Colombia as case studies, critically important questions are examined. These include whether high levels of criminality-fuelled violence necessarily amount to an armed conflict, when targeting a civilian committing a criminal act ceases to be a war crime and becomes a response to DPH and whether high-level organized criminality that is deeply interconnected with an armed conflict should be treated any differently from direct participation in hostilities. These criminality-linked conflicts seem to blur the distinction between law enforcement and armed conflict. Emily Crawford concludes that 'there are compelling legal and policy reasons why high-level criminal activities either indistinguishable from warfare, or else intricately connected to existing warfare, should remain outside the sphere of regulation under IHL'.

The final chapter of the book essentially considers 'what is to be done'. Good reasons are given for dismissing the prospect of new treaty law. Soft law options possibly leading to the evolution of customary norms are explored, and one can only applaud the conclusion that developing and reaffirming the law on civilian participation through a variety of soft law options would seem to constitute the best way ahead.

This is a book that tackles one by one the difficult issues arising from civilian involvement in armed conflict, that sets out the narrative in a carefully chosen and logical framework and that proceeds with a refreshing simplicity of expression that is notoriously difficult to achieve and maintain when discussing complex legal problems such as these. It is worthy of wide readership, and its analysis should provoke careful thought.

William Boothby*

International Economic Law after the Global Crisis, edited by CL Lim and Bryan Mercurio [Cambridge University Press, Cambridge, 2015, 557pp, ISBN 978-1-107-07569-6, £76.50 (h/bk)]

There was a time when international legal scholars focusing on the law governing the global economy tended to stay within their areas of specialization. Those focusing on international trade looked mainly to the WTO agreements and decisions of the WTO Dispute Settlement Body without considering the interaction within international investment law or international financial law. International investment lawyers first concentrated on diplomatic protection, and then on Bilateral Investment Treaties and investor–State arbitration. International financial lawyers wrote about the International Monetary Fund, international loans, sovereign debt, the Basel Accords, and more recently the so-called soft law on global finance and banking.

This book argues that this state of affairs has to change. International economic lawyers, both practitioner and academic, need to consider its practical operation in and between States, and explore the connections between trade, investment and finance. Scholarship therefore needs not only to 'drill down' into particular doctrinal categories but also to engage across those categories.

The book is themed around the notion that, in the wake of the so-called Great Recession, there is now a transition towards a more substantive and contextual international economic law. It therefore seeks to set the stage for a post-Great Recession form of international economic law. It also evaluates international economic law in the wake of the European debt crisis. Its primary aim is to grapple with what international lawyers know as fragmentation, arguing that international economic law has to deal with fragmentation as a matter or priority if it is going to make sense of how the global economy is and should be governed.

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