Karsten's failure to explore the character of "law" in its "lower" form is highly problematic. It is insufficient for him to say that his notion of law is not that of "jurists". There is no doubt that he takes a non-statist, pluralistic conception of "law", as his inclusion of aboriginal custom and settler folk-ways makes plain. Indeed his argument is that the totalising conception of state law, with its stifling belief in legal monoculture, eventually prevailed in the late-nineteenth century legal nationalism of each jurisdiction. Still, one is left with the problem of what Karsten means by "law". Santos, a prominent legal pluralist, defined "law" as "a body of regularised procedures and normative standards, considered justiciable in any given group, which contributes to the creation and prevention of disputes, and to their settlement through an argumentative discourse, coupled with the threat of force". (*Toward a New Common Sense: Law, Science and Politics in Paradigmatic Transition*, New York: Routledge, pp. 114–115.) Karsten joins those who argue that "not all phenomena related to law, and not all that are law-like have their source in government" (Moore "Legal Systems of the World" in L. Lipson and S. Wheeler, eds., *Law and the Social Sciences*, New York: Russell Sage Foundation, 1986 at p. 15). By his broad approach, however, all forms of social control become "law". Where, one might ask, "do we stop speaking of law and find ourselves simply describing social life"? (Merry "Legal Pluralism" (1988) 22 Law and Society Review 869 at p. 870.) It is that question which dogs Karsten's discussion of law. Were settlers by their conduct really constructing something they perceived as their own "legality" or were they simply social practices at odds with the "higher" law? Did the metropolitan agents perceive this gap in as strong a manner as Karsten portrays it or did they feel there was a more organic relation between English law? The royal charters and instructions may be regarded as attempts to re-create a legal Albion. They may be seen also—and this is perhaps a more historically sensitive view—as trellises for the growth of a local legal identity up which settler practice intertwined (though not always happily) with English law.

The book contains numerous typographical errors and, to this reviewer's eye anyway, there is over-intrusive use of the authorial first person. Stronger and more attentive editing was needed.

PAUL MCHUGH

The Law of Internal Armed Conflict. By LINDSAY MOIR. [Cambridge: Cambridge University Press. xix, 277, (Bibliography) 20 and (Index) 9 pp. 2001. Hardback £45.00 net. ISBN 0–521–77216–8.]

ACCORDING to studies by the Oslo Peace Institute, 73 States were engaged in armed conflicts in the period between 1990 and 1995. In the clear majority (59) of these cases, the armed conflicts were non-international in character. The state of international law hardly mirrors this factual assessment. While traditional inter-State conflicts are regulated rather comprehensively, the law governing internal armed conflicts is still somewhat unsettled. This body of law is based on the vague terms of common Article 3 of the Geneva Conventions; it has been partly codified in Additional Protocol II of 1977, and it also continues to evolve as

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customary international law. In the book under review, Lindsay Moir attempts to put together the pieces of the puzzle. Notwithstanding the criticisms set out below, it may be said at the outset that he fully achieves this goal. Readers are presented with a comprehensive survey of the modern law of internal armed conflict, including detailed discussions of most of the key issues.

Broadly speaking, the book can be divided in two parts. Chapters one to three provide a solid and well-written overview of the evolution of the law of internal armed conflict. Chapter one recapitulates the historical development, discussing the practice of recognition of belligerency and its decline in the 20th century, and the drafting history of common Article 3 of the 1949 Geneva Conventions. Chapter two provides a concise discussion of the main problems presented by that provision, and Chapter three does the same for Additional Protocol II of 1977.

Chapters four to six deal with more controversial issues, namely the status of customary rules governing internal conflicts, the relevance of international human rights, and the question of enforcement. Inevitably, chapter four largely turns upon the Tadic judgment of the International Criminal Tribunal for the Former Yugoslavia (ICTY). Despite some minor criticisms, Moir agrees with the Chamber's findings that (i) there exists a body of customary international law rules governing internal armed conflicts, and (ii), more importantly, that violations of the laws of internal armed conflict can give rise to individual criminal responsibility. Given the drafting history of the Rome Statute of the International Criminal Court, during which the international community affirmed both findings, this is probably the correct view.

In Chapter five, Moir goes on to analyse "to what extent … the provisions of common Article 3 and Additional Protocol II represent, and interrelate with, human rights protection" (p. 197). Unfortunately, he only succeeds in meeting the first of these two goals. As it stands, the chapter thoroughly analyses the extent to which the humanitarian law of internal armed conflict represents norms protecting human rights. Unfortunately, however, Moir does not fully clarify the interrelation between the two sets of rules. At the beginning of his analysis, he notes that "academic opinion seems to have crystallised into the view that the two regimes are related but distinct" (p. 193, n. 2), but then fails to explore many of the aspects of this relationship. For example, while noting the large overlap between the two sets of rules, Moir does not say whether one is *lex specialis*, or whether both always co-exist. Further issues worth discussing might have included the effects of reservations registered against, or prohibited under, one set of rules; or the relevance of human rights jurisprudence for an interpretation of the rules of humanitarian law. Fortunately, readers seeking information on these issues do not have to look very far, since the recent book by René Provost, *International Human Rights and Humanitarian Law*, also published by CUP, addresses them in depth.

Finally, Chapter six deals with what is perhaps the most pressing concern of those seeing to protect the victims of internal armed conflicts—the question of implementation. As Moir himself notes, "[t]he main problem lies not in the content of those rules [governing internal armed conflicts], but rather in their enforcement" (p. 232). The chapter discusses most types of enforcement measures envisaged in the Geneva Conventions and Additional Protocol II, such as prosecution of war criminals or action

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by the ICRC and the United Nations. Quite convincingly, Moir shows that despite the absence of a clear regulation in Article 3 or Additional Protocol II, present-day international law prohibits the use of belligerent reprisals against civilians during internal armed conflict as a means of law enforcement. The section dealing with enforcement measures taken by third States is more problematic. Moir subscribes to the widely-held view that Article 3 gives rise to obligations *erga omnes*, but leaves open which legal consequences flow from that assessment (p. 244 *et seq*.). The much-debated issue of whether third States are entitled, under Article 1, to resort to peaceful reprisals in response to violations of humanitarian rules, is dealt with rather briefly. More importantly, there is no mention at all of the possibility of instituting ICJ proceedings against States responsible for breaches of *erga omnes* obligations. Given the major relevance of ICJ jurisprudence for the development the *erga omnes* concept, this is indeed a very surprising omission. The remaining section on the enforcement of human rights is concise and clear; but again, one would have hoped for more information on the interrelation between the two sets of rules. All in all, the chapter on enforcement is, therefore, less comprehensive than those parts dealing with the content of the rules.

As noted above, despite these criticisms, the book provides a well-written assessment of the current rules governing internal armed conflict. To have addressed such a heterogeneous field in a comprehensive way is in itself a significant achievement. It may be hoped that Moir's clear exposition will assist in the crystallisation of customary norms, and in this sense, contribute to the further clarification of a hitherto very unsatisfactory area of international law.

CHRISTIAN J. TAMS

International Law and the Environment (second edition). By PATRICIA BIRNIE and ALAN BOYLE. [Oxford: Oxford University Press. 2002. xxx, 798, (Bibliography) 21 and (Index) 20 pp. Price £29.99 paperback. ISBN 0–19–876553–3.]

BIRNIE and Boyle's ground-breaking first edition was published in 1992, shortly before the outcomes of the UN Conference on Environment and Development were known. Hence, although the first edition contained references to the Rio Declaration, the Framework Convention on Climate Change, and the Convention on Biological Diversity, it could only do so in a somewhat speculative manner. The much anticipated second edition remedies this problem admirably. Whereas some might draw a parallel in the second edition being published only several months before the Johannesburg Summit on Sustainable Development, the absence of any binding instruments arising out of that summit is unlikely to detract from the second edition's currency.

The new volume is considerably longer than the first edition; it now fills almost 800 pages, compared to the first edition's 563. The increase in coverage and detail is not unjustified, as this dynamic and rapidly evolving field has seen many developments since 1992. The basic structure of the first edition is preserved. In the three central chapters on "the structure of international environmental law", the main argument is that "rules and principles of international law concerning protection of the environment do

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