

second-class citizens. In fact, the World Economic Forum's 2018 Global Gender Gap report states that it will take 202 years for women to achieve economic equality with men.⁵

This considerable collection of feminist perspectives is akin to a theoretical smorgasbord, an intellectual buffet offering a wide variety of ideas tinged with complexities, challenges, and possibilities. Like a smorgasbord, the variety of offerings cater to different preferences and tastes, and allows for dipping in and out, choosing to start at the beginning, middle, or end. For those who teach, research, practice, or otherwise engage with international law, this volume is a useful source and a notable contribution to the literature.

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Internationalized Armed Conflicts in International Law. By Kubo Mačák. Oxford, UK: Oxford University Press, 2018. Pp. xl, 268. Index. doi:10.1017/ajil.2020.2

Internationalized Armed Conflicts in International Law addresses the transformation of a noninternational armed conflict into an international one—which the author refers to as its “internationalization” (p. 24). The matter is one of increasing importance in recent decades, given the growing tendency of states to become involved in one way or another in internal conflicts in another state, or the possibility that a civil conflict may result in the transformation of warring factions into separate warring states. Although international law has been evolving to apply more of the international law of armed conflict to internal conflicts, significant differences nonetheless remain, and it is therefore important to assess when the process of “internationalization” crosses the line, and what the consequences of that transformation are.

⁵ World Economic Forum, *The Global Gender Gap Report* (2018), available at http://www3.weforum.org/docs/WEF_GGGR_2018.pdf.

Kubo Mačák is an associate professor at the University of Exeter Law School and has, among other things, worked at the International Criminal Tribunals for the former Yugoslavia and Rwanda, and has done research at the International Committee of the Red Cross and the Max Planck Institute. His scholarly background is evident in the thoroughness and rigor of his analysis in this book.

The process of internationalization. The first half of the book deals with the process by which noninternational conflicts may become international. Macak's analysis stays within the current structure of the law that provides for two regimes—one for international conflicts and another for noninternational conflicts—and does not attempt to move toward a possible third category to which some but not all of the international rules might apply.

Macak argues that there are several mechanisms through which internationalization may occur. The first is where a noninternational conflict becomes an international one by the military intervention of an outside state on the side of a rebel movement. He takes the view that a situation of outside intervention without the consent of the territorial state may be more ambiguous if the intervening state does not engage its armed forces directly, but supports a rebel group in various other ways. He argues that the provision of material or logistical support to a rebel faction is not sufficient to internationalize the conflict, but that such internationalization would occur if the outside state exercises overall control of the rebel movement, in particular by organizing and coordinating its actions against the government in power.

On the other hand, he argues that if foreign intervention occurs with the consent of the territorial state, the situation remains a noninternational conflict. This in effect rejects the proposition that such an intervention might transform the conflict into one governed by the rules of international conflict if the conflict is on such a scale as to justify the application of those rules. Macak's position on this point seems to reflect the current understanding of states, as reflected in modern conventions on armed conflict.

Macak applies the same concepts to the intervention of a multinational force into an internal conflict: intervention with the consent of the territorial state does not internationalize the conflict, but “peace-enforcement” operations without that consent can do so (p. 55). He rejects the argument that such an unconsented intervention under UN control should be exempted from the rules of international conflict, reasoning that such exemption would be contrary to the objective of giving all parties to the conflict the incentive to follow the rules of international humanitarian law.

Macak’s second scenario for internationalization is the dissolution of a state into two or more successor states that continue the conflict against one another, which he argues then becomes an international conflict. This also seems straightforward in principle, but it does raise the question of how to judge when one or more factions have become states on their own. This was illustrated, for example, in the Yugoslav conflict, where the issue arose as to when various provinces of the former Yugoslavia had become separate states, thereby bringing about the application of the rules of international conflict, and whether factions within those new states that had governments and controlled territory had acquired a similar status.

Macak’s third scenario for internationalization is that of “wars of national liberation,” as embodied in Article 1(4) of Protocol I to the 1949 Geneva Conventions. (That provision would treat as international those conflicts “in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination.”) That provision has from the start been rejected by the United States and by important parties to the Protocol, and the anticolonial conflicts that prompted its adoption have almost all now disappeared (with the possible exception, cited by Macak, of Western Sahara (p. 73)). He concludes that this provision of Protocol I has not become customary law, so that its application would be limited to parties to the Protocol who have not

rejected the provision, and that its hypothetical application would in any event be small.

Macak’s fourth scenario for internationalization is a situation in which the parties to the conflict have in effect voluntarily accepted its internationalization through any of several means. One is a recognition of belligerency, the second an agreement under Common Article 3 of the 1949 Geneva Conventions to apply the rules of international conflict, and the third a unilateral decision to apply those rules. He cites a number of examples of these situations, from the American War of Independence and the American Civil War, to the Israeli application of the fourth Geneva Convention in occupied Palestine. Since this process occurs through the consent of parties to the conflict, its effect logically depends on the degree to which they have agreed that the rules of international conflict apply.

Having laid out these scenarios, Macak then points out that conflict situations may be complex and not fall entirely into any particular category. For example, where a state has a large territory, more than one conflict may exist—possibly one with an intervening outside state and another with a domestic faction. These conflicts may be essentially unrelated, or the contesting parties may affect each other without any particular alignment among them, or the fighting entities may be mutually supportive. For these scenarios, Macak proposes what he calls a “hybrid” approach, in which the rules of international conflict apply to that part of the situation where an insurgent group and an intervening state cooperate in the organization, coordination or planning of their military actions, but not to other conflicts in the territory (p. 89).

Macak then describes a process of “de-internationalization” of an international conflict—for example, where an intervening state withdraws from the conflict, but fighting continues between the existing regime and the rebel group, or where the rebels succeed in replacing the original government and are now aligned with the intervening state (p. 105). He suggests, however, that where there is still doubt as to whether such a transformation has occurred, it is advisable to

assume that the situation remains an international conflict.

Application of these concepts. Macak then applies his conclusions about the process of internationalization to two areas of substantive law: the combatant status of persons participating in the conflict, and the situation of belligerent occupation.

In the first area, concerning combatant status, Macak acknowledges that the current general understanding is that fighters belonging to non-state armed groups in traditional civil wars do not enjoy such status, and therefore are not entitled to prisoner of war (POW) status and may be prosecuted for participation in hostilities. But he argues that this should not necessarily apply to fighters in internationalized armed conflicts, as he has defined them. He takes the view that they should be protected from such prosecution as long as they respect the requirements of international humanitarian law, and that denying such protection would undermine the “civilizing function” of that body of law (p. 163). He acknowledges the argument that some such groups might not have the capabilities required for complying with the law of international armed conflict, such as in the treatment of POWs, but argues that this is not necessarily so, and that offering combatant status in internationalized conflicts maximizes the incentive to comply.

At the same time, he recognizes that some aspects of internationalized conflicts may raise different issues in this regard. For example, where a civil conflict is internationalized by the intervention of an outside power in support of the insurgent group, it would not be enough to meet the requirement of being under responsible command that the group’s fighters are subject to the overall control of the outside power, but that they must be subject to “direct hierarchical military subordination” to that power and to a system of sanctions imposed by that power to ensure compliance with the rules of international humanitarian law (p. 179).

In the second area, concerning belligerent occupation, Macak deals with the problems of

applying the traditional law—which has been designed to deal with the occupation by one state of the territory of another—to different situations of internationalized conflicts: for example, the occupation by a nonstate group of part of a state’s territory, or the occupation by a state of part of its territory that had come under the control of a nonstate group.

Macak denies at the outset that the law of occupation should be limited to the relationship between sovereign entities. He argues that the law of occupation should be “sovereign-agnostic,” and that the lack of sovereignty of one of the parties in question should not prevent the application of that law, which may serve important humanitarian purposes in all occupation situations (p. 226). In particular, he points out that compliance with the norms of occupation can be within the power of even less-organized armed groups in internationalized armed conflicts. He proposes that the law of occupation should apply from the time that a party to the conflict has consolidated its control over a given territory, which may not be identical to the point at which the conflict has become internationalized.

Macak addresses several issues in this regard. He asks whether international law should accept that a state might occupy its own territory, including portions previously held by a nonstate group; he answers in the affirmative, citing in particular the U.S. position to that effect, dating back to the American Civil War where the Union’s Lieber Code accepted the application of rules of belligerent occupation of parts of American territory previously held by the Confederacy. He also asks whether a nonstate entity may be treated as having occupied a state’s territory, and again his answer is yes, citing the Yugoslav conflict and rulings by the International Criminal Tribunal for the former Yugoslavia.

The next question is whether, in the case of outside intervention on the side of an internal faction, it is the outside state or the internal group that is an occupier, with the attendant rights and responsibilities. Macak’s answer is that as long as the internal group maintains

operational autonomy, it should be considered the occupying power.

Macak concludes his book with the observation that he presents an argument in favor of extensive application of international humanitarian law to internationalized armed conflict, but at the same time he acknowledges that this application is not always straightforward. In particular, he recognizes that current law puts every conflict into one of two distinct categories—international and noninternational (he calls them “two strait-jackets sewn after the Second World War” (p. 241))—with distinct rules for each, notwithstanding the fact that most modern conflicts tend to be complex affairs involving both international and noninternational factors. As he points out, the situation is made more complex by the fact that often these conflicts are in flux and in transition from one degree of outside involvement to another.

In particular, Macak argues that many of the objections to the application of the international rules can be met even in cases where the entity in question does not have all the capabilities of a regular state. As to what might be done to develop and enhance the law in this area, he acknowledges that the gaps and problems might in theory be remedied by negotiation of a new multilateral instrument—for example, another Additional Protocol to the Geneva Conventions; but he doubts that it would be practical to get a broad coalition of states on board or to involve nonstate armed groups in the process. This leads him to the conclusion that the most realistic course of action is to enhance compliance with the law as it stands.

The above is only a summary of some of the many points and scenarios considered by Macak within the scope of his study. In one respect, his detailed analysis strains the mental stamina and attention of the reader; but in another respect, it gives the reader many significant matters to consider. If the book can be hard to read at times, it nevertheless is rich in its scope and detail.

Issues not addressed. Macak makes clear that he does not attempt to address all aspects of the internationalization of conflicts. First, the book

is limited to a consideration of the effect of such internationalization on the application of *jus in bello*—the law applicable to the conduct of armed conflicts, and does not address questions about *jus ad bellum*—the lawfulness of the resort to force. This means that Macak does not deal with the important issues concerning the legality of intervention by a state or states into an internal conflict in another state.

Second, to the extent the book addresses the effect of internationalization on the substantive law of armed conflict, it is basically only the law relating to the status of detained enemy personnel and the law of belligerent occupation. It does not give the same attention to the constraints on means and methods of warfare in various conflicts, a matter of great humanitarian significance. My own view is that these rules that apply in international conflicts should be fully applied in all forms of armed conflict. This includes, for example, the prohibition on indiscriminate attacks, precautions in conducting attacks to protect the civilian population, and generally accepted rules on the prohibition or regulation of weapons. I would argue that violations of all these rules should be subject to international prosecution in noninternational as well as international conflicts.

And third, the book does not deal at any length with the applicability in such situations of international human rights law or international criminal law, both potentially important aspects of the treatment of civilian populations in internal conflicts.

While it is understandable that Macak would want to limit the scope of his study, the reader cannot help but wonder what his views are on these important issues, and perhaps hope that he will address these matters in detail in his ongoing work. But in any event, within the limits of what he does address, the book is a thoughtful and thorough analysis of the process of internationalization.

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