Sandesh Sivakumaran

The Law of Non-International Armed Conflict (Oxford University Press: Oxford, 2012), ISBN 978-0-19-923979-5, xxxvii + 657 pages, £105.[*]

In the closing paragraph of this seminal book, Sandesh Sivakumaran writes that '[t]he law of non-international armed conflict bears a heavy burden, tasked as it is with regulating a situation which gives rise to many of the worst atrocities committed today' (p. 570). There is no doubt that conflicts fought between States and non-State actors or between several non-State armed groups have become the predominant form of armed violence in today's world. Few would need to be reminded of the horrors of Srebrenica, Rwanda, or Syria to accept the view expressed in the cited quote.

Nonetheless, an equally heavy burden rests on an author who sets out to map 'the law' applicable to such situations. This is for two main reasons. First, the scope of the potentially applicable law is broad, including not only international humanitarian law (IHL) but also other branches of public international law, most notably international human rights law (IHRL) and international criminal law (ICL). Second, the types of situations falling under the umbrella term 'non-international armed conflicts' are inordinately diverse, ranging from relatively minor clashes between two small armed groups to large-scale civil wars to some parts of the 'global war on terror'. This book tackles both challenges very well and demonstrates a formidable command of all three crucial areas of the law while maintaining clarity of focus and representativeness of the chosen examples.

The book seeks to achieve two main goals. First, it aspires 'to ascertain the content of the law of non-international armed conflict, when it applies, and how it is enforced' (p. 5). Although this goal is phrased in primarily descriptive terms, it is a commendable one. Very few recent books with comparable ambitions exist in the English-speaking world[1] and the

[*] This review was completed in January 2015.

reviewed one stands out by the level of its detail and the wealth of analysed sources. This is certainly a reflection of its second goal, namely 'to incorporate the views of both parties to conflicts—states as well as armed groups—on the law' (p. 5). Such an aim is, of course, potentially problematic. International law orthodoxy lends little weight to the views of non-State actors in the determination of the content of the law. However, the author carefully avoids the trap of weakening his argument by abandoning the traditional methodology and insists that the practice of non-State actors is referred to purely for illustration of compliance and non-compliance (p. 152). Yet, on few occasions this fuzzy line might have been overstepped. These will be highlighted below.

The book is structured into three parts, which could loosely be described as the past, the present, and the future of the regulation of non-international armed conflicts (NIACs). Most attention is appropriately given to the middle part of the book, comprising nearly two thirds of the total text. In the remainder of this review, I will briefly introduce each of these parts in turn. I will focus on the structure and the tenor of the argument, at times highlighting some potentially more controversial points. Finally, I will conclude by examining the title of the book: what exactly is the contemporary meaning of *the law of non-international armed conflict*?

The past

The first part of the book is primarily concerned with the historical evolution of the regulation of NIACs by international law. It devotes one chapter to each of the three consecutive approaches identified. The first of these is described as 'ad hoc regulation' (p. 9), comprising recognition of belligerency, State-issued instructions, unilateral declarations and bilateral agreements. The book examines a wide variety of examples of such instruments and presents their main features in a clear and concise way.

Notably, against the received wisdom in much of the contemporary literature, it represents recognition of belligerency as a perhaps dormant, but certainly not abandoned notion of international law. This is certainly true: today, as the author observes, '[n]othing prevents a

[1] See, in particular, Lindsay Moir, The Law of Internal Armed Conflict (2004) and Yoram Dinstein, Non-International Armed Conflicts in International Law (2014).

state from explicitly recognizing a situation as one of belligerency' (p. 20). The case for the continuing existence of the notion could have been further bolstered by considering recent instances of recognition of belligerency. Instead, the author claims that 'at least since 1949, and more likely since 1899, there have not been any cases of recognition of belligerency' (p. 19). This would be accurate only with respect to *parent* State recognition; conversely, there have been several instances of *third State* recognition in the period following World War II. Nicaraguan Sandinistas were recognized by the member states of the Andean Group (1979);[2] El Salvadorean rebels by France and Mexico (1981);[3] the Colombian insurgent group FARC by Venezuela (2008).[4] At times, other less unambiguous cases of recognition by third States have been put forward by academics as further instances of State practice in this sense.[5] Nevertheless, the author's overall conclusion certainly stands.

The second approach to regulation is described as 'systemic regulation' through IHL (p. 30). This relates to treaty instruments that have contained rules applicable to NIACs. The respective chapter relates the history from flat-out refusals to include NIAC rules in international instruments (an 1870 quote from Gustave Moynier cited on p. 31 is a particularly valuable find in this context) towards the adoption of Common Article 3 to the 1949 Geneva Conventions, described aptly as 'an article that broke new ground' (p. 53), and the 1977 Additional Protocol II, which further expanded the regulation of NIACs.

[2] Joint Declaration of the Foreign Ministers of Member States of the Cartagena Agreement on the Situation in Nicaragua, cited in Rafael Nieto Navia, '¿Hay o no hay conflicto armado en Colombia?', 1 Anuario Colombiano de Derecho Internacional 139 (2008), at 147.

[3] Joint Franco-Mexican Declaration on El Salvador, reprinted in Information Bulletin of the Political-Diplomatic Commission of the F.M.L.N.-F.D.R., 16 October 1981, at 4.

[4] Venezuelan President Hugo Chavéz's proposal that the FARC and a smaller rebel group ELN be recognized as belligerents was supported on 17 January 2008 by the Venezuelan National Assembly in a 'near unanimous vote' by a resolution to grant the FARC belligerent status. Chris Kraul, 'Chavez Keeps Up Campaign to Get Rebels Off Terrorist List', Los Angeles Times, 20 January 2008.

[5] See, e.g., John Dugard, 'SWAPO: The Jus ad Bellum and the Jus in Bello', 93 South African Law Journal 144 (1976), at 156 (arguing that the recognition of the Namibian liberation movement SWAPO as 'the authentic representative of the Namibian people' by the UN GA might be seen as recognition of belligerency); Sam Foster Halabi, 'Traditions of Belligerent Recognition: The Libyan Intervention in Historical and Theoretical Context', 28 American University International Law Review 321 (2012), at 373–390 (considering that the recognition of the Libya's National Transitional Council by France, Italy, Qatar, US, and UK may have amounted to a recognition of belligerency in the traditional sense).

The chapter notes that from the beginning, the rules of NIAC were modelled on the law applicable to IACs (although, notably, later on the book demonstrates some scepticism as to whether this is necessarily the optimal approach: pp. 76–77). Consequently, it highlights the resulting recurring dilemma: should NIACs be regulated by specific *provisions* of the law of IAC or only by its general *principles*? The chapter traces the history of the two diplomatic conferences that resulted in the adoption of the Conventions and their Protocols, respectively. It demonstrates that the 'provisions versus principles debate' (p. 50) has, time and again, been won by the adherents of the principles camp.

With respect to Protocol II, the book correctly notes that this victory has been reflected in the adoption of a 'simplified draft' (p. 50) of the instrument, which was, of course, a euphemism for the act of deletion of about a half of the provisions contained in the original draft Protocol occasioned at the eleventh hour in Geneva in 1977. The narrative could be criticized for expressly attributing this 'simplification' only to the delegation of Pakistan (ibid.), although eye-witness accounts have confirmed that 'the evident blessing' given by the head of the Canadian delegation David Miller had been equally important in reaching this outcome.[6] Nonetheless, this is just a small detail that does not detract from the value of the historical examination in this chapter.

The core of the book's contribution in this part is found in the chapter that describes the third approach to the regulation of NIACs, denoted as 'regulation through a body of international law' (p. 54). The chapter presents a comprehensive treatment of the development of norms regulating NIACs in the post-Protocol era and in particular since the 1990s. It claims that in this period, the regulation of NIACs underwent 'a wholesale transformation' (p. 99). While this perhaps overstates the point, as the core of the applicable law and the first reference point are still to be found in Common Article 3 and Protocol II, it is certainly true that several important developments took place in this period.

[6] Frits Kalshoven, 'Protocol II, the CDDH and Colombia' in Frits Kalshoven (ed.), Reflections on the Law of War: Collected Essays (2007), at 863; see also Frits Kalshoven, 'The Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, 1974–1977' in Frits Kalshoven (ed.), Reflections on the Law of War: Collected Essays (2007), at 184; see further Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds.), Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (1987), at 1335, para. 4413 (referring to 'a number of unofficial consultations' which have preceded the Pakistani proposal).

First, the chapter documents the role played by international judicial bodies and the ICRC in identification and development of customary international humanitarian law. Given that the book claims to accept the orthodox methodology of formation of customary law (p. 102), it is curious it does not investigate closer the apparent paradox of customary norms being 'developed' (indeed, this is the term used by the author: p. 60) not by States but judicial organs or, perhaps even more problematically, a private humanitarian institution. Interested readers can, however, find more on this issue in the referenced literature critical of some of such developments (pp. 60–61). Nevertheless, one can agree that many of the findings of international courts (the foremost among them the ICTY) and the ICRC have not been subsequently challenged by States and that today 'it is generally recognized that there exists a sizeable body of customary international humanitarian law applicable to [NIAC]' (pp. 60–61).

Second, the chapter outlines the contribution of two related bodies of law to the regulation of NIACs. The first of these is the development of international criminal law by international judicial bodies including the ICTY, ICTR, and most recently the ICC. We are reminded that today, the regulation of NIACs 'cannot be understood without detailed consideration of the jurisprudence of the international criminal tribunals' (p. 78). The book lives up to this self-imposed standard and delivers a thorough scrutiny of international case-law concerning war crimes—in other words, serious violations of IHL. The second body with influence on the regulation of NIACs has been IHRL. The chapter notes that there are important differences between IHRL and IHL and rejects that the latter could be described as 'the human rights law of armed conflict' (p. 84). However, the importance of IHRL for the regulation of NIACs has only been increasing. The chapter documents practice which suggests that in some situations, even armed groups can have obligations under IHRL, although it accurately notes that this view has yet to gain general acceptance by States (pp. 96–97). On the basis of this two-fold contribution by ICL and IHRL, the author proposes that a 'law of [NIAC]' has been created (p. 99). I return to the accuracy of this suggestion at the end of this review.

The final chapter of the first part attempts to outline the sources of the purported law of NIAC. It divides these into two categories: 'traditional sources' (p. 101), which comprise those listed in Article 38 of the ICJ Statute; and—somewhat underwhelmingly termed—'less traditional "sources"' (p. 107), which are to include various ad hoc commitments issued by non-State armed groups. There is little to add to the first of these categories. The discussion is brief but informative, with a focus on customary IHL.

With respect to the second category, the book is to be commended for its unprecedented compilation of these commitments. We learn that they range from brief internal documents like the code of conduct of the *Sendero Luminoso*, mandating its members to: 'Return what you borrow' and 'Do not mistreat prisoners' (pp. 134–135), to comprehensive multilateral agreements of the kind concluded between the parties to the internal conflicts in Bosnia and Croatia in early 1990s (pp. 125–127). What is more, the chapter contains an impressive detailed overview table of commitments from almost 70 NIACs since the US Civil War, which will be of great use to any future researchers.

While all of these may certainly exert a considerable 'compliance pull' on the non-State actors in question, it is open to doubt whether there is enough evidence to treat them—as the author suggests—as 'binding under international law' (p. 110). This view is certainly far from being generally accepted and the preferable position is the one expressed in the closing chapter of the book, namely, that the role of non-State armed groups in the creation and development of international law is an issue that still remains to be considered by the international community (p. 562).

The present

The middle part of the book delves into the substantive norms of the law of NIAC. This is likely the part that will be of most interest to practitioners due to its clear and structured discussion of the rules that apply to particular situations that can be characterized as NIACs. It considers, first, rules on the applicability of the law of armed conflict in relation to NIACs, following the familiar structure of material, temporal, geographical, and personal scope of application. Second, it turns to three specific areas of the law, concerning the treatment of the protected persons; the conduct of hostilities; and the implementation and enforcement of the law.

Of the three chapters that are devoted to determining the scope of application of the relevant law, two are focussed on material application only. This is hardly surprising. After all, the question of determining what exactly qualifies as a NIAC has been occupying academics since the introduction of the term 'armed conflict not of an international character' by Common Article 3. After noting that no definition of these words can be found in any of the applicable treaties and discussing the potential advantages and drawbacks of this absence, the book

endorses the definition of a NIAC provided by the ICTY Appeals Chamber in the *Tadić* case (p. 164).

According to this ruling issued in 1995, a NIAC is defined as a situation of 'protracted armed violence between governmental authorities and organized armed groups or between such groups'.[7] This definition contains two essential characteristics a situation must have in order to qualify as a NIAC, most commonly referred to as sufficient intensity and organization. The book analyses both in great detail, building on a wealth of relevant jurisprudence of the international criminal tribunals.

With respect to the first criterion, despite the use of the word 'protracted' in the original *Tadić* definition, the book correctly argues that duration is but one of the 'indicia' of intensity (pp. 167–168). To claim the contrary would mean that the nature of a conflict would be impossible to determine at the moment of its outbreak, which would certainly not be conducive for legal certainty.

As far as the second requirement is concerned, the book demonstrates that the necessary level of organization on part of the armed group is 'not all that high' (p. 170). Again, this makes sense. As long as the group is organized enough to allow it to comply with IHL, any defects in its structure and hierarchy should not stand in the way of the application of the law to the situation as a whole. The book also describes higher thresholds of application in relation to the norms contained in Additional Protocol II and the Rome Statute of the ICC.

One of the central problems of IHL is that even if an agreement on objective criteria triggering the application of the law can be reached, there is no authoritative body which would determine whether a specific situation meets this criteria or not. The book does not shy away from this issue and it patiently goes down the list of possible decision-makers (including the States, international organizations, and judicial organs) to substantiate its claim that none of them can be relied upon to decide on a systemic basis (pp. 197–199). It is worth adding that the book correctly observes that parties to the conflict can certainly not be trusted to make an unbiased qualification of the situation they are involved in. However, it is not entirely accurate to represent the States as those with the 'tendency to downplay the situation' and, conversely, armed groups as those willing to 'exaggerate the scale of the violence' (p. 197). There are

[7] Decision on Jurisdiction, *Prosecutor v. Tadić*, ICTY, Appeals Chamber, 2 October 1995, para. 70.

situations in which the government may actually be interested in characterising the violence as a NIAC (hence, potentially 'exaggerating' rather than 'downplaying' the situation) in order to escape the application of IHRL. This is because this body of law is often perceived as more onerous than IHL, in particular insofar as the rules on targeting are concerned.[8] Logically, the reverse may be true for the armed groups concerned. Nonetheless, the book provides a highly useful toolkit for the determination of the existence of a NIAC.

In a separate chapter, the book considers situations in which a NIAC may evolve into an IAC. It identifies three such situations: recognition of belligerency; wars of national liberation; and outside intervention. One may add to this list also situations of State dissolution. Surely, when a parent State plagued by an internal conflict disintegrates into two or more independent States, the conflict transforms into an international one. This was the case in ex-Yugoslavia following the independence of Croatia and Bosnia and Herzegovina in the early 1990s.

Having covered the notion of recognition of belligerency in the previous chapter on ad hoc regulation, the discussion centres on wars of national liberation and situations of outside intervention. With respect to the former, the book presents an analysis of the legal underpinning of this notion in Article 1(4) of Additional Protocol I, its drafting history, as well as its current legal status, opining against the customary nature of the concept as such. One could quibble over the qualification of some past conflicts under this heading. For example, the author's claim that 'the Aceh situation may have fallen within the scope of Article 1(4)' (p. 218) is questionable as Indonesia had never actually ratified Protocol I and the provision does not reflect customary law, an assessment shared by the author, as well (p. 221).

With respect to the latter, the book, like the ICTY, distinguishes between direct and indirect outside intervention and revisits the familiar debates about the appropriate legal tests to determine at what stage a conflict can be deemed transformed into an IAC as a result of such intervention. The discussion is well-informed and nuanced, yet the author manages not to lose the forest for the trees, acknowledging the importance of the facts of each case for the correct legal classification.

[8] See, e.g., Claus Kreß, 'Some Reflections on the International Legal Framework Governing Transnational Armed Conflicts', 15 Journal of Conflict and Security Law 245 (2010), at 260–261; Marko Milanović, 'End of Application of International Humanitarian Law', International Review of the Red Cross (2015) (forthcoming; available at SSRN: http://ssrn.com/abstract=2486435), at 26.

The next chapter lumps together the remaining questions pertaining to the scope of application. It covers in turn the personal, geographic, and temporal applicability of the rules of NIAC. Interestingly, this discussion offers the author an opportunity to revisit and refine some of his earlier writing, in particular with respect to the vexing question whether IHL can bind non-State actors if these, by definition, do not participate in its creation.[9] In simple words, the answer lies in the fact that State ratification of a treaty is done not only on behalf of the State but also on behalf of all individuals—possible future armed groups included—within its jurisdiction (pp. 240–241). While the author expressly abandons (at p. 241 fn 43) the expression 'legislative jurisdiction' used to describe this approach in his previously published work,[10] it is fair to say that—but for the semantics—his explanation has remained consistent over the years.[11]

The second half of the middle part of the book covers three specific areas containing substantive rules applicable to NIACs. First, it discusses the rules relating to the protection of the victims of NIACs, namely civilians and persons *hors de combat*. The relevant chapter proceeds from the general to the specific, covering the principle of humane treatment first and then moving on to rules on the protection of individual categories of persons, including the wounded and the sick; the missing and the dead; and the interned and the detained. It closes off with a discussion of the rules regulating humanitarian assistance in NIACs. In each of these areas, the author does not sidestep the main controversies of today. For example, he endorses the view that IHL contains an implicit legal basis for detention in NIACs (p. 301). In another example concerning the provision of humanitarian assistance to persons in the territory under the control of a non-State actor, he argues that at least in practice, if not in law, the consent of both the State and the relevant non-State actor will be required (pp. 332–333). The positions taken are nuanced and supported by a host of practice from conflicts both historical and recent alike.

Second, the book discusses the rules on the conduct of hostilities in NIACs. Although it now almost seems superfluous, the author reminds us that not so long ago, the prevailing view

[9] Sandesh Sivakumaran, 'Binding Armed Opposition Groups', 55 International Comparative Law Quarterly (2006), at 369.

[10] Ibid., at 381.

[11] Contra Dinstein, supra note 1, at 70 fn 254 (stating that '[t]he thesis has apparently been abandoned by the … author').

among the commentators was that very few treaty or customary rules existed in this area (pp. 336–337). The chapter effectively proves that today, the contrary is true. The regulation of the conduct of hostilities in NIACs is detailed and well-developed both as a matter of conventional and customary law. The chapter principally draws on Protocol II and other treaty texts including the Hague Convention on Cultural Property, the Conventional Weapons Convention and its protocols, and the Ottawa Convention, as well as the ICRC Customary IHL Study and the author's own research into the practice of States and relevant armed groups. It painstakingly details the applicable rules on targeting, the prohibitions on the use of particular weapons, and the limitations on permissible methods of combat. The chapter correctly notes the existing differences between the regulation of IACs and NIACs in this area and reminds the reader that a whole-scale transposition may not be viable nor desirable due to the peculiarities of NIACs. Again, the contribution of the chapter is particularly in its long list of examples from modern and historical practice, which usefully illuminate the arguments presented therein.

Third, the book turns to implementation and enforcement, the perceived 'weak points' of IHL (p. 430). Importantly, it recognizes that legal mechanisms of ensuring compliance with the law need to be complemented by other methods, which are perhaps even more important and which include public opinion, reputation, and personal conviction (ibid.). Although the book's focus on the law is understandable and proper, a closer consideration of the (potentially mutually reinforcing?) relationship between the legal and extralegal mechanisms would certainly have been most instructive.

The book considers internal and external legal mechanisms in turn. With respect to the former, it highlights the role of dissemination, instruction, legal advice, internal regulations, and sanctions. With respect to the latter, it considers the issue of belligerent reprisals—concluding that this mechanism is 'applicable' in NIACs, although 'its use is not to be encouraged' (p. 473)—and responses by outside actors, with most prominence given to the ICRC and the UN. Finally, it returns to the role of the judicial bodies, to which a separate chapter is devoted. Some overlap with the previously covered material is inevitable. Nevertheless, the chapter provides a good overview of the contribution of specific international and domestic tribunals, in particular since the mid-1990s. It concludes that the rules of NIAC have benefited from enforcement primarily through war crimes trials and through proceedings before regional human rights courts (pp. 509–510).

The future

The book concludes with its prospectively oriented third part, carrying an optimistic title 'Moving Forward'. The declared ambition of this part is to outline developments of the law considered as necessary by the author. Naturally, this is the most speculative part of the book, but its merits are confirmed by the fact that even relatively soon after its publication, it is already informing the relevant academic debate.[12] The author makes a number of proposals; suffice it to highlight the two potentially most controversial ones.

First, the book joins the calls for a status-based distinction for fighters belonging to non-State armed groups in NIACs. It argues that 'the notion of combatant immunity, or some sort of functional equivalent, is desirable for the law of [NIAC] in order to incentivize compliance with the law on the part of non-state armed groups' (p. 525). This is not a new point.[13] However, it is strengthened by the inclusion of historical practice of NIACs, in which captured fighters have been in fact given treatment equivalent to or approaching that to which combatants in IACs are legally entitled to. Still, little evidence is proffered in support of the likelihood that these exclusively discretionary measures will be interpreted by States as amounting to any emerging custom or acted upon when negotiating a new treaty instrument.

Second, the author makes a case for the conclusion of a new treaty, which would bring all of the proposed developments together. What is more, this treaty would be 'designed to bind armed groups in all situations' and armed groups would be allowed 'to sign up to the instrument' along with the States (p. 565). One hesitates whether this proposal lives up to the aim of being both 'concrete and realistic' expressed at the outset of the chapter (p. 513). Calls for new instruments—often as another protocol to the Geneva Conventions—have been made on a number of occasions.[14] Yet their humanitarian desirability seems to be indirectly

[12] See, e.g., William H. Boothby, Conflict Law: The Influence of New Weapons Technology, Human Rights and Emerging Actors (2014), at 441–442.

[13] See, e.g., Emily Crawford, The Treatment of Combatants and Insurgents Under the Law of Armed Conflict (2010), at 171–172.

[14] See, e.g., Hans-Peter Gasser, 'Internationalized Non-International Armed Conflicts: Case Studies of Afghanistan, Kampuchea, and Lebanon', 33 American University Law Review 145 (1983), at 157; M. Cherif Bassiouni, 'The New Wars and the Crisis of Compliance with the Law of Armed Conflict by Non-State Actors', 98 Journal of Criminal Law and Criminology 711 (2007-2008), at 808; Crawford, supra note 13, at 163; Gregory Rose, 'Preventive Detention of Individuals Engaged in Transnational Hostilities: Do We Need a Fourth Protocol

proportionate to their prospects of success, with many States being openly reluctant about participating in any such projects.[15] The odds that the treaty proposed here would gain traction are further compounded by the author's suggestion that non-State actors should participate in the process side-by-side with the States. Although the diplomatic conference of 1974–77 which saw the participation of about 15 national liberation movements provides some precedent in this respect, the following decades without any comparable event proved that this was an exception rather than a rule. States remain extremely wary of any association with non-State actors in relation to the creation and development of international law.

The title

Overall, the book succeeds in building a coherent whole which is highly readable, supported by a wealth of evidence, and yet attentive to detail. Still, it remains an open question whether— as the author seems to claim on several occasions— IHL, ICL, and IHRL have now become 'inextricably linked', with the result that 'a law of non-international armed conflict' was created and now amounts to a 'body of international law' (e.g. pp. 2, 55, 99, 182). This is questionable in particular because we are not given any criteria against which we could test this proposition: what makes a collection of rules from disparate fields 'a body of law' in the sense described by the author?

It is unlikely that the purported law of NIAC has achieved the statute of a 'self-contained regime' of international law in the sense used by the ICJ in the *Tehran Hostages* case.[16] After all, such a designation is disputed even with respect to much more cohesive systems established

Additional to the 1949 Geneva Conventions?' in William Banks (ed.), New Battlefields/Old Laws: Critical Debates on Asymmetric Warfare (2011), at 63; Sean Watts, 'Present and Future Conceptions of the Status of Government Forces in Non-International Armed Conflict', 88 International Law Studies 145 (2012), at 165.

[15] Cf. Rose, supra note 14, at 63 (acknowledging that the adoption of a 'Fourth Protocol … seems a long-term or unlikely prospect, particularly because of its need for widespread ratification'); see also Statement of Martin Eaton of the UK delegation to the First Periodical Meeting of States Parties to the Geneva Conventions on Humanitarian Law, held in Geneva in January 1998, reproduced in Geoffrey Marston, 'United Kingdom Materials on International Law 1998', 69 British Year Book of International Law 433 (1998), 605 (expressing the continuing doubts of the UK as to whether the adoption of a new instrument would be 'a worthwhile exercise').

[16] Judgment, Case Concerning United States Diplomatic and Consular Staff in Tehran (United States v. Iran), ICJ, 24 May 1980, at 40.

by regional human rights treaties such as the European Convention on Human Rights.[17] In any case, no argument to that effect has been made by the author either.

In fact, the term 'body of law' is used quite liberally throughout the text. At times, it is used to describe the purported *sources* of the law of NIAC, as in: '[IHL] and [IHRL] are different bodies of law' (p. 84). On other occasions, the same term is used to describe *subareas* of the supposed law of NIAC: 'a substantial body of law' is said to exist relating to the protection of victims of wars and to the conduct of hostilities (pp. 334 and 428, respectively). Furthermore, the existence of many differences in the application of various norms of IHL, IHRL, and ICL—many of which are openly admitted by the author (see, e.g., pp. 335 and 429)—also militates against the recognition of the law of NIAC as a discrete or self-contained body of law.

For these reasons, the term 'the law of NIAC' is probably better seen as designating simply the collection of rules of international law which at various times apply to and regulate various aspects of NIACs. These may at times overlap with or even contradict each other. In such cases, the applicable methods of interpretation (including the *lex specialis* rule) provide an available and tested way of resolving these problems.

Nevertheless, this is largely a semantic issue. However one interprets the intended meaning of this book's title, the work should be applauded for providing an excellent legal analysis applicable to almost any conceivable situation that may arise in a contemporary NIAC. It constitutes an admirable achievement and forms an essential addition to the library of anyone working in the field of international humanitarian law.

Kubo Mačák
Senior Lecturer in Law, University of Exeter
k.macak@exeter.ac.uk

[17] See, e.g., Bruno Simma and Dirk Pulkowski, 'Of Planets and the Universe: Self-contained Regimes in International Law', 17 European Journal of International Law 483 (2006), at 524–529.