

community in locating, or developing, a formal process of judicial review, such a process does not now exist and seems unlikely to form in the foreseeable future. In those circumstances, the work of Dr Tzanakopoulos in identifying and characterising the rights of States to respond to illegitimate Security Council resolutions and the limits upon those rights is vital. His work represents a major and scholarly contribution to the literature and deserves to be read widely.

*Dr Christopher Ward,*  
BARRISTER, 12<sup>TH</sup> FLOOR CHAMBERS,  
SYDNEY

## **The Treatment of Combatants and Insurgents under the Law of Armed Conflict**

*Emily Crawford*  
(Oxford University Press, 2010 213 Pages)

The issue of detention is one of the most difficult areas of the law of armed conflict, or international humanitarian law, applicable to non-international armed conflict. There is a whole treaty dedicated to the treatment of detainees in international armed conflict (Geneva Convention III of 1949) and part of another dedicated to civilian internees in such conflicts (Geneva Convention IV of 1949), but very little written law on detainees in non-international armed conflict. This is partly because the status of combatants in non-international conflict is so unclear — indeed they are not even given the title ‘combatants’, rather ‘non-protected persons’ which automatically establishes the idea that they do not have rights. This excellent book by Dr Crawford grapples with the issue of establishing a universal status for combatants in armed conflict so that in non-international armed conflict those engaged in fighting who are captured enjoy requisite privileges and rights under international humanitarian law. This book, published in 2010, arrives at just the right point in time to make a significant contribution to the international debate and understanding on existing protections for detainees in non-international armed conflicts under international humanitarian law and how the law can be further developed. Indeed, this very issue is the subject of a report submitted by the International Committee of the Red Cross (ICRC) to the international community proposing further discussion and to either set in place better laws or promote better implementation of existing laws.<sup>1</sup>

The title of the book may be misleading at first glance — ‘Treatment of Combatants and Insurgents under the Law of Armed Conflict’ gives the impression of a greater examination of laws applicable in armed conflict to combatants,

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<sup>1</sup> *Strengthening Legal Protections for Victims of Armed Conflict*, Report and Draft Resolution of the 31<sup>st</sup> International Red Cross and Red Crescent Conference, 31IC/11/5.1.1: <[www.icrc.org/eng/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-strengthening-legal-protection-11-5-1-1-en.pdf](http://www.icrc.org/eng/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-strengthening-legal-protection-11-5-1-1-en.pdf)>.

including targeting and other conduct of hostilities issues. In fact, the title does encompass what Dr Crawford aims to do — to look at how combatants and insurgents are treated both by the law as well as by their detainers. The bonus also of looking at the law of armed conflict rather than international humanitarian law, although those terms are used almost interchangeably, is that the law of armed conflict gives scope to discuss human rights law, from which international humanitarian law stands separate. Starting out, Dr Crawford gives a good picture of the historical background for why non-international armed conflict has received less legal attention than international armed conflict. She then discusses the legal status of combatants and non-combatants, as well as the more conceptually difficult position in non-international armed conflict of protected and non-protected persons. She outlines the existing protections for participants in non-international armed conflicts from a treaty and customary international law perspective and also deals with the human rights that might be applicable to detainees and detaining powers in non-international armed conflicts. Finally, she outlines a view of a ‘universal combatant status’ and a combining of principles relating to international and non-international armed conflict to give a fully rounded as well as practical protection to detainees in non-international armed conflict. In an area of law which is unsettled and complex, Dr Crawford notes many practical issues which must be addressed, such as victor’s justice, the need for non-state actors to uphold international humanitarian law and some form of human rights (noting the controversy around this topic), and engages in her own assessment of the customary international law rather than relying on studies by others, such as that by the ICRC in 2005.

While Dr Crawford’s book proposes a solution that might be acceptable to some States (implementation of existing laws but reinterpreting them for a new age), in her model uniform law on universal combatant status there are three points with which some in the international community might disagree. The first is the use of the terminology ‘enemy combatant’. Although Dr Crawford notes that this is a political term rather than legal, she continues to use the term throughout the book. This may have the benefit of being a short hand way of describing a difficult concept but, because it is not a legal term and carries with it the political connotations of Guantanamo Bay and similar detention operations in the so-called ‘war against Al-Qaeda’, the term detracts from some of the sensible suggestions Dr Crawford puts forward.

Secondly, in discussing the questions of amnesty and combatant immunity from prosecution, which she derives from Geneva Convention III, Dr Crawford strays into difficult territory. It is true that prisoners of war have immunity from prosecution (except for war crimes) on the basis that they are legitimate fighters and therefore cannot be prosecuted for legitimately engaging in an armed conflict on behalf of their Government. A combatant immunity for non-international armed conflict would extend that legitimacy of the conflict to non-state actors who inherently pit themselves against the State and violate national laws. It would be a big leap in the concept of national sovereignty if non-state actors could not be held responsible for fighting against the Government. Further, if a person is detained for fighting in the conflict and not prosecuted for his or her actions, that person would be interned as a security measure and could thereby be detained indefinitely,

depending on how long the war continues. With a prosecution, fair trial and sentence, the person detained at least knows how long he or she will be detained and for what reason. The general population will also get the sense that 'justice is being done'.

Indeed, and this is the third point, Dr Crawford does not delve into questions of procedural safeguards for those interned as a security measure in a non-international armed conflict. She speaks most relevantly about judicial guarantees for those who are prosecuted as a result of their engagement in armed conflict, but little about procedural safeguards when people are interned or, in fact, about internment at all. In an armed conflict, there may be little unclassified evidence that can be used to prosecute someone, but they continue to pose a security threat and cannot be released. In such circumstances, it is essential that they are treated well in accordance with international law deriving from Geneva Convention IV, human rights and customary international law. Their detention should also be reviewed periodically to ensure that the reason for their internment still exists. Internment is increasingly being used, although not necessarily under that name, particularly for those who cannot be easily classified as combatants or insurgents and it would have added an extra dimension to Dr Crawford's book if this issue were addressed more fully.

That said, this book, *The Treatment of Combatants and Insurgents under the Law of Armed Conflict*, is well researched and a very clear and structured read. Even if the reader were to come to it with little knowledge of the international law of armed conflict, he or she would be able to understand the concepts and logic as presented. Dr Crawford notes towards the end of the book, 'the last significant and systematic reassessment of the law of armed conflict took place over 30 years ago.' Now it is time for another reassessment and action by the international community to ensure that detainees or internees in armed conflict are treated in accordance with established legal principles. Dr Crawford's book will assist in this important task.

*Kelisiana Thynne*

RESEARCH MANAGER,  
AUSTRALIAN CIVIL-MILITARY CENTRE.<sup>2</sup>

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<sup>2</sup> The views in this review are not necessarily the views of the International Committee of the Red Cross.