

Marco Longobardo, *The Use of Armed Force in Occupied Territory*. Cambridge: Cambridge University Press, 2018, 342 pp., £85.00 (U.S. \$120.00) ISBN: 9781108473415 (hardback).

*The Use of Armed Force in Occupied Territory* attempts to identify and clearly delineate the legal framework relating to the legality of the use of force in occupied territories. The book takes a broad approach to its topic by contextualising it within three different bodies of international law: *jus ad bellum*, international humanitarian law and international human rights law. This serves to very capably fill what has been a hole in the literature of international humanitarian law. While occupations are a subject receiving some scholarly attention, the law pertaining to those occupations has been relatively under-studied. That also pertains to the use of force during occupation, particularly from the multiple perspectives of *jus ad bellum*, international humanitarian law and international human rights law. That being said, this book does not just fill that gap; the author's mastery of both international humanitarian law and international human rights law provides great nuance to the subject of armed force in occupied territory. It interweaves these two areas of the law effectively to provide a very convincing account of how and when force can be used during an occupation.

The first significant question raised in this book addresses which of the three identified areas of law, either together or separately, apply in the context of occupation. This analysis starts by considering *jus ad bellum*, and the right to self-defence contained therein, before dismissing it as forming part of the legal basis for using force in occupied territory [89]. The author reaches this conclusion by explaining that the very existence of an occupation means that an armed conflict is already ongoing, rendering *jus ad bellum* irrelevant in the occupation context [126]. As *jus ad bellum* is only operative before a conflict starts it necessarily cannot act as a justification for armed force used during an occupation.

Eliminating *jus ad bellum* from the equation naturally leads to a discussion of what law does apply to the use of force during an occupation. It is rather brilliantly argued that although the existence of an occupation necessarily means that a state of armed conflict exists, which has the tendency to suggest that international humanitarian law applies, the applicable law is not limited to one area of the law [149]. Instead, other parts of international law are also considered, with particular attention being paid to the human rights' principle of self-determination. This is a fascinating approach because it contextualises armed resistance to occupation in human rights terms as well as the readily recognized international humanitarian law realm. In effect, the book argues that not only will the citizens of an occupied state have legal protection if they engage in armed violence in an effort to exercise self-determination; they actually have a right to do so [156]. Dr Longobardo does make sure that it is understood that any such right is a qualified one and that resort can only be taken to armed conflict under these circumstances when the occupying power refuses to engage in any more peaceful efforts meant to end the occupation [163].

After establishing when armed resistance may be used during an occupation, the book turns to describing when an occupying power is permitted to use force. It finds that

the legitimate use of force by an occupying power is limited to only two situations: threats to public order and to allow the occupying power to provide for its own security [167]. Threats to public order can be further divided into two distinct categories: traditional law enforcement functions and the resumption of hostilities meant to bring about the end of the occupation [170]. In essence, the law recognizes that by exerting control over the territory of another sovereign, the occupying power assumes the responsibility to protect the people in the territory it is occupying. That obligation carries with it the ability to use force if necessary.

A further issue relates to how that obligation can be met; i.e. what degree of force can be used to provide protection. This problem is solved by relating the ability of the occupying power to use force to the authority exercised by the deposed sovereign [236]. An occupying power cannot gain more authority than what was held by the previous sovereign. The occupier can also not wield power differently from the deposed sovereign. Therefore, the amount of force than can be used, and the manner in which it is used, is limited.

This is where the distinction between law enforcement functions and responding to hostilities meant to bring about the end of the occupation becomes relevant. As the book makes clear, international law mandates that law enforcement is responsible for addressing violence that does not rise to the level of a non-international armed conflict [239]. It is only when that threshold is crossed that military force can be deployed. This distinction provides a useful rule of thumb for determining what amount of force is appropriate during an occupation. It is a rather elegant solution to an otherwise thorny problem and reflects the wisdom of approaching the topic from both an IHL and human rights perspective.

Not content to stop there, an additional human rights strand is incorporated into the analysis. It is argued that the right to life may further limit the lawful use of force during an occupation [241]. Again, the split between law enforcement activities and force meant to end hostilities is significant. When the use of force is directed towards a law enforcement measure it can only lawfully result in the taking of a life as a last resort [245]. By contrast, when hostilities have exceeded the bounds of the law enforcement paradigm and become a non-international armed conflict, international humanitarian law alone defines when a life can lawfully be taken. Under those rules, lethal force may be used against an enemy combatant or civilian engaging in hostilities [254]. As is evident, context matters.

Of course, identifying different situations as relating to law enforcement or hostilities is not as cut and dry in a real world setting. Making such a distinction can be particularly troublesome when the occupying power is confronted with activities that relate to both law enforcement and hostilities like violent demonstrations and rights meant to bring about the end of the occupation [249]. This nettlesome problem is addressed by arguing in favour of a presumption that such borderline cases must be resolved through the application of the more restrictive standard relevant to the deployment of law enforcement resources [269]. In other words, when in doubt, lethal force can only be a last resort.

One of this book's greatest achievements is its ability to describe not only what the law is as it relates to the use of armed force in occupied territory, but also to explain why and how it came to be that way. When writing about international humanitarian law, scholars sometimes have the tendency to become overly focused on the acts or omissions of nation states without fully taking into account why certain actions are unlawful. That inclination is avoided by placing the interests of human beings very much at the forefront of the analysis. The book is concerned with exploring the legality of the use of force in armed territories not as a matter of statecraft but so as to offer an explanation of how to best protect civilians living under these conditions.

The choice not to focus on the political implications of these conclusions is present in other aspects of the book as well. A clear decision has been taken to largely avoid passing judgment against individual regimes and their use of force during occupation. A book of this sort could easily become a polemic. That impulse is resisted here and instead it provides a basis upon which reasonable argument can be made. Perhaps this will disappoint some readers who might hope that this book will validate their own positions, however the insistence on balance is a real strength.

The use of force during occupation is a particularly murky subject about which little has been written. This book brings needed clarity to this area of the law. Written in an accessible style, it creates a framework for academics and practitioners to both understand the relevant legal questions and to move the conversation forward. The book avoids being divisive and in so doing has created a common space in which a constructive debate about the use of force in occupied territory can be pursued. This book is an achievement and one that will surely be a reference for years to come.