Kjetil Mujezinović Larsen, Camilla Guldahl Cooper and Gro Nystuen (eds). ***Searching for a 'Principle of Humanity' in International Humanitarian Law***. Cambridge: Cambridge University Press, 2013. Pp. xii, 365. £65. ISBN: 9781107021846.

The stated aim of the book under review, edited by three prominent Scandinavian academics, is to explore whether a 'principle of humanity' exists as an independent, binding norm in international humanitarian law (IHL) or whether its legal impact is limited to the norm-creation process. It consists of 11 articles (with an introduction and a conclusion), divided into two principal sections: 'theoretical perspectives' and 'Nordic experiences'.

The editors observe that there is currently a lack of clarity with regard to a 'principle of humanity' and, accordingly, propose to consider two related questions in order to illuminate the discussion. The first is whether recent developments may have resulted in humanitarian considerations having a greater impact than considerations of military necessity on IHL. This issue is explored in various articles in both sections of the book, and the articles tend to focus in particular on the impact of international human rights law (IHRL) on IHL. Indeed, one of the major themes of IHL has been the growing move towards the rules of human rights law and vice versa.[1] The debate has also gained particular importance from a European perspective as a result of the decisions in *Al-Jedda v. United Kingdom* and *Al-Skeini and others v. United Kingdom*.[2]

The second question discussed in this book (principally in the second section) is whether certain regions or nations that are not directly affected by armed conflicts are likely to place more emphasis on humanitarian considerations in IHL than are other regions or nations. The issue is addressed from the perspective of Scandinavian nations (referred to as 'Nordic' nations), and all of the articles in the second section are written by Scandinavian academics. However, some of these articles not only question whether there is in fact a unified 'Nordic perspective' (for example, the article by Ola Engdahl notes that Nordic states describe the nature of the Afghan armed conflict in contrasting ways) but also highlight the fact that Nordic nations have been involved in a considerable number of modern conflicts. For instance, Denmark has been a troop-contributing nation to operations in the Balkans, Iraq and Afghanistan. To this reviewer, although the Nordic nations may not have been affected by armed conflicts on their own territories for several decades, most of these nations have undoubtedly been involved in global armed conflicts, and it is therefore questionable whether their experience in modern conflicts has differed so significantly from that of other nations, such as the United Kingdom or France, that it gives rise to a unique perspective.

In the first article, Robert Kolb provides a summary of the main periods of IHL, which serves as a useful reminder of the background to the main enquiry of the book. He argues that we are currently in a phase where IHL is becoming increasingly 'humanized' in the sense that 'it progressively merges with human rights law considerations while being sanctioned and developed through the growing branch of international criminal law' (at 24). This observation of progressive humanization does not equate, however, to positing that a 'principle of humanity' is now an independent legal norm.

Yoram Dinstein, in the contribution following Kolb's, adopts a very different perspective on the current state of IHL in comparison with all of the other articles in this book. The author

[1] See M. Shaw, *International Law* (6th edn, 2008), at 1196, referencing L. Moir, *The Law of Internal Armed Conflict* (2002), ch. 5; R. Provost, *International Human Rights and Humanitarian Law* (2002).

[2] *Al-Jedda v. United Kingdom* (2011) 53 EHRR 23; *Al-Skeini and others v. United Kingdom* (2011) 53 EHRR 18. See, e.g., discussion in Thomas Tugendhat and Laura Croft, 'The Fog of Law: An Introduction to the Legal Erosion of British Fighting Power' (London, 2013), available at http://www.policyexchange.org.uk/images/publications/the%20fog%20of%20law.pdf (last accessed 9 March 2014).

clearly states that there is no principle of humanity and instead discusses the value of the existing principle of proportionality in addressing humanitarian concerns during periods of armed conflict. The author makes a series of polemical points, with which the editors of the book strongly disagree. The author argues, for instance, that a munitions factory can be attacked, even if this endangers a large number of civilian employees, and that civilians may be the subjects of attack even when they are used as involuntary human shields. In reaction, the editors comment that these points 'may cause the reader some concern' (at 350).

Cecilie Hellestveit explores the dichotomy between international and non-international armed conflicts (IAC and NIAC). The author argues that while there have been efforts to unify IHL (on the basis that there is no rationale as to why civilians under a NIAC should be entitled to less protection under IHL than civilians involved in an IAC), the dichotomy between IACs and NIACs is in fact beneficial, as it helps to maximize the protection of victims of armed conflicts and should therefore not be further or completely eroded. The author uses good examples to support her argument. For example, she highlights the problems relating to the lack of clarity regarding combatant status in NIACs, which does not sit well with other IHL principles such as the principle of distinction. The author believes that, 'rather than bringing the clarity of IAC into NIAC, the risk is high that the quagmire of NIAC will contaminate the regime of IAC' (at 104). She does not argue for the creation of a principle of humanity and, indeed, appears to favour instead an expansive role of IHRL in NIACs as a means of ensuring better protection for the victims of NIACs (at 106).

Kjetil Mujezinović Larsen considers the impact of IHRL on IHL by looking at the case law of the European Court of Human Rights (ECtHR) relating to incidental civilian casualties and considers whether and how the ECtHR takes IHL into account in its cases. The court does not make express references to IHL in its judgments but uses IHL standards nonetheless, adapting them to the human rights context. The author then considers the impact of ECtHR case law on IHL and, more widely, the impact of IHRL on IHL. Examining the standards in IHL and IHRL relating to incidental civilian casualties, he concludes that IHRL imposes obligations that exceed those imposed by IHL. This is particularly relevant because decisions of human rights courts can have an impact on customary international law. In addition, as conduct that is legal under IHL may be found to be illegal under IHRL, IHRL has an impact on operational decision making during armed conflicts.

The author concludes that the impact of IHRL on IHL does not lead to the conclusion that there is an emerging 'principle of humanity' but, rather, that it may be leading to the creation of a 'principle of human-rightism' (at 143), in the sense that IHL is increasingly supplemented by the clear norms of IHRL. The author, however, points out that the application of IHRL to armed conflicts remains controversial, such as in the case, for instance, where 'placing (arguably) unrealistic and unachievable human rights obligations on the parties to an armed conflict would result in weakened respect for legal obligations altogether, even for IHL' (at 142). The author argues that IHRL norms may not fit into the context of certain armed conflicts and that therefore the creation of a 'principle of humanity' could lessen the need to turn to IHRL to fill the gaps.

Katarina Månsson reviews the evolution of the protection of children during armed conflicts in both IHL and IHRL, arguing that IHL and IHRL have influenced each other and that both are underpinned by the 'principle of humanity'. The author does not appear to argue that this principle is a free-standing legal norm, more a 'norm of guidance' (at 162). She also provides an example of IHL and IHRL converging in a single instrument, namely the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.[3]

[3] Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, UN Doc A/54/49 (2000).

However, the subsequent sections of the article highlight the lack of effective implementation of a number of instruments designed for the better protection of children during armed conflicts.

The first two articles of the second section of the book (entitled 'Nordic Perspectives'), by Lauri Hannikainen and Sigrid Redse Johansen, both discuss various events that occurred during, and in the immediate aftermath of, World War II in two Scandinavian countries (Finland and Norway). As both articles discuss historical episodes, their relevance to the discussion over the current state of IHL is not apparent. Both articles, however, are of general interest. For instance, the article by Lauri Hannikainen discusses a relatively little known episode during World War II, namely the invasion by Finland of Eastern Karelia (in Russia). The author challenges the conventional narrative of this episode, by discussing the mistreatment of the native Russian population by Finnish authorities.

The article by Ola Engdahl in this section sets out to discuss, in the context of nations contributing troops to multinational peace operations, who should be considered a party to the conflict (for instance, the United Nations or a troop-contributing nation) and, accordingly, which entity is responsible for the application of IHL. The author considers the question by looking at the related topics of attribution and responsibility and, in the process, discusses different standards of control over individuals and groups in armed forces: 'effective control', 'overall control' and 'ultimate authority and control' (at 248), which have respectively been used by the International Court of Justice in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, the Appeals Chamber in *Prosecutor v. Dusko Tadić* and the ECtHR in *Agim Behrami and Bekir Behrami v. France* and *Saramati v. France, Germany and Norway*.[4] These different standards of control serve to illustrate the disagreements in this area and the resulting difficulty in identifying who is a party to an armed conflict. The author then considers who is a party to the armed conflict in Afghanistan and argues that, applying the standard of overall control, the North Atlantic Treaty Organization (NATO) is most likely to be considered a party, but not the troop-contributing nations. In the context of the recent Libyan conflict, he argues that the troop-contributing nations may be parties in light of the lesser degree of control exercised by NATO. In the course of the article, the author also considers the views of various Nordic nations on, for instance, the Afghan armed conflict, which go towards showing the lack of a unified 'Nordic perspective'. The author does not expressly discuss a 'principle of humanity'.

Peter Vedel Kessing sets out to consider what standards are applicable in respect of detention carried out by UN troops (whether they are under direct UN control or under national or alliance control) during peace operations. The author begins by considering detention standards in the context of an international armed conflict under IHL. He proposes to compare the rules on detention and the closely related rules on targeting in order to inform the debate. He creates a particularly useful table comparing the three categories of individuals who may be targeted, with the categories of individuals who may be detained (at 280). The analysis of the table focuses in particular on civilians taking direct part in hostilities, and the author argues that they should be detained as combatants, not civilians, because it is 'of utmost importance to avoid a situation … where a civilian can be targeted under less restrictive conditions than he/she can be detained' (at 283).

The author's argument that state practice is such that it supports a rule of customary international law that civilians taking direct part in hostilities should be treated as combatants is somewhat undermined by the United Kingdom's recent practice in the matter. The United

[4] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, ICJ Reports (1986) 14; Judgment, *Prosecutor v. Dusko Tadić* (IT-94-1-A), Appeals Chamber, 15 July 1999; *Agim Behrami and Bekir Behrami v. France*, (2007) 45 EHRR SE 85; *Saramati v. France, Germany and Norway*, (2007) 45 EHRR SE 10.

Kingdom is, along with the United States, one of the few troop-contributing nations to have used detention during operations, and it has treated members of militia groups in Iraq as civilians, not combatants. The author then considers detention standards under IHRL and concludes that IHRL detention standards diverge in many respects from IHL – for example, detention reviews must be performed by a court, not an administrative body. The author agrees with the view that the question whether IHL is the *lex specialis* in a particular instance must be determined on a case-by-case basis and that, in some armed conflicts, particularly those involving prolonged periods of occupation, it may be appropriate to apply IHRL standards instead.

Regarding NIACs, IHL provides little by way of reasons or procedures for detention, and the author therefore considers the different ways in which the gap could be filled, such as a combination of IHRL and IHL. The author points out that all of these approaches have drawbacks but that there is considerable state practice pointing towards the application of IHRL standards. The author then considers whether there can be any minimum detention standards in relation to UN troops, acknowledges the difficulties in this area, but makes several suggestions, such as using the review provisions set up by Geneva Convention (III) Relative to the Treatment of Prisoners of War.[5] The section refers to the Copenhagen process, which was launched by the Danish Ministry of Foreign Affairs, together with other states and international organizations, with the aim of trying to elaborate a common detention framework in UN peace operations. This process concluded after the article was written. Again, there is no express reference to a 'principle of humanity'.

Rikke Ishøy shows how the political and legal establishments of Denmark, as well as Danish public opinion, have reacted to the increased involvement of Danish troops in modern armed conflicts, such as Iraq and Afghanistan. Although the political establishment has used legalistic language to justify the actions of its armed forces, the author shows that the general public has had difficulties coming to terms with the realities of being involved in modern armed conflicts. The article also refers to the Copenhagen process, and, in the context of the article by Kessing, the editors comment that the process is an example of an initiative taken by a Nordic nation to strengthen the position of vulnerable groups in conflicts.

Arne Willy Dahl and Camilla Guldahl Cooper provide an overview of Norway's interaction with IHL. For example, the authors discuss how Norway has implemented various conventions through legislation and training and participated in international conferences leading to the adoption of the Additional Protocols to the Geneva Conventions. The authors argue that the reason why elements of Norwegian society appear to place an increasing emphasis on humanitarian considerations is that Norway has not had an armed conflict on its own territory for decades. The authors do not, however, elaborate this point further.

The concluding article by the editors of the book summarizes the various articles in light of the overarching objectives of the book. The editors conclude that the principle of humanity does not exist as a legal norm and that there are limited grounds for even arguing that such a principle is emerging. However, such a principle does exist, in their view, as an 'enhancing extra-legal consideration' (at 355), although it may be more appropriate to refer to humanitarian considerations than to a 'principle of humanity'. The editors then query whether such a principle may have a place where IHL is of limited application, such as in non-international armed conflicts. However, they agree that, at present, it appears that IHRL is taking precedence in this area, although not without causing problems. To this reviewer, while no state is currently suggesting the adoption of a 'principle of humanity', several authors in this book make a persuasive case for the desirability of this principle, particularly by highlighting the problems linked to the increased role of IHRL in armed conflicts.

[5] Geneva Convention (III) Relative to the Treatment of Prisoners of War, 1125 UNTS 3.

This reviewer is not, however, convinced that the debate over whether there is a 'Nordic perspective' contributes significantly to the overall discussion on the possible emergence of a 'principle of humanity'. Arguably, the practice of Nordic states is less likely to impact on the development of customary international law than the practice of powerful states either directly affected by, or more often involved in, armed conflicts (that is, whose interests are specially affected).[6] However, several of the articles discuss the fact that nations contributing troops to UN operations (such as Nordic nations) are generally placing an increased emphasis on humanitarian conditions, which is likely to have an impact on the creation of new IHL norms.

Individual Contributions

Kjetil Mujezinović Larsen, Camilla Guldahl Cooper and Gro Nystuen, Introduction by the editors: Is There a 'Principle of Humanity' in International Humanitarian Law?
Robert Kolb, The Main Epochs of Modern International Humanitarian Law since 1864 and Their Related Dominant Legal Constructions;
Yoram Dinstein, The Principle of Proportionality;
Cecilie Hellestveit, The Geneva Conventions and the Dichotomy between International and Non-International Armed Conflict: Curse or Blessing for the 'Principle of Humanity'?
Kjetil Mujezinović Larsen, A 'Principle of Humanity' or a 'Principle of Human-Rightism'?
Katarina Månsson, The Principle of Humanity in the Development of 'Special Protection' for Children in Armed Conflict: 60 Years beyond the Geneva Conventions and 20 Years beyond the Convention on the Rights of the Child;
Lauri Hannikainen, Military Occupation of Eastern Karelia by Finland in 1941–1944: Was International Law Pushed Aside?
Sigrid Redse Johansen, The Occupied and the Occupier: The Case of Norway;
Ola Engdahl, Multinational Peace Operations Forces Involved in Armed Conflict: Who Are the Parties?;
Peter Vedel Kessing, Security Detention in UN Peace Operations;
Rikke Ishøy, Humanity and the Discourse of Legality;
Arne Willy Dahl and Camilla Guldahl Cooper, Implementation in Practice: 60 Years of Dissemination and Other Implementation Efforts from a Norwegian Perspective;
Kjetil Mujezinović Larsen and Camilla Guldahl Cooper, Conclusions: Is There a 'Principle of Humanity' in International Humanitarian Law?

Catriona H. Cairns

New York University
Email: catriona.cairns@law.nyu.edu

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[6] On this general point, see, e.g., *North Sea Continental Shelf Cases*, ICJ Reports (1969) 3, at 43.