

William H. Boothby, *Weapons Law and The Law of Armed Conflict* (2nd ed.), Oxford University Press, Oxford: 2016, pp. 422

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Modern battlefields, as well as our daily lives are gradually becoming filled and controlled by cutting edge and disruptive technologies. Contrary to previous trends, this time it is civil industry that is inspiring military research centres and diffusing novel technologies. While national governments are debating new laws regulating self-driving cars or unmanned aerial vehicles delivery, the most advanced armies of the world are acquiring and developing new technologies in order to bolster their military capability in modern asymmetric armed conflicts and in the war on terror. Even though a quick list of the most “interesting” innovations – including cyber attacks, “killer robots”, human enhancement and “invisibility cloaks” – can easily give rise to moral panic, one should be reassured that the legal framework is not leaving them in a regulatory vacuum. Despite the rather low speed of legal developments, especially international negotiations of new arms control treaties, the general principles of the international law of armed conflict continue to apply in a number of matters, offering tentative answers to questions such as: Is it legitimate to put a sign of equality between an armed attack and a computer network attack? Does it activate the right of a State to self-defence? Are so-called LAWS (lethal autonomous weapon systems) new to military commanders? Is it forbidden to take human life based solely on the result of an artificial intelligence decision? Can we translate legal norms into a computer code? Is giving narcotics to soldiers in order to enhance their strength acceptable? Is it possible that our air space is regularly disturbed by invisible aircraft? Can we modify human DNA and make a specific group of people extinct?

These and more questions can and should not only be answered by the international community, but also discussed in open public debates, not in the context of science-fiction scenarios but in relation to the moral and legal standards that are in line with the public conscience of modern societies.

Both in the cases of technological innovations as well as when it comes to classical military acquisition processes, decision-makers, engineers, and analysts are looking for a comprehensive study on weapons law, and perhaps surprisingly they do not have a lot of choices, because in spite of the long and rich history of this branch of international law, the scholarly book market contains few relevant works. It was only with the contribution of William H. Boothby that the existing knowledge on regulations relating to the means of warfare has been structured and framed into a comprehensive “Bible” of the law relating to weaponry, which has now lived to see its second edition in 2016.

The author is particularly well-placed to present the topic, given his thirty years of experience as a member of the Legal Branch of the Royal Air Force, retiring as its Deputy Director in 2011 with the rank of Air Commodore. What's more, he also led the joint service team of lawyers at the Joint Doctrine and Concepts Centre in the United Kingdom, which initiated and implemented the UK system for the legal review of weapons (described in Chapter 19 of his book).

The 2nd edition of the book embraces the relevant changes in the law, technology and doctrine that have emerged over the past seven years. The most important update applies to new disruptive technologies and addresses the legal implications of technical developments in the fields of cyber weapons, remotely-controlled and autonomous weapon systems, electromagnetic microwave counter-IED weapons, nanotechnology, and metamaterials.

Insofar as the notion of “weapons law” is not widely used or accepted by learned scholars, the author explains that only the relevant norms of the law of armed conflict are discussed, leaving aside arms control treaties, and therefore the focus is put on legal norms that “essentially prohibit certain weapons or associated technologies and restrict the circumstances in which other weapons or technologies may lawfully be used” (p. 3). Hence the title of the book: *Weapons Law and The Law of Armed Conflict*.

The book is divided into 20 chapters which comprise a comprehensive analysis of all relevant factors, thus offering a “reference book” for a variety of audiences (negotiators, government officials, industry representatives, and also, albeit to a lesser extent, academics and students). The opening chapters 2, 3 and 4 on the evolution, components, and the use of weapons under the international law of weaponry and targeting provide a proper introduction to the topic. Given the small amount of literature which touches upon all aspects and perspectives of development of the law of weaponry, the author's approach – to concisely review all the relevant, but perhaps not always crucial to the topic, notions of the law of armed conflict, as well as present the body of relevant treaties – is highly commendable. Thanks to this the reader becomes seamlessly embedded in the subject and can focus on the crucial substantive matters. Moreover, the introductory chapters reveal the author's unique facility for explaining the most fundamental theoretical constructs in a highly intelligible way, thus providing readers with the requisite understanding of the legal framework.

In his next three chapters, the author presents the leading customary principles of the law of weaponry: the superfluous injury and unnecessary suffering principle; the principle of discrimination; and the rules on environmental protection in armed conflicts. In this way the author underscores the importance of a correct understanding of the fundamental principles with respect to the legitimacy of a weapon *per se*, although not necessarily the legitimacy of its *use*. A reviewer of a weapon has to take into consideration the dangers arising from the “effect-based” assessments of the legality of weapon, as it is the “designed purpose” of a weapon, and not its “possible effects”, which should be reviewed in the context of the legal obligations of a State. Otherwise an ill-judged attack or a simple misuse of a perfectly legal weapon may lead to a

false assumption concerning its legality. Moreover, the author meticulously points out barely noticeable linguistic discrepancies between different formulations of the same principles in international treaties (i.e. “calculated to cause” vs. “of a nature to cause”), and deftly depicts their consequences, not without invoking clever metaphors (i.e. the example of the barking dog on page 49).

The following ten chapters are devoted to particular types of weapons: conventional weapons, poisoned weapons, biological and chemical weapons, firearms, bullets and analogous projectiles, mines and booby-traps, non-detectable fragments, incendiary weapons, laser weapons, nuclear weapons, missiles, blast weapons, directed energy weapons, herbicides, flechettes, depleted uranium, white phosphorus, non-lethal weapons, cyber weapons, remotely controlled weapon systems, automated and autonomous weapons, nanotechnology, metamaterials, cluster munitions, and maritime and outer space weapons. This lengthy enumeration well reflects the bulk of the book and the underpinning consideration that “there is no ‘shortcut’ to be achieved by the means of analogy argument” (p. 147). The author meticulously examines all the relevant treaties, as well as their amendments, and identifies the twists and possible pitfalls in their interpretation – starting from the *travaux préparatoires* until the adoption of the text. Having reference to the case of the United Kingdom, he discusses the relevant State statements on ratification and eventual reservations to finally outline their practical importance, reflected in military manuals and international jurisprudence (which are not always of a legal character but provide useful indicators of contemporary expert thinking). Rather than compiling a simple summary of the existing body of treaties, he focuses on the contents and significance of resulting legal norms. In addition, he quite appropriately uses footnotes to highlight practical examples and cases, allowing the reader to follow his impeccable legal analysis. Whenever possible, the author discusses relevant customary rules, carefully analysing the ICRC Report on Customary International Humanitarian Law,¹ and underlines the need for revision of its wording, which sometimes generates incorrect conclusions, such as in the case of explosive bullets, where the criterion is formulated as “foreseeable use” instead of the “usual or normal effect of the weapon when used for its design purpose and in the designed or intended manner” (p. 137). By juxtaposing the customary rules with their treaty counterparts, the author rightly notes that even if the former are less restrictive, they attract near universal endorsement, which eventually proves their significance.

In the last part of the book, the author deals with the law applicable in non-international armed conflicts, compliance issues, and with factors especially influencing this branch of law: technology and humanitarian concerns. Again, in a very concise and thoughtful way the author explains the incentives, multipliers, and facts which have a specific impact on weapon regulations. In doing so he voices the need for the balanced inclusion, in the process of political decision making, of clearly competing aspects, like

¹ International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, 2005, Volume I: Rules, available at: <http://www.refworld.org/docid/5305e3de4.html> (accessed 30 May 2017).

military spending and humanitarian concerns or military necessity and the principle of humanity. Interestingly, by doing so he casts a shadow on generally praised actors (i.e. non-governmental organisations and campaigns), explaining the rational behaviour of the “boys to blame” (i.e. military powers).

In fact, the last chapter is the most interesting, since it may be perceived as an attempt to equalise the balance between the positivist approach stemming from the previous chapters and natural law theory. If any critique could be made it would be that the author, while representing a positivist paradigm, refrains from presenting his stand on the issue of novel military technologies and leaves the reader with the somewhat unsatisfactory feeling that future decisions on relevant regulations will belong to State actors. It is a pity that a person with such experience as a military lawyer and deep understanding of this branch of international law does not present his *de lege ferenda* proposals. Some readers may be disappointed that the author restrains from taking a clear position on the role of morality in the assessment of the legality of weapons, especially when it is regularly invoked in international discussions as one of the key factors (i.e. at the CCW meetings of experts on LAWS).

As was stated at the outset, this book is directed rather to governmental officials and weapons reviewers, thus contributing more to the concept of legal certainty than its agility. It can be argued that this is a drawback, but at the same time it may be proof of a healthy rationality. While drawing alternative scenarios of law-making processes, the author makes an argument that the most ambitious and far-reaching treaties are not always the best solutions and may result in unsatisfactory outcomes (i.e. a disregard for international law), a point on which he agrees with father of international humanitarian law, Jean Pictet.² It is hard to find fault in such an approach, given that the aim of weapons law is to regulate the relationship between the threat, the military advantage, and the humanitarian danger that the technology involves, and not to end armed conflict.

The author does not write as a pacifist because he knows that armed conflicts will persist and that States will have to be able to defend themselves. Therefore, in order to minimise suffering caused to the participants of armed conflict and to improve their protection without prejudicing the security of a State, the effective implementation and development of the law of weaponry must be continued. Meanwhile, since the book presents fundamental considerations in the struggle for a safer (although not war-free) world – i.e. the need for balance, compromise, sensitivity and understanding – *Weapons Law and The Law of Armed Conflict* should become compulsory reading for all treaty negotiators.

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² ICRC, *Conference of Government Experts on the Use of Certain Conventional Weapons (Second Session, Lugano, 28.1.-26.2.1976)*, Geneva, 1976, p. 78.

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