

**Christine Chinkin & Mary Kaldor. *International Law and New Wars*. Cambridge: Cambridge University Press, 2017. ISBN: 978-13-16-62209-4. Pp. 610. Hardcover: £89.99. Paperback: £31.99.**

Professors Kaldor and Chinkin have set out in this book to demonstrate how international law fails to address the problems of 'new wars' – the concept that modern wars are armed conflicts fought by participants, for purposes and with tactics, particularly attacks on civilians, that cause them to be different to 'old wars'. They start with an overview which brings together their respective fields of international relations and international law to explain the context of the use of force between and within States and then provide an analysis of the effectiveness (or, mostly, ineffectiveness) of international law. This is based on five security models: the Geo-Political (Realist), the War on Terror, Responsibility to Protect, Liberal Peace, and Human Security. These largely self-descriptive models combine in varying degrees historical, conceptual, political and legal critiques of international responses to conflict since the end of the Cold War. The final model is then used to propose a new framework to address these failings based on 'second-generation Human Security', a rights-based approach that seeks to re-characterise war as a violation of human rights and to permit the use of force only in a globalized context of self-defence.

The conceptual approach used for the analysis of the security models is based on the characterisation of international law as a discourse within international society; but the core of the book is a legal practitioner's critique of international law itself, interspersed with a feminist analysis. The critique of the bodies of *jus ad bellum* and *jus in bello* (which is also referred to as international humanitarian law or IHL) is broad and deep, with extensive notes containing a wealth of views, cross-references, and additional points. At times, there can almost be too many places where all sides of an argument are presented without giving a final opinion, such as whether IHL should apply to all participants. It also, on occasion, overstates the criticism of IHL, for example where the claim is made that IHL subordinates the principle of humanitarianism to military necessity, rather than seeking to find the difficult balance between the two. The key messages conveyed are that *jus ad bellum* is too permissive of the use of force, and that IHL fails to regulate violence

and legitimizes killing.

To look at the aftermath of 'new wars', the analysis uses a less-established body of *jus post bellum*, that covers both justice and reconciliation, although without resolving the potential incompatibility between them. Perhaps inevitably, it finds that its mechanisms are weak and fail to provide an end to wars. It then suggests a new framework that consists of IHL (despite its shortcomings), international human rights law (IHRL) and international criminal law. The framework is based on three broad principles and a unified objective. Its principles are: (a) 'a coordinated, comprehensive and holistic approach' to the bodies of international law which would include an equal commitment to economic and social rights and should lead through economic redistribution to the empowerment of those overlooked by other models; (b) an 'integrated process'; and (c) 'goals of cooperation, good neighbourliness and regional dialogue'. The objective is 'the construction of legitimate authority, at all levels, local, national, regional and international' as 'the only practical answer to "new wars"'. There is also an additional condition, that the framework would require large-scale disarmament. Taken together, these call for a transformational approach that goes beyond international law to society itself.

It is the approach to the analysis and the new framework that sets the book apart from other works on international law or international relations. Whilst modern approaches to law mostly accept that it cannot be taken in isolation from politics, the approach used here interlaces a traditional form of legal analysis of the 'black-letter' law with political views on what kind of society would eradicate the causes of 'new wars' and how it might be established. It acknowledges that there has been criticism of 'new wars' as neither 'new' nor 'wars' but it is still difficult to identify specific features of 'new wars' on which to ground the proposition that international law was designed to deal with 'old wars' and its ineffectiveness relates to the different nature of 'new wars'.

For example, attacks on civilians, urban battlefields, ethnic conflict, and guerrilla tactics are features of 'new wars'. However, they were also seen in the Second World War, and were among the issues discussed in the negotiations that led to the subsequent extension of international law, including the 1949 Geneva Conventions and their 1977 Additional Protocols, to the extent that States could agree. The reasons for the failure of international law to

address modern wars effectively may then lie more in unresolved political differences on how and to what extent war should be regulated rather than that they are 'new wars'. However, it may not matter whether wars are 'old' or 'new', as the critique of the ineffectiveness of international law to regulate them largely stands and provides the platform from which to propose a new model.

The 'second generation Human Security' model builds on the foundations of rights-based approaches to international peace and security since 1990. Although intended to resolve their perceived short-comings, it still retains a number of tensions, both within and between its multiple legal regimes. These are not fully addressed. For example, the authors mention that the European Court of Human Rights 'subjected Russian military operations in Chechnya to a high level of scrutiny'. Nevertheless, although the Court provided publicity for cases and awarded compensation, it left unresolved questions of how both IHL and IHRL may apply in combat or how to enforce other State responsibilities that form an integral part of the human rights regime, such as taking measures to prevent the reoccurrence of breaches and the prosecution of crimes. It also left open the problems that the book identifies as to how to hold all participants to account under human rights law or IHL and how to make powerful States such as Russia or the USA submit to the jurisdiction of the International Criminal Court; or, indeed, what kind of contribution that court can make to providing better security.

The model itself might also have included more detail on the key proposal that 9/11 and other terrorist acts should be characterized as crimes against humanity rather than part of a 'War on Terror', as it remains unclear how that approach might have been or could be applied in practice.

It gradually becomes apparent that the development of the rights-based, human security approach blurs legal and political distinctions. The central proposition that emerges is that 'war is illegal from a human rights perspective since attacks on enemies, even when they comply with IHL, can be construed as violations of human rights'. 'War' is defined here as 'the collective use of force involving two or more actors' and war in that sense is not illegal under human rights law: self-defence is a human right as well as a right under the United Nations Charter and there are exceptions for it and for lawful killing in war in the European Convention on Human Rights. It might appear that the book is advocating a 'conditional pacifist' position that would support the use of force

only in strict self-defence. However, the new framework contains a 'multilateralist' justification for the use of force which would also permit intervention. The idea that war of itself constitutes a violation of human rights moves the focus to the victims of conflict but without specifying how it is possible to avoid the concept of 'aggression' (as the book does) or the distinction between legitimate and illegitimate uses of force, particularly when considering the limits of self-defence or armed intervention authorised by the Security Council or the preservation of order within a State when confronted by large-scale, organized violence. There is also an inherent ambiguity in the scale of violence that the proposed regime of 'up-scaled self-defence' with 'robust' rules of engagement might involve, as well as a practical concern that it would always cede the initiative to an aggressor.

The difficult distinctions on the legality of the use of force in the proposed Human Security approach lead back to the complex task of providing both a critique of international law and 'new wars' based on legal, international relations and feminist-based approaches, and a new framework. The different approaches sit uneasily together, both in their use for the construction and critique of the security models, and in the outline of a new framework. In particular, the legal critique of the 'black-letter' law underlying the security models is very detailed and contains an abundance of interesting views and ideas; but it becomes muted and indistinct in the rights-based approach to 'second-generation Human Security'. The final section of the book contains some 'concrete' legal proposals, some more concrete than others, but as part of a framework that is intended to include the transformation of international society itself into an order that would supposedly be just and therefore secure, rather than for the reform of international law to provide better security.

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