



Melanie Jacques

**Armed Conflict and Displacement:**

**The Protection of Refugees and Displaced Persons under International Humanitarian Law**

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In 2010, Alexander Betts argued that it no longer makes sense to speak of the “refugee regime”. Instead, there is...a “refugee regime complex”, in which different institutions overlap [and] exist in parallel to one another’. Melanie Jacques is the latest scholar to take up the challenge of working through the intersections between international refugee law and other branches of international and domestic law. Her new book *Armed Conflict and Displacement* represents the most detailed account yet published of the treatment of refugees and other displaced persons under customary and conventional international humanitarian law (IHL). Recent conflicts in the Middle East and North-West Africa confirm the urgent need for a clear and precise statement of the special protections owed to persons displaced by conflict, and this work provides a concise and interesting overview of the ways in which IHL protects displaced persons in war. Although the text’s effectiveness and readability are undermined by some shortcomings in structure and argumentative approach, it is an important and generally readable statement of the existing law in this field.

The work is divided into 9 parts. The introduction establishes the circular causal connection between armed conflict and displacement, and states the book’s aim of providing a comprehensive account of IHL’s treatment of ‘war migrants’. It clearly distinguishes between IHL, refugee, and human rights law, and affirms the continued applicability of these latter branches of international law in wartime. Jacques also contends that IHL’s status as *lex specialis* in times of armed conflict, as well as the customary status of many of its norms, make it an especially powerful tool for the protection of persons displaced by war. Chapters 1 and 2 consider IHL’s various prohibitions on forced displacement in international and non-international armed conflicts, and Jacques does a good job setting out the relevant legal provisions that prohibit forcible movement of civilians in wartime, even if her discussion of the mechanics of customary international law is perhaps less detailed and precise than it might have been.

Chapter 3, the longest in the book, is entitled ‘Israeli Settlements, the Separation Wall, and Displacement of Civilians in the Occupied Palestinian Territory’. It is mostly dedicated to parsing Article 49(6) of the Fourth Geneva Convention, which prohibits occupying powers from “deport[ing] or transfer[ing] parts of [their] own civilian population into the territory [they] occup[y]”. However, it mentions the displacement effect settlements have on Palestinians only briefly and in passing. In a book dedicated to the prohibition of displacement in armed conflict, this focus on Article 49(6) is hard to understand. Indeed, the chapter feels like it was written for a separate project and only included in this book at the last minute, with a few references to displacement added to lessen the incongruity. While Article 49(6) is by no means unrelated to the prohibition on forced displacement, the chapter does not explore this connection, but is intent rather to drive home the illegality of Israeli expansionism in the West Bank. This approach is especially disappointing since the book provided Jacques the opportunity to reframe the debate on the legality of Israel’s settlement policy by moving the discussion away from analysis of Article 49(6) and focusing instead on



the way the settlements tend to depopulate areas traditionally inhabited by Palestinian Arabs. This would have marked a major step forward in the legal literature on Israel/Palestine: by applying her previous chapters' work on forced displacement to the concrete situation in Palestine to show that the settlements are illegal by virtue of their violating Article 49(1), Jacques could have cleverly undercut Israel's arguments under Article 49(6) by demonstrating that, *even if* settlements could be justified under that provision, as Israel claims, nevertheless the displacement they effect renders them illegal under Article 49(1). However, the information presented in Chapters 1 and 2 is largely forgotten as Jacques rehearses arguments that the West Bank is occupied and that settlements and the security wall constitute the kind of colonization prohibited by Article 49(6).

Chapters 4 – 7 are generally very good. Chapter 4 provides a very interesting discussion of forced displacement as an international crime, and includes careful and engaging analysis of important ICTY case-law. Jacques convincingly applies the *Tadic* criteria to show that forced displacement in internal armed conflicts constitutes a war crime, and her analysis of the relationship between Hague and Geneva law as discussed in the *Gotovina* case is fascinating. Chapters 5 and 6 deal with the protection of refugees and internally displaced persons (IDPs) caught up in armed conflict. Chapter 5 on refugee protection is valuable for its detailed discussion of IHL treaty provisions that deal specifically with refugees. Its analysis of the question whether refugees of enemy nationality are or should be treated differently from non-refugee enemy aliens is especially interesting. Chapter 6 on IDPs usefully brings together a range of IHL and human rights norms to “derive...a basic regime of protection for IDPs”. In this important work Jacques could, however, have gone a little further. For example, Jacques laments that “the Geneva Convention does not consider...women-specific health needs, such as access to reproductive health care” or HIV treatment and prevention. However, since, as she tells us, Article 76(1) of the First Additional Protocol provides that “[w]omen shall be the object of special respect and shall be protected in particular against rape...”, mightn’t Jacques have argued that IHL does indeed impose an obligation on States not only to protect against rape but also, in the event that such protection fails, to care for rape victims, including by provision of HIV/AIDS medications and birth control? One wishes that Jacques had devoted a little more space to considering ways in which the law might be pushed, stretched, and developed to offer greater protection.

One further problem with this chapter is its somewhat disjointed structure. After a thorough analysis of the human rights norms that protect IDPs, Jacques shifts her attention to international law concerning the provision of humanitarian relief and family reunification. These sections are good in themselves, but it is unclear why they are included as sub-parts of the IDP chapter instead of as separate chapters. Jacques justifies this placing by stating that IDPs are especially vulnerable and so especially in need of humanitarian aid and reunification, but while this may be true, the law discussed in this section is not limited to IDPs. As Jacques herself recognizes, IDPs are “like any other victim of war” when it comes to their right to external assistance and family reunification. Additionally, Jacques’s analysis of these issues is sometimes less precise than it could be. Most importantly, she seems to confuse States’ distinct obligations to accept humanitarian aid and to allow the safe passage of humanitarian aid destined for third countries. As a result, some of her conclusions are unclear.



Chapter 7 concerns the protection of refugee camps from armed attack. While some of this material is a little repetitive, Jacque's discussion of 'protected zones' is original and interesting, suggesting an important way forward for refugee and IDP protection. Jacques distinguishes between a range of different formal and informal 'protected zones', and provides an interesting account of the open relief centres that sprang up in Sri Lanka in the late 1980s. The policy prescriptions she provides at the chapter's end are sensible, and again make one wish that she had dedicated more space throughout the book to her own opinions and recommendations, rather than simply describing the current state of the law.

Overall, Jacques's book provides a generally good *tour d'horizon* of the *lex lata* in this important field. However, its overall effect is somewhat undermined by its lack of a unifying argument or theoretical perspective, which makes it difficult to read cover-to-cover. Read in 'bits', it is full of helpful, succinct and generally clear statements of black-letter law: students and practitioners seeking a brief exposition of the meaning of particular Articles or an overview of discrete topics will find interesting, informative discussion in its pages. But as a scholarly monograph, it never quite comes together. The transition between legal provisions and ideas feels disconnected at times, and Jacques could have done more to explain and clarify some of the interconnections and tensions among and between different legal rules. Certainly, there are key themes that reappear throughout the text: for instance, Jacques shows (or posits) at various points that international humanitarian law "places too much emphasis on nationality as a criterion for protection". But these thematic discussions are not sufficiently sustained or integrated, and ultimately cannot provide the book with the unifying argumentative thread that it needs.

Despite this, the book is certainly a valuable contribution. In bringing together, explaining, and systematizing (though not, perhaps, fully synthesizing) a wide range of scholarly, legislative, and judicial materials, Jacque's book will undoubtedly serve as important basis for future research, and will be of real use both to practitioners working in the field and scholars and policy-makers seeking to further develop this most important branch of international law.

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