

**Rule of Law in War: International Law and United States
Counterinsurgency in Iraq and Afghanistan**

Travers McLeod

**Oxford University Press, 2015, pp 286, ISBN 978-0-19-871639-6,
\$120.00**

Travers McLeod's *Rule of Law in War*, examines the influence of international law on the development and execution of United States (US) counterinsurgency doctrine in the Iraq and Afghanistan wars. His central thesis is that international law has had a profound impact upon the development of US counterinsurgency doctrine and its execution, despite a widespread view that armed conflict occurs in an environment hostile to the influence of international law. The book makes a significant contribution to the understanding of the interaction between law and the conduct of counterinsurgency operations. It does this through its close examination of the development of US doctrine, the working documents and insights of the authors of the doctrine, as well as those responsible for its implementation.

McLeod begins his work by providing a concise background to modern counterinsurgency operations and their intersection with legal principles. In particular, it introduces important ideas in the law of armed conflict. Having introduced the context of his work, McLeod goes on to explain the background of Field Manual 3-24 *Counterinsurgency* (FM 3-24). This document, developed in 2006, sets out the US Army and Marine Corps doctrine guiding the conduct of counterinsurgency operations by those organisations. It has significantly shaped the equivalent guiding documents of Australia and other North Atlantic Treaty Organisation (NATO) states. McLeod's work is based around the development and execution of this doctrine, and reflects his insights into the working documents and the people involved in the creation of FM 3-24. The second half of the text builds upon McLeod's theory of international law's impact on the conduct of modern armed conflict.

McLeod formulates his analysis of the influence of international law in counterinsurgency by tracing its impact over three pathways, namely: international law's ideational pull, international law and legitimacy, and international law's mandatory influence. He examines these three pathways both in terms of their impact on the construction of FM 3-24 and in terms of their impact on its prosecution. By looking at both the creation and execution of the doctrine, McLeod strongly demonstrates that his thesis holds true not only at a theoretical level, but also on the battlefield in real time.

McLeod's division of the impact of international law into three pathways permits a clear analysis of the extent of that impact. The three-pathway analysis means that international law's impact can be viewed firstly in terms of its broad ideas, in particular the rule of law (ideational pull), and subsequently in terms of activities *permitted* by international law (legitimacy) and activities *demand*ed by international law (mandatory influence). Through use of this structure, McLeod succeeds in making a comprehensive survey of international law's effects in this area. Significantly, McLeod points out that his analysis is not based on compliance with international law, but with its actual influence and why it has mattered in the formation of FM 3-24 and its execution. He achieves this by examining the debates that formed a part of the development of the doctrine and by examining the effect the new doctrine had on the actions of commanders in the battle space.

McLeod uses his three-pathway approach to examine first the development and then the execution of FM 3-24. In examining the development of the doctrine, he notes in particular General Petraeus' (the driver behind FM 3-24) insistence in involving a wide range of people in the drafting process, including not only military personnel, but also experts from fields as diverse as human rights law. McLeod observes the influence these people had in altering the drafts of FM 3-24; for example, he notes radical changes in the manual's language around detention and interrogation. Early drafts reflected an idea that detention and interrogation were a normal and necessary part of counterinsurgency operations; however, the final product provided that these were only to be conducted in the most exceptional circumstances.

McLeod goes on to examine the experiences of those whose job it was to implement the doctrine on the ground. He uses insights from commanders at various levels, including General McChrystal, commander of US forces and NATO's International Security Assistance Force (ISAF) in Afghanistan. He highlights some of the challenges of implementing an approach to warfare, which was often at odds with the conventional approach of many leaders. However, he shows that the new doctrine strongly influenced rules of engagement in Afghanistan, profoundly impacting the manner in which the war was conducted and changing the approach expected of the troops by their commanders.

McLeod's analysis and case studies of the practical impacts of international law on the ground are largely (although not exclusively) limited to the insights of leaders at an operational and strategic level. Given the potential strategic consequences of activities at a tactical level in modern counterinsurgency (as McLeod points out), it would have perhaps been useful to include a wider range of examples demonstrating the impact of international law being felt at the tactical level.

Nevertheless, this criticism does not take away from the work's overall effect.

Through his clear and thorough analysis, McLeod demonstrates the increasingly profound impact which international law has had on US operations in Iraq and Afghanistan. McLeod's analytical method is the fundamental strength of this book. It permitted a broad exploration of the impact of international law on both theoretical and practical levels in the context of modern counterinsurgency. The strength of this analysis is further enhanced by McLeod's extensive use of anecdotal evidence of the creation and execution of FM 3-24. This makes McLeod's work a significant piece in understanding the place of international law in modern warfare.

*Thomas Johnston**

* Third year BA/LLB student at the University of Tasmania and member of the *University of Tasmania Law Review* editorial board in 2015.