

# **What is the importance of being a fighter in international criminal law?**

**by**

**Joanna Nicholson**

The thesis is divided into two parts. Part one examines the concept of ‘fighters’ from different perspectives, the intention being that this part shall lay a foundation upon which the second part of the thesis shall rest. Part two is the main part of the thesis and looks at when is it important in international criminal law whether someone is a fighter or not, and in what way it is important.

## **PART ONE - Fighters from different perspectives**

### *Chapter 1 - Fighters from a historical perspective*

This chapter explores how the division between fighters and civilians arose- is it a recent phenomenon? It seeks to explain how and why the current legal definition of ‘combatant’ arisen.

The first draft of the chapter has been written. It will be about 10,000 words long once it is completely finished. The first draft has been read by a historian and I am intending to present the chapter before the legal history group at the University to get more feedback.

### *Chapter 2- Fighters from a philosophical perspective*

This chapter seeks to explore what philosophers have said in reply to questions such as: are fighters different from the rest of us? In what way? Should we have different expectations of fighters as a result? Should we expect them to be braver than non-fighters? Should we expect them to endure more danger to themselves in order to protect civilian lives? What level of danger should this be?

I have written about 2,500 words of this chapter and aim to finish it after Christmas. It should be about 10,000 words long once completed. I am intending to ask some philosophers to read and comment on it.

### Chapter 3- *Fighters from a legal perspective*

The purpose here is to explore, firstly, who has combatant status according to IHL and what that means; and, secondly, to ascertain what is the position of others who fight in armed conflicts who do not have combatant status? Who constitutes a legitimate military target?

The first draft of this chapter has been written. It will be about 12,000 words when it is completely finished.

## **PART TWO- Fighters in ICL**

### Chapter 4 - *How do international criminal courts decide who is a combatant?*

This chapter shall analyse case law to see how international criminal courts have determined who is a combatant. Do they do it in accordance with IHL? What are the differences? Is there a consistent pattern in how the courts have determined this, or is it more random?

This chapter has not been written, I am hoping to get the majority of it completed before my mid-way evaluation.

### Chapter 5 - *Fighters as victims of humanity*

There has been a question regarding whether fighters can be victims of crimes against humanity. This chapter analyses the development of Treaty law to see why this is the case and also examines case law to see how courts have dealt with the matter. It argues that it is important that fighters can be found to be victims of the crime.

The first draft of the chapter has been written and is 13,000 words long.

### Chapter 6 - *Fighters and Defenses*

This examines cases where fighters have argued that they have a defense to a crime. Have the courts required more from them because they are fighters? Should they? I am hoping that this is where the work which I have undertaken in Chapter 2 will come in handy.

The chapter has not been written. I am intending to write this early next year.

#### Chapter 7- *Command Responsibility*

I shall examine how international criminal courts have dealt with military superiors or military-type superiors as against civilian superiors. How have courts determined what type of superior someone was? Has it mattered whether they are military or civilian? Should it? The chapter shall also discuss the Rome Statute which has different provisions for military and civilian superiors.

The chapter has not been written. I am hoping to write this before the summer of next year.

#### Chapter 8 - *Modes of Responsibility*

This chapter shall look at different modes of liability in ICL and contrast cases where the accused has been a fighter with cases where the accused has been a civilian.

This chapter has not been written.