

ZOOM IN

The question:

Old rules for new problems? Assessing Roscini's take on the cyberspace between *jus ad bellum* and *jus in bello*

Introduced by Giulio Bartolini and Marco Pertile

The international legal regulation of cyberspace is one of the most challenging current developments under international law, with respect to the positions of both States and non-state actors. Among the many areas of interest in relation to cyberspace, one of the most notable emerging aspects can be safely identified in its potential use as an immaterial 'terrain' for recourse to force. Taking into account that the international legal framework on the use of force was developed at a time when cyber operations were not envisaged, the basic question faced by actors and scholars is whether the applicable rules are (still) fit to regulate hostilities carried out in cyberspace or whether legal gaps can be identified.

Understandably, this issue has generated some lively academic debate and a number of research studies. In 2013, the *Tallin Manual on the International Law Applicable to Cyber Warfare*, elaborated by a group of experts under the auspices of the NATO Cooperative Cyber Defence Centre of Excellence in Tallin, broke the ice. It will soon be complemented by the so-called *Tallin 2.0*, addressing issues that were not covered in-depth by the first document, as in relation, for instance, to the role of human rights and the problems connected to State responsibility. Within the doctrinal debate, undoubtedly, particular attention has been attracted by Marco Roscini's book on *Cyber Operations and the Use of Force in International Law* (Oxford University Press, 2014, 336 pp) as testified to by the significant number of reviews already published on this monograph (see for instance (2016) J Conflict

and Security Law 1-2, (2013) 84 British YB Int L 385 and (2014) 1 J Use of Force and Intl L 387).

Marco Roscini, Professor of international law at the University of Westminster, has engaged in an ambitious project addressing the main areas of international law potentially relevant to the use of force in cyberspace, namely: *jus ad bellum*; *jus in bello* and the less explored (but still relevant) law of neutrality. Introduced with a foreword from Yoram Dinstein, Roscini's book engages in an in-depth analysis of the legal framework starting from the assumption – as maintained in the early pages of the book – that existing positive law may be applied to this new scenario. However, the challenges posed by the innovative character of cyber operations have put to question the capacity of both the *jus ad bellum* and the *jus in bello* frameworks to properly address cyber operations. The issue is further complicated because the very nature of these activities clearly requires scholars to be equipped with technological expertise, in order to properly depict the phenomenon, and to engage in dynamic interpretations of the existing law, to identify sound legal solutions.

Against this background, here at QIL we are persuaded that a new set of reviews of Roscini's book can offer the occasion to evaluate not only whether the solutions offered by the author are appropriate, but also whether additional elements of analysis can be offered, taking into account the growing debate and practice. We therefore asked two knowledgeable colleagues to engage in a discussion of the main pillars of Roscini's book: the application of – respectively – the *jus ad bellum* and the *jus in bello* to cyber operations. In this context the first part of Roscini's book, the one related to *jus ad bellum* issues, has been addressed by Christian Henderson, editor in chief of the *Journal on the Use of Force and International Law* and Professor of international law at the University of Sussex. Conversely, Roscini's analysis of the applicable *jus in bello* has been the main focus of the review written by Emanuele Sommario, Assistant Professor at the Scuola Sant'Anna of Pisa, who has published widely on International Humanitarian Law and Human Rights. As the reader will see, both our authors share a very positive assessment of Roscini's book, but do not shy away from identifying outstanding problems and issues that are still worth discussion.

