Leiden Journal of International Law (2019), **32**, 605–608
doi:10.1017/S0922156519000189

BOOK REVIEW

C. Henderson, *The Use of Force and International Law*, Cambridge University Press, 2018, 428 pp., ISBN 978-113-95-6756-5, Pb £29.99
doi:10.1017/S0922156519000189

As Professor of International Law at the University of Sussex and co-editor-in-chief of the *Journal on the Use of Force and International Law*, Christian Henderson comes from a position of exceptional expertise to explore the framework for the use of force by states. Such discussions are not new; they have been at the core of international legal debates throughout the discipline's history. On the one hand, a state is forbidden from utilizing force against foreign states in an aggressive manner; but on the other, a sovereign entity is entitled to defend itself. Overarching this is the moral obligation to protect civilians and *jus cogens* norms. In light of this complexity, Henderson's practical exploration of the international law governing the resort to force provides an enlightening and practical perspective on the topic.

Article 2(4) of the United Nations (UN) Charter[1] prohibits 'the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the UN'. *The Use of Force and International Law* argues that the prohibition and its permissible exceptions, as framed in the UN Charter, were not intended to govern the type of conflicts, geopolitics or technology we witness today.[2] Henderson takes the reader through an exploration of contemporary challenges and presents that the inter-state conflicts of the early twentieth century have largely given way to internal conflicts, or those fought against non-state actors.[3] Furthermore, while conventional weaponry is still used, 'weapons of mass destruction, drones, cyber weaponry and suicide bombers' mean we must ask different questions of the law.[4] In the face of these developments, Henderson argues that the international legal framework is malleable enough to remain relevant, whilst continuing to regulate state conduct and uphold the certainty of law.[5]

Part I focuses upon the contemporary prohibition of the threat or use of force. In Chapter 1 a cursory overview of the prohibition in treaty and customary law highlights how states have attempted to limit the constraints of the prohibition, adequately setting the context for the rest of the book. However, a more extensive textual analysis of the terms of Article 2(4) would have further strengthened the introduction. The chapter ends with a critical analysis of current challenges to implementation; notably the limitations of accountability and enforcement mechanisms. The objective-positivist stance of the book is evident in claiming that the prohibition maintains its legal force, both in treaty and customary law.[6] The arguments in favour of such a claim could be further developed, in particular, by addressing the proposition that states justifying their illegal use

[1]United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.
[2]C. Henderson, *The Use of Force and International Law* (2018), at 1–2.
[3]Ibid., Chs. 8, 9.
[4]Ibid., at 3.
[5]Ibid., at 3.
[6]Ibid., at 47.

of force through the framework of the Charter is more representative of the political influence of the prohibition, than its legal authority.

Chapter 2 argues for the prevailing view that armed force, as opposed to economic or political force, is the focus of the prohibition in Article 2(4).[7] Ultimately, Henderson proposes that force is the 'intentional physical coercion by one state of another through the direct or indirect use of an instrument that is at least capable of causing human harm'.[8] This presentation of 'force' which requires some actual destructive effect or physical damage[9] sits somewhat uncomfortably with later discussions of non-conventional weapons, such as cyberattacks. Furthermore, the distinction between conventional and non-conventional weapons that must meet different thresholds of harm in order to constitute force could be further interrogated to justify the conclusions made.

Part II explores the use of force in the context of collective security as an exception to the prohibition. Chapter 3 concludes that the UN collective security system does not operate as it was intended to because it is hindered by political and strategic realities, in particular, the use of the veto by the permanent UN Security Council (UNSC) members and the lack of a standing army.[10] This has led to the development of the 'authorisation model'[11] to provide a mechanism for the UN to act in the face of threats to peace and security. As Henderson discusses, the approach is not provided for by the spirit or letter of the UN Charter,[12] and threatens to 'privatise' collective security.[13] However, the author maintains a – perhaps overly – optimistic view of the ability of the UN to adapt to these controversies.

Chapter 4 discusses how states have sought justification for the use of force, when the UNSC has failed to act, through the revival of UNSC resolutions[14] and 'implied' authorization as enacting the 'collective will' of the Council.[15] These practises demonstrate how the system has adapted to the unforeseen challenges of the UNSC being unable, or unwilling, to fulfil its function in regards to the use of force.[16] Without such reform, states would have increasingly pursued unilateral or regional acts, undermining the collective security system. Henderson argues that these practises have ensured that the UNSC has maintained some oversight over the use of force, and given the collective security system 'a new lease of life'.[17] Yet the same practices demonstrate the lack of control the UNSC has over 'coalitions of the willing' who act first, and justify later. As such, while Part II valuably presents the UN system's ability to adapt, it would have benefitted from exploration of how reform of the UNSC function could overcome deadlocks, in particular through modification of the UN Charter to regulate practises of authorization and reform the use of the veto.

Chapter 5 examines the institution of peacekeeping which arose 'as a response to the failure of the collective security system' and has become central to the operation of the UN[18] despite its absence from the Charter. It explores the legal justifications for the use of force within peacekeeping operations[19] and the conflict of these practises with the principle of non-intervention.[20] Henderson identifies that the very purpose of such missions requires the ability of actors to use force to fulfil their mandates.[21] He argues that the introduction of 'peace enforcement operations' that are distinct from

[7]Ibid., at 54.
[8]Ibid., at 80.
[9]Ibid., at 59.
[10]Ibid., at 103.
[11]Ibid., at 105–8.
[12]Ibid., at 111.
[13]Ibid., at 112.
[14]Ibid., at 128, 135.
[15]Ibid., at 153.
[16]Ibid., at 165.
[17]Ibid., at 163.
[18]Ibid., at 167.
[19]Ibid., at 190–2.
[20]Ibid., at 189–91.
[21]Ibid., at 192, 200.

https://doi.org/10.1017/S0922156519000189 Published online by Cambridge University Press

peacekeepers and are authorized to use force, could overcome the blurring of lines and political mistrust of peacekeepers.[22] Such a distinction seems largely semantic and consideration of alternatives would have been valuable. Nonetheless, the author makes it clear that without adaptation to the modern necessity of permissible force within peacekeeping operations, the legitimacy of such missions would be irreparably undermined.

Part III explores the 'inherent' right of self-defence as the only exception to the prohibition of force outside the UNSC auspices. Chapter 6 examines the general aspects of self-defence and presents that states utilize the concept of self-defence to justify their forcible measures. Controversy in this area concerns the difficulty in applying abstract legal rules to complex realities, such as the gravity threshold for an 'armed attack',[23] and the customary elements of necessity and proportionality.[24] Henderson ably argues that any application of these thresholds must be contextualized and thus cannot be 'fixed'[25] resulting in criteria that are intangible.[26] Ultimately, this leaves the system open to abuse and charges of uncertainty threaten the legitimacy of the prohibition.

This discussion continues in Chapter 7 through the prism of preventative self-defence. A lack of clarity on the temporal reach of the 'armed attack' requirement has resulted in states stretching the scope of this justification from situations where an attack is objectively verifiable as 'imminent',[27] to permitting pre-emptive strikes,[28] to what is now framed as anticipatory action.[29] The chapter concludes that the temporal threshold of imminence does not meet the operational realities and thus consideration of the 'wider context of the threat' is increasingly being accepted.[30] Henderson insightfully highlights that the move from temporal to contextual imminence has pushed the justification from actual attacks, to threats of attack; well beyond the intended scope of Article 51.[31]

Chapter 8 examines use of force against non-state actors that inevitably engages the 'sovereignty barrier' of a third state without justification from the UN Charter.[32] The state upon whom the attack would be directed may have effective control of the group,[33] be harbouring them[34] or be unable or unwilling to prevent their armed attacks against the injured state.[35] This relationship affects how self-defence will be justified and the level to which sovereignty is threatened. The author concludes that these practises, along with 'targeted killings', threaten the prohibition of the use of force and remain outside of any legally permitted framework.[36] Without reform, states could continue to act with impunity in exercising their right to self-defence. Part III explores how acts of self-defence threaten the legitimacy of the prohibition of the use of force and Henderson concedes that practise in this area conflicts with the law.

Part IV focuses on forcible intervention in situations of civil unrest. Chapter 9 examines consent to external forcible intervention. This exception is not expressly found in the UN Charter but is generally held not to violate international law or state sovereignty.[37] Henderson explores the continued controversy concerning who has the right to 'consent' to the use of force when the

[22]Ibid., at 197–8, 200.
[23]Ibid., at 216.
[24]Ibid., at 230–9.
[25]Ibid., at 220.
[26]Ibid., at 271.
[27]Ibid., at 277.
[28]Ibid., at 291.
[29]Ibid., at 297.
[30]Ibid., at 299.
[31]Ibid., at 306.
[32]Ibid., at 309.
[33]Ibid., at 312.
[34]Ibid., at 315.
[35]Ibid., at 322.
[36]Ibid., at 345.
[37]Ibid., at 350.

https://doi.org/10.1017/S0922156519000189 Published online by Cambridge University Press

government no longer represents the will of the people.[38] The chapter acknowledges that 'effective control' traditionally provides legitimacy to governmental authority[39] but argues that the right to self-determination complicates when consent of the 'controlling' party will be legitimate.[40] Ultimately, a purpose-based approach must be adopted and only if intervention does not threaten the principle of self-determination will it be legitimate.[41]

The final chapter addresses when it is legitimate for a state to forcibly intervene without a state's consent. Acts of humanitarian intervention are not authorized by the UNSC but it is argued they are necessary to end humanitarian crises.[42] Henderson examines whether such action can be reconciled with the UN Charter and its development into the 'Responsibility to Protect' doctrine.[43] He concludes that while there are moral arguments for such intervention, it remains unlawful without the authorization of the UNSC.[44] Given the book's focus on practically responding to modern challenges, this conservative view was disappointing and a more detailed consideration of potential reforms would have been appreciated.

Henderson's book is successful in setting out a new perspective in a well-trodden area of the law. Applying the legal framework through the lens of the modern realities of forcible measures offers an engaging and practical analysis of the law. He examines the claim that the prohibition of the use of force remains relevant in the face of modern challenges through its ability to adapt and reform, and whilst his argument at times appears optimistic, he justifies this stance with evidence and case study examples.

The book ably examines the scope and practical application of the use of force under international law but a more traditional textual analysis of Articles 2(4) and 51 of the UN Charter would have ensured the discussions were grounded in an understanding of the relevant instruments. Furthermore, the focus on practical application sometimes leaves the detail of legal argument framed in broad assertions that focus on justifications, with comparatively cursory consideration of the counter-arguments. This is particularly evident in the ongoing contention that the legal framework remains relevant despite the numerous challenges raised.

A final note in terms of scope. The author acknowledges that the book may provide an 'elitist' view,[45] focused upon a predominantly Western understanding of the interaction between sovereign states that has developed from classical 'just war' theories.[46] The book does not consider how such theories developed, have affected, or been accepted by countries of the Global South. These countries are increasingly influencing the international arena and the agenda is no longer set by a handful of states. An understanding of how the rules of the use of force are interpreted within the wider global landscape would ensure a holistic picture.

Overall, I would recommend this book; it provides a uniquely practical discussion through clear and thoughtful analysis. *The Use of Force and International Law* is best suited to more advanced students, academics and practitioners.

*Kathryn Allinson**

[38]Ibid., at 351.
[39]Ibid., at 355.
[40]Ibid., at 360.
[41]Ibid., at 366.
[42]Ibid., at 380.
[43]Ibid., at 401.
[44]Ibid., at 406.
[45]Ibid., at 4.
[46]Ibid., at 10.

*LL.M, PhD Researcher, Queen Mary University of London and Managing Editor, International Community Law Review, Mile End Road, London E1 4 NS, United Kingdom [k.l.allinson@qmul.ac.uk].

https://doi.org/10.1017/S0922156519000189 Published online by Cambridge University Press