

BOOK REVIEWS

International Law and the Proliferation of Weapons of Mass Destruction by DANIEL H JOYNER
[Oxford University Press, Oxford, 2009, 304 pp, ISBN 978-0199204-90-8, \$102 (h/bk)]

Non-proliferation law is often considered the ugly duckling of international security law. If there are entire libraries on issues of *jus ad bellum* and *jus in bello*, there is still a relatively scant number of publications on the international law aspects of disarmament. This is why any new study in this field is to be welcomed, especially when, as is the case with Dan Joyner's volume, it is an excellent one. In addition, the book could not be better timed, considering the current concerns caused by the Iranian and North Korean nuclear programmes and President Obama's recent rhetoric on a nuclear weapon-free world.

The book is organized into three parts. The first comprises three chapters and describes the nuclear, chemical and biological weapons non-proliferation regimes (the latter two are jointly discussed because of their historical, documentary and normative similarities), including an analysis of the main provisions of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and of the Biological Weapons and Chemical Weapons Conventions, as well as of the weapons of mass destruction (WMD) dual-use export controls. Joyner's most provocative argument is probably that nuclear weapon States are collectively in breach of their obligation to move toward disarmament under article VI of the NPT, which leads him to maintain that the obligations of non-nuclear weapon states under article II are as a consequence null and void or at least voidable (pp 66–67). The author suggests that, in order to ascertain whether this contention is correct, an Advisory Opinion should be requested by the UN General Assembly from the International Court of Justice (ICJ) (p 67). Although the analysis of the WMD regimes is well-argued and supported by frequent references to today's proliferation problems (eg Iran's nuclear program and the US–India 'Global Partnership'), the author focuses only on universal non-proliferation treaties. The analysis would have gained from a discussion, even briefly, of regional agreements, such as those on nuclear weapon-free zones. Indeed, universal and regional regimes are mutually supportive and complementary to each other, as recognized by article VII of the NPT and by the NPT Review Conferences.

The second part discusses the role that the main UN political bodies have played in the field of WMD non-proliferation law. Joyner maintains that the Security Council acted *ultra vires* when adopting Resolution 1540 (2004), by which the Council tried to deal with some limitations of the existing non-proliferation regimes. According to the author, Resolution 1540 is not an ad hoc response to a specific threat to international peace and security, but rather a 'calculated, proactive, forward-looking' piece of international legislation (p 186) incorrectly adopted under Chapter VII, while the appropriate law-making procedure in the UN Charter for the creation of non-proliferation law is that contained in articles 11 and 26. This procedural flaw results in the resolution being in breach of article 25 of the Charter (pp. 188–189) and thus null and void *ab initio* (p 197). Joyner also analyses the ICJ case-law in the field of non-proliferation law and brands the 1996 Advisory Opinion on the *Legality of Nuclear Weapons* as a 'jurisprudential disaster' which 'stands as a testament to the complexity of the issue area, and the difficulty of finding a clear place for international law on issues of such high politics and national security sensitivity' (pp 216–217). According to the author, the chances that the ICJ will exercise its contentious jurisdiction over a legal dispute between states on non-proliferation issues are 'quite dim' (p 230), unless the ICJ jurisdictional reach is increased through an amendment of article 36 of the ICJ Statute, something advocated by Joyner as a means of counterbalancing the legislative powers of the Security Council (pp 238–240).

The third and final part is devoted to what Joyner calls 'counterproliferation' (as opposed to 'non-proliferation') policy, defined as 'efforts either to preclude specific actors from obtaining WMD-related material and technology or to degrade and destroy an actor's existing WMD

capability' (p 250). Two case-studies of counterproliferation-oriented pre-emptive uses of force (the 2003 military operation against Iraq and the Proliferation Security Initiative) are analysed: the author argues not only that their conformity with existing international law is doubtful, but also that, from a practical point of view, they have produced deleterious blowback effects. The most interesting section is, however, that on *jus ad bellum*. After reviewing several proposals for changing the laws and institutions in the field, Joyner concludes that the international law on the use of force is currently in crisis, the main cause of which is that 'a significant number of states now believe that their vital national security interests require them to act in a manner that is in breach of the laws governing international uses of force laid down in the UN Charter' (p 339). The author maintains that 'this most sensitive area of international relations has exceeded the regulating capacity of the formal sources of international law, and the normative and structural limitations of international law as a legal system' (p 353) and boldly suggests that the rules on the use of force should be 'deformalised' so to become non-binding commitments or soft-law (p 363). This would still 'provide norms to which states would positivistically and explicitly assent' but would also 'allow states with legitimate concerns, as particularly expressed in WMD counter-proliferation strategies, the flexibility they need to deal with modern threats to their vital national security and prosperity interests' (p 371). Whether or not one agrees with Joyner's thought-provoking argument, his reasoning is clear and well supported with references to international legal theory and international relations doctrines.

All in all, Dan Joyner's study is a valuable contribution to the still fairly limited legal literature on disarmament. Scrupulously researched, the book will be of great interest not only to academics and practitioners, but could also be recommended for a postgraduate course on non-proliferation law: as the author makes clear from the outset, the book is addressed to 'an interdisciplinary and interprofessional audience' (p. xxiv) and care is indeed taken to explain, when necessary, some basic international law notions. Minor gripes aside (the two-page index hardly facilitates thematic searches), the ultimate value of the book lies in the fact that it is not only a brilliant critique of non-proliferation law but also a proactive proposal of reforms and solutions to existing problems.

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The Legal Order of the Oceans: Basic Documents on the Law of the Sea by AV LOWE AND SAG TALMON (eds) [Hart Publishing, Oxford, 2009, xxviii + 1012 pp, ISBN 978-1-84113-823-7, £45.00 (p/bk)]

One can cheerfully welcome the arrival of this volume as an overdue friend. As the authors point out in their foreword, one of the distinctive characteristics of the law of the sea is its richness of documentary sources. A wide-ranging, judiciously edited volume of such 20th and 21st century documents has been notably absent from the shelf of standard reference works, a gap this book ably fills. *The Legal Order of the Oceans* can be strongly recommended for any graduate-level course in the subject. On most topics, every 'core' treaty or soft-law instrument is included (the coverage of fisheries law is especially comprehensive) and there is at least one representative example of a legal text on all major 'sectoral' issues (eg sample bilateral ship-boarding agreements dealing with the interception of narcotics or weapons of mass destruction). It will be of use and interest not merely to students, scholars and practitioners of the law of the sea but to a wider audience of environmental and general public international lawyers. It is also surprisingly up-to-date, managing to include even the regional code of conduct on suppressing piracy in the Gulf of Aden concluded in January of this year.

The usual argument against any new collection of primary documents would be that they are all easily available on the internet or are adequately covered by other 'statute' books. Neither is true here. While the law of the sea has historically been a rich field for law-making, not all of its

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