

recognises, it covers a topic within the area of human rights which has, until recently, been rather neglected in the literature. The book is obviously well researched, and clearly written, refers to a considerable body of literature and case law and covers a wide field. It should be of interest both to academics and practitioners.

The first chapter is of an introductory character, and is followed by one on the treaty standards on freedom of movement, the most important of which is contained in Article 12 of the Covenant on Civil and Political Rights. The succeeding chapter is concerned with the regulation of movement within states. It critically examines the concept of a threat to public order or *ordre public*, which has been frequently invoked as a reason for imposing restrictions on movement and entry in a number of states. Furthermore, it considers a number of other matters, including restrictions on freedom of movement and residence under apartheid and racial discrimination. In addition, it succeeds in encapsulating a good deal of material relating to freedom of movement within the European Union within a comparatively brief space.

Chapter 4 deals with the movement and residence of minorities, and makes reference to certain of the decisions of the Permanent Court of International Justice under the Minorities treaties, as well as to the provisions of Article 27 of the ICCPR. The next chapter contains interesting material on the exclusive movement and residence of indigenous people on traditional lands. It is followed by a chapter which considers the legality of the imposition of restrictions on the movement and residence of refugees. This chapter seems to contain a good deal of original thought. The author adopts the same view as certain other commentators that the rerouting of asylum seekers to a safe third country may amount to the avoidance of international obligations to protect refugees. He also correctly questions the exclusion of asylum seekers who are nationals of member states from asylum in those states.

Chapter 7 is concerned with derogations on freedom of movement. The brief final chapter contains the authors' conclusions. He does not attempt a systematic comparative approach, which would have been difficult given the scope of his work. Nevertheless, his considerable scholarship and careful analysis of disparate materials are impressive.

FRANK WOOLDRIDGE

*Recourse to Force. State Action Against Threats and Armed Attacks.* By Thomas M. Franck. [Cambridge: Cambridge University Press, 2002. 218 pp. ISBN 0521820138. £40.]

Professor Franck's book is a valuable addition to the monographs so far published about the law relating to the use of force. It combines the examination of practice up to the most recent period with a fascinating grasp and analysis of material by the author which, like many other occasions, has produced a work offering his readers so pleasant a combination of utility, elegance, and enjoyment. The book explores the claimed titles of the use of force based on anticipatory self-defence, countermeasures, protection of nationals, humanitarian intervention, and anti-terrorist measures.

The author searches for the applicable law not primarily in normative instruments, but in state practice as such. The book empirically examines state practice and attitudes, inter alia within the UN principal organs, related to specific instances of the

invocation by states of the right to use force under one of the claimed titles. He considers this practice important in terms of law-making, and submits that in certain instances the use of force not explicitly sanctioned under the UN Charter was tolerated by what he calls 'the system' or 'the UN system', and this arguably happened in cases of anticipatory self-defence, countermeasures, or humanitarian intervention.

The author states that the delegates vote in UN organs not in terms of rejection or endorsement of any exception to the prohibition of the use of force, but by reference to 'their assessment of the factual necessity and proportionality of the action taken' (91). But, while following Professor Franck's reasoning, one should bear in mind that this may also be a practice caused by a political reluctance to make strict legal determinations and hence not involving any visible sign of *opinio juris*, and its normative value should be assessed accordingly. Such politically motivated attitudes may follow from political utility and convenience. In addition, states understand that an expression of legal conviction in favour of the specific entitlement of the use of force can work not only as enabling that state to use a justified force, but also to see itself as an addressee of the use of such justified force if things develop in such a direction.

Another point is that the practice examined in a most systematic way by the author takes place not in isolation or vacuum, but in the context of being closely linked to the conventional regulation of *jus ad bellum* in the UN Charter. When we are concerned with a treaty text, the attitudes of states can hardly amount to more than a process of application of existing norms—a process whose legality itself has to be judged in the light of the content of the norms. This content has to be ascertained by way of treaty interpretation, as required by the Vienna Convention on the Law of Treaties of 1969. The author seems to elaborate on this point and contends that in case of interpretation of the UN Charter provisions concerning the use of force, 'common sense, rather than textual literalism, is often the best guide of international legal norms' (98).

Apart from the fact that politicians or legal advisers may differ in their understanding of common sense, and also in understanding whether a given legal rule reflects that common sense, the interpretive methods adopted within the law of treaties seem to require keeping some distance from the author's sceptical understanding of textualism. The 'textual literalism' referred to by the author is the principal method of treaty interpretation as confirmed by the Vienna Convention, which in all certainty applies to the UN Charter. The very reference to 'textual literalism' seems to associate this basic interpretational principle with a restricted, possibly narrow-minded, attitude involving a propensity to neglect a wider context of State practice and international politics. This, however, does not seem the only proper method in the field of legal research, the primary aim of which is to clarify what legal norms say, rather than what they may have said had they a different textual meaning, or what would be the state of law had they been non-existent. If such a course of analysis is followed, the predominant role of textual interpretation will become clear.

But in the end, the author recognises that the practice of states and UN organs is as extremely diverse and non-uniform as it could be, and thus offers no exclusive or exhaustive guidance on legality of specific claimed titles to use force. A logical alternative to such 'practice-oriented' approach would be the return to 'textual literalism' as required by the treaty interpretation methods. But the author proceeds to examine whether, while perhaps the use of force remains illegal under hard law, there could be certain criteria of mitigation or exculpation (Chapter 10). This chapter, interesting and

thought-provoking as it is, is really a piece on history and philosophy of law rather than an attempt to find evidence for the existence of international legal principles supported by the author; it focuses upon the moral criteria, as elaborated upon by legal theorists and national courts, which could render legitimate some illegal uses of force. However, the very use of such an approach, notably in the case of 'humanitarian' intervention, seems to be an implicit acceptance by scholars that many claimed titles of the use of force are not really supported by international law. The reference by the author to 'grey areas' between legality and legitimacy seems to be a further confirmation of this.

The monograph does not examine the character of the prohibition of the use of force as a peremptory norm (*jus cogens*), which is not even mentioned in the index appended to the book, and hence neglects its impact. If the peremptory nature of this prohibition were accepted, one could suggest that certain conclusions reached by the author are not justified. For instance, the author focuses upon the concepts of countermeasures and self-help, as well as exculpatory factors arguably permitting states to use force in vindication of a preceding wrong or for humanitarian purposes. But the author does not suggest where exactly these situations should be placed in the context of general international law, particularly the state responsibility. It seems to be established, due to the recently accomplished codification of state responsibility by the UN International Law Commission, that countermeasures may not be forcible or offend against *jus cogens*. It is also clear that circumstances precluding wrongfulness are not invocable to justify the conduct of a state offending against *jus cogens*. Furthermore, *jus cogens* seems to be relevant in terms of relevance of state practice in specific cases and there seems to be every reason to suggest that *jus ad bellum*, as part of *jus cogens*, shall be applied integrally, that is uniformly, in all circumstances, and state practice, diverse as it is, cannot influence its content.

In general, Professor Franck's monograph is an interesting description of law and practice, also encompassing the political attitudes of different states, including great powers or superpowers, both during and after the Cold War. In this respect the monograph could be interesting not only for lawyers but also for students of geopolitics and international relations. From the legal point of view, the monograph accumulates large analysis of precedents and in this sense it could offer an interesting source to those who wish to become familiar with a quite original view relating to the law of the use of force.

ALEXANDER ORAKHELASHVILI

*The Law of the Sea and Polar Maritime Delimitation and Jurisdiction*. Edited by Alex G Oude Elferink and Donald R Rothwell. Publications on Ocean Development, Vol 37. [The Hague; Kluwer Law International, 2001. 416 pp. ISBN 90-411-1648-6]

The polar regions are distinguished from other regions of the earth by their extreme climatic conditions, cold and ice. They may, however, be distinguished from each other in many ways. The Antarctic consists mainly of land. The Arctic on the other hand is to a large extent frozen sea ringed around with archipelagos and the northern extremes of territories which pierce the Arctic meridian. Whereas the Arctic is subject to claims of sovereignty, albeit based at times on the contentious sector theory, the Antarctic has,