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BOOK REVIEW

Erin Pobjie, *Prohibited Force: The Meaning of 'Use of Force' in International Law*, Cambridge University Press, 2024, Online ISBN: 9781009022897
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Dr. Erin Pobjie offers a thorough, thought-provoking, and intriguing analysis of the prohibited and legal 'use of force' within international law. The explanatory framework that Dr. Pobjie provides is essential in a time where the use of force is continuous and the lines between its legality are extremely blurred. This book review will attempt to summarize the contextual framework of this book, as well as offer some critical thoughts on certain areas.

Dr. Pobjie provides a meticulous doctrinal research analysis on the permitted and non-permitted use of force within international law. The author starts her first three chapters by providing a historical perspective of the emergence of the principle and an interpretive analysis of the relationship between the two legal sources that surround the 'use of force' in international law, *treaty* and *custom*. More specifically, the book details the interplay between Article 2(4) of the UN Charter and state practice and adopts the position that although the principle of the prohibition of force did exist, the legal rule arose later, through the adoption of the Charter. Eventually, Dr. Pobjie emphasizes the difficulty in understanding subsequent state practice of the acceptance of the current provisions of the use of force to understand its part in customary international law. This is because state compliance to treaty terms are not significant examples of customary international law and since all states are part of the UN, they need to comply with the interpretation of the Charter. Only explicit reference of a rule of a treaty would render that rule to be a customary one, and this takes place through state acts, verbal acts, and silence or inaction. In emphasizing the interplay between the Charter and custom, the book's strengths lie in the fact that it encompasses an extremely wide margin of international law to understand the prohibition of the use of force. More specifically, the author states that 'customary international law rules may be used to supplement treaty interpretation by filling in gaps in the treaty'.[1] This is remarkably portrayed by the fact that the author understands that the drafters of Article 2(4) left the term 'force' intentionally open to encompass subsequent forms of conflict after the Second World War. Therefore, the supplementary relationship between *treaty* and *custom* lies in subsequent state practice that can determine the evolution of Article 2(4). Nevertheless, subsequent alternative normative interpretations of Article 2(4) are difficult if the principle forms a part of peremptory norms of international law. The author recognizes and presents the conflicting views on what part of the 'use of force' can be *jus cogens*.[2]

Through the first two chapters, the author suggests that the prohibition of force can be identical in its scope within customary international law and the Charter, however, there is a possibility for 'future divergence'.[3] Perhaps, the author emphasizes the *norm-creative* character of the Charter and Article 2(4) a lot, while possibly slightly underplaying the impact of state practice. Although

[1]E. Pobjie, *Prohibited Force: The Meaning of 'Use of Force' in International Law* (2024), 60.

[2]The author states that several scholars believe that only a narrow core of the prohibition is *jus cogens*, that some authors believe that only Article 2(4) is, and that others believe that the entire *jus contra bellum* is a *jus cogens* principle. Ibid., at 72.

[3]Ibid., at 58.

the author puts her analysis in a historical context, it would be more beneficial to understand the significance of state practice in the creation of the Charter, with the political and historical context at the time, meaning the end of the Second World War and decolonization. The two played a major role in the creation and interpretation of the Charter for various reasons. Consequently, state practice and willingness form the main backbone of the Charter, which renders divergence in certain provisions, as the author maintains, quite unlikely. Furthermore, the move towards collective security needs to be analysed with the structure of the UN, as well as whether individual moves of security have been eradicated. This would also explain why several forms of 'force' are allowed.

The author touches upon these points remarkably in the subsequent chapters. More specifically, Chapters 4 and 5 both talk about the collective system of security and the interpretation of uses of force. The book continues with a textual analysis of Article 2(4) in Chapter 4, defining the terms 'All Members', 'international relations', and 'against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations'.[4] The case and the black letter analyses determine that several requirements for the 'use of force' to take place within Article 2(4) need to exist, such as that the act needs to be exercised by a state, to be directed towards another state and not within its domestic jurisdiction, and that it can be the use of force in violation of international demarcation lines, the use of force arising from political dispute, and the use of force for benign purpose if the other requirements are met. The specific chapter, which is complementary to Chapter 5 that discusses the meaning of the term 'force', gives us a contextual analysis of when does the force fall within or outside the scope of Article 2(4). Dr. Pobjie details states' intentions on the definition of 'force' within the scope of the subsequent state practice and the interpretation of several terms that surround Article 2(4), such as *coercion* and *aggression*, within the General Assembly. For instance, the author cites the 1970 Friendly Relations Declaration as a near-universal state agreement of the interpretation of Article 2(4) and the 1974 Definition of Aggression not as an agreement, but as a 'guideline for the UN Security Council'.[5] Consequently, the book gives great weight to the intentions of states and the context of the agreement to understand whether these form an actual interpretation of the normative power of Article 2(4). The gist of this chapter falls within the discussion of whether economic coercion can be a part of the Charter's interpretation. The author suggests that there were efforts by several states (e.g., Brazil) to include economic coercion as part of the term 'force'. Through an extensive interpretation of the issue, the main objection that the drafters of Article 2(4) had on including economic coercion as an element of force, was that it would give the Charter a very broad understanding, and that the economic force was not clearly defined. This leads the author to conclude that Article 2(4) normatively requires the physical force to be revoked, but most importantly the book makes the assertion that what counts are the effects of the force (as opposed to the source of the force, such as weapons or kinetic energy).

These two chapters, that in the writer's opinion form the backbone of the book, allow for further conclusions to be drawn. First, that this black letter analysis of the Charter reflects the inter-state relationships and subsequent state practice, yet not the strength of each state in international law. Perhaps Hersch Lauterpacht's comment is essential here, where he argues that the use of force and threats were originally necessary due to the imperfect structure and underdevelopment of international law and its sanctions.[6] Some elements of this still remain. Second, and strictly connected to the first point, the author makes a very important conclusion, that although economic coercion does not form part of the term 'force', two of the determining factors are the effects of the force and the political sovereignty of a state. Given that economic coercion has caused significant harm to states over time, the black letter analysis of the law testifies

[4]Ibid., at 85.

[5]Ibid., at 111.

[6]H. Lauterpacht, *Private Law Analogies in International Law* (1926), PhD thesis, The London School of Economics and Political Science, 70–7.

to the separation of the economic and the political within the law. More specifically, that the violence in the international arena needs to be manifested is some way. In other words, significant economic coercion can lead to similar political outcomes as the use of 'traditional force'; the former is, however, legal, while the latter is illegal.[7]

Chapters 6 and 7 of the book talk about the elements and anomalous examples of the use of force. Chapter 6 builds on Chapter 5's concluding comments on the effects of the use of force, where the author sets out which elements must be present for an act to fall within Article 2(4). Such elements include targets of humans or objects, directness of the use of force, permanent as opposed to temporary effects, and actual versus potential effect, with the author emphasizing that for the last two factors, the law is quite unclear and that maybe a combination of both is necessary. Dr. Pobjie makes specific remarks on the gap that exists between Article 2(4) and Article 51 (self-defence) of the Charter. She puts at the forefront state practice in the application of this provision and in citing several scholars she agrees that no *de minimis* gravity of the use of force exists in international law, but that gravity plays an important role in determining whether an action falls within the scope of Article 2(4). The last element of Chapter 6 is intention, where the author explores intentional use of force threat, action, effect, coercion, and evidence of hostile intent. Dr. Pobjie determines that intent is a decisive factor, but where the 'act' is possibly lacking the gravity or actual effects. Continuing the textual analysis, the book mentions that through the 1974 Definition of Aggression, uses of force are not exhaustive. The first part of the chapter follows an analysis of the wording of each element of the use of aggression under Article 3, such as blockades, indirect force by armed groups etc., that allows the author to conclude that states have given a different meaning to the term aggression, which does not necessitate the use of physical means. The second part of the chapter is dedicated to analysing examples of the uses of force that do not fall within the aforementioned categories. The author tries to balance the several instances of the uses of force, with the contributing factors that she set up in Chapter 4 (intention, international relationships, etc.). Through the focus on several examples such as armed response to aerial incursions or maritime law enforcement against foreign-flagged vessels with no basis for jurisdiction, the author suggests that there is a need for clarification of the competing legal framework that applies to the demarcation of the boundaries of the use of force.[8] The author concludes the chapter by offering several explanations as to why some anomalous examples of the use of force exist, such as the agreed exceptions that exist in the interpretation of Article 2(4), the broad meaning of the term 'force', and most importantly, that the term 'use of force' is a type and not a concept.

With that being said, the author moves to make the most substantial contribution of the book in the last chapter. She understands that there are several competing legal frameworks, different normative types, and that interpretations of force and state practice vary and differ from its articulation within the Charter. She compares the 'use of force' internationally with the definition of *coercion* under German Criminal Law, where several elements must be present for something to constitute coercion. The two elements of international law (physical action that produces a physical effect on the victim) have a very low threshold and consequently a different, more fact-based approach theory should exist, one which does not treat 'force' as a context, but as a type. Dr. Pobjie suggests that case examples have shown us that not all mentioned elements of force (intention, sufficient nexus between an armed group and a state etc.) need to be present individually for something to constitute force, but that the presence of a combination of them

[7]One example can be the Cuba case, where the failure of the Bay of Pigs invasion (unlawful) turned into a 60-year-long economic embargo (lawful).

[8]See Pobjie, *supra* note 1, at 186. Specifically, the author uses some case examples to prove the difficulty in determining the use of force within the maritime framework. For example, she uses the case of *Fisheries Jurisdiction* to determine the competing legal framework between the boundaries of the Charter and its conflict with the Convention on Future Multilateral Co-Operation in the Northwest Atlantic Fisheries.

might also be sufficient. Merely through the case analysis of Article 2(4) the author states that there are some fundamental elements (which were set out in Chapter 4), indicative elements (set out in Chapter 6), and other additional elements, such as the use of weapons or kinetic energy. The type theory that the author proposes is a theory that some elements 'must be identified' and 'balanced' to determine whether an act constitutes the use of force under Article 2(4), and may be combined to understand the different types of 'uses of force', that may not include all of the elements. The reason behind this is that 'the weaker certain elements are', 'the higher the number or gravity/intensity of other elements'. The author concludes this chapter by applying type theory to several anomalous examples of uses of force, such as the cases of *Mayaguez*, the *Red Crusader*, *Torrey Canyon*, *Rainbow Warrrior*, etc. According to the author, using these case examples, type theory allows for the use of a better contextual and systematic approach, which helps to break down different elements of a possible 'act of force' and weigh them individually.

Indeed, the type theory proposed by Dr. Pobjie is a significant tool to measure the use of force in contemporary international law. At a time where technology and international relations are changing rapidly, the theory could prove to be a weapon of assessment, as it does not treat 'force' as a universal term, but rather it provides different frameworks where it can develop and take different forms without normative interpretations of the Charter. Possibly, the criticism of this test is that it is too subjective and that it relies a lot on the contextual analysis of the specific facts of each case. In other words, it limits the possibility of drawing conclusions for the future use and terminology of the 'use of force'. Lastly, since it treats force as a type, it does not adequately explain why some forms of coercion are precluded from the normative interpretation of Article 2(4), such as economic coercion. This might limit the discussion for future uses of force, such as a cyberattack causing significant economic damage to a country.

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