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International Law and the Use of Force
Beyond the UN Charter paradigm.
Routledge, London / New York, 1993, 272 pp., $ 20.00

The book to be presented here could hardly have come more timely and welcome. Not only does it address a central question of international law, but one that deserves new discussion in the light of recent changes in the international system such as the end of East-West confrontation and the increased vigour of the United Nations. Having said this, a cautionary note must immediately be added. Notwithstanding its subtitle, which may be slightly misleading, the book says little about future uses of force with UN-authorization, e.g. in the sense of a future system of collective security. Rather, it provides a comprehensive and concise stocktaking of existing international law regarding the use of force. In doing so, the authors, assistant professors of Government at Georgetown University and of International Law and Organization at the University of Virginia, respectively, follow an approach which "is grounded firmly in the positivist understanding of international law" (10). By this it is meant that the two criteria to determine existing international law are state practice and *opinio iuris*, or, as the authors tend to put it: Any rule of international law must be *controlling* of state behavior and must be regarded as *authoritative*.

Having clarified these methodological premisses, the authors start by giving an overview of the historical development of legal norms relating to the use of force. For the sake of convenience and following Professor John Norton Moore, they divide the timespan of 330 B.C. to the present into six periods. The penultimate of these periods is the UN Charter period, and the Charter's framework for the resort to force and the collective use of force are the subject of the following chapters 3 and 4, respectively.

Discussion here unveils several problems of the Charter provision, the most prominent of which concern: problems of interpretation, the changed nature of international conflict (now including much more civil conflicts as well as covert and terrorist actions), the perceived illegitimacy of institutions for peaceful change and settlement, and, finally, the growing preference for justice over peace. As to collective security, the UN, for various, mainly political, reasons "was never a true collective security system - not even at its creation" (51). Hence, "states have attempted to find alternative methods of dealing with international conflicts" (68), including reliance on the UN General Assembly (instead of the Security Council) and regional arrangements as well as the use of peacekeeping. In doing so, they have moved to the post-Charter period by creating what the authors in their concluding chapter call a "new legal paradigm", namely the "post-Charter self-help paradigm" (178).

The features of this paradigm are worked out in a thorough disccussion of the five major challenges to the Charter paradigm in chapters 5 through 9. These challenges are: anticipatory self-defense; intervention in civil and mixed conflicts; intervention to protect nationals; humanitarian intervention; and, finally, the response to terrorism. Discussion in these

chapters mainly follows a case approach and is rich in both factual and legal scholarly references, although the latter are mainly to Anglo-Saxon writing. To take the example of humanitarian intervention, chapter 8 gives the following working definition: "use of armed force by a state (or states) to protect citizens of the target state from large-scale human rights violations there" (113), explicitly excluding action taken upon the authorization of the Security Council. It then reviews eleven cases of potential humanitarian intervention that have occured since 1945, the motivation of and justification given by the intervening countries as well as the reaction of observing states and scholars, and somes to the conclusion that "the restrictionist norm prohibiting humanitarian intervention is both authoritative and controlling" (137).

Discussion of the four other challenges, however, leads to less clearcut and often less restrictive results. The authors even go so far to summarize: "the 'rejectionist' approach [concerning Article 2(4)] seems to offer the most accurate description of the contemporary *ius ad bellum*" (185). "[T]he legal structure that has emerged from the ashes of Article 2(4) may simply be a modified regime of 'self-help'" (188). Whence the authors' conclusion: "the current post-Charter self-help regime leaves much to be desired. A system that provides very little in normative restraints on the recourse to force ... is destructive of world order" (195). As to the emergence of a new pro-democratic paradigm, the authors are sceptical given that "over one-third of the states in the international system maintain regimes in which significant political rights and civil liberties, as defined in the West, are denied" (193). Their own, rather modest - realistic, the authors would claim - proposal for a recommended *ius ad bellum* would allow the use of force in the following cases (each of them more precisely specified, although this cannot be reproduced here): self-defense; protection of nationals; and, finally, "as in the Charter paradigm, force authorized by the Security Council would be permissible" (291). This is about all the authors have to say about this interesting question. As to prohibited uses of force, the authors, reflecting what might be seen as a Western perspective, "consider all uses of force to correct past injustices and to promote self-determination to be impermissible" (202), although they admit they might be just. Making them legal, however, would prove to be destructive given the absence of objective criteria.

All in all, the picture the authors give of contemporary international law regarding the use of force is rather bleak. But, as they put it: "There may be something 'wrong' with the contemporary *ius ad bellum*. But if something is in fact wrong, then the answer is to change the law, not to reinterpret it" (136). As noted before, the book is short when it comes to a potential reform especially of action under UN-authority. Its strength is the solid documentation of the international legal *status quo* - quite necessary and helpful for any attempt to think beyond it.

Martin List