

International Law and the Use of Force: A Documentary and Reference Guide

Shirley V Scott, Anthony John Billingsley, Christopher Michaelsen
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bibliography, index)

As the title clearly indicates, the book is not a monograph but is a guide to the documentary materials and issues relating to the use of force in the modern world. In a field that has been so extensively examined by scholars, diplomatists and journalists, especially in the last 20 years, and where opinions and approaches differ so widely, it might have seemed an heroic task to compile and present, as a *vade mecum* for students of the subject, a balanced account of the spectrum of opinion as an aid to further study and reflection. But the three authors have risen magnificently to the challenge. Although the book is aimed at students, and is ideal as a text for student classes in international relations and international law, it will also be found very helpful as a reference book by scholars and practitioners who fancy that their knowledge of the field is already advanced.

The early chapters trace the evolution of the United Nations Charter provisions relating to the use of force and the institutions of collective security. Later chapters deal with the crucial issues of the interpretation of the prohibition of the use of force in article 2(4), the reservation of the right of self-defence in article 51, and the definition of aggression. Controversial current issues are dealt with in the chapters devoted to an examination of how effective the institutions of collective security have worked in the past, the phenomenon of terrorism and how this has changed the landscape of the law, and a detailed study of the proffered justifications of the invasion of Iraq in 2003.

The distinctive feature of the book is the structuring of each chapter around foundational documents. If international lawyers have a special role to play in the science of international relations it is in their insistence on the study and interpretation of the texts of documents evidencing the solemn commitments of States made binding by the rules of international law. Analysis of national interests and policies, however important, cannot be pursued in disregard of the relevance of international law. Each of these texts, necessarily abbreviated to the bare essentials, is accompanied by dispassionate analysis and comment, with references to further reading. The texts are enlivened by historical notes, photographs, and personal details respecting some of the major figures in the events discussed.

It is not a point of criticism to note that the book is slanted towards American readers, although by no means exclusively so. This is justifiable not merely by market considerations but also because the practice and attitudes of the United States are, and have been, crucial in the development of the law and in the currency of the contemporary debate.

If the present reviewer has a criticism to offer (and who would not have their own view as to what should have been included or left out in such a comprehensive

work?) it is that the treatment of the topics of humanitarian intervention and the responsibility to protect is too brief and avoids the most awkward questions regarding the adequacy of the present law. If — as is the conventional and most widely held view — no forcible intervention in the territory of another State is permissible in the absence of authorisation by the United Nations (otherwise than by consent of the affected State), then action to forestall or bring to an end egregious violations of human rights, such as genocide, is prevented where a veto against such action is cast (or even, in political reality threatened) by a permanent member of the Security Council. Defenders of the orthodox view, such as Ian Brownlie (who died recently in a car accident), Thomas M Franck¹ (whose death last year we also lament), and the Australian scholar Simon Chesterman² are forced to argue that, in such cases where morally imperative action is blocked by an unmeritorious casting of the veto, humanitarian intervention might be characterised as ‘justifiable even though illegal.’ Brownlie saw an analogy between this view and the domestic criminal law relating to mercy killing, where intentional killing is always wrong but may be mitigated by special circumstances resulting in a nominal or light sentence.³ The present reviewer has to confess that he remains unconvinced by such a line of reasoning: if something is justifiable, then the law should accommodate it. Thus he holds to a more flexible reading of article 2(4) of the Charter than is shared by most of his colleagues.⁴ But that argument should remain for another day, not here.

This review ought not to end without an especially congratulatory comment on the final chapter of the book which essays an answer to the question ‘[h]as the international law relating to the use of force created a more peaceful world?’ Whereas primary responsibility for each of the other chapters is attributed to one of the authors, the final chapter is not and must therefore be regarded as the collective work of all three. It is truly outstanding in its balance and insights. It could stand alone as a summary of where we stand at the present state of international law and relations regarding the use of force. While optimistic, it does not understate the challenges ahead.

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- ¹ T M Franck, *Recourse to Force: State Action Against Threats and Armed Attacks*, The Hersch Lauterpacht Memorial Lectures (Cambridge University Press, Cambridge, 2002).
 - ² Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford University Press, Oxford, 2001).
 - ³ Ian Brownlie, “Thoughts on kind-hearted gunmen” in R B Lillich (ed), *Humanitarian Intervention and the United Nations* (University Press of Virginia, Charlottesville, 1973) 139.
 - ⁴ Ivan Shearer, “A revival of the Just War Theory” in M N Schmitt and J Pejic (eds), *International Law and Armed Conflict: Exploring the Faultlines* (Brill, The Netherlands, 2007) 1–20.