

Olivier Corten, ***The Law Against War***. Oxford: Hart Publishing, 2010. Pp. 569. \$150. ISBN: 9781841139425.

Olivier Corten's book, *The Law Against War*, is a translated and updated version of the initial French publication of 2008 (*Le droit contre la guerre* (Pedone)), which has been praised in the French speaking world for constituting a wide ranging study of the law on the use of force that fills a gap in the literature. Indeed, this extensive and in-depth analysis of the prohibition of the use of armed force and its exceptions in current public international law provides a

welcome clarification of the status and the content of controversial legal concepts concerning the recourse to force, such as the doctrines of anticipatory and pre-emptive self-defence and the institution of the right of humanitarian intervention. Corten's approach is a positivist legal one: he rigorously analyses state practice and case law since 1945 in order to determine the existence of customary rules relating to the use of force.

The book is divided into eight chapters arranged into two parts. The first part delimits the principle of the prohibition of the use of force. In Chapter 1, Corten investigates the methodological issues the principle raises. He postulates the existence of an international law regime on the use of force and intends to identify customary norms in the attitudes of states relating to the use of force. In the next chapter, Corten defines the concepts of 'force' and 'threat of force' in Article 2(4) of the United Nations Charter. According to the author the notion of 'force' covers only military force and does not concern simple police measures, the former being defined as coercive acts of a certain gravity by one state reflecting the intent to compel the will of another state. The definition of 'threat of force' is particularly interesting since only a few other commentators have interpreted this notion in the specific wording of Article 2(4) of the United Nations Charter. To be covered by the prohibition set out in the Charter the threat must be made by one state against another and must be clearly established. Corten further demonstrates that the use of force and the threat of force are prohibited in the same manner and to the same extent. In Chapter 3, the author explains that the principle of the non-use of force applies only to relations between states. According to Corten the scope of the principle has not been extended to non-state political entities – entities exercising a territorial type of power – or to private groups. Contrary to a doctrinal position which emerged after 11 September 2001, Corten defends a traditional point of view and argues that states have not yet recognized the possibility of exercising self-defence against terrorist organizations. In the following chapter, Corten asks whether circumstances can be invoked to justify the use of force. This chapter first outlines the legal status of the interdiction of the use of force. Referring to states' *opinio juris*, case law, and doctrine, Corten explains that the rule prohibiting the use of force is of a peremptory character. He then argues that circumstances such as a state of necessity or extreme distress cannot be invoked to justify military action.

Part two of the book investigates the requirements and scope of both the generally accepted and controversial exceptions to the prohibition on the use of force. Chapter 5 is a valuable contribution in that it deals with a topic which has been the specific subject matter of only a few other publications: under what conditions can consent justify a military operation? The chapter studies two different legal regimes: the general legal regime of military intervention to which consent has been given and the legal regime of military intervention to which consent has been given in a state where there is a military conflict. As explained by Corten, consent must be given by the central authorities of the state on whose territory the operation takes place and must be validly issued, that is to say be anterior to the military intervention, free, clearly established, and relevant. Regarding the second regime of military intervention addressed by the author, the question arises which authority can legally authorize the military action if two authorities compete, both claiming to be representing the state. If an internationally recognized government consents to an external military intervention, another question is whether the intervening power may support the government against a rebel movement. Chapter 6 of the book proceeds to analyse the legal regime relating to authorization through the United Nations Security Council of the use of force by states, regional agencies, and United Nations troops. According to Corten, such an authorization can only be given by the UN Security Council and has to be clear. For the author, the authorization to use force can be explicit or even implicit, when the Security Council authorizes states to use 'all necessary means' to achieve some particular objective. In practice, the technique of implicit authorization is

the one more frequently used by the Security Council. Relying on a study of the relevant practice, the author rejects the legality of the presumption of an authorization to use force. For Corten, an authorization of military intervention cannot be deduced from resolutions of the Security Council adopted before the military action has taken place if those resolutions do not contain a clear authorization to use force. Similarly, an authorization of military intervention cannot be presumed from an approval by the Security Council of a military action already engaged. Corten demonstrates that the concept of a presumed authorization by the Security Council to use force was not recognized as a legal justification for the Iraq war in 2003. Corten rightly explains that the idea of a presumed authorization of a military intervention is radically incompatible with the legal regime of collective security established by the United Nations Charter. The subsequent Chapter 7 outlines the regime of self-defence. Analysing Article 51 of the United Nations Charter as well as relevant state practice and case law, Professor Corten argues that contemporary public international law does not enshrine the doctrine of pre-emptive self-defence nor of anticipatory self-defence, which he refers to as theories of 'preventive self-defence' (at 407). It is true that, as acknowledged by other commentators, the concept of 'pre-emptive self-defence' put forward by the United States to justify its intervention in Iraq was not recognized by the international community of states. However, Corten goes further and opposes a major part of the doctrine that accepts recourse to self-defence in the case of an imminent armed attack. The author then shows that the possibility of characterizing as an aggressor a state that harbours or tolerates private groups conducting an armed attack against another state is not recognized in legal texts, in state practice, or in case law. In particular, according to Corten, the precedent of the war against Afghanistan is not sufficient to reveal clearly the existence of an *opinio juris* of states in favour of a wider definition of the concept of aggression or in favour of the concept of what the author calls an 'indirect aggression' (at 444). Corten consequently argues that under current public international law self-defence cannot be invoked against a state which passively supports private groups in the conduct of an armed attack. Finally, he analyses the meaning of necessity and proportionality of an action taken in self-defence, explaining that, contrary to what is often stated, the criterion of necessity should not be construed too narrowly. In Chapter 8, Corten makes the argument that there is no right of humanitarian intervention, that is to say a right to unilateral military action for humanitarian reasons. Corten shows that such a right does not exist, whether for general humanitarian purposes or, more specifically, for the protection of nationals of the intervening state. Corten links the study of the question whether there is a right to armed action to rescue nationals to his study of the existence of a right of humanitarian intervention, and not to the study of the scope of the right to self-defence, as is done by other commentators. According to Corten, the right of humanitarian intervention has no basis in relevant legal texts and has also not emerged as a customary right. The author argues that states are reluctant to accept a right of humanitarian intervention, especially after the Kosovo war in 1999. Therefore, if states are allowed to intervene in another state on humanitarian grounds, this is not on the basis of a unilateral right of humanitarian intervention, but because of a recognized exception to the prohibition on the use of force such as the host state's consent or Security Council authorization (such as that given in March 2011 to the humanitarian intervention in Libya).

In the end, Corten convincingly demonstrates that the legal regime of the prohibition on the use of force laid down in the United Nations Charter has barely been called into question by the majority of states. His exhaustive and clear study is without doubt a very useful contribution to a controversial and still fundamental field in public international law.

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