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Introduction

There is abundant literature on the use of force under international law; much of which is of a very good quality, so why add another book to the tall stacks of publications that already exist on the topic? This book will certainly not resolve all the controversies relating to the use of force. Nevertheless, we do hope to make a worthwhile contribution to the discussion on controversial issues, including on intervention for humanitarian purposes, the use of force in self-defence against attacks by non-State actors and how the law on the use of force applies to new and emerging technologies and in response to so-called hybrid threats. We also aim to set out the scope of the law governing the use of force, while not ignoring the areas of contention both in academic literature and in the practice of States and other actors. To some extent, this book will thus cover topics which have received attention elsewhere, from restating the main points of the law to discussing points of view on various controversial issues. Of course, we aim to do so from the perspective of our respective backgrounds and insights, incorporating our previous research and the work of others in this field and providing a considered viewpoint on issues where there is a significant difference of opinion. Consequently, we think the book will offer some new insights, even on those topics which have received considerable attention elsewhere.

The title of the book also reveals one aspect of our approach that differs from that adopted in most other literature on this topic. International law has become increasingly compartmentalized over the years, sometimes to such an extent that the individual components are no longer seen as part of a whole. This 'fragmentation' of the legal system is partly due to the increasing complexity of the law and the corresponding tendency to (over-)specialization in the legal profession. We are convinced that the law on the use of force has a central place in the contemporary international legal system and should be viewed not only through a microscope but also through a telescope, to see how it is connected to the wider legal system governing international relations. To this end, we

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have devoted one part of this book to exploring the relationship of the contemporary *jus ad bellum* with other areas of international law and its function within the broader legal landscape. We have done so, not to conflate the rules from one sub-system with those of another but to provide some insight into how they interrelate and to reconcile the apparent and real overlaps as well as occasional clashes of obligations which can arise between them. To put it simply, we see international law as a coherent and interlocking system, comparable to or imaginable as a metro map, with different coloured lines intersecting and serving different destinations. We also think that understanding contemporary law requires some attention to the historical evolution of the rules relating to the use of force; hence, another part of the book gives a historical overview of those rules, an aspect which is often overlooked nowadays in other works on the topic.

Who is the book addressed to? We have at least three audiences in mind. First, for our colleagues in the academic legal community as a contribution to the ongoing debate on issues relating to the use of force. Second, since we are both practitioner lawyers who have been and are engaged in providing legal advice to non-academic professionals (to the armed forces and to international tribunals respectively), we sincerely hope this book will be of use to a professional and practitioner public and assist in providing clear answers to difficult questions. This is not a 'manual' on how to apply the law in a practical setting, but if it assists those who write such manuals in providing usable answers to hard questions, it will have served one of its intended purposes. Last but not least, the book is intended as a research tool and further reading for the (post-)graduate level student and PhD candidate who is interested in the topic. We have therefore endeavoured to keep the work as accessible as possible, highlighting areas of agreement and contention to help inform the conduct of research.

The book is divided into five parts comprising a total of sixteen chapters. Part I consists of three chapters, including this one. It provides an introduction to the book and a historical background to the contemporary legal framework for the use of force. Part II, consisting of three chapters, sets out the legal framework relating to the use of force and devotes attention both to areas of agreement and to aspects of the law where there is a degree of controversy. It deals with the prohibition on the use of force and the two recognized exceptions to it. Part III, consisting of five chapters, delves further into older and newer controversies. These include the longstanding debate on the legality of the use of force for the

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protection of human rights in the absence of a mandate from the UN Security Council, the impact of new technologies and new methods of warfare on the law governing the use of force and the modalities of countering so-called hybrid threats. Part IV consists of four chapters and explores the place of the *jus ad bellum* within the wider international legal system. In this part, we aim to clarify the relationship between *jus ad bellum* and other international legal regimes, such as the law of armed conflict, the law of neutrality, the law relating to State sovereignty in the context of consensual intervention, the law governing the use of the global commons (law of the sea, air law and the law of outer space), international human rights law, international criminal law and the law of international responsibility. Part V, consisting of a single chapter, provides a summary of the main findings and discusses how to harmonize and reconcile the rights and obligations arising from different legal subsystems. It also contains some reflections on the relevance of the law in a world that does not always abide by its rules and precepts.

As regards our methodology in this book, we take a modernized legal-positivist approach to the law in relation to both sources and interpretation. Hence, we consider the law to be found primarily in the sources enumerated in Article 38 of the Statute of the International Court of Justice (ICJ), with the addition of decisions of international organizations which have legally binding effect. For the interpretation of treaties we use the well-known methods set out in the Vienna Convention on the Law of Treaties. We consider customary law to be identified through the application of the criteria developed in ICJ case law for determining the existence and content of a rule of customary international law. We also apply historical legal analysis and cite past and more recent examples from State practice as a means of illustrating the law. We use open sources on weapons technology and military operational questions (such as targeting doctrine) where relevant. We follow a legal-doctrinal approach in applying the law to concrete examples and cases. Hence, while we use numerous examples and cite State practice and case law where relevant, this is neither an empirical study of any particular case or situation nor a critique of any State's record on the use of force.

Where there are parallel legal obligations or potential conflicts of obligations arising from different legal regimes, we try to resolve them by using tools such as complementarity of obligations and systemic harmonization, with the aim of maintaining the coherence of the legal system. We do this on the basis of several premises: first, that States are bound by the totality of their legal obligations; second, that such

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obligations should be given due consideration when determining how to give them effect and harmonize them as far as possible; third, in the case of conflict between obligations arising from different legal regimes, it must be determined which obligation takes precedence over another. The complementarity of obligations would mean, for instance, that while the law of armed conflict is separate from the law on the use of force and provides rules relating to the conduct of hostilities irrespective of the right to use force, it does not preclude the relevance of the law governing the use of force once hostilities commence. Likewise, the law governing the use of particular geographical areas, such as the law of the sea or the law relating to the peaceful use of outer space, must be given due regard when applying the law on the use of force.

Finally, while we fully acknowledge that the law does not develop in a vacuum and that it is not alone in shaping the policy and behaviour of States and other actors, we see the law as distinct from pure policy, morality, ethics or other extra-legal considerations. We see a clear divide between the law as it is and the law that we or anyone else would like to have or which may be in the process of crystallizing. So we consistently distinguish 'black letter law' from opinions or possible directions in which the law may be moving.

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