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From Korea to Kuwait: Britain and Coalitions of the Willing

Nigel D. White

in Democracy goes to War: British Military Deployments under International Law

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The deployment of large numbers of British troops to both Korea in 1950 and to Kuwait in 1990 followed similar domestic and international legal paths, though the political contexts were quite different, one occurring at the outset of the Cold War and the other at its end. Britain was instrumental in shaping the idea of coalitions acting under the authority of the UN as an alternative to the more centralized application of military force envisaged under the UN Charter. This chapter traces the Parliamentary and international political debates that led to the development of this as a form of lawful military action. In particular, it concentrates on why it was necessary to obtain UN authority for these actions when they could readily be justified as exercise of the right of collective defence.

International Court of Justice

Magdalena Forowicz

in The Reception of International Law in the European Court of Human Rights

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The case law and Statute of the International Court of Justice have filled important gaps in the Court's case law. They have also constituted important milestones in the Court's interpretation and development of ECHR. Overall, the ECtHR has treated them as authoritative sources of inspiration and it has rarely disagreed with the ICJ's findings. A survey of the case law reveals that there is no general and coherent approach

underpinning the Court's references. Being rather irregular, these references have acquired great importance as a result of the individual developments that they introduced. This chapter discusses a number of these important adaptations introduced in number of areas, including interim measures, the opposability of reservations, and the primacy of the UN Charter.

The Applicability of Economic and Social Rights to the UN Security Council

Nigel D. White

in *Economic, Social, and Cultural Rights in Action*

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This chapter examines the applicability of economic, social, and cultural rights (ESC rights) to the UN Security Council, to determine whether it is bound to respect human rights law generally, and ESC rights in particular, when acting under Chapter VII of the UN Charter. This includes instances when it imposes economic sanctions against states and against individuals (such as those suspected of terrorism), and when it establishes a post-conflict administration in a state. It is argued that while the primary rules of international law, including fundamental economic and social rights, are applicable to the activities of the Security Council, the UN system is woefully inadequate in ensuring the accountability of the Security Council in this, or in any other, regard.

Lawbreaker or Lawmaker? Britain and International Law on the Use of Force

Nigel D. White

in *Democracy goes to War: British Military Deployments under International Law*

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This chapter gives an account of the current debate on the international rules governing the use of military force, its approach differs from the normal approach in that seeks to discern the rules accepted by the international community by viewing international law from the perspective of the British government. In recent years, the perception

is that Britain is more willing to challenge — arguably flout international law — with its actions in Kosovo (1999) and Iraq (2003) in particular. However, the chapter shows that British practice has — on a number of occasions since the new world order introduced by the UN Charter of 1945 — been problematic from an orthodox international legal perspective. The UK's arguments before the International Court in the Corfu Channel case of 1949, its initiatives in creating the first UN sponsored coalition of the willing in Korea in 1950, its military venture to secure the Suez Canal in 1956 are examples drawn from earlier times that, together with recent practice in Kosovo, Afghanistan (2001), and Iraq all raise the question of whether Britain is a law-abiding state.

The Identification of a Threat

Alexander Orakhelashvili

in Collective Security

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This chapter examines, in a comparative perspective, the institutional perceptions of threats to be addressed by collective security institutions, which provides the cause of action if collective security is ever to be set in motion. The notion of a 'threat to the peace' under Article 39 of the UN Charter is obviously of prominent importance; constituent elements of this notion are examined, including the interpretation of Article 39, Security Council's discretion, genuineness of a threat, and substantive content. It is also examined how the operation of Article 39 demonstrates the Security Council's subsidiary role to regional peace and security efforts. After this, the chapter proceeds to identify the parameters of threat perceptions of such organizations as EU, NATO, OAS, AU, SADC, and ECOWAS.

Institutionalizing the Implementation of State Responsibility in Counterterrorism Contexts The Interplay between the Security Council and International Legal Norms

Vincent-Joël Proulx

in Institutionalizing State Responsibility: Global Security and UN Organs

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This chapter delivers a methodical examination of the Security Council's role in counterterrorism and global security contexts, with particular emphasis on its suitability to interpret and apply secondary rules of State responsibility (SR). It explores the impact of SR norms on Chapter VII powers and chronicles the extent of Council practice. It considers the expansion those powers to include SR, the Council's powers in relation to secondary norms, and the rights of States vis-à-vis the implementation of responsibility notwithstanding Council involvement. It analyses instances of SR implementation by the Council beyond Chapter VII. It takes stock of the Council's various advances in promulgating primary norms in both counterterrorism and global security contexts, ultimately identifying a rapprochement between the Council's more traditional executive functions and the sui generis mission of counterterrorism. It concludes that SR for failing to prevent global security violations can be implemented through the Council in certain circumstances.

Cyber Operations and the jus ad bellum

Marco Roscini

in Cyber Operations and the Use of Force in International Law

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This Chapter discusses how the UN Charter's provisions on ius ad bellum apply to cyber operations. It explores if a cyber operation amounts to a 'use of force' and is thus prohibited by Article 2(4) of the UN Charter and its counterpart in customary international law. It then discusses whether the state victim of a cyber operation can invoke the right of self-defence by cyber or kinetic means against it: to this purpose, it establishes under what conditions a cyber operation amounts to an 'armed attack' and the legal requirements for the reaction in self-defence, along with the specific problems arising in connection with their application in the cyber context and the standard of evidence required. Remedies against cyber operations below the level of armed attack are then analysed as is the role the UN Security Council can play in relation to cyber operations under Chapter VII of the UN Charter.

Navigating the Unilateral/Multilateral Divide

Gregory H. Fox

in *Jus Post Bellum: Mapping the Normative Foundations*

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This chapter warns of the dilemma facing the nascent jus post bellum should it seek to regulate all actors in a post-conflict environment: the unilateral/multilateral divide. This manifests itself in three ways post-conflict. First, applicable law regulates states but not international organizations. Second, the UN Security Council has authority to substitute its policy preferences for existing state-centric law on post-conflict states. Third, the Council has multilateralized almost every post-conflict state in recent history. This chapter explores the possibility of a variegated jus post bellum that imposes on international organizations only those obligations they can fulfill, while continuing to subject states to the full spectrum of post-conflict norms. Second, it reviews the actors and law applicable to four prominent efforts at post-conflict reconstruction: East Timor, Afghanistan, Iraq, and Libya. It analyzes how a uniform jus post bellum would fare in these cases if international law continued to adhere to unilateral/multilateral distinction.

Protection of Civilians, Responsibility to Protect, and Humanitarian Intervention

Scott Sheeran and Catherine Kent

in *Protection of Civilians*

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The chapter finds that humanitarian intervention is now a largely abandoned idea, but one still necessary in the absence of Security Council reform. It argues that the Responsibility to Protect doctrine has failed to lead to real change, the selectivity of its application has fuelled mistrust, and it is not capable of crystallizing into an effective obligation in light of the veto embedded in the UN Charter. The protection of civilians mandate has, however, had some successes where the Responsibility to Protect has been less able. The UN membership's acceptance of the protection-of-civilians mandate has rendered it the foundation stone for the use of force under the Charter, and has made the UN's intervention in conflicts more palatable. The chapter argues that

the protection of civilians mandate represents a fundamental trend in global governance and use of force for humanitarian and human rights purposes by the UN, and a recalibration of the Security Council's powers under the Charter.

The Evolution of the UN Collective Security System

Haidi Willmot

in Protection of Civilians

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The chapter examines changes in three key aspects of the collective security system: (a) the mechanism for determining aggression and deciding response measures; (b) the determination of threats to the peace; and (c) the measures used to address such threats. It finds that the system recognizes the legitimacy of civilians as a group to be protected irrespective of their polity, but at the same time remains committed to States as the primary security actors, and therefore seeks to execute protection within that paradigm. In doing so, the system creates two distinct but closely linked communities—a society of individuals and a society of States—both of which civilians are simultaneously members, and that, it is argued, represents a trajectory toward a cosmopolitan idea of the ordering of global society.