THEMATIC:
THE USE OF FORCE IN INTERNATIONAL LAW

Illustration by Courtney Adamson
EDITORIAL

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Since its institution in the aftermath of World War II, the prohibition on the use of force in article 2(4) of the Charter of the United Nations (‘UN Charter’) has served as a tenet of the international legal order. Subject only to limited exceptions,1 the importance of the prohibition in reducing recourse to force is suggested by a key fact: that in the almost 70 years since 1945, no conflict has proved nearly as deadly as those that marked the first half of the 20th century. Yet the operation of this norm in modern times raises challenging questions, as the nature of warfare has undergone – and continues to undergo – dramatic changes.

Most notably, the risk of conventional war between great powers has faded to insignificance. In its place, ‘asymmetrical’ conflicts – pitting state militaries against small but nimble non-state armed groups (‘NSAGs’) – have become the more familiar form of warfare. The march of technology has brought unmanned drones, cyber-warfare, and new weaponry to the battlefield. Novel justifications for intervention are debated: proponents of the ‘responsibility to protect’ (‘R2P’) doctrine advocate military responses to serious humanitarian crises, while some states have relied on allegations of the development or deployment of chemical, biological or nuclear weapons to support the use of force. All the while, there is a mismatch between such developments in the use of force and the limitations on the formal space in which the legality of war may be contested.

Our thematic issue aims to contribute to scholarly understanding of this complex environment. The articles enclosed address five contemporary concerns: the status of R2P in the light of the international community’s contrasting responses to crises in Libya and Syria;2 states’ attacks against NSAGs, such as by drones, that cross national borders;3 the provision of arms and non-lethal forms of assistance, for example to groups operating in Syria;4 the legality under the jus

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1 Exceptions exist for actions taken in self-defence pursuant to UN Charter art 51, or with respect to threats to the peace, breaches of the peace, and acts of aggression, which are authorised by a United Nations Security Council Resolution pursuant to ch VII.
in bello of new weaponry intended for counter-insurgency;\(^5\) and the rise of ‘peoples’ tribunals’ as alternative fora adjudicating the use of force.\(^6\)

A project of this kind cannot be brought into existence without the hard work of many generous individuals. We wish first of all to express our deep gratitude to Professor James Crawford, the Whewell Professor of International Law at the University of Cambridge and Research Professor at LaTrobe University, who authored the insightful Foreword that follows this Editorial. Professor Crawford also delivered the keynote address at the Issue’s launch on 12 September 2013 at Allens, Sydney.

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Although I write on their behalf, it would be remiss not to acknowledge the Editorial Board of the *Journal*, which has put extraordinary work into ensuring the accuracy and technical compliance of each article of the Issue. I also thank my colleagues on the Executive Committee for their remarkable dedication in assisting in the preparation of this publication. Particular thanks go to our outstanding and indefatigable Executive Editor, Emily Burke.

Finally we thank the contributors themselves for their achievements. We will let these speak for themselves in the coming pages.

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