

**THEMATIC:  
THE USE OF FORCE IN INTERNATIONAL LAW**



*Illustration by Courtney Adamson*

## EDITORIAL

GUY BALDWIN\*

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,<sup>1</sup> 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 20<sup>th</sup> 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;<sup>2</sup> states' attacks against NSAGs, such as by drones, that cross national borders;<sup>3</sup> the provision of arms and non-lethal forms of assistance, for example to groups operating in Syria;<sup>4</sup> the legality under the *jus*

---

\* Editor, Issue 36(2), 2013.

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.

2 Andrew Garwood-Gowers, 'The Responsibility to Protect and the Arab Spring: Libya as the Exception, Syria as the Norm?' (2013) 36 *University of New South Wales Law Journal* 594.

3 Gareth D Williams, 'Piercing the Shield of Sovereignty: An Assessment of the Legal Status of the "Unwilling or Unable" Test' (2013) 36 *University of New South Wales Law Journal* 619.

4 Christian Henderson, 'The Provision of Arms and "Non-lethal" Assistance to Governmental and Opposition Forces' (2013) 36 *University of New South Wales Law Journal* 642.

*in bello* of new weaponry intended for counter-insurgency;<sup>5</sup> and the rise of ‘peoples’ tribunals’ as alternative fora adjudicating the use of force.<sup>6</sup>

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.

Special thanks also go to Dr Christopher Michaelsen and Dr Lucas Lixinski, academics at the University of New South Wales Faculty of Law, for their assistance, encouragement and learned advice through every stage of the production process. We are similarly thankful for the support of our Faculty Advisors, Dr Lyria Bennett Moses and Professor Michael Handler.

Much credit belongs to the anonymous referees for their feedback in relation to each article of the general and thematic issues. Without their help, a student-run publication would have little hope of selecting the best submissions for inclusion. Yet their contribution goes further: in constructively engaging with the articles, they have improved the scholarly content of the Issue immeasurably.

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.

---

5 James D Fry, ‘The XM25 Individual Semi-automatic Airburst Weapon System and International Law: Landing on the Wrong Planet?’ 36 *University of New South Wales Law Journal* 682.

6 Andrew Byrnes and Gabrielle Simm, ‘Peoples’ Tribunals, International Law and the Use of Force’ 36 *University of New South Wales Law Journal* 711.