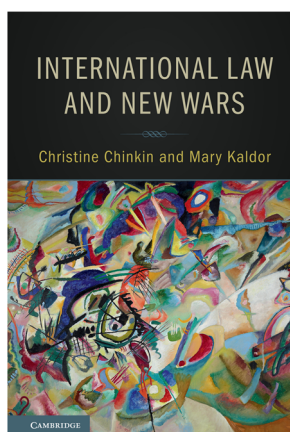


BOOK REVIEW



International Law and New Wars

Christine Chinkin and Mary Kaldor*

Book review by Daniele Archibugi, Research Director at the Italian National Research Council and Professor at Birkbeck College, University of London.¹

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Traditional international law has become incapable of providing a useful normative framework for most of the conflicts of the contemporary world: this is what Christine Chinkin and Mary Kaldor denounce in their impressively fresh book *International Law and New Wars*, a daring venture which will provoke much discussion among theorists and practitioners of global governance. International law as taught in universities is still based on the assumption that States are sovereign and that they can effectively control transnational forces. It is conceived for a world where organized violence is waged by national armies clearly identified by uniforms and hierarchies and where boundaries are patently marked by patriotic flags. The authors argue that international law is less and less able to account for contemporary warfare, where the aggressors are insurgents, terrorists, members of criminal gangs and other groups not affiliated with any State. The book shows that, even when wars have started as inter-State disputes (like those waged in Afghanistan and Iraq), the real problem is not that of achieving a military victory, easily predictable due to the overwhelming might of Western States, but is rather one of administering and guaranteeing safety in the occupied territories after their conquest.²

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The book is divided into five parts. The first part provides the general framework, emphasizing the relevance of international law, in particular as a tool for limiting the sovereignty of States to use force. The second part discusses *jus ad bellum*, while the third is devoted to *jus in bello* and demonstrates that current international humanitarian law is ill-fitted to regulate new wars. The fourth part discusses *jus post bellum*, addressing the issue of involvement of a number of actors in delivering peacebuilding, justice and accountability. The fifth and final part wraps up by explaining how current wars require a radical transformation of international law.

The book will likely open salutary discussions on the theory of international law and the practice of humanitarian interventions carried out by military means. Chinkin and Kaldor are well aware that international law often displays a “dark side” by protecting the interests of the powerful and sustaining inequalities,³ but they are sometimes reluctant to abandon the framework that they so sharply criticize. The subdivision of the substantive part of the volumes into three parts, relating to *jus ad bellum*, *jus in bello* and *jus post bellum*, adopts the organization of the subject by the Italian founder of international law, Alberico Gentili, who already in the 1590s had provided the framework that would become the backbone of legal theorizing about war and peace.⁴ It may seem surprising that the authors give credit to Gentili’s predecessor, Francisco Vitoria, and to Gentili’s successor, Hugo Grotius, but not to Gentili himself.

The authors insist that States should no longer be the exclusive authorities in the organization of global commons, and perhaps it is time to move on and to accompany international law with something more specific to human security. Immanuel Kant suggested that public law should be subdivided into three, rather than two, branches: internal law, inter-State law and cosmopolitan law.⁵ Under the rubric of cosmopolitan law, he included the rights and duties of humans independently from inter-State relations. Much of the human security approach advocated by Chinkin and Kaldor in the book seems to be an implementation of the Kantian idea of cosmopolitan law.

Chinkin and Kaldor remind the readers that civilians are often the primary victims of conflicts. The authors argue that in the reality of contemporary conflicts, soldiers often commit crimes,⁶ which may imply that traditional military methods and the underpinning legal framework have become inadequate to provide what they were expected to deliver, namely security. The authors argue at the same time that security is a highly ambiguous concept. It might, in fact, be interpreted either as security of “the State” from real or illusory rivals and threats, or as security of people, regardless of their belonging to a specific State. The book

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2 *International Law and New Wars*, pp. 160–161 (on Afghanistan), 194 (on Iraq).

3 *Ibid.*, p. 564.

4 Alberico Gentili, *De jure belli libri tres*, Clarendon Press, Oxford, 1933 (first published 1598).

5 Immanuel Kant, “To Perpetual Peace: A Philosophical Sketch” (1795), in H. Reiss (ed.), *Kant’s Political Writings*, Cambridge University Press, Cambridge, 1991, pp. 99–105.

6 *International Law and New Wars*, pp. 13–16.

explicitly favours the latter interpretation of security and asserts that international law should therefore be reviewed: its main purpose should no longer be to defend the State from real or imagined threats, but should rather be to contribute to human security.

Chinkin and Kaldor provide comprehensive examples where the traditional approach prioritizing the security of the State has been unable to deliver what it promises. In the case of civil wars, such as in Bosnia, Libya and Syria, even for the most powerful members of the international community it may be hard to know *who* and *where* to fight.⁷ The doctrine of the responsibility to protect, in spite of its good intentions, has focused on security of the State, and has mostly been performed by States. Therefore, the authors argue, the outcomes of conflicts in Darfur, Libya, Cote d'Ivoire and Mali have been bitterly disappointing.⁸

When able to identify an enemy to target, as occurred in Libya and Syria, some States have assumed that security problems could be resolved through military intervention, which has been narrowly understood as air strikes.⁹ The book raises the question of whether air strikes, the most common warfare method, are appropriate to achieve and protect human security.¹⁰ While using air strikes seems to be the most convenient form of intervention for powerful States since it allows them to exploit their military and technological capabilities without the dangers associated with putting “boots on the ground”, it may not be the best way to guarantee security of the population at large. Chinkin and Kaldor argue that in spite of its increased technological precision, aerial warfare is likely to violate the basic principle of international humanitarian law, namely the distinction between combatants and civilians.¹¹ Instead, the authors advocate for a different approach to humanitarian interventions.¹² The approach suggested in the book is based on the tenet that the international community should endeavour to protect civilians through cooperation with local networks and organizations.¹³ While the interventions would not necessarily exclude the use of military means, the principal aim would not be that of striking an enemy, but would rather be that of protecting endangered populations. Chinkin and Kaldor claim that their view is far from idealistic and that it is, on the contrary, the most pragmatic way to guarantee peace and security.

The practical implications of this work bring the readers back to the hard political reality. While the authors claim the rights of *persons* – as opposed to that of States' citizens – should be protected, they do not provide a comprehensive response to the parallel issue: who has the corresponding *duty* to protect individuals when a State proves unable to perform its tasks? The availability of

7 *Ibid.*, pp. 249, 255.

8 *Ibid.*, see Section 5.3.3, “The Responsibility to Protect in Action”, pp. 202–211.

9 *Ibid.*, pp. 206, 538.

10 *Ibid.*, pp. 206, 538.

11 *Ibid.*, p. 538.

12 *Ibid.*, pp. 224, 539. The fifth part of the book in particular is aimed at reconstructing international law on the grounds of the analysis previously carried out; see pp. 477–564.

13 *Ibid.*, pp. 518–519.

armies and police forces, as well as humanitarian assistance staff and fire brigades, very much depends on the willingness of States to provide them. Even the Blue Helmets, which in principle should be provided by the United Nations (UN) as such, are in fact national troops of contributing States. The authors refer to the role that UN agencies and non-governmental organizations have played in preventing conflicts and mitigating human suffering,¹⁴ and while they claim that global civil society can play a largely political role by influencing international institutions,¹⁵ Chinkin and Kaldor do not discuss how the former can be empowered. At the same time, UN agencies and non-governmental organizations do not yet have the required muscle and, unfortunately, are too weak to manage large conflicts without the active support of States. The normative implication of the book can therefore be read as a plea to grant more resources and functions to international organizations and global civil society.

The book provides powerful arguments to show that the traditional international law framework is inadequate to regulate contemporary conflicts. It also meticulously identifies and discusses the instruments that international law can provide in order to enhance human security. Will governments be prepared to listen and to act, or will they continue to take action *ex-post* only, when the costs of managing global crises might have become much higher? According to Thomas Hobbes, a thinker highly sceptical about the potential of international law, “[c]ovenants, without the sword, are but words”.¹⁶ History has partially reversed such dry wisdom, and on some occasions the might of States has effectively been tamed by international law. Chinkin and Kaldor provide powerful intellectual tools to help readers embrace the reality and challenges of contemporary conflicts.

14 *Ibid.*, pp. 378–429.

15 *Ibid.*, p. 558.

16 Thomas Hobbes, *Leviathan*, Cambridge University Press, Cambridge, 1996 (first published 1651), p. 117.