International Law and New Wars by Christine Chinkin and Mary Kaldor

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It is often said nowadays that modern wars have no clear beginning, middle or end. This is the basic premise of this important work by Christine Chinkin, Director of the Centre for Women, Peace and Security at the London School of Economics, and Mary Kaldor, Professor and Director of the Civil Society and Human Security Research Unit at the same institution. The new wars (an encompassing term describing contemporary political conflict) of the twenty-first century have a different logic from 'old wars'; armed groups pursuing conflict often have a vested economic and political interest in an ongoing conflict. Instead of a clash of wills between states based on specific and well-defined political or territorial goals as was the case with 'old wars', clearly demarcated by declarations and peace treaties, new wars are largely fought along identity (ethnic, religious or tribal) lines. Instead of being fought by regular and identified armed forces, the groups participating in new wars are often loose and fluid networks of state and non-state actors. They often have a cross-border character and links to private groups, including criminal networks. Violence and human rights abuses perpetrated against civilians are common during such conflicts and they are often sustained by new forms of war economies.

These characteristics result in a tendency of conflicts of this nature to spill across borders and develop a self-sustaining longevity, turning certain regions into 'bad neighbourhoods'; for instance, Central Africa, the Horn of Africa, the Middle East and the Balkans. Consequently, the concept of the legality of the use of force in international law is also being challenged, with a gap evolving between the traditional legality principles and the legitimate use of force to end human rights violations.

The authors hold that these new wars are not adequately addressed by traditional international law on the regulation of political violence. While there have been efforts to adapt the international legal framework, the realities of 'new wars' and the humanitarian catastrophes concomitant thereto and the development of human rights law since the end of the Second World War, require a reconceptualisation of international law's response. The aim of the book is therefore to develop a 'rights-based' and human security response to new wars, with principles rather than expediency underlying responses to crises, while also cognisant of the gender dimension of conflict and the critical role that gender needs to play in developing this alternative rights-based approach.

The book proceeds along two tracks: First, it identifies and defines four security models, namely the Geo-Political, War on Terror, Humanitarian Intervention/Responsibility to Protect (R2P) and Liberal Peace models. These models are then applied to areas of international law relating to security, offering different responses to new wars and the question on how to address the legality–legitimacy gap.

The Geo-Political model represents a Cold War and realist perspective on security as a contestation between powers using tools like regular military forces, economic sanctions and inter-state diplomacy, while the rules of classic international law form the legal basis of the *ius ad bellum* and the *ius is bello*. The War on Terror model has been a reaction to the so-called 'asymmetric wars' against armed groups, and stretched the traditional concepts of the law on self-defence to encompass possible future attacks and attacks by non-state armed groups. Humanitarian Intervention/Responsibility to Protect aims to safeguard individuals and communities against the most serious crimes. The objective of the Liberal Peace model is to establish collective stability rather than to defeat enemies, as is the case with the first three models. Such collective security can be achieved by means of multilateral interventions with expanding mandates and by enhancing the security roles of international and regional organisations, notably the United Nations, the Organization for Security and Co-operation in Europe and in Africa, the African Union, the Economic Community of West African States and the Southern African Development Community.

The tools employed by the Liberal Peace model are mainly peacemaking, peacekeeping and peacebuilding. The thesis that the authors develop in the book is that none of these theories adequately address the concept of new wars. Only a model that focuses primarily on the security of individuals and the communities they live in can provide the security needs in the fluid environments in which new wars take place. This second-generation Human Security model therefore employs a bottom-up approach. Ceasefires and protection should not be imposed from the outside, but must evolve from communities and encompass a range of political, economic, security and social

initiatives, as well as justice mechanisms which may then be reinforced by outside initiatives.

The book is organised into four parts. Part I sets out the conceptual framework of the work, in the introductory chapter providing an overview of the characteristics of new wars, before proceeding to chapter 2, which provides an overview of the evolution and changing, eroding nature of the concept of sovereignty and its relationship to the law on the use of force and the security models. Chapter 3 explores the narratives around the binding force of international law and theories of compliance. It concludes that different versions of international law are inherent to the respective security models; because in the Geo-Political and War on Terror models states remain the primary actors likely to use coercive force, while in the R2P and Liberal Peace models the primary actors are international institutions and states acting in a multilateral context, and in the case of the Human Security model it is civil society.

Part II, titled *Ius ad Bellum*, starts off in chapter 4 with an overview of the prohibition on the use of force and subsequent development of the *ius ad bellum*, as applied with respect to the Geopolitical and War on Terror Models; concluding that a reinterpretation of the right to self-defence that will strengthen the prohibition of the use of force is required. Chapter 5 explores the development of the humanitarian intervention/R2P exceptions to the prohibition on the use of force through a number of case studies; concluding that the triggers for intervention under the R2P doctrine are inadequate while also not addressing the structural causes of atrocity crimes. Based on the case studies, and specifically NATO's aerial bombing of Kosovo, it is concluded that as in the case of the law with respect to self-defence, humanitarian intervention is implemented by means and methods that are not always compatible with the aim of protecting civilians and as such may violate humanitarianism.

The first chapter of Part III, *Ius in Bello*, reviews the principles of International Humanitarian Law (IHL) and postulates that IHL is an outdated regime for the protection of civilians in new wars, where civilians are often deliberately targeted. The development of human rights law and its applicability in conflict is a further challenge to IHL's traditional foundations, while the principles of distinction, necessity and proportionality, and the difficulty with respect to the classification of conflicts, lay bare that the roots of IHL are firmly embedded in old-war thinking.

Chapter 6 proceeds to the subject of weapons, and the control thereof. It argues that while there have been significant achievements with respect to arms control and regulation (associated with the Geopolitical and War on Terror models), humanitarian protection can only be built on the foundation of effective and sustained disarmament.

Part IV covers the *Ius Post Bellum* as an emerging body of law, based not on charter or treaty law, but on a more amorphous series of agreements, guidelines and resolutions of international organisations. Chapter 8 deals with post-conflict governance, and explores the frameworks for post-conflict international presence, as they developed from the 'old war' concept of military occupation, to administration of a territory by an international body authorised by the Security Council, and finally to international assistance to local authorities. In these types of post-conflict governance, there is a tension between the idea of war and the idea of human rights. This is further explored in the next chapter, on peacemaking, peacekeeping and peacebuilding under the Liberal Peace model. These distinct phases, the authors conclude, is based on old war, Clausewitzian assumptions. Furthermore, not only are these phases increasingly indistinguishable in modern wars, but peace agreements and processes tend to confirm and codify power relationships that developed during conflict, while also tending to contain top-down, imposed solutions, often resulting in the prioritisation of stability over justice and accountability.

In chapter 10, which explores the topic of justice and accountability as part of *post bellum* law, the authors discuss the discourses on international criminal law and mechanisms aimed at ensuring justice and accountability for participants in conflicts as well as international personnel. While the growth of justice and accountability mechanisms over the last decades—mainly resulting from global civil society activism—is impressive, effective accountability outcomes are still being constrained by geo-political power relations.

In the final part, the authors explore the way forward for the concept of second-generation Human Security. While greater international consensus after the end of the Cold War resulted in the emergence of the idea of human security, its implementation has been stymied by the War on Terror and the resurgence of Geo-Politics. As these and the other models have proved to be inadequate to ensure sustainable protection, they argue for a second generation Human Security model, described as 'a rights-based approach to peacemaking and intervention that is both top-down and bottom-up, both international and local, and that requires extensive political, economic, legal and security tools' (480). Furthermore, it is particularly focused on the gender aspects of security. A thorough overview of the origins and development of the concept of human security leads the authors to the conclusion that the failures relating to its implementation and the contested and 'fuzzy' character of the concept have resulted in it becoming increasingly marginalised (also in the AU). A thorough rethink of the concept and its implementation is therefore required. The proposition is that effective human security must be based on the primacy of human rights and a clear recognition that war is illegitimate.

Tensions between the use of force and the protection of human rights in international law tend to result in a state-based concept of international security. A human-based

concept of security in international law to regulate new wars in the twenty-first century requires a re-evaluation of the concepts underlying international law. Human security must be based on the principle of the right to be protected. Intervention strategies must therefore be based on local contexts in order to enhance security on an individual and community basis, which require new conceptualisations of political, security, economic, social, gender and justice/accountability initiatives and mechanisms.

This is an important and timely book, it provides food for thought in a time when profound changes are under way in the international system, and the concept of humanitarianism appears to be in retreat. While at times somewhat too theoretical for this reviewer as a practitioner of international law, and admittedly idealistic, it contains a wealth of well-researched information on the whole spectrum of modern peace and security law. It is therefore a valuable contribution to a major discourse in international law. The concept of a right to protection, while perhaps not brand new, is an important instrument in the toolbox of both academics and practitioners to re-invigorate the fading R2P concept with its essential humanitarian content, at a time when lateral and innovative thinking is required of all those who care about the protection of humans.

Attractively produced, it unfortunately suffers from a lack of a bibliography, which would have been a major advantage in view of its thorough and in-depth exploration of concepts at the heart of international peace and security law.