The presentation of the development of international law until the Treaty of Westphalia, which was the turning point for shifting moral and religious arguments towards the consideration of legality, is clear and fully sufficient for the purpose of this study (at 97–100). Powell states that there are 'myriad crucial topics awaiting scientific exploration in the context of linkage between sharia and international law' (at 50). This is true with respect to certain subjects such as human rights and Islam. However, the subject of the book under review does not belong to this category. Based on the research, Powell's most important policy advice is that international courts must open a place for Islamic laws in their practice, at least when one of the parties is an Islamic state. She believes this would enhance the legitimacy of these courts (at 287–288). The likelihood of international courts following this advice is not great.

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Erika de Wet. ***Military Assistance on Request and the Use of Force***. Oxford: Oxford University Press, 2020. Pp 272. £84.00. ISBN: 9780198784401.

It is fair to say that the law governing the use of interstate force (*jus ad bellum*) is one of the most widely written upon – not to mention, controversial – sub-disciplines within international law. Within the voluminous literature, there exists a notable interest in the two established exceptions to the general prohibition of the threat or use of force found in the 1945 Charter of the United Nations and self-defence and the use of force under the auspices of the United Nations (UN) Security Council.[1] Much debate continues to take place regarding the breadth and scope of these exceptions, particularly that of self-defence,[2] but their existence as limited exceptions to the general prohibition is rarely questioned.[3]

[1] See, e.g., C. O'Meara, *Necessity and Proportionality and the Right of Self-Defence in International Law* (2021); N.M. Blocker and N.J. Schrijver (eds), *The Security Council and the Use of Force: Theory and Reality – A Need for Change?* (2005).

[2] For example, whether the right of self-defence is permitted against the actions of non-state actors. For a contribution on this issue by the author of the book under review, see de Wet, 'The Invocation of the Right to Self-Defence in Response to Armed Attacks conducted by Armed Groups: Implications for Attribution', 32 *Leiden Journal of International Law* (*LJIL*) (2019) 91.

[3] There is, however, an ongoing debate as to whether there is an additional exception of humanitarian intervention. For a recent contribution on this issue, see O'Meara, 'Should International Law Recognize a Right of Humanitarian Intervention?', 66 *International and Comparative Law Quarterly* (2017) 441.

By contrast, there is some uncertainty as to whether a request or the consent by the incumbent authorities within a state for the deployment upon its territory of the armed forces, or other military assistance, of another state constitutes an additional exception to the prohibition or whether it even engages the prohibition of the use of force *ab initio*.[4] Alternatively, others have questioned whether consent can be a defence with respect to a violation of the prohibition.[5] Despite the prevalence of interventions by states in the territories of other states (ostensibly) based upon the latter's consent – for example, the ongoing interventions in Syria and Yemen – there has hitherto been relatively limited, although admittedly growing, attention devoted to the topic in the academic literature.[6] Within existing literature, the topic has been approached from various angles and perspectives, giving rise to some notable theoretical and practical disagreement.[7] The primary aim of Erika de Wet's *Military Assistance on Request and the Use of Force*, however, is to attempt to clarify and establish the *lex lata* on fundamental legal aspects of military assistance on request. This is pursued through a rigorous doctrinal positivist approach with, consequently, a notable focus on state and organizational practice – in particular, that of the Organization of American States and the African Union. The book therefore represents a notable and timely contribution to the burgeoning literature on this important and prominent issue within the *jus ad bellum*.

In the introduction, de Wet carefully delimits the scope of her inquiry. In a temporal sense, the book takes as its focus post-Cold War events, which seems appropriate given that, as de Wet notes, the 'changed political reality' since the end of the Cold War has witnessed an accumulation of requests for military assistance across regions that have involved a diversity of state actors and international organizations, with a number of these new organizations expressly regulating military assistance on request in their collective security frameworks (at 14). In a material sense, there is a particular emphasis on intervention in civil wars, or non-international armed conflicts,[8] given that the 'permissibility of military assistance in these situations remains one of the most controversial issues in doctrine' (at 15). However, while this is the stated focus, de Wet certainly does not exclude incidences of assistance that have occurred outside of civil war situations in her analysis, as exemplified, for example, by the attention given to the interventions by the Gulf

4 See C. Henderson, *The Use of Force and International Law* (2018), at 349–350.

5 See, in general, Paddeu, 'Military Assistance on Request and General Reasons against Force: Consent as a Defence to the Prohibition of Force', 7 *Journal on the Use of Force and International Law* (*JUFIL*) (2020) 227.

6 See, e.g., Doswald-Beck, 'The Legal Validity of Military Intervention by Invitation of the Government', 56 *British Yearbook of International Law* (1985) 189; E. Lieblich, *International Law and Civil Wars: Intervention and Consent* (2013); Fox, 'Intervention by Invitation', in M. Weller (ed.), *The Oxford Handbook of the Use of Force in International Law* (2015) 816; International Law Association, *Use of Force – Military Assistance on Request*, available at www.ila-hq.org/index.php/committees.

7 On this, see Lieblich, 'Why Can't We Agree on When Governments Can Consent to External Intervention? A Theoretical Inquiry', 7 *JUFIL* (2020) 5.

8 As de Wet notes, the 'study applies the term "civil war" as being synonymous with that of a NIAC as defined in article 1 of Additional Protocol II' (at 19).

Cooperation Council in Bahrain in 2014 to suppress protests against the government or by the Economic Community of West African States' intervention in The Gambia in 2017 to uphold the results of an election, neither of which could be said to have crossed the – admittedly, rather blurry – threshold of a non-international armed conflict.

The book 'departs from a definition of military assistance on request that refers to the exercise of forcible measures by the armed forces of a state or those placed at the disposal of an international organization in the territory of another state at the latter's request' (at 1). Looking further at the meaning of 'military assistance' here, it is apparent that de Wet consciously focuses on the deployment of armed forces within a state and excludes the provision of arms or other military assistance. Indeed, it is 'direct' rather than 'indirect' military assistance that is the stated focus of the work (at 15). De Wet does not justify the exclusion of indirect force from the scope of the book, although it might seem a little surprising given both the prevalence of such forms of military assistance and the fact that this is where the greater controversy has arisen.[9] It was, in any case, noticeable that indirect assistance in fact receives attention in the book, leading one to question the rigour of the author's approach. As an example of this, the section on '[t]he illegality of (direct) military support to opposition groups' in Chapter 2 focuses almost entirely on such indirect assistance to national liberation movements as well as on the extensive coverage of the provision of arms and other forms of indirect assistance by Western and Middle Eastern states to the Syrian Opposition Coalition from 2013.

With respect to the terminology used to frame the scope of the book, it is also interesting that de Wet opts for military assistance at the 'request' or with the 'invitation' of a state, as opposed to 'with its consent'. This would seem to imply that the initiative, at least, has been taken by the assisted state with a formal and positive request for assistance, whereas often the initiative is taken by the assisting state(s) or organization and in situations where there is not a request to speak of or at least one that has emerged without some form of pressure or coercion thereby vitiating the consent provided. For example, while 'pro-invasion clauses', such as Article 4(h) of the Constitutive Act of the African Union, can be seen as the provision of *ex ante* general consent to intervention, it is more difficult to view it specifically as military assistance on request, given that such clauses can be invoked in situations where the government concerned would certainly not request any assistance, as such. In addition, the discussion on the relationship between military assistance on request and individual and collective self-defence in Chapter 6 is far more focused on the necessity of obtaining the consent of states in invoking the so-called 'unable or unwilling' doctrine, with any notion of request from the territorial state being somewhat redundant. In any case, and as de Wet herself notes, 'the terms "request" and "consent" can be used interchangeably, as two sides of the same coin' (at 1). Given that 'consent' encompasses both a state

[9] See Henderson, 'The Provision of Arms and "Non-Lethal" Assistance to Government and Opposition Forces', 36 *University of New South Wales Law Journal* (2013) 642.

requesting military assistance within its territory and the situation where a state or organization seeks to use force upon the territory of another state in circumstances that would not come under 'military assistance on request', it might have seemed a more appropriate choice.

Following de Wet setting out her stall in the introduction (Chapter 1), the subsequent substantive chapters focus on the nature and identity of the authority legally entitled to extend an invitation for military assistance (Chapter 2), the legality of military assistance on request specifically during civil wars (Chapter 3), the legality of military assistance to governments with dirty hands – that is, those implicated in human rights and/or international humanitarian law violations (Chapter 4), the requirements for a valid consent in the context of military assistance on request (Chapter 5) and the relationship between military assistance on request and the right to individual or collective self-defence (Chapter 6).

Firmly embedding state and institutional practice at the core of her analysis and arguments, de Wet convincingly weaves through these issues. On many occasions, she arrives at what might be seen as fairly traditional and uncontroversial positions. For example, in the discussion in Chapter 2 on the nature and identity of the authority entitled to extend an invitation for direct military assistance – an issue that has been particularly pertinent in recent years in the situations in Libya, Syria, The Gambia and Venezuela, to name but a few – de Wet adopts the position of the International Court of Justice (ICJ) that assistance to non-state armed groups is prohibited.[10] Indeed, the chapter 'departs from the well-established principle in international law that the competence to request either direct military assistance or indirect military assistance (in the form of arms, logistics, or financing) rests with the *de jure* government' (at 21). From this point on, the chapter essentially seeks to discern whether effective control, democratic legitimacy or the right of self-determination is determinative in identifying the *de jure* recognized government, which, as such, possesses the right to request or consent to military assistance. On the basis of an impressive survey of state and organizational practice, de Wet sides with effective control.

Yet, while offering a traditional account, de Wet's conclusions are often commendably nuanced. Indeed, whilst arguing that effective control is the primary factor in determining authority to extend a request for assistance, she also acknowledges that, in light of the practice included within her analysis, democratic credentials are increasingly weighing more heavily in such determinations (at 73). Furthermore, there has been a notable rise in the formation of 'negotiated governments' with outside involvement, a practice that demonstrates that the absence of effective control and democratic legitimacy will not necessarily preclude such interim governments from requesting and receiving direct military assistance. Finally, de Wet concludes that in certain situations 'some states are willing to tolerate openly or even applaud indirect military assistance to insurgents, despite the illegality of such actions' (at 31), and, on occasion, certain organizations have overlooked their expressly stated objection to

[10] See *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, 27 June 1986, ICJ Reports (1986) 14, para. 206.

coups or unfree or unfair elections in favour of the authority in effective control (at 64). While this turning of a blind eye is certainly something that can be identified in practice, it would have been good to see de Wet turn her skilled hand to delving further into the normative implications of this practice.

However, the book does not shy away on occasion from taking what might seem to be more controversial positions or at least those that might appear more questionable. For example, in Chapter 5, de Wet turns her focus to the formal requirements for valid consent to direct military assistance – in particular, the identity and nature of the state organs competent to issue and withdraw consent; the applicable benchmarks for consent to be said to have been given freely; whether consent has to be provided explicitly or whether consent can be implied from the circumstances; and the timing of the consent – in particular, whether it must be given ad hoc immediately prior to, or at the time of, each occasion of military assistance or whether *ex post facto* or general *ex ante* consent to intervention – in the form of a pro-invasion clause – is permitted.

According to de Wet, the survey of state practice demonstrates that 'customary international law only imposes two specific, formal limitations on the legal construct of military assistance on request. The first is that the request for or consent to military assistance must be issued (and withdrawn) by the highest officials of a state, namely, the head of state and/or government' (at 179). However, '[t]he second constraint imposed by customary international law concerns the requirement that *ex ante* consent as expressed in pro-invasion treaty clauses must be complemented by ad hoc consent at the time of the forcible measures' (at 179), which serves to both verify that prior *ex ante* consent has not since been withdrawn as well as to distinguish such arrangements from the collective security system of the UN Security Council.[11] While the state and institutional practice discussed by de Wet indeed indicates this to be the case, there is also nothing to suggest that the provision of ad hoc consent was more than circumstantial and/or provided for reasons other than legal compulsion or that such a compulsion has developed in light of the practice.

Although a focus on the *lex lata* is maintained throughout the book as a primary strand, there is also a distinct policy strand underpinning de Wet's work. In particular, she is clearly concerned about the continuing integrity of the prohibition of the use of force as, in her view, '[t]he limited constraints placed by customary international law on the legal construct of military assistance on request can contribute to the further erosion of the prohibition of the threat or use of force in article 2(4) of the UN Charter' (at 224). In addition to the right to self-determination being of limited relevance in posing a meaningful limitation to the right to military assistance on request in practice (Chapter 3) and the lack of any prohibition on direct military assistance to requesting governments implicated in widespread violations of international humanitarian and/or human rights law (Chapter 4), there are also limited constraints regarding the formal requirements for valid consent (Chapter 5). Arguably, a counterbalance to this

[11] See Kleczkowska, 'The Meaning of Treaty Authorisation and Ad Hoc Consent for the Legality of Military Assistance on Request', 7 *JUFIL* (2020) 270; see also Wippman, 'Treaty-Based Intervention: Who Can Say No?', 62 *University of Chicago Law Review* (1995) 607.

is the fact that military assistance to opposition groups still constitutes a violation of the prohibition of the use of force. As the ICJ phrased it in the *Nicaragua* case, 'it is difficult to see what would remain of the principle of non-intervention in international law if intervention, which is already allowable at the request of the government of a State, were also to be allowed at the request of the opposition'.[12] While the Court was open to this position changing, in de Wet's view, it has not done so, thus limiting any damage to the integrity of the prohibition of force.

Occasionally, these two strands of the book are blurred. For example, de Wet is dismissive of both the so-called 'negative equality' doctrine, which prevents states from intervening in a civil war,[13] and the arguments of some scholars that, although the negative equality principle stands, states nonetheless have the right to assist the governmental authorities of a state for certain purposes during a non-international armed conflict, such as countering terrorist groups or as a counter-intervention to prior intervention on behalf of non-state groups.[14] A key part of de Wet's dismissal is her concern that 'the application of the counter-terrorism and counter-intervention exceptions is likely to entirely erode the prohibition in practice' (at 120). This is correct – indeed, it is notoriously difficult to objectively identify a terrorist group, making it relatively easy for a wide range of groups to be identified by states as such and thus permit outside intervention, as well as it being difficult to verify whether claims of prior intervention used in order to justify requests for military assistance are accurate or fabricated. Yet it does not in itself have an impact on the fact that interventions have occurred and been accepted that have been undertaken ostensibly for purposes other than to assist one party in the midst of a civil war.

While the book is otherwise thorough and generally convincing, Chapter 6 on the relationship between military assistance on request and the right to individual or collective self-defence is where the current reviewer was left feeling slightly undernourished. Whilst somewhat controversial, de Wet goes to great lengths to argue that the threshold for the attribution of armed attacks to states has been lowered from that advanced by the ICJ in the *Nicaragua* case of 1986 (at 202–205)[15] as well as that armed attacks are able to be perpetrated by non-state actors (205–211). Both of these issues are undoubtedly of relevance to the inquiry, yet also rather well covered in existing literature.[16] In this respect, the chapter perhaps could have made its mark by examining the relationship between the two legal constructs of military assistance on request and collective self-defence. For example, the requirement of 'request' for intervention compared with a 'request' for assistance in collective self-defence, and the circumstances when each might be invoked, could have been explored more thoroughly, in addition to whether there are any distinctions between the two concepts other than the territory

[12] *Nicaragua*, *supra* note 10, para. 246

[13] On this doctrine, see, e.g., Ferro, 'The Doctrine of "Negative Equality" and the Silent Majority of States', 8 *JUFIL* (2021) 4.

[14] See, e.g., Bannelier-Christakis, 'Military Interventions against ISIL in Iraq, Syria and Libya, and the Legal Basis of Consent', 29 *LJIL* (2016) 743.

[15] *Nicaragua*, *supra* note 10, para. 195.

[16] See M. Ellen O'Connell, C.J. Tams and D. Tladi, *Self-Defence against Non-State Actors* (2019).

upon which they are exercised.[17] In particular, would the legal basis of collective self-defence also be necessary if a third state's agents or other manifestations were targeted either within the territory or territorial waters of the assisted state? Certainly, a further exploration of such issues would have assisted in providing a more concrete answer to the author's central inquiry in the chapter as to whether the right of collective self-defence has usurped military assistance on request or at least has the potential to do so.

These relatively minor gripes aside, it has to be said that *Military Assistance on Request and the Use of Force* is an excellent and stimulating read and certainly represents a significant contribution to the *jus ad bellum* literature in general but to that regarding consent to the deployment of armed forces abroad in particular. Its readability and accessibility, combined with its overall comprehensive nature, means that it has already become one of the leading works on the subject and the 'go-to' text not just for international lawyers but for all those interested in this important and often controversial topic.

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[17] See, e.g., Visser, 'Intervention by Invitation and Collective Self-Defence: Two Sides of the Same Coin?', 7 *JUFIL* (2020) 292; C. Kreß, 'The Fine Line between Collective Self-Defense and Intervention by Invitation: Reflections on the Use of Force against "IS" In Syria', *Just Security* (17 February 2015), available at www.justsecurity.org/20118/claus-kreb-force-isil-syria/.