

The Use of Force against Individuals in War under International Law: A Social Ontological Approach, by Ka Lok Yip, Oxford, Oxford University Press, 2022, 336 PP, ISBN: 9780198871699

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Sometime in 2022, I was invited to take part in a book launching event as a discussant because the topic the book addresses, i.e. legality of the use of force against individuals in war under international law, is directly related to the area of my current research engagement. Initially, I was wondering what new issues would be presented in this latest book on this subject matter since a lot has already been said and is being said by notable experts in the field. Yet, when I was provided with a digital copy of the book by the organizers of this event, I came to the understanding that Dr Yip, the author of the book, has approached to examine the topic from a unique perspective indeed – A Social Ontological Approach.

Utilizing an interdisciplinary methodology, the book presents a multifaceted perspective by bringing together social theories, legal analysis, and practical case studies to provide a comprehensive study. This multidisciplinary approach, which emphasizes the interaction between social theory and international law, is admirable because a large portion of well-known legal research on international law in general and international human rights and humanitarian laws, in particular, tends to shy away from engaging in theoretical discussions that are sparked by other academic disciplines, like social theory.

As the author noted, simply stated, the central problem this book examined is: how can the use of force against individuals in war be considered legal? In other words,

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the book inquires whether it is legal (under international law) to kill, or capture and confine, a person in war? This question sounds simple, but in reality, it is not. This is because the ascertainment of something being 'legal' in armed conflict (war) is fraught with difficulty since different branches of international law could be applicable to the same situation but with different normative prescriptions to regulate the situation (*jus ad bellum* (international law regulating the legitimacy of the resort to force), international humanitarian law (IHL), international human rights law (IHRL)).

So, the question is, should the 'legality' of the use of force be ascertained based on the normative prescription under any one, some, or all of these legal norms from the different branches of the law? What if something is 'legal' under one but illegal under another?

This book addresses these concerns to the significance, applicability, and rationality of discussing the 'legality' of the use of force against civilians in war by reinvigorating the link between legal theory and society. Finding their relationship helps clarify the meaning of the law, pinpoint its practical relevance, and possibly make its intervention sensible because the law both emerges from and shapes the social reality at the same time. Hence, in presenting discussions on various issues related to the topic, I can say that the book is thought-provoking.

First, the book discusses the overlapping legal standards on the legality of using force against individuals in times of war. To examine various conceptualizations of the link between these legal norms, the chapter engages with a variety of jurisprudence and summarizes the various methods for creating these connections into three major groups: positivist approaches predicated on a particular conception of public international law as a unified legal system; substantive approaches that place an emphasis on substantive considerations rather than formal rules; and critical approaches driven by worries about hegemony under the guise of universality. In so

doing, it sets the way for the social-ontological approach suggested in this book, which tries to expose the law's presuppositions about social reality, by drawing attention to the reductive nature of each of the existing approaches.

Second, the book attempts to explain the concept of 'legality' under international by analyzing six different conceptions of something being 'legal': namely 'Positive Legality', 'Negative Legality', 'Neutral Legality', 'Simple Legality', 'Compounding Legality', 'System-wide Legality'. By doing so, it establishes the conceptual framework for a doctrinal examination of the complex notion of 'legality' and its varied applications in the context of the use of force against individuals in war.

Next, in the third Chapter, the taxonomy of 'legality' concepts established in the book is utilized to determine which 'legality' concept is referenced in the IHRL framework that has generated the most heated debates on the topic. In this regard, it highlights a gap between IHRL and *jus ad bellum*/IHL that has not received enough attention and demonstrates that the cross-referential legality required by IHRL encompasses both Positive Legality and System-wide Legality using accepted interpretation techniques and IHRL jurisprudence.

Then, the book makes an emphasized analysis of 'Compounding Legality', which refers to the conception that legality under one legal norm has the effect of reproducing legality under another legal norm, through the use of legal techniques. In relation to this, it explores the tension generated by the profound and extensive requirements of legality envisaged under IHRL in situations governed also by IHL and *jus ad bellum*, which do not impose the same level of 'legality' requirements. In addition, it critically analyzed the arguments for and limitations of the two legal strategies—*lex specialis* and systemic integration—that have been employed to overcome these issues. In so doing, the book refutes the assumption that one standard is meant to take precedence over or not be in conflict with another by highlighting the differences between the regulatory goals of IHRL and *jus ad bellum*/IHL, and it

criticizes the abuse of both legal techniques based on this assumption. Accordingly, it offers alternate viewpoints by reintegrating the law with social reality after pointing out the limitations of ‘techniques of legal reasoning’ for addressing the tensions among the various rules regulating the use of force against individuals in war.

As such, in the fifth Chapter of the book, Dr Yip examines the use of force against individuals in war from a social ontological standpoint by referring to social theories. In it, the author contends that social forces present in other strata of social reality, which have the capacity to collectivize, instrumentalize, and structure persons and their actions, limit and shape human agency during times of war, regardless of the roles they may play. The chapter specifically proposes that any use of force against individuals in conflict is always the outcome of a combination of structure and agency that, despite their mutual interaction, is analytically different and potentially subject to regulation by legal rules addressing them.

Following this discussion, the book introduces a novel method for interpreting the law that makes use of social ontology in opposition to methods that minimize or reject the existence of a social reality that shapes and is shaped by the law while nevertheless existing independently of it. In addition, the book makes an interesting demonstration of how different attempts to procure the convergence of IHL and IHRL in the regulation of the use of force against individuals in war result in the conflation of ontologies in reality by applying insights from the social-theoretical exploration to the Israeli–Palestinian conflict, particularly during the ‘Knife Intifada’ in 2015/16. In the end, the book makes a general conclusion and presents a summary of the implications of the study on the legal regulation of the use of force against individuals in war, which the author asserted are threefold: theoretical, methodological, and practical.

In conclusion, the importance of this book as a contribution to the scholarly literature on the subject matter it addresses primarily lies in the fact that it employs an interdisciplinary investigation that combines the methodologies of doctrinal analysis, social theorizing, and empirical case study. In other words, the book brings together law, social theories, and actual practices to create a methodological framework that triangulates the phenomena investigated and the conclusions drawn. Based on my review, I can say that the book has delivered what it has set out to deliver, and by engaging on the topic in a trending debate and providing novel insights based on an interdisciplinary approach, it made a real contribution to the field.

I hope this review inspires others – scholars, legal and operational practitioners, and others interested in this vital but often cryptic topic of international law – to share insights from the intellectual labour of Dr Yip through this book.