


BOOK REVIEW

Collective Self-Defence in International Law, by James A. Green

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Describing the doctrine of collective self-defence as one of the most debated topics in public international law is not an exaggeration. For critical theorists who tend to perpetuate the inequalities, eurocentrism and other so-called anomalies around international law, collective self-defence stands as Gyges' ring, which is a stark reflection of the unjust, untouchable strength of the powerful states. Against the polemics around 'collective self-defence' James Green presents a crafty analysis from both academic and practical perspectives in his recently published work *Collective Self-Defence in International Law*. Given the gravity of ongoing events in these difficult times, the imperative of discussing 'collective self-defence' becomes a timely one.

Green is certainly aware of the seriousness of the task that he has undertaken, as the concept of collective self-defence stemmed from Article 51 of the UN Charter,¹ which sanctifies the modern legal concept of self-defence, setting out 'the inherent right of individual or collective self-defence if an armed attack occurs'. Yet there is no unanimity attributed to Article 51 in affirming how collective self-defence comes into effect, which makes a twilight situation for scholars or international lawyers in defining its applicability. For instance, the United States once interpreted its rights under the collective self-defence doctrine to be bounded by the rights of the requesting states. During Ronald Reagan's era, US state practice regarding collective self-defence appeared to be a doctrine shaped by the nation's interests. In a speech to the American Society of International Law, Abraham Sofaer, who was Legal Adviser to the Department of State under President Reagan, stated that the United States believes it can engage in lawful collective self-defence in any situation where the nation being assisted is entitled to act, and to the same extent.²

¹ Charter of the United Nations (entered into force 24 October 1945) 1 UNTS XVI.

² Abraham D Sofaer, 'International Law and the Use of Force' (1988) 82 American Society of International Law Proceedings 420, 422. These remarks are especially significant because they were presented as part of an extended attack on the reasoning of the International Court of Justice (ICJ) in the *Nicaragua* case: ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, Merits, Judgment, 27 June 1986 [1986] ICJ Rep 14.

Additionally, the various interpretations and legal opinions on this topic have created ambiguity for scholars in attempting to understand and rationalise the concept.

In the introduction, Green traces the unprecedented rise of the recent collective self-defence actions from the US-led coalition actions in Syria to Armenia's appeal to collective self-defence in September 2022. While acknowledging the difficulties that one can face in fathoming the concept, Green tries to engage in a broader discussion that intends to find answers to the grave questions related to collective self-defence, or at least to progress a debate on the perennial questions about the scope of the right.

This book takes a detailed and technical approach to examining the complexities of collective self-defence. While the extensive academic terminology and numerous case notes can be tedious for the general reader, Green's work stands out as it focuses on a specific topic within international law scholarship.

The first two chapters underpin the evolution of the concept while re-examining the problems that encompass the concept. Mainly, the author admits how problematic it is to examine a concept which has not been conceptualised by the treaty laws; thus, he opts for ascertaining collective self-defence through state practice. Chapters Three to Six present the doctrinal analysis of Green's book with a direct appeal to the scholarship as they attempt to identify and discuss the legal requirements for the operation of self-defence.

Chapter Three attempts to identify the exact criteria applying to individual and collective self-defence. Green recognises armed attack, necessity and proportionality as the most important aspects falling within the criteria for collective self-defence. He reiterates, in this chapter, that the requirements for individual self-defence have largely been discussed; hence his objective lies in interpreting the criteria applied to collective self-defence. In his findings, Green points out that both individual and collective self-defence share the same criteria as noted above. This provides a notable degree of consistency to the law governing the right of self-defence as a whole. At the same time, Green is convinced that the flip side of individual self-defence – such as whether it is legitimate to launch pre-emptive strikes or whether it is permissible to exercise it in response to attacks by non-state actors – is equally problematic in the realm of collective self-defence.

Concerning the so-called 'until clause' – which affirms that Article 51 holds that the right of self-defence can be exercised only 'until the Security Council has taken measures necessary to maintain international peace and security' – the author highlights historical cases such as the Falklands War and US action in Lebanon in 1958 to reflect the complexity and inconsistency of state practice. In the case of Lebanon, for example, the situation was quite clear when the Lebanese president invoked US military intervention to avert the influence of the United Arab Republic (UAR) in Lebanon. When the situation deteriorated, the Lebanese government requested of the United Nations Security Council (UNSC) and, in return, the UNSC passed a resolution on 11 June 1958. Having examined the legal criteria for collective self-defence, Green then observes how declaration and request become vital for the formation of collective self-defence. Green does not solely praise the legendary *Nicaragua* case in

1986³ as he traces requests for aid from various victim states in the early stages of the UN era. He briefly mentions South Korea's plea for aid to support it against the North. Thus, the *Nicaragua* case and the position of the International Court of Justice (ICJ) are re-examined in Chapter Four to identify the basis of the requirement of 'declaration'. In the *Nicaragua* merits decision, the ICJ indicated that for collective self-defence to be exercised, first, 'the State which is the victim of an armed attack must form and declare the view that it has been so attacked'.⁴ Besides tracing the infancy stage of the ICJ approach to collective self-defence, Green highlights the gradual development of the Court towards request and declaration. For instance, he discusses the relevance of the 2003 *Oil Platforms*⁵ and 2005 *Armed Activities*⁶ cases as novel developments emanating from the ICJ after *Nicaragua*. It is important to note that in neither the *Oil Platforms* case nor the *Armed Activities* case did the Court mention a requirement for the defending state first to declare that it has experienced an armed attack. While the ICJ did not explicitly reject its earlier assertion of the necessity for such a declaration in either decision, it also did not reinforce it.

The striking similarities that exist in the concept of collective self-defence and military assistance on request often create ambiguities in the scholarship and also in the praxis of international law. Generally, in international law, military assistance on request means direct military assistance by the sending of armed forces by one state to another state at the latter's request. The final chapter of the book is an apt attempt to elucidate and distinguish the two. For instance, while acknowledging that both concepts arise from sovereignty, Green illustrates how both operate as legally independent claims. In addition to examining the subtle differences between the two concepts at the doctrinal level, the author makes a plausible effort to explore the differences at the practical level. He is concerned that the requirement of request shared by the two doctrines frequently leads to a mixing of states' collective self-defence and military assistance on request. He distinguishes between the two concepts by emphasising that collective self-defence necessitates a prior armed attack, whereas military intervention upon request has no such requirement. In my view, the most significant contribution of Green's work is the clear differentiation it establishes between collective self-defence and military assistance at the request of a state.

Following a thorough research of both the theory and practice of collective self-defence, Green articulates the importance of collective self-defence as a much-nuanced notion in international law, which has been consistently misinterpreted and overlooked. The originality of Green's work is the fact that it rebuts the myth of recognising the nature of collective self-defence as a concept attributed to Article 51 of the UN Charter. In his work, he reveals that collective self-defence has a long history dating back to the seventeenth century based on military alliances. In addition to the thorough efforts made by Green in unravelling the complexities

³ *Nicaragua* (n 2).

⁴ *Nicaragua* (n 2) para 195.

⁵ ICJ, *Oil Platforms* (*Islamic Republic of Iran v United States of America*), Merits, Judgment, 6 November 2003 [2003] ICJ Rep 161.

⁶ ICJ, *Armed Activities on the Territory of the Congo* (*Democratic Republic of the Congo v Uganda*), Merits, Judgment, 19 December 2005 [2005] ICJ Rep 168.

of collective self-defence, the book leaves readers with some unresolved questions. One significant issue pertains to individual self-defence, particularly regarding preventative defensive actions and the ongoing debate about the (un)lawful use of force in self-defence against attacks by non-state actors. In the concluding remarks, Green acknowledges the vulnerabilities of collective self-defence, especially given the involvement of a third party, which can escalate the use of force. Overall, James Green's work represents a valuable contribution to the ongoing discussions and debates surrounding this important topic of international law.