BOOK REVIEW

***Destroying the Caroline: The Frontier Raid that Reshaped the Right to War*, by Craig Forcese, Irwin Law inc., 2018, ix-369 pp., ISBN: 781552214787**

Anyone who has studied (or even just had a passing interest in) the law on the use of force will have come across the hallowed *Caroline* incident of 1837. It is this famous nineteenth century frontier raid that is the focus of Craig Forcese's excellent new book, *Destroying the Caroline*, which was the 2019 winner of the American Society of International Law's Certificate of Merit for a preeminent contribution to creative scholarship.

1. The *Caroline* and its legacy

The *Caroline* incident, along with the formula that emerged from it,[1] have long been a fixture of any discussion of the law governing self-defence.[2] Given the incident's ubiquity, one would be forgiven for thinking that its facts are well-known. However, a key contribution – amongst many – of Forcese's book is to demonstrate that subsequent representations of the facts of the raid (and those of the wider context in which it occurred, as well as its aftermath) have at times been partial, misunderstood, or just plain wrong.[3]

Nonetheless, at least the core events of the incident will be familiar to most readers. In the context of the rebellion against British administration in Canada (9–14), in late 1837, a group of insurgents had occupied Navy Island in the Niagara River, within British-Canadian territory (15–21). The invaders were being supplied with weapons and personnel by a privately

[1] See n 6 – n 11 and accompanying text.

[2] In her modern *ad bellum* classic, Gray – in an oft-repeated turn of phrase – referred to the *Caroline* as having attained a 'mythical authority'. See Christine Gray, *International Law and the Use of Force* (Oxford University Press, 3rd edn 2008) 149 (although, interestingly, Gray dropped this phrase from the most recent edition. See Christine Gray, *International Law and the Use of Force* (Oxford University Press, 4th edn 2018) 158). There are endless works that reference the *Caroline* (to greater or lesser extents), but to give just a few examples of *ad bellum* scholarship that have stressed its importance, see Rosalyn Higgins, 'The Legal Limits to the Use of Force by Sovereign States: United Nations Practice' (1961) 37 *British Yearbook of International Law* 269, 298; J L Brierly, *The Law of Nations: An Introduction to the International Law of Peace* (Clarendon Press, 6th edn 1963) 405–6; Robert Jennings and Arthur Watts (eds), *Oppenheim's International Law, vol I* (Longman Group UK ltd, 9th edn 1992) 420; Oscar Schachter, 'The Right of States to Use Armed Force' (1983–1984) 82 *Michigan Law Review* 1620, 1635; Sean D Murphy, 'Self-Defence and the *Israeli Wall* Advisory Opinion: An *Ipse Dixit* from the ICJ?' (2005) 99 *American Journal of International Law* 62, 64–5.

[3] This is a recurrent thread throughout *Destroying the Caroline*, with Forcese pointing out inconsistencies or misunderstandings of the factual realities that have appeared and been passed down in subsequent reference to it as and when they arise. In particular, though, see the discussion at 229, and the helpful flowchart at the end of the book that maps how some of these inaccuracies have been passed down through time (263).

owned US steamer, the *Caroline*. During the night of 29 December 1837, while the *Caroline* was docked at Schlosser, in United States territory, it was raided and sunk by a small British-Canadian militia group (37–47). In the process at least one United States citizen, Amos Durfree, was killed.[4] Other casualties were alleged, and assertions of multiple deaths have been repeated in accounts since,[5] but ultimately, as Forcese affirms, '[i]t is not clear if anyone else died in the fight' (46).

The *Caroline* incident is, of course, 'best remembered today for a single passage in the protracted diplomatic exchanges between the two governments'[6] – Britain and the US – concerning the raid and the justification (or not) for the violation of US territorial integrity that it represented. This is the famous '*Caroline* formula': an articulation of the criteria for an acceptable act of self-defence, set out by the United States Secretary of State Daniel Webster (first in a correspondence he had sent to Henry S Fox in April 1841, but more commonly cited from its repetition in a letter that Webster sent to Lord Ashburton, the British special representative to the United States, dated 27 July 1842):

> It will be for that Government *to show a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation.* It will be for it to show, also, that [the state acting in self-defence] … did nothing unreasonable or *excessive*; since the act justified by the necessity of self-defence must be limited by that necessity, and kept clearly within it.[7]

From Webster's words, one can draw a direct line to the modern customary international law requirements of necessity and proportionality for self-defence.[8] The formula also has legal

[4] See the sworn affidavit of Gilman Appleby, Commander of the *Caroline*, as supported by nine other crew members, (1837–1838) XXVI *British & Foreign State Papers* 1373–5.

[5] Most famously, some accounts alleged the death of the ship's cabin boy, 'Little Billy'. See, e.g. John Basset Moore, *A Digest of International Law, vol II* (Government Printing Office, 1906) 409; Robert Y Jennings, 'The *Caroline* and McLeod Cases' (1938) 32 *American Journal of International Law* 82, 84. However, this may be brought into question, given unverified and conflicting accounts (46–7).

[6] Christopher Greenwood, 'The *Caroline*' (2009) *Max Planck Encyclopedia of Public International Law*, https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e261?prd=EPIL, para 5.

[7] Letter dated 27 July 1842, from Daniel Webster to Lord Ashburton (1841–1842) XXVI *British & Foreign State Papers* 193–4 (extract taken from Webster's earlier letter to Henry S Fox, dated 24 April 1841, (1840–1841) XXIX *British & Foreign State Papers* 1137–8), emphasis added.

[8] See Yoram Dinstein, *War, Aggression and Self-Defence* (Cambridge University Press, 6th edn 2017) 296–7; James A Green, 'Docking the *Caroline*: Understanding the Relevance of the Formula in Contemporary Customary International Law Concerning Self-Defense' (2006) 14 *Cardozo Journal of International & Comparative Law* 429, 450; Christian Henderson, *The Use of Force and International Law* (Cambridge University Press, 2018) 227.

resonance for today's debates surrounding preventative self-defence[9] (although, as Forcese demonstrates, this resonance is perhaps at odds with the actual facts of the incident)[10] and – albeit less commonly noted – self-defence against non-state actors and the so-called 'unwilling or unable' doctrine.[11]

2. The *Caroline* in scholarship

It has already been noted that there are ubiquitous references in international law scholarship to the *Caroline* formula as a crucial root of key aspects of the modern customary international law on self-defence, and as a touchstone for current debates.[12] Beyond this, though, there are a number of previous works that have been focused on the *Caroline* itself, revisiting the incident and seeking to bring deeper clarity to its enduring influence.[13]

The most prominent of these perhaps remains an article from 1938 by Robert Jennings, which famously presented the incident as the *locus classicus* of the law of self-defence.[14] As Forcese notes, Jennings' article – much like the incident that it examines – has had 'a lasting impact, and is heavily referenced even today in modern international law scholarship' (190).

More recently, creating their own connective tissue, a number of entries in the 'batch' of *Caroline*-centric publications that emerged in the decade from mid-1990s to mid-2000s all decided to follow an informal naming convention of 'verb-ing' the *Caroline* in their titles. Kearley's 'Raising the *Caroline*' in 1999[15] was followed by Occelli's 'Sinking the *Caroline*'

[9] As noted by Gray, 2018 edn (n 2) 275, the terminology with regard to the notion of self-defence in response to an attack that has not yet occurred is not at all uniform in the literature. Therefore, to be clear, following the previous (arbitrary) practice in my writing, I herein use the term 'preventative self-defence' to refer to any form of forcible action taken before an actual attack has commenced (i.e., as a 'catch all' for *any* use of force launched in response to an attack that has not yet occurred, whether the attack is imminent or not).
[10] See subsection 5.3.
[11] See subsection 5.4.
[12] See n 2 and accompanying text.
[13] See, e.g., Moore (n 5); Jennings (n 5); Albert Bickmore Corey, *The Crisis of 1830-1842 in Canadian-American Relations* (Yale University Press, 1941); Kenneth R Stevens, *Boarder Diplomacy: The* Caroline *and McLeod Affairs in Anglo-American-Canadian Relations, 1837-1842* (University of Alabama Press, 1989); Martin A Rogoff and Edward Collins Jr, 'The *Caroline* Incident and the Development of International Law' (1990) 16 *Brooklyn Journal of International Law* 493; Thomas Kearley, 'Raising the *Caroline*' (1999) 17 *Wisconsin International Law Journal* 325; Maria Benvenuta Occelli, 'Sinking the *Caroline*: Why the *Caroline* Doctrine's Restrictions on Self-Defence Should not be Regarded as Customary International Law' (2003) 4 *San Diego International Law Journal* 467; Green (n 8); James Denver and John P Denver Jr, 'Making Waves: Refitting the *Caroline* Doctrine for the Twenty-First Century' (2013) 1 *Quinnipiac Law Review* 165; Gábor Kajtár, 'The *Caroline* as the "Joker" of the Law of Self-Defence – A Ghost Ship's Message for the 21st Century' (2016) 21 *Austrian Review of International and European Law* 3.
[14] Jennings (n 5) 92.
[15] Kearley (n 13).

in 2003,[16] and, then, by my own 'Docking the *Caroline*' in 2006.[17] That naming convention had been dropped in more recent work on the incident,[18] but Forcese has revived it with '*Destroying*' *the Caroline*: neatly connecting his book to some of the previous literature on the subject by virtue of its very title.[19]

The relatively small, but not insignificant, body of legal literature focused *specifically* on the *Caroline*, has – over the last few decades in particular – sought in some measure either to reaffirm or question the incident's lofty status in *ad bellum* discourse. Some scholars, for example, have argued that the *Caroline* is today of limited value, being relevant only to certain 'types' of self-defence claim,[20] or that its resulting formula is in need of amendment in relation to the realities of modern threats.[21] Others have gone further and argued that the *Caroline* should not be seen as having meaningful implications for modern customary international law at all.[22] In complete contrast, a competing seam of this scholarship has sought to reaffirm the pre-eminence of the *Caroline* and its fundamental role in the modern law.[23]

For what it is worth, for my part, I argued in my 2006 article that the *Caroline*'s relevance had been both under- and overstated. My view now, as then, remains that 'the *Caroline* formula in itself does not represent contemporary customary international law',[24] but that the roots of the modern law undeniably are to be found in the *Caroline*, and, therefore, the 'exclusion of the *Caroline* from scholarly discourse over the current position of the customary international law of self-defence is unhelpful, because the formula is an extremely useful tool to aid our understanding of this area of the law.'[25]

Destroying the Caroline is another contribution to this thread of *ad bellum* inquiry that has chosen to zero in on this 'useful tool'. As noted, the book's very title acts to situate it amongst some of that wider body of work. However, as will be discussed,[26] the depth and quality of the historical research in the book (in particular) means it stands out as one of the most important works that has thus far been written on the incident.

[16] Occelli (n 13).
[17] Green (n 8).
[18] See, e.g. Denver and Denver (n 13); Kajtár (n 13).
[19] This convention is also applied to a number of the chapter titles within the book.
[20] See, e.g. Kearley (n 13).
[21] See, e.g. Denver and Denver (n 13).
[22] See, e.g. Occelli (n 13); Kajtár (n 13).
[23] See, e.g. Rogoff and Collins (n 13).
[24] Green (n 8) 433.
[25] *Ibid*.
[26] See section 4.

3. Structure and approach

Destroying the Caroline is split into five parts. Drawing on *significant* archival research, Part I pieces together and sets out a detailed account of the events that led up to the incident, and then of the incident itself. Part II – likewise underpinned by some exceptional historical research – examines the fallout: the various increases and reductions in Anglo-American tensions that followed, and the diplomatic exchanges that ultimately produced the famous formula that became the *Caroline*'s most enduring international legal legacy. Part III then assesses the merits of the claims and debates at the time, set in their appropriate historical context. Part IV charts the process through which the *Caroline* became firmly embedded in international legal discourse, through consideration of nineteenth century writings and practice. Finally, Part V engages the question of what the *Caroline* might mean for the law on the use of force today.

As such, Forcese (very deliberately) straddles political and social history, legal history and modern legal analysis.[27] Parts I and II together are essentially a 'pure' historiography of a frontier incident from 1837 and its aftermath; Parts III and IV move into *legal* history territory, analysing the claims at the time and then the legal resonance of the *Caroline* in the decades that followed; Part V acts to situate the *Caroline* in current legal debates.

4. Turning to history

It is the historical aspect of *Destroying the Caroline*, comprising the notable majority of its pages, which is the most successful. The quality and sheer depth of the underpinning historical research – particularly in the first two Parts of the book, although also throughout much of Parts III and IV – is extremely impressive. In Parts I and II, Forcese presents an account that is not just detailed but rich: the first 120 or so pages of the book are populated with real people leading real lives and acting on real motivations. The reader gets the what, why and who all presented to them in vibrant technicolour: this first third or so is a wonderful read, entertaining and frequently illuminating. Despite its later forays into current legal debates (notably in Part V), *Destroying the Caroline* is, first and foremost, a crucial (and very readable) work of international legal history.

[27] As a different reviewer of *Destroying the Caroline* has elsewhere noted, 'the book is part history, part analysis of contemporary debates, and part links between them.' Matthew Waxman, 'The *Caroline* Affair in Evolving International Law of Self-Defense', *Lawfare* (28 August 2018) www.lawfareblog.com/carolineaffair.

The book might therefore be seen as part of the so-called 'turn to history' in international law scholarship.[28] This 'trend' (if it is a trend: the 'historical dimension of international legal discourses is not new')[29] has certainly had its detractors, particularly with regard to the value of seemingly melioristic narratives that present a credulity-defying 'idea of progressive history'[30] for international law.[31]

However, *Destroying the Caroline* dodges that wider critique of historical work in international law entirely, thankfully avoiding any such linear 'march of civilisation' inferences.[32] Forcese is very clear that the *Caroline* incident 'is remembered by chance, and not design' (4) and that, when it comes to the influence that the *Caroline* has had, 'nothing was inevitable' (190). Forcese does not present the *Caroline* or its influence as 'predictable', 'canonical', 'good', or 'bad' (at least, not inherently so). Instead, he primarily seeks to investigate what actually happened, what influence that happening has had since, and why.

Thus, while, as has been noted,[33] much of the existing scholarship on the *Caroline* incident seeks either to celebrate or denigrate it as a modern touchstone, Forcese does neither. Instead, he undertakes the more challenging task of truly trying to understand it, by painstakingly sifting through the evidence. Importantly, he allows that evidence to lead him where it may, and when the evidence is unclear – about what happened, or why – he says so (presenting plausible interpretations but not definite conclusions as to the facts).[34] This careful and 'neutral' approach to sources is the reason that the book's historical account is ultimately so convincing.

5. The *Caroline* and the modern law

[28] See, generally Matthew Craven, 'Theorizing the Turn to History in International Law', in Anne Orford and Florian Hoffmann (eds), *The Oxford Handbook of the Theory of International Law* (Oxford University Press, 2016) 21.
[29] See Jean d'Aspremont, 'Critical Histories of International Law and the Repression of Disciplinary Imagination' (2019) 7 *London Review of International Law* 89, 90.
[30] Martti Koskenniemi, 'Law, Teleology and International Relations: An Essay in Counterdisciplinarity' (2011) 26 *International Relations* 3, 4.
[31] See, e.g. Ryder McKeown, 'International Law and Its Discontents: Exploring the Dark Sides of International Law in International Relations' (2017) 43 *Review of International Studies* 430; Charlotte Peevers, 'Liberal Internationalism, Radical Transformation and the Making of World Orders' (2018) 29 *European Journal of International Law* 303
[32] This is not to say that the book necessarily would be entirely free of some of the other critiques of works of international legal history, particularly the notion of zoning in on particular historical 'markers'. See d'Aspremont (n 29).
[33] See n 19 – n 25 and accompanying text.
[34] See, e.g. as just one example, 21 (noting the 'plausible claim' that the Usher homestead was shelled by the insurgents located on Navy Island).

Perhaps a less successful – or at least, less obviously successful – aspect of *Destroying the Caroline* comes towards the end of the book, when Forcese engages with the incident's relevance to modern legal debates. To be fair, it is made very explicit that the goal is not to delve into those debates in significant depth. It is clearly stated that the aim of the last Part of the book is to '*briefly* canvass the chief controversies in modern self-defence law, and how the *Caroline* has been used to resolve or confuse the issues' (212, emphasis added). Part V does just that, but, as a result, left me wanting a bit more.[35] It would, of course, be entirely unrealistic to expect that Forcese's rich contextualisation of the *Caroline* would then act as a 'magic key' to unlocking today's perennial legal controversies. Nonetheless, some aspects of Part V may perhaps have benefited from further depth in relation to those controversies.

5.1. Necessity and proportionality

For example, I personally found the discussion in Part V of the crucial necessity and proportionality criteria a little disappointing. While less controversial than questions of preventative self-defence or self-defence against non-state actors, the necessity and proportionality criteria have become, in the UN era, customary international law requirements for *all* self-defence actions,[36] and they are criteria that in large part owe their modern contours to the *Caroline* formula.[37] These criteria are therefore arguably the *Caroline*'s most important legal legacy,[38] yet they are discussed in a mere few pages of the book (233–6). Perhaps more could have been done to explore the connective tissue between the *Caroline* and prominence/nature of these criteria today.

5.2. The protection of nationals

Similarly, the consideration of the notion of the protection of nationals (215–9) could have expanded further upon the *Caroline*'s place (actual and/or appropriate) in debates on that question: for example, by exploring the fact that both have roots in wider notions of 'self-help'

[35] This was also the case occasionally in Part IV: for example in relation to the speedy run through of the 1945 emergence of the UN Charter's prohibition on the use of force (197–200).
[36] See, e.g. *Legality of the Threat or Use of Nuclear Weapons* (advisory opinion) [1996] 1 ICJ Rep 226, para 41.
[37] See n 8 and accompanying text. This is not to say that these criteria did not exist in some form in legal theory stretching back *much* further. See, e.g. James A Green and Francis Grimal, 'The Threat of Force as an Action in Self-Defense under International Law' (2011) 44 *Vanderbilt Journal of Transnational Law* 239, 300.
[38] James A Green, 'The *Ratione Temporis* Elements of Self-Defence' (2015) 2 *Journal on the Use of Force and International Law* 97, 100; Henderson (n 8) 227.

predating much of the modern law.[39] This section also is premised on the claim that because the Charter and custom require an 'actual armed attack', this seemingly rules out the protection of nationals abroad (219). This understanding would appear to assume that an 'actual armed attack' must be against a state's territory, and yet no basis for that – much debated[40] – conclusion is provided.

5.3. Preventative self-defence

The section in Part V on preventative self-defence is rather more successful in situating the *Caroline* in modern debates on that topic. The *Caroline* has, of course, long been a common feature of considerations of preventative self-defence,[41] both in terms of the threshold question of whether a state can act in self-defence prior to the occurrence of an armed attack at all, and also whether – if it can – there exists a requirement that the anticipated attack being responded to must be an imminent one. The notion of an 'imminence' criterion in this context has, in the UN era, repeatedly been drawn[42] from Webster's claim that the need to act in self-defence must be 'instant, overwhelming, leaving no choice of means, and no moment for deliberation.'[43]

However, Forcese's historical groundwork potentially undermines the *Caroline*'s place in modern debates concerning preventative self-defence. He highlights, for example, the inaccuracy of the sometimes repeated (as he charts at 263) assertion that Navy Island was in US territory; the island was part of British-Canada, and thus its occupation in 1837 was not a staging ground for an invasion but an invasion in itself. Moreover, also commonly overlooked

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[39] See, e.g. Andrew W R Thomson, 'Doctrine of the Protection of Nationals Abroad: Rise of the Non-Combatant Evacuation Operation' (2012) 11 *Washington University Global Studies Law Review* 627, 639–44 (touching on this connection, albeit not meaningfully exploring it either).

[40] See, e.g. Tom Ruys, 'The "Protection of Nationals" Doctrine Revisited (2008) 13 *Journal of Conflict and Security Law* 233 (ultimately taking the view, at 270, that 'the long-standing controversy over the legality of forcible protection of nationals remains unresolved', but being clear, at 236, that a commonly advanced argument is that 'nationals abroad form part of a state's population and are therefore one of its essential attributes, implying that an attack against nationals abroad can be equated to an [armed] attack against the state itself…').

[41] See, e.g. Kinga Tibori Szabó, *Anticipatory Action in Self-Defence: Essence and Limits under International Law* (T.M.C. Asser Press, 2011) 72–5; Arthur Eyffinger, 'Self-Defence or the Meanderings of a Protean Principle', in Arthur Eyffinger, Alan Stephens and Sam Muller (eds), *Self-Defence as a Fundamental Principle* (Hague Academic Press, 2009) 103, 119–20; Noam Lubell, *Extraterritorial Use of Force Against Non-State Actors* (Oxford University Press, 2010) 56–9; Gregory A Raymond and Charles W Kegley, Jr, 'Preemption and Preventative War', in Howard M Hensel (ed), *The Legitimate Use of Force: The Just War Tradition and the Customary Law of Armed Conflict* (Ashgate, 2008) 99, 101.

[42] See, e.g. *Case Concerning Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v United States of America*) (merits) [1986] ICJ Rep 14, dissenting opinion of Judge Schwebel, para 200; Oscar Schachter, *International Law in Theory and Practice* (Martinus Nijhoff Publishers, 1991) 151–2 James W Houck, '*Caroline* Revisited: An Imagined Exchange between John Kerry and Mohammad Javad Zarif' (2013) 2 *Penn State Journal of Law & International Affairs* 293; Dennis R Schmidt and Luca Trenta, 'Changes in the Law of Self-Defence? Drones, Imminence, and International Norm Dynamics' (2018) 5 *Journal on the Use of Force and International Law* 201.

[43] Letter dated 27 July 1842 (n 7).

is the fact that it was an invasion that included shelling, beyond the island, of the Canadian shore and Canadian boats on the river (21–2, 228). Thus, Forcese argues that the common conception of the *Caroline* incident as an act of preventative self-defence (or, at least, as *solely* an act of preventative self-defence) is factually incorrect (227–31). This is certainly not an entirely 'new' understanding of the incident,[44] but it is starkly realised here because of the depth of the historical research underpinning it.

Admittedly, one can perhaps still make a case that the *Caroline* incident was at least partially one of a preventative sort, in that the vessel was docked for the night (i.e., one attack was 'over'; the next, yet to commence). States often include language in their self-defence claims that paint a mixed picture of action in relation to both 'ongoing' and 'future' attacks.[45] However, Forcese certainly shows that this reading of the incident is less credible than I, at least, had previously thought. He makes a strong case that, were the incident to occur today, it would be seen as a response to a single, actual and ongoing, armed attack (at various points, but most clearly at 228). Forcese notes the resulting irony that the *Caroline* has become a key battleground on which doctrinal conflict concerning preventative self-defence is fought, with both those looking to restrict (or prohibit) it *and* those seeking to widen its parameters invoking the incident to support their respective positions (226, 246).

There are two ways to look at this, though. On the one hand, it may require us to question whether the *Caroline* is appropriate for considering questions of preventative self-defence at all. We may conclude that the debates surrounding imminence (whether it is a requirement, should be a requirement, and what it even means), are all premised on an inappropriate source: an incident that is better conceptualised as a response to an attack well underway. At the same time, the *formula* that sprang from the *Caroline* can be seen as having taken on a life of its own over the (many) years since, divorced from its factual origins (indeed, that is precisely Forcese's point: e.g. he explicitly highlights this 'disconnect' at 229). The fact that the language in the formula *appears to* set out an imminence criterion *prima facie* and has become adopted in that way perhaps is enough to conclude that it should not matter that the incident was not an act of the type of self-defence with which that formula has since become synonymous.

[44] See, e.g. Jordan J Paust, 'Post-9/11 Overreaction and Fallacies Regarding War and Defence, Guantanamo, the Status of Persons, Treatment, Judicial Review of Detention, and Due Process in Military Commissions' (2003-2004) 79 *Notre Dame Law Review* 1335, 1345–6; Dinstein (n 8) 225.
[45] Green (n 38) 114–6.

Forcese presents but, somewhat frustratingly, does not really take a clear stand on such points. He highlights the a-historical discrepancy between the incident's facts and current legal usage, as well as the dangers posed both by abandoning the imminence standard that has (wrongly) stemmed from the *Caroline* and by adhering too strictly to it (230–1). Beyond that, though, we are left to draw our own conclusions on the core debates surrounding imminence. Again, one cannot help but wish for a bit more depth on the contours of those debates.[46]

5.4. Unwilling or unable

The relevance of the *Caroline* incident for modern debates on the use of force in self-defence against non-state actors is 'now dimly remembered' (239). Forcese does an excellent job of remedying this by highlighting throughout not only the core fact that the raid was undeniably one conducted against a non-state group, but also the repeated references in diplomatic exchanges at the time (and over subsequent years) to the unwillingness and/or inability of the United States to curb the insurgents' actions (e.g. 35, 63, 74, 149–50, 157–8). The reader is left in no doubt that ongoing debate on the so-called 'unwilling or unable' doctrine[47] is another area of current controversy that very much has roots in the *Caroline*.

Armed with that clear finding, in Part V, Forcese turns his attention to the unwilling or unable doctrine today. The debate surrounding the doctrine is clearly presented, with some useful discussion of historical examples since the *Caroline* (238), as well as of recent invocations of it, especially in relation to action against Islamic State (239–41). The (seemingly accumulating) evidence that the doctrine *may* be an aspect of customary international law is noted, but then contrasted with the danger of abuse represented by such a 'fuzzy doctrine' (242). Again, though, ultimately, Forcese steps in – rather than fully *diving* in – to the murky waters of the modern debates on unwilling or unable, and one is left slightly unclear as to what view he, himself, takes in relation to how best we should try to navigate them.

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[46] See Craig Martin, 'Book Review: *Destroying the Caroline: The Frontier Raid That Reshaped the Right to War*. By Craig Forcese. Toronto: Irwin Law, 2018. 369 pages' (2018) 56 *The Canadian Yearbook of International Law* 1, 5 (making a similar point in his review of this book: 'while emphasizing that imminence is the element that has been most misunderstood and exploited, Forcese does not explore in detail the full extent of that distortion').

[47] See, generally, e.g. Ashley Deeks, '"Unwilling or Unable": Toward a Normative Framework for Extraterritorial Self-Defense' (2012) 52 *Virginia Journal of International Law* 483; Olivier Corten, 'The "Unwilling or Unable" Test: Has it Been, and Could it be, Accepted?' (2016) 29 *Leiden Journal of International Law* 777; Kimberley N Trapp, 'Actor-Pluralism, the "Turn to Responsibility" and the *Jus ad Bellum*: "Unwilling or Unable" in Context' (2015) 2 *Journal on the Use of Force and International Law* 199; Craig Martin, 'Challenging and Refining the "Unwilling or Unable" Doctrine' (2019) 52 *Vanderbilt Journal of Transnational Law* 387.

Ultimately, it is perhaps greedy – and a sign of the quality of the majority of the book, which preceded it – to want 'more' on the modern law in Part V. This is especially the case when one considers that Forcese is clear that his engagement with today's controversies is deliberately brief, and the primary goal of the book is to help us properly to understand the *Caroline*. Measured against that goal the book is a resounding success.

6. Conclusion

Ultimately, Forcese conceptualises the *Caroline* – in true 21st century fashion – as a 'meme' (e.g. 4, 211), a 'self-replicating idea' (4) in the *ad bellum* landscape. At the same time, though, he provides a unique insight into the underlying circumstances and people that gave birth to that meme, charts its solidification, and grapples with the disconnect between the way the *Caroline* is represented today, 'often partially and in a stylised manner' (3–4) with what actually happened.

As someone who has undertaken a major (although nowhere near *this* major) research project on the *Caroline* in the past – digging into original documents from the time and trying to make sense of the legal context that shaped and embedded elements of Webster's famous formula in the customary international law that we continue to apply and contest today – it was a real pleasure to read *Destroying the Caroline*. I thought, unjustifiably self-importantly, that I 'knew' the *Caroline*, more so even than most scholars in the field. Forcese's book makes it clear that I did not, or, at least, not well enough. My misunderstandings and gaps in knowledge about the incident were entertainingly revealed to me in the pages of this book.

Its latter sections, engaging current legal debates, are perhaps less successful than the historical analysis that precedes them, and a fuller exploration of those debates – in places – may have further increased its utility for the modern *ad bellum* researcher. Nonetheless, my quibbles about the final Part of the book – largely, I think, stemming from an appetite that had been wetted by its overall quality – do not significantly detract from that overall quality. *Destroying the Caroline* is now one of the leading works on the *Caroline* incident, and will be an invaluable resource for anyone engaging with it (or its legacy) going forward.

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