New Security Threats, Unilateral Use of Force, and the International Legal Order

Afeno Super Odomovo

The emergence of new security threats to the international community has led to a fundamental reevaluation of the contemporary international legal order. The events of September 11, 2001 in particular heralded the beginning of an age of terror, characterized by the fear that terrorist groups could acquire and use weapons of mass destruction (WMD) against their targets. The ensuing war against transnational terrorism and proliferation of WMD is a new type of warfare, posing unique threats and unparalleled security challenges to the international community. No doubt the war against terrorism incorporates a number of innovations into the existing international legal framework. One such innovation has to do with the rules regulating the use of force in inter-state engagements. In spite of the normative *jus ad bellum* doctrines of self-defense and necessity, there have been instances where the imperatives of political, humanitarian, and strategic considerations leave no choice but for states to act outside the law. Unilateral and unauthorized use of force has the potential to undermine the universal system of collective security and erode the current international legal framework, as it sets a bad legal precedent. This paper places contemporary provisions for the use of force in their historical and legal contexts, examines the extent to which they diverge from the current international legal order, and considers whether they create the need for a new international legal order.

Key Words: international legal order, weapons of mass destruction, terrorism, preemptive self-defense, use of force

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Introduction

The circumstances under which the use of force is justified in international law have remained at the forefront of political and legal debates since early times. In this context, the creation of the United Nations resulted in the most fundamental modification of international law of the twentieth century, by outlawing the use of force in international relations. The prohibition against the use of force is a treaty-based rule that is enshrined in both the UN Charter and treaties of regional scope such as the North Atlantic Treaty and the Inter-American Treaty of Reciprocal Assistance. These provisions are the most fundamental *jus cogens* norm of contemporary international law that encompasses the primary value of collective security.

However, contemporary international law has been inundated with new security problems. In the past few years, the international community has witnessed an upsurge in threats of terrorism and has realized the danger posed by the production and proliferation of WMD. Most importantly, the changing nature of armed conflict has exposed the international community to new security challenges, as inter-state conflicts and threats from failed states and armed non-state actors have been proven to affect the law regulating the use of force. These new security threats have led to demands for a fundamental reevaluation of the relevance of the current international law. The thinking among some members of the international community is that existing international laws are hopelessly outdated in light of new security threats, and they therefore call for a radical overhaul of the current international legal order.

This paper examines the use of force under customary international law and the legal framework established at the end of the Second World War to protect the international community from threats to international peace and security, and the capacity of this framework to respond to threats that were not contemplated by the drafters of the UN Charter. In particular, it examines the relevance of the existing international legal order in the face of new security threats and the recent tendency to resort to unilateral and unauthorized use of force. The paper first explores the use of force under customary international law. Second, it considers the use of force under the UN Charter. Third, the paper examines the prospect of a new international legal order in the face of a changing world. Fourth, the nature of the international legal order in the post-9/11 world is examined.

Preemptive Use of Force under Customary International Law

The conduct of war is customarily governed by a large body of international humanitarian law. This body of law evolved over centuries and draws greatly on past conventions, particularly the Geneva and Hague Conventions.[1] While the Geneva and the Hague Conventions were primarily associated with *jus in bello* (laws of war), the focus of customary international law was mainly on the rules relating to *jus ad bellum* (justification for war). The rules governing the use of force together with other fundamental humanitarian principles have long provided the framework for formally organized international relations and coexistence of states.

Until contemporary times, customary international law regarded the right to use force and the power to go to war as essential attributes of statehood and, consequently, the right of every state. As Charles Cheney Hyde, a foremost expert in international law put it, "It always lies within the power of a state to endeavor to obtain redress for wrongs or to gain political or other advantages over another, not merely by the employment of force, but also by direct recourse to war."[2] Within this context, customary international law also recognized self-defense as a legitimate basis for the use of force. Hence, Hyde affirmed:

> An act of self-defense is that form of self-protection which is directed against an aggressor or contemplated aggressor. No act can be so described which is not occasioned by attack or fear of attack. When acts of self-preservation on the part of a state are strictly acts of self-defense, they are permitted by the law of nations, and are justified on principle, even though they may conflict the... rights of other states.[3]

Apparently, customary international law recognized the use of force against an aggressor under the self-defense provision even before the aggressor actually attacks. Traditionally, the recognized right of a state to use force for purposes of self-defense include the preemptive use of force.

The precedent classically cited by states and international law scholars for preemptive self-defense was the formulation of the right of preemptive attack by then United States (US) Secretary of State Daniel Webster in connection with the famous *Caroline* incident. During the 1837 insurrection against British rule in colonial Canada, the ship *Caroline* was believed to be conveying supplies to insurgents on Navy Island who were attacking British vessels on the Canadian riverside. British forces crossed the border

into the US, seized the *Caroline,* set her on fire, and sent her over the Niagara Falls. The British government claimed to have acted in self-defense because the US had not prevented the rebellious activities on its territory. The US protested, and in the course of the diplomatic exchanges that followed, Secretary of State Daniel Webster articulated the two conditions essential to the legitimacy of pre-emptive use of force under customary international law.

Webster asserted that an intrusion into the territory of another state can be justified as an act of self-defense only in those "cases in which the necessity of that self-defense is instant, overwhelming, and leaving no choice of means and no moment for deliberation."[4] In another remark Webster asserted that the force used in such circumstances has to be proportional to the threat.[5] Therefore, under customary international law the preemptive use of force for self-defense is limited such that it has to be necessary and proportional,[6] and for an act to be necessary, any measure short of armed force (diplomatic efforts, economic sanctions, embargoes, and so on) would have to be, or have proven to be, inadequate.

The Use of Force under the United Nations Charter

The rules that govern the use of force for preemptive self-defense encompass a number of treaties, international agreements, and conventions, the most fundamental of which is the UN Charter, as the source of the organizing principles of the existing international legal order. The prohibition on the use of force is a fundamental principle of contemporary international law and is enshrined in the UN Charter. The Charter creates a system of collective security in which the Security Council is authorized to "determine the existence of any threat to the peace, breach of the peace, or act of aggression," and to "decide what measures shall be taken... to maintain international peace and security."[7] The Charter obliges member states to "settle their international disputes by peaceful means"[8] and to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations."[9]

Although it nominally outlaws the use of force in international relations, the UN Charter recognizes the right of nations to use force for the purpose of self-defense. Article 51 of the Charter provides: "Nothing in the present Charter shall impair the inherent right of individual or collective self-

defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."[10] The right acknowledged under this article is traditionally referred to as the "inherent right" of every state to self-defense. Nevertheless, the language of Article 51 indicates that resort to self-defense is intended to be an interim measure, permitted "until the Security Council has taken measures necessary to maintain international peace and security."[11] Unfortunately, the collective decision-making process of the Security Council has been rendered ineffective as a result of strategic voting among its permanent members.

In particular, the veto right of permanent member states has rendered the Security Council largely limited in authorizing the use of force under Article 42 of the Charter. Nevertheless, there are exceptions to the veto right of the permanent members of the Security Council. Specifically, UN General Assembly Resolution 377 of 1950, titled "Uniting for Peace," empowers the General Assembly to make appropriate recommendations to members for collective measures, including the use of force "if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security."[12]

Read literally, Article 51's articulation of the right of self-defense apparently precludes the preemptive use of force by individual states or groupings of states and reserves the right to authorize such use of force exclusively for the Security Council. Measures taken in self-defense, according to this understanding, are legitimate only after an armed attack has already started.[13] Unfortunately, to interpret Article 51 literally, "is to protect the aggressor's right to the first strike."[14] Clearly it would be a betrayal of the purpose of the Charter to oblige a state, in the face of potential radiological, chemical, biological, or nuclear attack, "to allow its assailant to deliver the first and perhaps fatal blow."[15] This predicament reflects the fact that the position of the UN Charter concerning the condition under which the use of force is legitimate has been overtaken by new security threats and modern weapons technology.

Indeed, both the literal and nominal interpretations of Article 51 are controversial. The crux of the controversy is whether the phrase "if an armed attack occurs" rules out preemptive self-defense. That is, does international law as embodied in Article 51 of the UN Charter confer on

states an anticipatory right of self-defense? In an attempt to avoid this controversy over nominal and literal interpretations, some scholars assert that Article 51 recognizes the "inherent right of individual or collective self-defence" as it was developed in customary international law prior to the adoption of the Charter and preserves it intact.[16]

In essence, contemporary international law has never satisfactorily clarified whether any form of anticipatory defense is allowed under the self-defense clause (Article 51) of the UN Charter. However, in both theory and practice it has generally been accepted that states do not have to wait to be attacked before responding with force if there is overwhelming evidence of an impending attack.[17] This position has a foundation of support in the words of Elihu Root, US Secretary of War (1899-1904), who once defined self-defense as "the right of every sovereign state to protect itself by preventing a condition of affairs in which it will be too late to protect itself."[18] Therefore, unlike customary international law, the Charter regime of international law is limited by its lack of clarity regarding anticipatory self-defense.

This weakness has created a problem of compliance with the Charter's provisions and has consequently led to instances of unilateral and unauthorized use of force by states in the face of new security threats. In the case of the 2003 US-led intervention in Iraq, military force was used without explicit UN Security Council authorization, yet the US and its allies justified their action as legitimate on the basis of Iraq's non-compliance with UN Security Council Resolution 1441 of 2002, which had found Iraq to be in "material breach" of its disarmament obligations.[19] Some Security Council members, such as China and Russia, "were strongly of the view that this resolution did not provide automatic authority for the use of force, and that it would be for the Council (and not individual member states) to decide whether Iraq was in breach of the provisions of Resolution 1441."[20] Indeed, the UN Charter's provisions regulating the use of force give rise to a general problem of compliance in the face of modern security threats.

Technological Advancement and Modern Security Threats

Technological revolutions in military affairs over the last fifty years have fundamentally transformed the nature of armed conflict at a pace beyond the capacity of current international law to handle. The introduction of WMD, ballistic missiles, the Internet, and information warfare has reduced

the time necessary to carry out deadly attacks and greatly multiplied the security costs of non-anticipatory defense strategies. According to William Bradford:

> [Breakthroughs in] technological development, proliferation of WMD, and radicalization of international relations have so enhanced the magnitude of the threats to civilian populations and the speed with which enemies can attack that the *Caroline* standard for 'imminence,' developed in the pre-WMD era, is no longer sufficient to simultaneously restrain states while guaranteeing their survival.[21]

In other words, the emergence of more elusive and deadly threats posed by the convergence of terrorism and WMD has rendered dangerous such restrictive standards of international law as "imminence" because the threat of nuclear attack is always imminent. Biotechnological advancement has made it easier to enrich nuclear materials and informal networks facilitate the transfer of the technology required to convert nuclear materials into WMD. In 2004, there were reports of illicit transfer of nuclear weapons technology to Pakistan, North Korea, and possibly Iran and Libya through the informal networks of a Pakistani scientist, Abdul Qadeer Khan.[22] Moreover, unlike state actors, non-state armed groups can detonate WMD without fear of a devastating nuclear retaliation. In June 1990, the rebel group Tamil Tigers seized cylinders of chlorine from a paper mill and released the gas into a fort controlled by the Sri Lankan Armed Forces.[23] Evidently the existing international nuclear nonproliferation regulatory regime cannot handle modern nuclear and biotechnological security threats.

International Law and the Use of Force in the Post-9/11 World

The US reaction to al-Qaeda's terrorist attacks on the World Trade Center and the Pentagon on September 11, 2001 was expressed in terms of recourse to military force. The US and its allies initiated military actions against al-Qaeda's terrorist training camps and the military installations of the Taliban regime in Afghanistan in exercise of its inherent right of individual and collective self-defense.[24] Although the invasion was widely perceived as legitimate on the basis of self-defense under the UN Charter,[25] there was no specific UN Security Council resolution authorizing the invasion. Consequently, the invasion set a legal precedent capable of undermining

the provisions of existing international law regulating the use of force among states.

It has been argued by various international jurists and legal luminaries[26] that the law relating to the use of force is concerned mainly with state relations, and that its scope does not include the activities of non-state entities. Confusion over the status of non-state actors and the responsibility under the Charter of states on whose territory non-state aggressors are located has been exploited by certain states to launch military attacks against other states. The problem emanating from this development centers mainly on the question of whether contemporary international law recognizes an attack by a non-state armed group to be an armed attack within the scope of Article 51, which would justify the use of force against that group and any third state in which the group is located.

It is remarkable that most of the forceful counter-terrorist measures by the US against other states after 9/11 have received considerably less opposition from the international community. The UN Security Council expressed its unanimous support for the US-led military intervention against the Taliban regime in Afghanistan. In Resolutions 1368 and 1373 of 2001,[27] the Security Council reaffirmed the inherent right of individual and collective self-defense against non-state actors. But then, mere failure to condemn the US should not be taken as acceptance of a legal doctrine permitting the use of force in these circumstances. Nevertheless, it indicates a trend of increasing tolerance, which has recently resulted in recognition of states' right of self-defense against non-state armed groups.

Moreover, use of force is contemplated beyond circumstances of self-defense and extends to a number of situations that do not fit within the existing regime governing the use of force in international law. For instance, the US extends the law regulating the use of force a step beyond the doctrine of pre-emptive self-defense. The proposed Bush doctrine of preventive war claims the right of self-defense "even if uncertainty remains as to the time and place of the enemy's attack."[28] In other words, advocates of the doctrine (especially the US) justify the use of force that is not necessarily based on imminent attack but forms part of a long-term risk prevention strategy. This was basically the argument put forward by the US for attacking Iraq in 2003.[29]

In response to the 9/11 attacks, the US has pushed for a revision of outmoded standards for evaluating the lawfulness of self-defense by using

the Bush doctrine, which is adapted to the capabilities and objectives of today's adversaries. The Bush doctrine is a signal that the US and other states, like Israel, will no longer wait for threats to fully materialize but will take preventive action when necessary to protect their citizens. The Bush doctrine of preventive war is indeed a "militant and highly transformative assertion"[30] that clearly transcends the bounds of anticipatory self-defense.

Closely related to the Bush doctrine is a recent conceptualization of imminence that supports US drone strikes. A confidential Department of Justice white paper justified the lawfulness of the US government's use of deadly force in a foreign country against a US citizen who is a "senior operational leader of al-Qa'ida or an associated force" if such an individual poses an "imminent threat of violent attack against the United States" and his or her "capture is infeasible," provided such use of deadly force is "conducted in a manner consistent with applicable law of war principles."[31] Though not a legal document, this white paper justifies governmental authority to carry out extrajudicial killing of citizens who pose an imminent threat of violent attack against the country.

Historically, there are a number of instances of military aggression in the guise of anticipatory self-defense, including the Japanese invasion of Manchuria in 1931 and the German invasion of Poland in 1939. Perhaps, justifying their actions as anticipatory self-defense rather than aggression, states like China, North Korea, Pakistan, and members of the Arab League might claim this legal entitlement to attack Taiwan, South Korea, India, and the state of Israel, respectively, in light of the volatile nature of their geopolitical regions. For instance, in response to the September 2004 school siege by Chechen terrorists in southern Russia, the argument put forward by the Russian government for the use of military force against the terrorists was that the strikes were carried out in order to liquidate terrorism in the region.[32]

In particular, the terrorist incidents of 9/11 have created a new world order characterized by unilateral and unauthorized use of force in inter-state relations and have "set in motion a significant loosening of the legal constraints on the use of force."[33] The strong support for the US-led extraterritorial use of force against Afghanistan by members of the international community, coupled with heightened concerns about transnational terrorism, has reinforced the authority of the UN Security Council to approve the use of force for individual or collective self-defense.

Although the initial invasion of Afghanistan in October 2011 was conducted without specific UN Security Council authorization, the language of Resolutions 1368 and 1373[34] enabled the US to claim legitimacy for its actions. This is a clear demonstration that international law is changing in response to contemporary threats facing the international community.

International Law in a Changing World: Towards a New Legal Order

The existing rules of international law regulating the conduct of war were drawn up when war was primarily the business of nation-states. Moreover, the UN system was established to regulate inter-state relations, "including the declaration of war between states."[35] But the current security situation is more complex than that of previous decades. Now, more states as well as non-state armed groups capable of inflicting large-scale harm are seeking to procure and produce weapons of mass destruction, thereby threatening both regional and global security. Chemical, biological, radiological, and nuclear weapons that are within the reach or in the hands of terrorist groups are among the greatest security threats in contemporary times. Thus the problem is that "in today's security climate, yesterday's exceptions are becoming today's rules."[36]

The evolving security environment necessitates new rules for regulation of the use of force in self-defense. New developments in the international environment require reformulation of the laws of war and, in fact, the entire international legal system to reflect the changed nature of security threats, in order to incorporate contemporary realities into the international legal framework. As it is continuously faced with new situations, the current international legal regime is constantly challenged, and international law is gradually being modified to incorporate these changes. These new developments include the emergence of international terrorist organizations; the increasing number of non-state actors in armed conflicts, such as drug cartels, rebel groups, and pirates; and the growing number of failed states that threaten international peace and security.

Non-State Actors and International Law: The UN system was undoubtedly created to regulate the use of force and relations between nation-states. The Charter regime did not recognize non-state entities as actors on the international scene. In fact, self-defense was justified only against states. Accordingly, the target was specified: the aggressor state. And the

purpose was clear: to repel the aggression.[37] Conversely, contemporary security threats are fuzzy, "altering the definition of vulnerabilities, threats, and dangers and catapulting a variety of non-state actors into strategic visibility."[38] In the current security environment, threats that used to originate from interstate disputes now emerge from intrastate conflicts sponsored by non-state actors outside the territorial state.

Today, terrorism is considered one of the greatest threats to international peace and security. The fact that terrorist groups are non-state actors, and are difficult to pinpoint in a particular state, necessitates the establishment of legal means of determining the responsibility under international law of the state on whose territory such terrorist groups operate. Accordingly, the doctrine of the "Responsibility of States for Internationally Wrongful Acts"[39] provides legal clarifications on the responsibility of failed states and non-state actors in international law. In addition, secondary legislation – the UN Security Council resolutions – partly fills this legal vacuum by establishing that terrorists may be considered agents of governments that harbor them.[40] Nevertheless, these rules still leave unanswered the question of whether the war on states that sponsor terrorism is legal under the self-defense clause of the UN Charter.

The apparent void in the UN Charter in relation to non-state actors pertains basically to non-state actors that are not in any way established or partly governed by states. The situation is complicated by the absence of structures that enable diplomatic relations among some non-state actors.[41] Non-state actors such as drug cartels, pirates, and terrorist organizations pursue goals that are arguably illegal and pose security threats not only to the territory from which they operate, but also to the wider international community.[42] For instance, recent developments off the coast of Somalia have resulted in a UN Security Council resolution (Resolution 1816 of 2008) describing pirate activities as a threat to international peace and security.[43] This resolution is a confirmation that threats from non-state actors can be of such magnitude as to constitute a security threat to the international community, even though piracy was hitherto considered a mere criminal act on the high seas.

Rogue States, Failed States, and the International Legal Order: The concepts of rogue states and failed states have emerged in the lexicon of international relations, with both branded as threats to international peace and security because these states are largely seen as vulnerable to terrorist networks.

The existence of failed or failing states has further complicated the problem of identifying and holding responsible those states that sponsor terrorism. Rogue states and failed or failing states constitute a great threat to international peace and security as they serve as breeding grounds for terrorists and similar groups, and such states are very likely to sponsor and fund terrorist activities against their enemies, whether real or imagined.

UN Security Council Resolution 748 of 1992 affirmed that "every state has the duty to refrain from instigating, assisting, or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when such acts involve a threat or use of force."[44] But can a failed or failing state be held responsible for the actions of terrorist groups within its territory? Put differently, what is the obligation of a failed state under international law? For instance, can Somalia, an African failed state, be held responsible under international law for its inability to prevent actions of terrorist groups who hold sway and operate in parts of the country? Does the inability of the state of Somalia to stop these acts constitute acquiescence to these terrorist activities? Limitations inherent in the existing international legal framework in relation to non-state entities have made this question difficult, if not impossible, to answer within the scope of the Charter framework.

Although the UN's core principles of non-interference, respect for the territorial integrity of member states, and prohibition of unilateral use of force "provide the cornerstone for international order,"[45] international law has other provisions[46] that recognize the rights and responsibilities of failed states and non-state actors. International human rights and humanitarian laws recognized failed states and non-state actors as members of the international legal system with corresponding rights and responsibilities. The notion that all actors are bound by international humanitarian law was supported by the UN Security Council with reference to Liberia and Somalia.[47] However, human rights laws may be suspended in a failed state in the absence of legally recognized governmental authority.

Indeed, it would be a questionable practice to hold a failed state responsible for the violation of its international obligations during a period of total collapse. Hence, the "Responsibility of States for Internationally Wrongful Acts" regards the conduct of non-state entities as acts of a state only if these entities are exercising "elements of governmental authority in the absence or default of the official authorities and in circumstances such

as to call for the exercise of these elements of authority."[48] Although the doctrine provides legal clarifications regarding the problem of attribution in a failed state, it is applicable only where a functioning state structure and governmental authority exist.

Collective and Unilateral Humanitarian Intervention: The duty of other states to protect civilian population in states where the government poses a humanitarian threat to its citizens has emerged as a challenge to state sovereignty under international law.[49] In particular, unilateral humanitarian intervention to relieve a population from gross human rights abuses is a big challenge to state sovereignty in customary international law. This is a considerable security challenge given the fact that such intervention mostly results in armed confrontations between the intervening state and the territorial state. Apparently, the 1999 NATO military intervention in Kosovo for humanitarian reasons broke new legal ground and resulted in the debate about the need for a new humanitarian war doctrine. Subsequently, the principle that military interventions to achieve humanitarian objectives did not require the UN Security Council's specific authorization seems to have been established.[50]

According to the Independent International Commission on Kosovo,[51] NATO military intervention was "illegal but legitimate" because it was undertaken without specific authorization from the UN Security Council but was justifiable as legitimate on humanitarian grounds and on the basis of the understanding that all diplomatic avenues were exhausted before the invasion. Yet Article 2(7) of the UN Charter states, "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require Members to submit such matters to settlement under the present Charter." That is to say, "No other State and no international organisation may scrutinise what is happening inside a State except with the full consent of the territorial State."[52]

Even though the UN Security Council passed a resolution authorizing "all necessary measures to protect civilians under threat of attack,"[53] the NATO military intervention in Libya to protect civilians from human rights violations by military forces loyal to former dictator Muammar Qaddafi exceeded the authorization of the Security Council resolution. Moreover, the legality of this military intervention is questionable because NATO implemented the resolution not only for civilian protection but "to justify

pursuing general support for the rebels and attacking Libya government military assets."[54] In consideration of the controversy surrounding NATO military intervention in Libya, what circumstances justify external intervention under international law? Put another way, at what point is unilateral use of force for humanitarian objectives legal? Clearly, these are very difficult questions, partly because – aside from international law and the doctrine of Responsibility to Protect (R2P)[55] – economic, political, and strategic interests have evolved as important factors justifying the use of force on humanitarian grounds.

Recent military actions "all bend or break the law of war as it has traditionally been understood."[56] New security threats have made major world powers regard international law as secondary to projection of military power. Naturally, states that are skeptical about the ability of international law to regulate state and non-state behavior will hardly worry about the damage to the international legal system. The cumulative effect of these developments is apparently that the Charter's provisions regulating the use of force are no longer regarded as binding international law.[57] It is becoming difficult to determine where diplomacy ends and where the use of force becomes necessary.

Conclusion

Although state recourse to preemptive use of force has occurred before 2001, the recent resort to anticipatory use of force by states is largely a development that resulted from the fear of threats posed by terrorism and the lethality of WMD and, especially, the 9/11 terrorist attack. The threats of WMD are linked not only to changes in the international environment, but also to the process of economic globalization, which has reduced the effectiveness of traditional nonproliferation regimes. International law as embodied in the UN Charter is concerned more with the maintenance of peace and security and less with the legal rules of the use of force. The Charter's provisions regarding the use of force are legally obscure. Thus, in the process of responding to new threats, international law is often amended by state practice in violation of the current international legal framework. Although these changes still lack the status of binding international law, as they are at the level of individual state practice, they have set a legal precedent to which other states would lay claim in the future.

Indeed, violations of international law by states serve as a legal precedent and have the capacity to indirectly reform the law, particularly when the violator receives widespread support for its actions. However, the international community has to be careful to ensure that such renovations do not, in seeking to address new security challenges, shift the balance too far in another direction, in order not to become a destabilizing force in the current delicate constellation of international affairs. The use of force, except in self-defense, when explicit and confirmed threats have been recognized, or in pursuit of other legitimate ends recognized as such by the larger international community, often instills insecurity and resentment of the existing legal order by less powerful states.

On the whole, without meaningful reforms incorporating a more flexible and holistic view of states' right of self-defense against terrorism and WMD, international law regulating the use of force will become irrelevant in the face of emerging security threats. Nor will a gradual modification of the existing body of the law of war work, as the entire legal structure is in danger of collapsing under the weight of new threats. Likewise, the recognition of a new legal order will not necessarily prevent the emergence of new threats to the international community. Moreover, it is difficult to predict the effect of a new legal order on future international stability. To be effective and binding, the rules of a new legal order must have enough built-in flexibility for states to exercise force when necessary without undermining or destroying the credibility and legitimacy of the international legal order.

Notes

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