

CHAPTER 7: War and the Prohibition on the Threat or Use of Force

Introduction

The rule governing resort to force form a central element within international law and together with other principles such as territorial sovereignty and the independence and equality of states provide the frame work for international order. While domestic systems have, on the whole, managed to prescribe a virtual monopoly on the use of force for the governmental institutions, reinforcing the hierarchical structure of authority and control international law is in a different situation. It must seek to minimize and regulate the resort to force by states, without itself being able to enforce its will. Reliance has to be placed on consent, consensus, reciprocity and good faith. The role and manifestation of force in the world community is, of course, dependent upon political and other non-legal factors as well as upon the current state of the law, but the law must seek to provide mechanisms to restrain and punish the resort to violence. This chapter addresses the principles under the use of force by states. Hence, it will assess the emergence of use of force from just War to the United Nations, the principles as to use of Force under the United Nations, Self defense and Collective Self defense under international Law....

Objectives

In this chapter students are expected to apprehend the following points:

- Meaning and nature of use of force under international law;
- Exceptions to the use of prohibition of use of force;
- Meaning and categories of force;
- The right of self-defense
- Terrorism and self defense;
- Anticipatory or pre-emptive self-defense; and

- Collective security

7.1 History of use of force: from the 'Just War' to the United Nations

Christianization of the Roman Empire and the ensuring abandonment by Christians of pacificism give rise to the doctrine of just war. In those days the doctrine was force could be used provided it complied with the Divine Will. The concept of the just war embodied of Greek and Roman philosophy and was employed as the ultimate sanction for the maintenance of an ordered society. St Augustine (354-430) defined the just war in terms of avenging of injuries suffered where the guilty party has refused to make reparation. War was to be embarked upon to punish wrongs and restore the peaceful status quo but no further. Aggression was unjust and the recourse to violence had to be strictly controlled. St Thomas Aquinas in the thirteenth Century took the definition of the just war a stage further by declaring that it was the subjective guilt of the wrongdoer that had to be punished rather than the objective wrong activity. He wrote that war could be justified provided it was waged by the sovereign authority, it was accompanied by a just cause (i.e. the punishment of wrongdoers) and it was supported by the right intentions on the part of the belligerents.

With the rise of the European nation-state, the doctrine began to change. It became linked with the sovereignty of states and faced the paradox of wars between Christian states, each side being convinced of the justice of its cause. This situation tended to modify the approach to the just war. The requirement that serious attempts at a peaceful resolution of the dispute were necessary before turning to force began to appear. This reflected the new state of international affairs, since there now existed a series of

independent states. The use of force against other states, in addition to strengthening the order, posed serious challenges to it and threatened to undermine it. Thus the emphasis in legal doctrine moved from the application of force to suppress wrongdoers to a concern to maintain the order by peaceful means. The great Spanish writer of the sixteenth century, Vitoria, emphasized that not every kind and degree of wrong can suffice for commencing war, while Suarez noted that states were obliged to call the attention of the opposing side to the existence of a just cause and request reparation before action was taken. The just war was also implied in immunity of innocent persons from direct attack and the proportionate use of force to overcome the opposition.

Gradually it began to be accepted that a certain degree of right might exist on both sides, although the situation was confused by references to subjective and objective justice. Grotius, in his systematizing fashion, tried to exclude ideological considerations as the basis of a just war, in the light of the destructive seventeenth-century religious conflicts, and attempted to redefine the just war in terms of self-defense, the protection of property and the punishment for wrongs suffered by the citizens of the particular state. Dear reader we will see the meaning and scope of self defense in the coming chapter.

But with positive and the definitive establishment of the European balance of power system after the peace of Westphalia, 1648, the concept of the just war disappeared from international law as such. States were sovereign and equal, and therefore no one state could presume to judge whether another's cause was just or not. States were bound to honor agreements and respect the independence and integrity of other countries, and had to try and resolve differences by peaceful methods.

The doctrine of the just war arose with the increasing power of Christianity and declined with the outbreak of the inter-Christian religious wars and the establishment of an order of secular sovereign states. Although war became a legal state of affairs which permitted force to be used and in which a series of regulatory conditions were recognized, there existed various other methods of employing force that fell short of war. Reprisals and pacific blockades were examples of the use of force as 'hostile measures short of war.'

These activities were undertaken in order to enforce rights or to punish wrongdoers. There were many instances in the nineteenth century in particular of force being used in this manner against the weaker states of Latin America and Asia. There did exist limitations under international law of the right to resort to such measures but they are probably best understood in the context of the balance of power mechanism of international relations that to a large extent did help minimize the resort to force in the nineteenth century, or at least restrict its application.

The First World War marked the end of the balance of power system and raised afresh the question of unjust war. It also resulted in efforts to rebuild international affairs upon the basis of a general international institution which would oversee the conduct of the world community to ensure that aggression could not happen again. The creation of the League of Nations reflected a completely different attitude to the problems of force in the international order.

The Covenant of the League declared that members should submit disputes likely to lead to a rupture to arbitration or judicial settlement or inquiry by the council of the League. In no circumstances were members to resort to war until three months after the arbitral award or judicial decision or report by the council. This was intended to provide a cooling off period for

passions to subside and reflected the view that such a delay might well have broken the seemingly irreversible chain of tragedy that linked the assassination of the Austrian Archduke in Sarajevo with the outbreak of general war in Europe. League members agreed not to go to war with members complying with such an arbitral award or judicial decision or unanimous report by the council.

The League system did not, it should be noted, prohibit war or the use of force, but it did set up a procedure designed to restrict it to tolerable levels. It was a constant challenge of the inter-war years to close the gaps in the covenant in an effort to achieve the total prohibition of war in international law and this resulted ultimately in the signing in 1928 of the General Treaty for the Renunciation of War (the Kellogg-Briand Pact). The parties to this treaty condemned recourse to war and agreed to renounce it as an instrument of national policy in their relations with one another.

In view of the fact that this treaty has never been terminated and in the light of its widespread acceptance, it is clear that prohibition of the resort to war is now a valid principle of international law. It is no longer possible to set up the legal relationship of war in international society. However, this does not mean that the use of force in all circumstances is illegal. Reservations to the treaty by some states made it apparent that the right to resort to force in self-defense was still a recognized principle in international law. Whether in fact measures short of war such as reprisals were also prohibited or were left untouched by the treaty's ban on war was unclear and subject to conflicting interpretations.

7.2 The UN Charter

Article 2(4) of the Charter declares that:

(a) All members shall 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 other manner inconsistent with the purposes of the United Nations.

This provision is regarded now as a principle of customary international law and as such is binding upon all states in the world community. The reference to 'force' rather than war is beneficial and thus covers situations in which violence is employed which fall short of the technical requirements of the state of war.

Article 2(4) was elaborated as a principle of international law in the 1970 Declaration on Principles of International law and analyzed systematically:

- First, wars of aggression constitute a crime against peace for which there is responsibility under international law;
- Secondly, states must not threaten or use force to violate existing international frontiers (including demarcation or armistice lines) or to solve international disputes;
- Thirdly, states are under a duty to refrain from acts of reprisal involving the use of force;
- Fourthly, states must not use force to deprive peoples of their right to self-determination and independence;
- And fifthly, states must refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another state and must not encourage the formation of armed bands for incursion into another state's territory.

Many of these items are crucial, but ambiguous. Although the Declaration is not of itself a binding legal document, it is important as an interpretation of the relevant Charter provisions. Important exceptions to article 2(4) exist in relation to collective measures taken by the United Nations and with regard to the right of self-defense. Whether such an exception exists with regard to humanitarian intervention is the subject of some controversy.

Article 2(6) of the Charter provides that the UN “shall ensure that states which are not members of the United Nations act in accordance with these principles so far as may be necessary for the maintenance of international peace and security”. In fact, many of the resolutions adopted by the UN are addressed simply to ‘all states.’ In particular, for example, Security Council Resolution 757 (1992) adopted under Chapter VII of the Charter, and therefore binding upon all member states imposed comprehensive sanctions upon the Federal Republic of Yugoslavia (Serbia and Montenegro). However, the invocation in that decision was to ‘all states’ and not to ‘member states’.

7.3 Meaning of Force

One point that was considered in the past and is now being reconsidered is whether the term ‘force’ in article 2(4) includes not only armed force but, for example, economic force. Does the imposition of boycotts or embargoes against particular states or groups of states come within article 2(4)? Although that provision is not modified in any way, the Preamble to the Charter does refer to the need to ensure that ‘armed force’ should not be used except in the common interest, while article 51, dealing with the right to self-defense, specifically refers to armed force, although that is not of itself conclusive as to the permissibility of other forms of coercion.

The 1970 Declaration on Principles of international Law recalled the ‘duty of states to refrain ... from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any state’ and the international Covenants on Human Rights adopted in 1966 emphasized the right of all peoples freely to pursue their economic, social and cultural development. This approach was underlined in the Charter of economic rights and duties of states, approved by the General Assembly in 1974, which particularly specified that ‘no state may use or encourage the use of economic, political or any other type of measures to

coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights'. The question of the legality of the use of economic pressures to induce a change of policy by states was examined with renewed interest in the light of the Arab Oil Weapon used in 1973-4 against states deemed favorable to Israel. It does see that there is at least a case to be made out in support of the view that such actions are contrary to the United Nations Charter, as interpreted in numerous resolutions and declarations. But whether such action constitutes a violation of article 2(4) is uncertain.

It is to be noted that article 2(4) covers the "threats of force" as well as "use of force". This issue was addressed by the international court in its Advisory Opinion to the General Assembly on the legality of the threat or use of Nuclear Weapons. The court stated that a 'signaled intention to use force if certain events occur' could constitute a threat under article 2(4) where the envisaged use of force would itself be unlawful. Example given included threats to secure territory from another state or causing it to 'follow or not follow certain political or economic paths.' The court appeared to accept that *the mere possession of nuclear weapons did not of it self constitute a threat*. However, noting that the policy of nuclear deterrence functioned on the basis of the credibility of the possibility of resorting to those weapons in certain circumstances, it was stated that whether this amounted to a threat would depend upon whether the particular use of force envisaged would be directed against the territorial integrity or political independence of a state or against the purpose of the UN. If the projected use of weapons was intended as a means of defense and there would be a consequential and necessary breach of the principles of necessity and proportionality, this would suggest that a threat contrary to article 2(4) existed. One key point here would be the definition of proportionality, in particular would it relate to the damage that might be caused or rather to the scope of the threat to which the response in self-defense is proposed? If the latter is the case, and

logic suggests this then the threat to use nuclear weapons in response to the prior use of nuclear or possibly chemical or bacteriological weapons become less problematic.

7.4 The Phrase 'Against the territorial integrity or political independence of any state'

Article 2(4) of the charter prohibits the use of force 'against the territorial integrity or political independence of any state, or in any other manner in consistent with the purposes of the United Nations.' There is a debate as to whether these words should be interpreted restrictively, so as to permit force that would not contravene the clause, or as reinforcing the primary prohibition, but the weight of opinion probably suggests the latter position. The 1965 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States emphasized that:

No state has the right to intervene, directly or indirectly, for any reason what so ever, in the internal or external affairs of any other state. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the state or against its political economic and cultural elements, are condemned.

This was reaffirmed in the 1970 Declaration on Principles in international Law, with the *proviso* that not only were such manifestations condemned, but they were held to be in violation of international law. the International Court of Justice in the ***Corfu Channel*** case (see annexes) declared specifically, in response to a British claim to be acting in accordance with a right of intervention in minesweeping the channel to secure evidence for judicial proceeding, that:

The alleged right of intervention was the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot... find a place in international law.

The Court noted that to allow such a right in the present case as a derogation from Albania's territorial sovereignty would be even less admissible.

For, from the nature of things it would be reserved for the most powerful states, and might easily lead to perverting the administration of international justice itself.

7.5 Categories of Force

Various measures of self-help ranging from economic retaliation to the use of violence pursuant to the right of self-defense have historically been used. Since the establishment of the charter regime there are basically three categories of compulsion open to states under international law. These are retorsion, reprisal and self-defense.

Retorison

Retorsion is the adoption by one state of an unfriendly and harmful act, which is nevertheless lawful, as a method of retaliation against the injurious legal activities of another state. Examples include the severance of diplomatic relations and the expulsion or restrictive control of aliens, as well as various economic and travel restrictions. Retorison is a legitimate method of showing displeasure in a way that hurts the other state while remaining within the bound of legality. The Hickenlooper amendments to the American foreign assistance act are often quoted as an instance of retorsion since they required the United States president to suspend foreign aid to any country nationalizing American property without proper

compensation. This procedure was applied only once, as against Ceylon (now Sri Lanka) in 1963, and has now been effectively repealed by the American Foreign Assistance Act of 1973. Retorsion would also appear to cover the instance of a lawful act committed in retaliation to a prior unlawful activity.

Reprisals

Reprisals are acts which are in themselves illegal and have been adopted by one state in retaliation for the commission of an earlier illegal act by another state. They are thus distinguishable from acts of retorsion, which are in themselves lawful acts; the classic case dealing with the law of reprisals is the Naulilaa dispute between Portugal and Germany in 1928. This concerned a German military raid on the colony of Angola, which destroyed property, in retaliation for the mistaken killing of three Germans lawfully in the Portuguese territory.

The Tribunal, in discussing the Portuguese claim for compensation, emphasized that before reprisals could be undertaken, there had to be sufficient justification in the form of a previous act contrary to international law. In fact, the German claim that it had acted lawfully was rejected on all three grounds. Those general rules are still applicable but have now to be interpreted in the light of the prohibition on the use of force posited by article 2(4) of the United Nations Charter. Thus, reprisals short of force may still be undertaken legitimately, while reprisals involving armed force may be lawful if resorted to in conformity with the right of self-defense. Reprisals as such undertaken during peacetime are thus unlawful, unless they fall within the framework of the principle of self-defense. Sometimes regarded as an aspect of reprisal is the institution of pacific blockade. This developed during the nineteenth century and was extensively used as a forceful application of pressure against weaker states. In the absence of war

or armed hostilities, the vessels of third states were probably exempt from such blockade, although this was disputed by some writers.

Pacific blockade may be instituted by the United Nations Security Council, but cannot now be restored to by states since the coming in to force of the Charter of the United Nations. The legality of the so-called 'quarantine' imposed by the United States upon Cuba in October 1962 to prevent certain weapons reaching the island appears questionable and should not be relied upon as an extension of the doctrine of pacific blockades.

7.6 The right of self-defense

The traditional definition of the right of self-defense in customary international law occurs in the Caroline Case (see Annexes). This dispute revolved around an incident in 1837 in which British subjects seized and destroyed a vessel in an American port. This had taken place because the Caroline had been supplying groups of American nationals, who had been conducting raids into Canadian territory. In the correspondence with the British authorities which followed the incident, the American Secretary of state laid down the essentials of self-defense. There had to exist 'a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation.' Not only were such conditions necessary before self-defense became legitimate, but the action taken in pursuance of it must not be unreasonable or excessive, 'such act, justified by the necessity of self-defense, must be limited by that necessity, and kept clearly within it.' These principles were accepted by the British government at that time and are accepted as part of customary international law.

Article 51 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

the measure necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defense shall be immediately reported to the security council and shall not in any way affect the authority and responsibility of the security council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

There is extensive controversy as to the precise extent of the right of self-defense in light of Article 51. On the one hand, it is argued that article 51 in conjunction with article 2(4) now specifies the scope and limitations of the doctrine of use of force. In other words, self-defense can only be resorted to 'if an armed attack occurs' and in no other circumstances. On the other hand, there are writers who maintain that the opening phrase in Article 51 specifying that 'nothing in the present Charter shall impair the inherent right of...self -defense' means that there does exist in customary international law a right of self-defense over and above the specific provisions of article 51, which refer only to the situation where an armed attack has occurred. A number of academics and some states have regarded Article 51 as merely elaborating one kind of self-defense in the context of the primary responsibility of the Security Council for international peace and the enforcement techniques available under the Charter.

The International Court of Justice in the Nicaragua case (see Annexes) has however, clearly established that the right of self-defense exists as an inherent right under customary international law as well as under the UN Charter. It was stressed that:

Article 51 of the Charter is only meaningful on the basis that there is a 'natural' or 'inherent' right of self-defense and it is hard to see how this can be other than of a customary nature, even if its present

content has been confirmed and influenced by the Charter... it cannot, therefore, be held that Article 51 is a provision which include and supervenes' customary international law.

Accordingly, customary law continued to exist alongside treaty law (i.e. the UN Charter) in this field. There was not an exact overlap and the rules did not have the same content. The Court also discussed the notion of an 'armed attack' and noted that this included not only action by regular armed forces across an international border, but additionally the sending by or on behalf of a state of armed bands or groups which carry out acts of armed force of such gravity as to amount to an actual armed attack conducted by regular armed forces or its substantial involvement there in.

The court did not accept, however, that this concept extended to assistance to rebels in the form of the provision of weapons or logistical or other support, although this form of assistance could constitute a threat or use of force, or amount to intervention in the internal or external affairs of the state. This lays open the problem that in certain circumstances a state under attack from groups supported by another state may not be able under this definition to respond militarily if the support given by that other state does not reach the threshold laid down. Judge Jennings referred to this issue in his dissenting opinion, noting that, 'it seems dangerous to define unnecessarily strictly the conditions for lawful self-defense, so as to leave a large area where both a forcible response to force is forbidden, and yet the United Nations employment of force, which was intended to fill that gap, is absent.

Another aspect of the problem as to what constitutes an armed attack is the difficulty of categorizing particular uses of force for these purposes. For example, would an attack upon an embassy or diplomats abroad constitute an armed attack legitimating action in self-defense? On 7 August 1998, the US Embassies in Kenya and Tanzania were bombed, causing the loss of over

250 lives and appreciable damage to property. On 20 August, the US launched a series of cruise missile attacks upon installations in Afghanistan and Sudan associated with the organization of Bin Laden deemed responsible for the attacks. In so doing, the US declared itself acting in accordance with Article 51 of the Charter and in exercise of its right of self-defense. Another argument that has been made is that, with regard to actions against aircraft, an armed attack begins at the moment that the radar guiding the anti-aircraft missile has 'locked on'.

7.7 Terrorism

Before we directly proceed to the relationship between use of force and terrorism let's look at some points on the concept.

Terrorism is the systematic use of terror especially as a means of coercion." There is no internationally agreed definition of terrorism. Most common definitions of terrorism include only those acts which are intended to create fear (terror), are perpetrated for an ideological goal (as opposed to a lone attack), and deliberately target or disregard the safety of non-combatants. Some definitions also include acts of unlawful violence and war.

Most government definitions outline the following key criteria: target, objective, motive, perpetrator, and legitimacy or legality of the act. Terrorism is also often recognizable by a following statement from the perpetrators.

Violence - According to Walter Laqueur of the Center for Strategic and International Studies, "the only general characteristic of terrorism generally agreed upon is that terrorism involves violence and the threat of violence." However, the criterion of violence alone does not produce a useful definition, as it includes many acts not usually considered terrorism: war, riot, organized crime, or even a simple assault.

Psychological impact and fear – The attack was carried out in such a way as to maximize the severity and length of the psychological impact. Each act of terrorism is a “performance,” devised to have an impact on many large audiences. Terrorists also attack national symbols to show their power and to shake the foundation of the country or society they are opposed to. This may negatively affect a government's legitimacy, while increasing the legitimacy of the given terrorist organization and/or ideology behind a terrorist act.

Perpetrated for a political goal – Something all terrorist attacks have in common is their perpetration for a political purpose. Terrorism is a political tactic, not unlike letter writing or protesting, that is used by activists when they believe no other means will effect the kind of change they desire. The change is desired so badly that failure is seen as a worse outcome than the deaths of civilians. This is often where the interrelationship between terrorism and religion occurs.

Deliberate targeting of non-combatants – It is commonly held that the distinctive nature of terrorism lies in its intentional and specific selection of civilians as direct targets. Specifically, the criminal intent is shown when babies, children, mothers, and the elderly are murdered, or injured, and put in harm's way.

Disguise – Terrorists almost invariably pretend to be non-combatants, hide among non-combatants, fight from in the midst of non-combatants, and when they can, strive to mislead and provoke the government soldiers into attacking the wrong people, that the government may be blamed for it. When an enemy is identifiable as a combatant, the word terrorism is rarely used.

Unlawfulness or illegitimacy - Some official (notably government) definitions of terrorism add a criterion of illegitimacy or unlawfulness to distinguish between actions authorized by a government (and thus "lawful") and those of other actors, including individuals and small groups. Using this criterion, actions that would otherwise qualify as terrorism would not be considered terrorism if they were government sanctioned. For example, firebombing a city, which is designed to affect civilian support for a cause, would not be considered terrorism if it were authorized by a "legitimate" government.

The question has been raised whether the right of self-defense in response to terrorism and, in particular, whether terrorist acts would constitute 'armed attack' within the meaning of the Charter or customary law. The day after the September 11, 2001 attacks upon the World Trade Center in New York, the Security Council adopted Resolution 1368 in which it specifically referred to 'the inherent right of individual or collective self-defense in accordance with the Charter'. Resolution 1373 (2001) reaffirmed this and, acting under Chapter VII, adopted a series of binding decisions, including a provision that all states shall 'take the necessary steps to prevent the commission of terrorist acts.'

On 7 October, the US notified the Security Council that it was exercising its right of self-defense in taking action in Afghanistan against the Al Qaeda organization deemed responsible and the Taliban regime in that country which was accused of providing bases for the organization. The members of the NATO alliance invoked article 5 of NATO Treaty and the parties to the Inter-America treaty of reciprocal assistance, 1947 invoked a comparable provision. Both provisions refer specifically both to an 'armed attack' and to Article 51 of the Charter. Accordingly, the members of both these alliances accepted that what had happened on 11 September constituted an armed attack within the meaning of Article 51 of the Charter. In fact, neither treaty was activated as the US acted on its own initiative with specific allies

(notably the UK), relying on the right self-defense with the support of *acquiescence* of the international community.

7.8 Anticipatory or pre-emptive self-defense

A further issue is whether a right to anticipatory or pre-emptive self-defense exists. This would appear unlikely if one adopted the notion that self-defense is restricted to responses to actual armed attacks. The concept of anticipatory self-defense is of particular relevance in light of modern weaponry that can launch an attack with tremendous speed, which may allow the target state little time to react to the armed assault before its successful conclusion, particularly if that state is geographically small. States have employed pre-emptive strikes in self-defense. Today, war instruments are so sophisticated that they can destroy the target in a few moments. Israel, in 1967, launched a strike upon its Arab neighbors, following the blocking of its Southern Port of Eilat and the conclusion of a military pact between Jordan and Egypt. It could, of course, also be argued that the Egyptian blockade itself constituted the use of force, thus legitimizing Israel actions without the need for 'anticipatory' conceptions of self-defense, especially when taken together with the other events. It is noteworthy that the United Nations in its debates in the summer of 1967 apportioned no blame for the outbreak of fighting and did not condemn the exercise of self-defense by Israel.

The International Court in the Nicaragua case expressed no view on the issue of the lawfulness of a response to an imminent threat of an armed attack since, on the facts of the case, that problem was not raised. The trouble, of course, with the concept of anticipatory self-defense is that it involves fine calculations of the various moves by the other party. A preemptive strike embarked upon too early might constitute an aggression. There is a difficult line to be drawn. The problem is that the nature of the international system is such as to leave such determinations to be made by

the states themselves, and in the absence a modification of this. States generally are not at ease with the concept of anticipatory self-defense, however, and one possibility would be to concentrate upon the notion of 'armed attack' so that this may be interpreted in a relatively flexible manner. One suggestion has been to distinguish anticipatory self-defense, where an armed attack is imminent and unavoidable so that the evidential problems and temptations of the former concept are avoided without dooming threatened states to making the choice between violating international law and suffering the actual assault. According to this approach, self-defense is legitimate both under customary law and under Article 51 of the Charter where an armed attack is imminent. It would then be a question of evidence as to whether that was an accurate assessment of the situation in the light of the information available at the relevant time. This would be rather easier to demonstrate than the looser concept of anticipatory self-defense and it has the merit of being consistent with the view that the right to self-defense in customary law exists as expounded in the Caroline case. In any event, much will depend upon the characterization of the threat and the nature of the response, for this has to be proportionate.

The concepts of **necessity** and **proportionality** are at the heart of self-defense in international law. the Court in the Nicaragua case stated that there was a ' specific rule where by self-defense would warrant only measures which are proportional to the armed attack and necessary to respond to it, a rule well established in customary international law.' And in the Advisory Opinion it gave to the General Assembly on the legality of the threat or use of Nuclear Weapons it was emphasized that 'the submission of the exercise of the right of self-defense to the conditions of necessity and proportionality is a rule of customary international law. But what will be necessary and proportionate will depend on the circumstances of the case. The necessity criterion raises important evidential as well as substantive

issues. It is essential to demonstrate that, as a reasonable conclusion on the basis of facts reasonably known at the time, the armed attack that has occurred or is reasonably believed to be imminent requires the response that is proposed.

Proportionality as a criterion of self-defense may also require consideration of the type of weaponry to be used, an investigation that necessitates an analysis of the principles of international humanitarian law. The International Court in the Legality of the Threat or Use of Nuclear Weapons case (see Annexes) took the view that the proportionality principle may 'not in itself exclude the use of nuclear weapons in self-defense in all circumstances; but that 'a use of force that is proportionate under the law of self-defense, must, in order to be lawful, also meet the requirements of the law applicable in armed conflict.' In particular, the nature of such weapons and the profound risks associated with them would be a relevant consideration for states 'believing they can exercise a nuclear response in self-defense in accordance with the requirements of proportionality'. Dear reader below is an article assessing the case of the United States waging war against Iraq: whether preemptive self defense is legitimate. This excerpt is very important to understand self defense under international law.

7.9 Collective Security

Collective Security, according to Inis Claude's Article "Collective Security as an Approach to Peace", is seen as a compromise between the concept of world government and a nation-state based balance of power system, where the latter is seen as destructive or not a good enough safeguard for peace, and the first is deemed unaccomplishable at the present time. And while collective security is possible, several prerequisites have to be met for it to work.

Basic principles

First: almost every state, especially all major states, has to be in the collective security arrangement and committed to it for it to work. The League of Nations faced major problems with this given that the United States, a leading international power, did not join nor give its support to the organization. Similarly, when Italy invaded Ethiopia, Britain's and France's governments were more committed to blocking the rise of Germany, and hence did not seriously chide Mussolini, who they saw as a potential ally against Hitler in 1935.

Second: no one state can block the decision making process. This was a major issue with the League of Nations, as it gave every state veto power, as well as with the UN, which gives it to 5 powerful nations. Should vetoes be allowed, the collective security arrangement will be greatly weakened as one country can subvert a democratic decision.

Third: for sanctions to work, the international economy has to be sufficiently interdependent such that sanctions harm the intended country enough, but do not harm the countries doing the sanctioning. And for sanctions to work, universality of their application is especially important for them to have an effect.

The fourth prerequisite; that for countries to trust collective security, they have to know it works well enough to safeguard their security. But at the same time, unless countries trust it, it's less likely to work. And while it is possible for collective security to start off with a small number of states and gradually have more adopt the idea, the first three issues need to be addressed in the first place, especially the second with regards to the UN's allocation of veto power and permanent seats.

The lines between what is considered "collective defense" and "collective security" have been blurred. The concept of "collective security" forwarded by men such as Michael Joseph Savage, Martin Wight, Immanuel Kant, and Woodrow Wilson, are deemed to apply interests in security in a broad

manner, to "avoid grouping powers into opposing camps, and refusing to draw dividing lines that would leave anyone out." Tenets of collective security continue to be behind many famous current and historical military alliances, most notably NATO. The term "collective security" has also been cited as a principle of the United Nations, and the League of Nations before that. By employing a system of collective security, the UN hopes to dissuade any member state from acting in a manner likely to threaten peace, thereby avoiding any conflict.

Collective Security in the League of Nations

Another example of the failure of the League of Nation's collective security is the Manchurian Crisis, when Japan occupied part of China (who was a League member). After the invasion, members of the League passed a resolution calling for Japan to withdraw or face severe penalties. Given that every nation on the League of Nations council had veto power, Japan promptly vetoed the resolution, severely limiting the LN's ability respond. After two years of deliberation, the League passed a resolution condemning the invasion without committing the League's members to any action against it. The Japanese replied by quitting the League of Nations.

A similar process occurred in 1935, when Italy invaded Ethiopia. Sanctions were passed, but Italy would have vetoed any stronger resolution. Additionally, Britain and France sought to court Italy's government as a potential deterrent to Hitler, given that Mussolini was not in what would become the Axis alliance of WWII. Thus, neither enforced any serious sanctions against the Italian government. Additionally, in this case and with the Japanese invasion of Manchuria, the absence of the USA from the League of Nations deprived the LN of another major power that could have used economic leverage against either of the aggressor states. Inaction by the League subjected it to criticisms that it was weak and concerned more

with European issues (most leading members were European), and did not deter Hitler from his plans to dominate Europe.

The most active and articulate exponent of collective security during the immediate pre-war years was the Soviet foreign minister Maxim Litvinov, but after the Munich Agreement in September 1938 and Western passivity in the face of German occupation of the remainder of Czechoslovakia in March 1939 it was shown that the Western Powers were not prepared to engage in collective security against aggression by the Axis Powers together with the Soviet Union, Soviet foreign policy was revised and Litvinov was replaced as foreign minister in early May 1939, in order to facilitate the negotiations that led to the Molotov-Ribbentrop Pact with Germany, signed by Litvinov's successor, Vyacheslav Molotov, on August 23 of that year. The war in Europe broke out a week later, with the German invasion of Poland on September 1.

Conclusion

Cited examples of the limitations of collective security include the Falklands War. When Argentina invaded the islands, which are overseas territories of the United Kingdom, many UN members stayed out of the issue, as it did not directly concern them. There was also a controversy about the United States role in that conflict due their obligations as a Inter-American Treaty of Reciprocal Assistance (the "Rio Pact") member.

However, many politicians who view the system as having faults also believe it remains a useful tool for keeping international peace.

The role of the UN and collective security in general is also evolving given the rise of internal state conflicts since the end of WWII, there have been 111 military conflicts world wide, but only 9 of which have involved two or more states going to war with one another. The remainder has either been

internal civil wars or civil wars where other nations intervened in some manner. This means that collective security may have to evolve towards providing a means to ensure stability and a fair international resolution to those internal conflicts. Whether this will involve more powerful peacekeeping forces or a larger role for the UN diplomatically will likely be judged from a case to case basis.

7.10 International Law and the Preemptive Use of Force against Iraq

By: David M. Ackerman

Preemptive Military Attacks under Customary International Law

Until recent decades customary international law deemed the right to use force and even to go to war to be an essential attribute of every state. As one scholar summarized:

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. Within that framework customary international law also consistently recognized self defense as a legitimate basis for the use of force: 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 with the ... rights of other states.

Moreover, the recognized right of a state to use force for purposes of self-defense traditionally included the preemptive use of force, *i.e.*, the use of force in anticipation of an attack. Hugo Grotius, the father of international

law, stated in the seventeenth century that “[i]t be lawful to kill him who is preparing to kill.” Emmerich de Vattel a century later similarly asserted: The safest plan is to prevent evil where that is possible. A Nation has the right to resist the injury another seeks to inflict upon it, and to use force ... against the aggressor. It may even anticipate the other’s design, being careful, however, not to act upon vague and doubtful suspicions, lest it should run the risk of becoming itself the aggressor. The classic formulation of the right of preemptive attack was given by Secretary of State Daniel Webster in connection with the famous *Caroline* incident. In 1837 British troops under the cover of night attacked and sank an American ship, the *Caroline*, in U.S. waters because the ship was being used to provide supplies to insurrectionists against British rule in Canada headquartered on an island on the Canadian side of the Niagara River. The U.S. immediately protested this “extraordinary outrage” and demanded an apology and reparations. The dispute dragged on for several years before the British conceded that they ought to have immediately offered “some explanation and apology.”

But in the course of the diplomatic exchanges Secretary of State Daniel Webster articulated the two conditions essential to the legitimacy of the preemptive use of force under customary international law. In one note he 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.” In another note he asserted that the force used in such circumstances has to be proportional to the threat: It will be for [Her Majesty’s Government] to show, also, that the local authorities of Canada, even supposing the necessity of the moment authorized them to enter the territories of the United States at all, did nothing unreasonable or excessive; since the act, justified by the necessity of self-defense, must be limited by that necessity, and kept clearly within it.

Both elements – necessity and proportionality – have been deemed essential to legitimate

the preemptive use of force in customary international law.[In its advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the International Court of Justice stated that “[t]he submission of the exercise of the right of self defense to the conditions of necessity and proportionality is a rule of customary international law.” 1996 I.C.J. Reports Para. 41.]

Effect of the United Nations Charter

However, with the founding of the United Nations, the right of individual states to use force was purportedly curbed. The Charter of the UN states in its Preamble that the UN was established “to save succeeding generations from the scourge of war”; and its substantive provisions obligate Member States of the UN to “settle their international disputes by peaceful means” (Article 2(3)) 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” (Article 2(4)). In place of the traditional right of states to use force, 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” (Article 39). Although nominally outlawing most uses of force in international relations by individual States, the UN Charter does recognize a 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.

The exact scope of this right of self-defense, however, has been the subject of ongoing debate. Read literally, Article 51's articulation of the right seems to preclude the preemptive use of force by individual states or groupings of states and to reserve such uses of force exclusively to the Security Council. Measures in self-defense, in this understanding, are legitimate only *after* an armed attack has already occurred. [This reading of Article 51 finds support in the decision of the International Court of Justice in *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, 1986 I.C.J. Reports p. 14. The gravamen of the Court's ruling was that in customary international law as well as Article 51, the use of force in self-defense is justified only in response to an armed attack:

... [F]or one State to use force against another ... is regarded as lawful, by way of exception, only when the wrongful act provoking the response was an armed attack In the view of the Court, under international law in force today - whether customary international law or that of the United Nations system - States do not have a right of "collective" armed response to acts which do not constitute an "armed attack"]

Others contend that Article 51 should not be construed so narrowly and that "it would be a travesty of the purposes of the Charter to compel a defending state to allow its assailant to deliver the first, and perhaps fatal, blow" To read Article 51 literally, it is said, "is to protect the aggressor's right to the first strike." Consequently, to avoid this result, some assert that Article 51 recognizes the "inherent right of individual or collective self-defence" as it developed in customary international law prior to adoption of the Charter and preserves it intact. The reference to that right not being impaired "if an

armed attack occurs against a Member of the United Nations,” it is said, merely emphasizes one important situation where that right may be exercised but does not exclude or exhaust other possibilities.

In further support of this view, it is argued that the literal construction of Article 51 simply ignores the reality that the Cold War and other political considerations have often paralyzed the Security Council and that, in practice, states have continued to use force preemptively at times in the UN era and the international community has continued to evaluate the legitimacy of those uses under Article 51 by the traditional constraints of necessity and proportionality. The following examples illustrate several aspects of these contentions:

In 1962 President Kennedy, in response to photographic evidence that the Soviet Union was installing medium range missiles in Cuba capable of hitting the United States, imposed a naval “quarantine” on Cuba in order “to interdict ... the delivery of offensive weapons and associated material.” Although President Kennedy said that the purpose of the quarantine was “to defend the security of the United States,” the U.S. did not rely on the legal concept of self-defense either as articulated in Article 51 or otherwise as a justification for its actions. Abram Chayes, the Legal Adviser to the State Department at that time, later explained the decision not to rely on that justification as follows:

- In retrospect ... I think the central difficulty with the Article 51 argument was that it seemed to trivialize the whole effort at legal justification. No doubt the phrase “armed attack” must be construed broadly enough to permit some anticipatory response. But it is a very different matter to expand it to include threatening deployments or demonstrations that do not have imminent attack as their purpose or probable outcome. To accept that reading is to make the occasion for

forceful response essentially a question for unilateral national decision that would not only be formally unreviewable, but not subject to intelligent criticism, either Whenever a nation believed that interests, which in the heat and pressure of a crisis it is prepared to characterize as vital, were threatened, its use of force in response would become permissible In this sense, I believe that an Article 51 defense would have signaled that the United States did not take the legal issues involved very seriously, that in its view the situation was to be governed by national discretion, not international law.

- In 1967 Israel launched a preemptive attack on Egypt and other Arab states after President Nasser had moved his army across the Sinai toward Israel, forced the UN to withdraw its peacekeeping force from the Sinai border, and closed the port of Aqaba to Israeli shipping, and after Syria, Iraq, Jordan, and Saudi Arabia all began moving troops to the borders of Israel. In six days it routed Egypt and its Arab allies and had occupied the Sinai Peninsula, the West Bank, and the Gaza Strip. Israel claimed its attack was defensive in nature and necessary to forestall an Arab invasion. Both the Security Council and the General Assembly rejected proposals to condemn Israel for its “aggressive” actions.
- On June 7, 1981, Israel bombed and destroyed a nuclear reactor under construction in Iraq. Asserting that Iraq considered itself to be in a state of war with Israel, that it had participated in the three wars with Israel in 1948, 1967, and 1973, that it continued to deny that Israel has a right to exist, and that its nuclear program was for the purpose of developing weapons capable of destroying Israel, Israel claimed that “in removing this terrible nuclear threat to its existence, Israel was only exercising its legitimate right of self-defense within the meaning of this term in international law and as preserved also

under the United Nations Charter.” Nonetheless, the Security Council unanimously “condemn[ed] the military attack by Israel in clear violation of the Charter of the United Nations and the norms of international conduct” and urged the payment of “appropriate redress”.

Current Situation

Thus, in both theory and practice the preemptive use of force appears to have a home in current international law. Its clearest legal foundation is in Chapter VII of the UN Charter. Under Article 39 the Security Council has the authority to determine the existence not only of breaches of the peace or acts of aggression that have already occurred but also of threats to the peace; and under Article 42 it has the authority to “take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.” These authorities clearly seem to encompass the possibility of the preemptive use of force. Less clear is whether international law currently allows the preemptive use of force by a nation or group of nations without Security Council authorization. That would seem to be permissible only if Article 51 is read not literally but as preserving the use of force in self-defense as traditionally allowed in customary international law. As noted, the construction of Article 51 remains a matter of debate. But so construed, Article 51 would not preclude the preemptive use of force by the U.S. against Iraq or other sovereign nations. To be lawful, however, such uses of force would need to meet the traditional requirements of necessity and proportionality. As the examples listed above illustrate, the requirement of necessity is most easily met when an armed attack is clearly imminent, as in the case of the Arab-Israeli War of 1967. But beyond such obvious situations, as Abram Chayes argued, the judgment of necessity becomes increasingly subjective; and there is at present no consensus either in theory or practice about whether the possession or development of weapons of mass destruction (WMD) by a rogue state

justifies the preemptive use of force. Most analysts recognize that if overwhelmingly lethal weaponry is possessed by a nation willing to use that weaponry directly or through surrogates (such as terrorists), some kind of anticipatory self-defense may be a matter of national survival; and many – including the Bush Administration – contend that international law ought to allow, if it does not already do so, for the preemptive use of force in that situation. But many states and analysts are decidedly reluctant to legitimate the preemptive use of force against threats that are only potential and not actual on the grounds the justification can easily be abused. Moreover, it remains a fact that the international community judged Israel's destruction of Iraq's nuclear reactor site in 1981 to be an aggressive act rather than an act of self-defense. Iraq has become an occasion to revisit the issue. Iraq had not attacked the U.S., nor did it appear to pose an imminent threat of attack in traditional military terms. As a consequence, it seems doubtful that the use of force against Iraq could be deemed to meet the traditional legal tests justifying preemptive attack. But Iraq may have possessed WMD, and it may have had ties to terrorist groups that seek to use such weapons against the U.S. If evidence is forthcoming on both of those issues, then the situation necessarily raises the question that the Bush Administration articulated in its national security strategy, *i.e.*, whether the traditional law of preemption ought to be recast in light of the realities of WMD, rogue states, and terrorism. Iraq likely will not resolve that question, but it is an occasion to crystallize the debate.

The protection of nationals abroad

In the nineteenth century, it was clearly regarded as lawful to use force to protect nationals and property situated abroad and many incidents occurred to demonstrate the acceptance of this position. Since the adoption of the UN Charter, however, it has become rather more controversial since the 'territorial integrity and political independence' of the target state is infringed, while one interpretation of Article 51 would deny that 'an armed

attack' could occur against individuals abroad within the meaning of that provision since it is the state itself that must be under attack, not specific persons outside the jurisdiction.

The issue has been raised in recent years in several cases. In 1964, Belgium and the United States sent forces to the Congo to rescue hostages (including nationals of the states in question) from the hands of rebels, with the permission of the Congolese government, while in 1975 the US used force to rescue an American Cargo boat and its crew captured by Cambodia. The most famous incident, however, was the rescue by Israel of hostages held by Palestinian and other terrorists at Entebbe, following the hijack of an Air France airliner. The Security Council debate in that case was inconclusive. Some states supported Israel's view that it was acting lawfully in protecting its nationals abroad, where the local state concerned was aiding the hijackers, others adopted the approach that Israel had committed aggression against Uganda or used excessive force.

The United States has in recent years justified armed action in other states on the grounds partly of the protection of American citizens abroad. It was one of the three grounds announced for the invasion of Grenada in 1984 and one of the four grounds put forward for the intervention in Panama in December 1989. However, in both cases the level of threat against the US citizens was such as to raise serious questions concerning the satisfaction of the requirement of proportionality.

Humanitarian Intervention

Using military force to save lives is difficult, dangerous, rarely politically rewarding—and yet somehow here to stay. American presidents, UN Security Councils, and western publics will almost always want to do something when thousands or tens of thousands of innocent people are dying as a result of war. But dozens of civil wars are being waged around the world at any given time; demands being made on the U.S. armed forces

already verge on being excessive; and conducting successful interventions is difficult. American policymakers must be judicious in deciding when and how to use force to save lives in conflicts that do not involve vital, strategic U.S. interests.

Each such decision requires answering three crucial questions. When and where should we intervene? How should we do so? And who should do the intervening? By answering these questions carefully—and by trying to develop more global capacity for conducting peace and humanitarian operations—the international community can significantly reduce violence around the world in the years ahead.

When and Where to Intervene?

Given the many conflicts in the world today, how can we possibly decide which ones to try to resolve by force? The answer is to focus on those where the scale of death and suffering is greatest, where intervention is unlikely to create great-power conflicts, and where a mission can be designed that promises many lives saved at low cost to intervening soldiers.

But aren't civil and ethnic conflicts spinning out of control to the point that the problem is intractable? The short answer is no. Yahya Sadowski argued convincingly in a 1998 Brookings book that contrary to what doomsayers have been prophesying for years, the prevalence and intensity of civil conflict are not increasing as a result of the end of the Cold War, globalization, or anything else. Of the many civil wars around the world, most are not especially violent. Their per capita death rates, for example, are not notably worse than murder rates in U.S. cities. That is not to say we should ignore these conflicts—only that the blunt, dangerous, and expensive instrument of forcible military intervention should not be applied in most instances. As Steve Solarz and I have argued, the United States and like-

minded countries cannot be expected to try to make the rest of the world safer than U.S. society.

In the 1990s, ten conflicts were extremely lethal: those in Sudan, Rwanda, Angola, Somalia, Burundi, Liberia, Iraq, Sierra Leone, Bosnia, and Chechnya. These should have been the prime candidates for humanitarian intervention, as should any future conflicts of comparable severity (Kosovo and Haiti were not on this list, but the Clinton administration's wise decisions to intervene in those places reflected the presence of strategic stakes alongside humanitarian concerns). But it would not have been wise to intervene in all ten, which brings us to the second criterion for intervention—that a mission not risk major-power war costing far more lives than could possibly be saved. Notably, intervening in Chechnya was and is simply out of the question, given Russia's size and nuclear weapons capability. (In North Korea, where not war but severe repression and misgovernment, joined with starvation, caused at least hundreds of thousands of deaths last decade, intervention was also impractical given the North's ability to retaliate and cause at least tens of thousands of casualties in South Korea. Likewise, a hypothetical intervention in Kashmir would be unthinkable without the permission of India and Pakistan. And similar considerations rule out any forceful military mission to protect Tibet from Chinese oppression.)

What about the other nine terrible wars of the 1990s? How could outside powers have used force to save lives without making the problems worse than they already were and costing many lives of intervening troops in the process? That is probably the hardest question of all.

How to Intervene?

Simply deciding to intervene is not enough. Using force the wrong way can exacerbate some conflicts and get a lot of people, including U.S. troops, killed as well.

For this reason, it is often said that the United States needs an exit strategy before choosing to intervene. That is generally good advice—as long as the exit strategy is sound. Sometimes, however, as in Kosovo, insisting on a precise itinerary of intervention and a concrete political end-state for the region before becoming involved would be counterproductive. We do not, and probably cannot, know in advance how long outside forces might be needed; setting arbitrary deadlines risks creating unrealistic expectations at home and undesirable doubts abroad as to our commitment. Trying to determine now whether Kosovo will remain part of Yugoslavia, become independent, or be divided into two parts would do more to reignite the Serb-Albanian conflict than to resolve it.

But at a minimum, the international community needs some sense of how it will apply military force before intervening. Should it simply do enough to feed starving people, should it create safe havens for individuals or groups at risk, should it impose a ceasefire line between warring parties—or might it even help one side to win a conflict?

It all depends. Where tens of thousands are at risk from war—related famine, disease, or exposure, simply setting up protected humanitarian zones may make sense. That is particularly the case when, as in Somalia in the early 1990s, the conflict that has produced the problem seems severe and intractable.

Imposing ceasefire lines, or even permanently partitioning countries into two or more parts, can work well in some ethnic conflicts. We need not always create multiethnic, inclusive societies; sometimes saving lives is accomplishment enough. The international community's long-term goal in

Bosnia remains recreating a multiethnic state, but in the short term, at least, allowing separate entities with separate armies is sound policy and represents a huge improvement over the state of war that prevailed there five years ago. In Sudan, if the war-related famine again becomes severe, dividing the country into an Arab north and a Christian south may save the vast majority of threatened Sudanese lives at the lowest cost in dollars—and in the blood of intervening troops.

Finally, we should even be willing to take sides when one party to a conflict is clearly the better choice for its own country and when taking sides is likely to end a conflict. For example, the Bush administration was right to overthrow Manuel Noriega in Panama, clearing the way for a democratically elected successor; the Clinton administration was right to threaten to depose the Cedras regime in Haiti to allow the Aristide regime to take charge. Had the global community been willing to step up its involvement in Rwanda in 1994, it would have been wisest to ally with the Tutsi-led Rwandan Patriotic Front against the Hutu-led armed forces that, in league with various militia groups, ultimately carried out that country's terrible genocide.

What about the future? The world's most severe wars today include those in Sierra Leone, Congo, Angola, Algeria, Colombia, and Sri Lanka. Intervention in the last three would pit outside forces against battle-toughened, dedicated, and rather large insurgencies fighting on terrain advantageous for guerrilla-like warfare. Those are the situations U.S. and other outside forces should generally avoid, since they are likely to inflict substantial casualties on intervening troops. But the other conflicts in Africa, particularly the brutal war in small Sierra Leone, may be easier to contain. Any intervention there should take the side of the government against Liberia-financed mercenary rebels. It has been no credit to the international community that it did not address this conflict seriously—

instead hoping for the best while poorly armed peacekeepers interposed themselves in a civil war they were not able to contain. Things may be changing for the better, however, as of this writing.

The war in Angola involves larger indigenous fighting forces over a much wider area. The government—the lesser of two evils in this case—has recently been making inroads against the rebel forces of former U.S. client Jonas Savimbi. Were outside countries to try to stop this extremely bloody, long, and pointless war, they would be wise to side with the government and help it win a decisive victory. But it could take many thousands of international troops—and most likely dozens of fatalities to them—to do so. Finally, in the huge country of Congo, the global community should be willing to deploy a force at least 10 times larger than the 5,500-person UN monitoring operation now proposed if a true ceasefire ever is accepted. The larger force would deploy along a ceasefire line running north-south through the center of the country, forcibly keeping hostile armies apart and denying sanctuary to the Hutu extremists who fled to Congo from Rwanda several years ago. But muscular interventions in wars like those in Angola and Congo will probably not happen until more countries develop the military capabilities for such operations—which brings us to the final question.

Who Should Intervene?

How much of the work in forcible humanitarian interventions should the United States be expected to do? It seems unreasonable—not to mention politically unsustainable—for U.S. troops to do most everything. Saving lives is not a uniquely American interest. And the United States, alone among the major western powers, already maintains high military vigilance in the Persian Gulf and the Korean peninsula.

Unfortunately, other countries in general have neither the forcible entry capabilities nor the sustainable logistics to intervene in distant lands to save lives. Australia has done most of the work in East Timor, and our European allies have provided the vast majority of troops in Bosnia and Kosovo, of late. But U.S. capabilities are generally needed, at least initially, in the face of armed opposition. And the United States will need to contribute troops to postwar missions in places like the Balkans if it wishes to influence their conduct.

Although the United States need not create a specialized armed force for peace operations, it should modify its military force structure to lessen the strain of various types of limited missions around the world. Primary U.S. military attention must remain focused on those parts of the world where our economic interests are greatest, allies are at risk, and dangerous military competition could break out if local parties are not reassured or deterred. That means a continued emphasis on Europe, the Persian Gulf, and East Asia. But some military units—including special forces with particular language and political skills, military police, and support units that provide water, food, and medical care—should be beefed up for peace operations. Some of these special units, many now in the reserve force structure because they do not require constant training and drilling to do their jobs in war, are being overused. Placing more of them in the active-duty force structure would allow them to be deployed without excessively disrupting the lives of reservists, many of whom do not expect such duty short of a national crisis. Some 10,000 to 20,000 specialized troops should be added—at a cost of about \$1 billion a year, less than half of 1 percent of the defense budget. That is not too high a price to pay.

Other countries have much more work to do. The European allies, Canada, and even Japan should improve their ability to move troops to distant combat zones. The United States should overcome its ambivalence about its

allies strengthening their military capabilities and enthusiastically endorse most any steps they take toward greater military burden sharing.

Among the major western European nations, the model for improving peace operations and forcible intervention capabilities is clear. In a word, it is Britain. Its military is smaller than that of France or Germany but much more useful beyond its own borders. It can deploy perhaps 50,000 combat troops, with air support, well beyond its territory within three to four months and sustain them there for months. Britain is also planning to acquire more sealift and airlift to move its forces fairly rapidly. Smaller European countries cannot use Britain as an exact model, of course, but they can scale their efforts to some extent proportionately or band together in subgroups, with each country developing certain specialties. Because the European Union cannot be expected in the near term to act as a single entity in matters of war and peace, the most realistic alternative is for several countries or subgroups of countries each to have the capacity for meaningful military action abroad on their own or as coalitions of the willing.

What of budget constraints? Most European countries do not need to spend more—they need to spend differently. Large force structures are no longer needed, as Britain has already recognized and as Germany appears to be concluding as well. By cutting troops and buying lift and mobile logistics, NATO European countries can do far more than they do now with the \$170 billion a year they spend on defense.

Were Germany and Japan to follow the above prescriptions, their neighbors might be highly agitated, worrying about their capacity for autonomous power projection. The simplest way to defuse—or at least contain—such concerns is to begin with modest military ambitions for those two cases. Deploying troops only under multilateral, and preferably UN, auspices would further reassure nervous neighbors.

What about non-Western countries? Expensive hardware such as airlift capabilities, helicopters, and fighter aircraft, especially in large numbers, will generally be beyond their means. It is more realistic to ask these countries to develop well-trained soldiers, proficient in basic combat and peacekeeping skills, and equipped with serviceable small arms, body armor, vehicles for transport, and logistics and communications support for sustained operations abroad. Even if such countries cannot be expected to lead forcible interventions, they can provide valuable combat forces that enable peacekeeping missions to uphold ceasefires and peace accords under challenge. As the world witnessed in Angola in the early 1990s, some of the worst and most deadly conflicts erupt in countries where peace accords are reached, but later disintegrate. The breakdown of the Sierra Leone peace accord in 2000 that left many African troops held hostage is another reminder of the need for better-prepared peacekeeping troops, particularly from regions such as Africa, where conflicts are most common.

The United States and other western countries can do a great deal to help in this regard by providing modest sums—perhaps a couple hundred million dollars a year in all—for improved training, equipment, and other basic military needs. Programs like the African Crisis Response Initiative (ACRI), created by the Clinton administration, should not only be continued, but expanded dramatically. At present the ACRI funds only occasional training rotations for a few thousand regional troops, to the tune of about \$20 million annually.

Again, the focus should be on improving individual countries' military capacities, so that they can deploy as ad hoc coalitions, rather than depending on unanimous participation from all members of regional security groups to carry out missions. Regional institutions are useful for

negotiating peace accords and politically legitimating interventions, but not for owning or maintaining actual military forces-at least not yet.

This agenda is not particularly demanding for the United States. It involves small changes in the U.S. armed forces, limited aid to certain poorer countries, and diplomatic efforts to promote the plan. But the actions outlined here can make a big difference in preparing the world to handle peace operations in war-ravaged lands like Angola and Congo-lands whose forsaken people are now being often forgotten.

Questions for Discussion

1. How do you describe **meaning**, of “force”, **categories** of force and the **nature** of force under international law?
2. Discuss the **exceptions** to the use of prohibition of use of force.
3. How would you characterize the right of **self-defense** under international law?
4. How do you explain acts of terrorism and self defense?
5. **Anticipatory** or **pre-emptive self-defense**; is it protected under the UN Charter, international law?
6. What is **collective security/defense**? What is its place under international law?
7. Is the attack on Iraq by the US led force justified on any of the grounds of International law? Discuss.