“Save in the Common Interest”: Confronting Legal Hegemonies in the Law of Self-Defense Against Terrorist Acts

Stahn, C.

"Save in the Common Interest": Confronting Legal Hegemonies in the Law of Self-Defense Against Terrorist Acts

Carsten Stahn

ABSTRACT

The aftermath of 9/11 has triggered expanding interpretations of self-defense, enabling the exercise of self-defense against non-state actors. This interpretation is permitted by the wording of Article 51 of the UN Charter. However, controversies over the extension of self-defense under the Unable or Unwilling Doctrine in the aftermath of Syria, the application of self-defense to attacks by Houthis against commercial vessels in the Red Sea, or legal concerns regarding the proportionality of the Israeli response to the October 7 attacks, illustrate some of the ongoing contestations regarding the use of force under the umbrella of counterterrorism. It is more necessary than ever to refine safeguards and constraints in the context of the

Carsten Stahn *is Professor of International Criminal Law and Global Justice at the Leiden Law School and Queen's University Belfast. He is former Research Fellow at the Max Planck Institute for Comparative and International Law in Heidelberg and former Legal Officer at the International Criminal Court. He holds LL.M. degrees from Paris I/Cologne and NYU, as well as a PhD and a Habilitation from Humboldt University Berlin in Constitutional Law, International & International Criminal Law. His most recent books include Confronting Colonial Objects (Oxford University Press, 2023) and Justice as Message (Oxford University Press, 2020).*

resurgence of imperial ambitions or moves toward a "deal-based," rather than a "rules-based" order. The Security Council and the International Court of Justice have only played a marginal role in curbing risks. The Gaza war has shown four radically different readings of self-defense, and the risks of rationalizing human cost through necessity and proportionality justifications. This article proposes a number of ways to curtail abuses of self-defense and confront legal hegemonies in the law governing the use of force. They include a greater focus on de-hegemonic approaches toward consent and cooperation prior to the exercise of self-defense, the development of clearer evidentiary standards, the option of compensation in case of the violation of necessity or proportionality criteria, broader transparency and discursive accountability relating to claims of self-defense under Article 51, and a reinvigoration of the role of the General Assembly.

INTRODUCTION

The preamble of the United Nations Charter is clear: "Armed force shall not be used, save in the common interest." It placed faith in the collective security system. In my 2003 article, "Terrorist Acts as 'Armed Attack': The Right to Self-Defense, Article 51 (½) of the UN Charter, and International Terrorism,"[1] I argued that the legal response to 9/11 marked a turning point for certain tenets of the UN system: the interplay between self-defense and collective security, the future of the law of self-defense, and the balance between recourse to force and law enforcement more broadly. How does the picture look today?

More than two decades later, the consequences and ambivalent features of legal responses have become clearer. Classical state-centric readings of self-defense have been adjusted to the realities of terrorist threats posed by non-state actors. In state practice, it is more commonly recognized that the right of self-defense also applies to attacks by non-state actors.[2] Self-defense has been invoked on a continuing basis as legal justification for military strikes against terrorist actors. It has been applied, both in the context of collective action against the Islamic State of Iraq and Syria (ISIS) or in response to Houthi attacks against merchant ships in the Red Sea, and in transnational counterterrorism operations by individual states (e.g., Turkey, Colombia, Kenya, Ethiopia). However, there are flip sides.

The increased turn to self-defense has contributed to a greater degree of international legal disorder. It has broadened the option to invoke self-defense as a strategy to justify the use of force within the territory of a host state without the latter's consent. States have actively used counterterrorism

semantics and indeterminacies in law to expand the temporal boundaries of warfare, provide a veneer of legality for intervention, and conceal political and economic rationales of operations. The dispute over the justification of military strikes in Syria,[3] or legal concerns regarding the proportionality of the Israeli response to the October 7 attacks,[4] illustrate some of the continuing global controversies of expanding justifications of the use of force against terrorist acts.

The increased turn to self-defense has contributed to a greater degree of international legal disorder. It has broadened the option to invoke self-defense as a strategy to justify the use of force within the territory of a host state without the latter's consent.

The troubled implications of the interventions in Afghanistan, Iraq, Libya, or Syria have reinvigorated concerns that the legal framework developed in the War on Terror may entrench hegemonic features of the law of armed force,[5] create greater inequality, or ultimately serve to extend authoritarian rule.[6] The price has become apparent in the war in Ukraine, where Russia relied on these contradictions to brand acts of aggression against Ukraine as legitimate exercises of self-defense.[7]

There is an urgent need to address the risks and problems of expanding interpretations of self-defense against terrorist acts in order to confront the illiberal liberalism of legal argumentation, and curtail the abuse of self-defense. In this article, I revisit three fundamental aspects of the law of self-defense against terrorist acts in post 9/11 practice: (1) light and shadow of a new era of Article 51 practice,[i] (2) four readings of self-defense, and (3) ways to constrain abuses through the principles of necessity, proportionality, and procedural and discursive accountability. I propose certain recommendations and course corrections. They will not entirely solve the dilemmas of hegemony and abuse, but are necessary to confront the vulnerabilities and challenges of the law of self-defense in an era of disinformation,

i. Article 51 states: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence 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. Measures taken by Members in the exercise of this right of self-defence 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."

securitization of structural problems, double standards, and fundamental threats to the "rules-based order."[8]

LIGHT AND SHADOW OF A NEW ERA OF ARTICLE 51

The argument that self-defense can be invoked against non-state actors is not new. The 9/11 attacks and its aftermath has given new impetus to the claim that Article 51 of the UN Charter can be invoked in response to terrorist attacks by non-state actors, provided that they are sufficiently grave in terms of their scale and effect.[9] In 2003, I argued that Article 51 would become a "new Grundnorm governing the unilateral use of force by states against terrorist acts."[10] This prediction has to some extent become a reality.

The Emperor's New Clothes

The strengthening of obligations of states to prevent and punish terrorism has reinforced the claim that "sovereignty over territory comes with a price."[11] In legal debate, the main issue is often not so much whether states are entitled to exercise self-defense against terrorist acts by non-state actors, but rather how it can be justified that the host state needs to tolerate violations of its sovereignty.[12]

Self-defense has become the justification of choice in state practice. Since 2001, multiple states have relied on 9/11 as a precedent to justify the exercise of self-defense against terrorist actors abroad without the consent of the host state. The list is long and doesn't just include Western powers. Turkey has repeatedly asserted the right to self-defense under Article 51 against attacks by members of the Kurdistan Workers' Party (PKK) in Iraq (2016)[13] and ISIS and Kurdish forces in Syria (Operation Olive Branch, 2018; Operation Peace Spring, 2019).[14] Israel has invoked self-defense in order to justify attacks against the "terrorist presence" of Hezbollah in Lebanon (2006).[15] In 2007, Russia justified the exercise of self-defense against terrorist attacks by Chechen rebels from Georgia by emphasizing Georgia's failure to establish a security zone and comply with counterterrorist obligations under Security Council Resolution 1373.[16] In 2008, Colombia carried out strikes against members of the Revolutionary Armed Forces of Colombia in Ecuador, based on grounds of hot pursuit and self-defense.[17] Kenya has relied on self-defense in order to justify the use of force against Al-Shabaab in Somalia in 2011.[18] In 2015, Egypt used self-defense in order to counter terrorist acts directed against Egypt and Egyptian nationals by an ISIS-affiliated group operating in Libya.

The number of cases in which states have submitted communications under Article 51 to the Security Council to justify military action against terrorist targets has increased since 9/11.[19] This trend suggests that states are eager to ground forcible counterterrorism operations inside the framework of the UN Charter, rather than outside of it.[20] However, the boundaries of self-defense have been pushed through norm entrepreneurship by powerful states. Norm entrepreneurship here refers to the gradual translation of national policies into new legal doctrines and principles through informal legal processes, or the active use of legal grey zones in practice, in order to extend the prospects of uses of force.[21] Some extensions, such as relaxations of the "imminence" standard of the attack or broader flexibility to carry out strikes against non-state actors without consent or complicity of the territorial state, provide leeway for abuse or carry neo-imperial features, since they enable a select number of states to enforce their interests through force.

A critical juncture is the formalization of the "Unwilling or Unable" doctrine in the context of the U.S.-led military operations against ISIS in Syria in 2014 (Operation Enduring Resolve).[22] It gave broader support to an expansive concept of self-defense against terrorist acts, which had previously been invoked only by a handful of states (Israel, Turkey, and the United States). Syria objected to the U.S.-led Coalition airstrikes on its territory.[23] On September 23, 2014, U.S. Permanent Representative Samantha Power formulated the doctrine in the letter under Article 51 to the Security Council. It stated:

> "States must be able to defend themselves, in accordance with the inherent right of individual and collective self-defense, as reflected in Article 51 of the Charter of the United Nations, when, as is the case here, the government of the State where the threat is located is unwilling or unable to prevent the use of its territory for such attacks."[24]

The United States' reading marks a reinterpretation of Article 51, introducing an additional element into the justification of self-defense, which lacks an express foundation in the wording of the provision. Ultimately, this argument implies that, under Article 51, a state is required to endure measures of self-defense against attacks by non-state actors emanating from its territory, even if it does not carry responsibility for such attacks. Several Western states, including the UK, Germany, the Netherlands, the Czech Republic, Canada, and Australia, supported this argument to justify their actions. Some states have endorsed an expansive version of the doctrine, encompassing both the inability and the unwillingness limb (e.g., Australia,

Azerbaijan, Belgium, Denmark, Estonia, the Netherlands, Turkey, the UK, and the United States).[25] Others have accepted it at least in cases of absence of state authority or effective control (e.g., Austria, Belgium, Denmark, and Norway).

The Unwilling or Unable doctrine evokes colonial déjà-vu, since it introduces hierarchical, capacity-based distinctions among states, which are reminiscent of nineteenth century practices.[26] Notions of unwillingness or inability are not empirical facts, but subjective interpretations actively created through discourses and social practices—and therefore open to normative assessment. The danger of the doctrine lies in the fact that it leaves assessments of the host state's capacity and behavior within the hands of intervening states. It has been criticized as a revival of historical "self-help"[27] or "vital interests"[28] doctrines under the umbrella of a global "war against terror."[29] Its formalization in Article 51 letters opens prospects for unchecked uses of force beyond the case of ISIS or Syria.

The Unwilling or Unable doctrine evokes colonial déjà-vu, since it introduces hierarchical, capacity-based distinctions among states, which are reminiscent of nineteenth century practices.

Both limbs of the test have problems from the perspective of equality and state consent. The doctrine suggests that it is legitimate to carry out strikes in self-defense, if the host state is "unwilling to effectively restrain the armed activities of the non-state actor."[30] This is a slippery slope, since it enables the victim state to brand a host state as unwilling, if the host state seeks to address terrorist threats emanating from its territory in a different way (e.g., non-military means) than the victim state, or if the host state refuses external assistance to suppress terrorist activities. The doctrine ties the host state to an obligation of result, rather than an obligation of means.[31] The possibility of carrying out strikes against states, which are "unable but willing," carries similar risks of abuse. Specifying a "reasonable and objective basis" to conclude that a host state is unable is difficult in cases of partial inability.[32] Leaving that assessment to the victim state (e.g., in case of a "failure or refusal" of the host state to agree or implement "a reasonable and effective plan of action"),[33] opens the floodgates for abuse.[34] Governments with lesser means to suppress terrorist activities effectively remain at the receiving end of foreign uses of armed force.

This expansion has triggered critical reactions from Latin American and Asian states. States such as Brazil, Mexico, Ecuador, Venezuela, Cuba,

and Sri Lanka have opposed the doctrine since it broadens exceptions to the general prohibition on the use of force, and/or have challenged its emergence as customary law.[35] China has cautioned that extraterritorial self-defense under the cloak of "counter-terrorism" should be subject "to the consent of the state concerned."[36]

A further critical step was the application of self-defense to attacks by the Houthis against commercial vessels and navy ships in the Red Sea by the armed forces of the United States and the UK, with support from the Netherlands, Canada, Bahrain, and Australia. It posed the question to what extent Article 51 could be exercised transnationally to counter attacks against international commercial shipping. The commercial vessels attacked by the Houthis ran under the flags of Panama, the Bahamas, Liberia, Singapore, and the Marshall Islands. Both the United States and the UK invoked the right to self-defense under Article 51 to justify missile strikes against Houthi-controlled areas in Yemen without the consent of the government. The justification relied inherently on the logic of the Unwilling or Unable doctrine.[37] It broadened the application of Article 51 beyond the classical idea that states can use self-defense to protect their warships or vessels carrying their flag.[38] Under international law, it has been contested whether attacks by non-state actors against merchant vessels trigger the exercise of the right to self-defense, since they are not "quasi territorial extensions" of their flag states.[39] The United States pushed for an extensive interpretation of self-defense in the context of counterterrorism, arguing that it "is long established that States have a right to defend merchant and commercial vessels from attacks."[40] However, self-defense does not provide a general right to respond to attacks on "international commercial shipping," or a license for states to protect their own global strategic or economic interests through the use of force.[41] Other states, such as Russia, criticized the extension of self-defense to the protection of commercial vessels.[42] They argued that it would give intervening states "a free hand at loosely interpreting the right to defend their ships for the purpose of self-defense."[43]

A "Hands-Off" Security Council and Judicial Indeterminacy by the World Court

The checks and balances that the Charter foresees to counter expanded claims of self-defense have not been exercised as intended. The Security Council and the International Court of Justice (ICJ) have only played a marginal role in curbing risks.

The innovation of the response to 9/11 was that the Security Council affirmed ex ante in UNSC Resolutions 1368 (2001) and 1373 (2001) that

the United States had a right to defend itself against attacks by Al-Qaeda. In 2003, I expressed the hope that this practice would lay "the foundation for a new model of community-based self-defense" (Article 51 ½).[44] These hopes clearly did not materialize. Security Council reactions to invocations of Article 51 have been inconsistent, ambiguous, and ex post.

The Council has failed to exercise its jury function under Article 51 in a transparent and systematic way. It reacted in ambiguous terms to the application of the Unable or Unwilling doctrine in the context of Syria. It adopted resolution 2249 (2015), in which it "called upon" Member States that "have the capacity to do so to take all necessary measures" to "suppress terrorist acts committed specifically by ISIL" in Syria and Iraq. It endorsed military action ex post facto in operative paragraph 5 of the resolution. But it did not formally authorize these measures as enforcement measures under Chapter VII, it failed to mention Article 51 expressly, and it added a caveat that the endorsement only extends to measures taken "in compliance with international law." It thereby provided leeway to both supporters and critics of the Unable or Unwilling doctrine to maintain their positions.[45]

The Council adopted a similar hands-off approach in the legal controversy over military strikes against the Houthis in Yemen. In this case, it again reacted ex post facto. It adopted Resolution 2722 (2024), in which it "[took] note of the right of Member States, in accordance with international law, to defend their vessels from attacks, including those that undermine navigational rights and freedoms."[46] Through this careful language ("takes note," "in accordance with international law"), it avoided taking a clear position on the endorsement of interpretation of self-defense advocated by the coalition supporting the strikes.

The indecisive practice of the Council, its reactive modus operandi, and its passive approach toward Article 51 communications has been criticized by representatives of the Global South. In 2018, the thirty-three member states of the Community of Latin American and Caribbean States (CELAC) issued a statement to the Sixth Committee of the General Assembly, in which they expressed "concern" regarding the "ex post facto" justifications of self-defense "in the context of counterterrorism," and called for a more "open and transparent debate on this issue."[47]

The other UN organ that can exercise scrutiny over the interpretation of self-defense is the ICJ. It has largely shied away from providing guidance on the interpretation of Article 51 in relation to non-state actors in the aftermath of 9/11. The Court could have provided guidance on developments since *Nicaragua* in the *Oil Platforms* case (2003),[48] the *Wall Opinion* (2004),[49] or the *Armed Activities* case (2005).[50] However, it has addressed

the status of the law of self-defense only in a cursory way ("telegraphic" style) in the framework of its decisions,[51] leaving a great deal of uncertainty. The reasoning reflected in the main body of decisions reflects an unease of the Court to depart from its previous jurisprudence. The three decisions suggest that the ICJ's jurisprudence embraces a cautious, state-centric reading of self-defense. However, upon closer examination, the Court's approach is more nuanced. The diversity of views is reflected in the separate or dissenting opinions of individual judges.

Palestine marked a test case for the impact of Security Council resolutions 1368 (2001) and 1373 (2001). In the *Wall Opinion*, the Court had an opportunity to clarify its stance on the role of attacks by-non state actors. The language of the advisory opinion is marked by compromise. The Court avoided engaging with the question of self-defense against acts of non-state actors, by relying on the special context of the occupation of Palestine. It denied the externality requirement of self-defense. The ICJ implied that a state cannot invoke self-defense in relation to attacks by non-state actors, which emanate from territory occupied by that state, since such attacks do not necessarily involve use of force in "international relations" within the meaning of Art. 2 (4) of the UN Charter.[ii] It rejected Israel's claim to self-defense partly because it "exercises control in the Occupied Palestinian Territory" and because the threat "originates within, and not outside, that territory."[52] Several judges (Higgins,[53] Kooijmans,[54] Buergenthal[55]) have criticized the Court for failing to engage more thoroughly with the underlying justifications and developments after 9/11.[56] For instance, Judge Kooijmans openly challenged the failure of the Court to take into account the "new element" of resolutions 1368 (2001) and 1373 (2001), namely their recognition of "the inherent right of individual or collective self-defence without making any reference to an armed attack by a State."[57]

In the *Armed Activities* case, the Court denied Uganda's claim to self-defense on the ground that there was "no satisfactory proof" that the government of the Democratic Republic of Congo (DRC) was directly or indirectly involved in these attacks.[58] But it added an important disclaimer and stated that "the Court has no need to respond to the contentions of the Parties as to whether and under what conditions contemporary international law provides for a right of self-defense against large-scale attacks

ii. Article 2(4): 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.

by irregular forces."[59] This opening may be seen as an indication that the Court has never fully closed the door to the applicability of Article 51 to terrorist attacks by non-state actors.[60]

The existing jurisprudence has presented an incomplete picture of the complexity of legal issues. Judge Kooijmans and Judge Simma openly voiced their regret that the Court "missed a chance to fine-tune the position it took 20 years ago in spite of the explicit invitation by one of the Parties to do so."[61] Follow-up decisions have not provided much clarity. The Court has largely failed to discuss the interplay between occupation and self-defense in its 2024 advisory opinion, in which it argued that Israel abused "its position as an occupying Power" in the occupied territories[62] or in its interim measures orders under the Genocide Convention in the aftermath of the October 7 attacks by Hamas.[63] This silence marks a considerable gap in the reasoning. Some judges have explained the inapplicability of self-defense in the occupied territories in their individual opinions. For instance, Judges Yusuf, Nolte, and Cleveland have argued that self-defense cannot be used to justify prolonged and illegal occupation,[64] i.e., annexation or permanent control over occupied territory.

The broader reluctance of the Court to formulate a general position on the applicability of self-defense to acts of non-state actors may be explained by a number of factors: judicial economy, the delicate historical and political context of self-defense claims, divergent legal views, and the will to produce a widely shared majority decision. This indecision has left a void in the legal landscape. It has provided an opportunity for powerful states to develop the normative framework of self-defense through policy doctrines (e.g., the Bush doctrine of "preemptive self-defense")[65] or soft instruments pushing the boundaries of self-defense.

The broader reluctance of the Court to formulate a general position on the applicability of self-defense to acts of non-state actors may be explained by a number of factors: judicial economy, the delicate historical and political context of self-defense claims, divergent legal views, and the will to produce a widely shared majority decision.

A prominent example of a soft instrument, which has sought to redefine the contours of self-defense in line with the Unable or Unwilling doctrine are the Bethlehem Principles ("Principles relevant to the scope of a state's right to self-defense against an imminent or armed attack by non-state actors"),[66] coined by former

UK legal advisor Daniel Bethlehem and based on discussions "with foreign ministry, defense ministry, and military legal advisers from a number of states who have operational experience in these matters."[67] They are formally presented as neutral principles, geared toward addressing the "practical realities" of this sensitive area of law, but have been criticized for their lack of inclusivity, their limited engagement with alternative viewpoints,[68] and their broad interpretation of the irrelevance of state consent in case of unwillingness (collusion, harboring)[69] or inability[70] to "effectively restrain the armed activities of the non-state actors".

TERRORIST ATTACKS AS ARMED ATTACK: FOUR READINGS OF SELF-DEFENSE

The conflicting views about the proper interpretation of self-defense are grounded in different conceptions of self-defense and divergent views as to how competing interests should be balanced.[71] This is vividly illustrated by the dispute over self-defense in response to the October 7 attacks in the Security Council. Several states (e.g., the United States, France, the UK, Malta) have openly recognized Israel's right to self-defense, while others (e.g., Jordan, Pakistan, Brazil) have questioned this right, based on the fact that Hamas is a non-state actor and Israel an occupying power.[72] The controversy reflects not only different views about the applicability of self-defense in contexts of occupation,[iii] or the status of Gaza as occupied territory,[iv] but the persistence of radically different understandings of self-defense. They correlate partly with different understandings and approaches toward international law.

iii. *The Wall Advisory Opinion* suggested that self-defense may be precluded in contexts of occupation, since the attack lacks sufficient externality. The 2024 Advisory Opinion on *Policies and Practices of Israel in the Occupied Palestinian Territory* implied that occupying power cannot invoke self-defense if the occupation is illegal and guided by an ulterior goal of annexation (para. 261).

iv. Israel has argued that Gaza was not occupied territory prior to the October 7 attacks, since it was governed by Hamas and no longer under Israel's effective control since its disengagement from Gaza in 2015.

State-Centric Reading of Self-Defense

According to a classic state-centric reading of armed attack, self-defense applies in interstate relations. It can only be exercised against a host state, if terrorist attacks by non-state actors can be attributed to that state.[v] Doctrinally, this approach reads self-defense under Article 51 as an exception to the prohibition of the use of force under Article 2(4), which must be violated, in order to trigger Article 51. This reading entails several limitations for self-defense. It makes self-defense subject to an externality requirement, since Article 2(4) prohibits use of force in "international relations," and it implies that the attack must, in principle, be imputable to a state entity, i.e., the host state.

According to a classic state-centric reading of armed attack, self-defense applies in interstate relations. It can only be exercised against a host state, if terrorist attacks by non-state actors can be attributed to that state.

This understanding of self-defense places the emphasis on stability of international relations and the protection of the interests of the host state. It requires some form of due diligence violation (*sic utere non laedas*), or at least a sufficient nexus, enabling attribution of conduct to the host state as a precondition for self-defense. This attribution has posed challenges in the context of 9/11. It has gradually led to a loosening of requirements, expanding attribution beyond agency (effective control) or collusion to passive support (e.g., harboring), based on duties of states to combat terrorism. The Unable or Unwilling doctrine stretches this idea to a breaking point, since it enables self-defense in circumstances that are beyond the host state's control. It imposes de facto a strict liability regime in cases where the host state is unable to suppress terrorist activities, making it necessary to rely on alternative justifications than attribution, such as estoppel or forfeiture of sovereignty protection, in order to justify the exercise of self-defense.

The state-centric understanding makes it difficult to justify the exercise of self-defense against Hamas as a non-state actor.[73] It would require Israel to show that the attacks had a sufficient degree of externality to violate Article 2(4) of the UN Charter. Most importantly, it makes the applicability of Article 51 dependent on whether or not Palestine qualifies as a

v. The attribution argument has been criticized for reading more into the wording of Article 51 than it actually says.

state entity, whether Gaza is part of its sovereign territory, and whether the attacks can in some way be attributed to the Palestinian authority.

Self-Defense As An Inherent, Non-State-Centric Right

A second approach regards self-defense as an inherent right and independent norm of international law,[74] rather than as an exception to Article 2(4). It has gained significant traction in the aftermath of 9/11. It treats self-defense as the "flip-side" of the state-centric ban on force,[75] which is triggered by the factual occurrence of an armed attack (not a violation of Article 2(4)).[76] This approach justifies the exercise of self-defense against non-state actors based on the wording of Article 51, which does not place a limitation on the author of the attack, and the permissive nature of self-defense, which allows states to defend themselves against armed attacks. It places greater emphasis on the interests of the victim state, which cannot be deemed to passively tolerate terrorist attacks against its territory or inhabitants. It operates on the understanding that self-defense can be exercised without attribution of an attack to a state or prior wrongdoing by the host state.[77] It seeks to curtail the risk of armed force predominantly through the necessity and proportionality requirements of self-defense. The host state is deemed to endure self-defense action in or on its territory, based on the inherent right to self-defense under Article 51. This approach finds support in the wording of Security Council Resolutions 1368 (2001) and 1373 (2001). It has inter alia been invoked by the United States to defend its strikes against al-Qaeda and its associated forces in Afghanistan, Pakistan, Yemen, or Somalia,[78] by Israel to justify its exercise of self-defense against attacks by Hezbollah in Lebanon, or by Turkey to support its operations in Iraq and Syria against the PKK.

A second approach regards self-defense as an inherent right and independent norm of international law,[74] rather than as an exception to Article 2(4). It has gained significant traction in the aftermath of 9/11.

This reading makes it possible to argue that the October 7 attacks qualify as an armed attack and that self-defense can be exercised against Hamas as a non-state actor. It treats self-defense primarily as a security measure, rather than as an international sanction. It faces critiques, since it increases the risks of abusive uses of force, which have become evident in the context of the use of force in Gaza. First, self-defense may easily turn from a defensive operation into a punitive measure, i.e., an attempt to hold the authors of

the attack accountable through force or to inflict punishment on a broader collectivity. This is, inter alia, shown by the large number of civilian casualties and the displacements in the Gaza war. Second, self-defense is subject to weak safeguards: rather general and malleable necessity and proportionality standards and blurry evidentiary thresholds.[vi] For instance, the United States, the UK, and Australia have subscribed to the standard of the Bethlehem Principles, which do not require "clear and convincing" evidence, but merely a "reasonable and objective basis,"[vii] supported by credible and all reasonably available information. This is a relatively low threshold,[79] which is easily subject to manipulation, and rarely publicly verified, due to selective follow-up or political divide within the Security Council.[80]

Second, self-defense is subject to weak safeguards: rather general and malleable necessity and proportionality standards and blurry evidentiary thresholds.

The Functional Approach: Differentiation by Nature of Non-State Actors

A third approach differentiates based on the nature of the non-state actor. It accepts that armed attacks by state-like entities come within the scope of Article 51. This view has gained prominence in justification of strikes against ISIS in Syria. Some states have taken the view that self-defense can be exercised against non-state actors, if they carry state-like features. For instance, Germany has argued that states are entitled to exercise self-defense directly against non-state actors under Article 51, if they qualify as a de facto regime.[81] France has taken a similar view. It has defended the position that self-defense is permissible against non-state actors that have the characteristics of a "quasi-State."[82] Some authors justify the possibility to exercise self-defense against state-like actors, which exercise control over territory, by the fact that they are directly bound by customary prohibitions of the use of force.[83]

Some states have taken the view that self-defense can be exercised against non-state actors, if they carry state-like features.

vi. Article 51 is silent on the required standard that should be met in reports to the Security Council.

vii. The "reasonable and objective basis" formula is used in Principles 5, 7, 8, 11, and 12 of the Bethlehem Principles.

This position helps to alleviate the problems of attribution posed by the state-centric approach. At the same time, it constrains some of the risks of an uncontrolled expansion of self-defense, based on a functional differentiation of power and capacity of non-state actors. It implies that Israel might be entitled to exercise self-defense against non-state actors, such as Hamas, based on their state-like features and their functional control over Gaza from where the attacks emerged.[84]

Article 51 as Part of the Problem

A fourth approach takes a radically different view. It calls into question whether self-defense is an appropriate framework to respond to terrorist attacks of non-state actors. Such critiques are voiced by many different constituencies (e.g., rule of law proponents, pacifists, and Third World Approaches to International Law).[85] Some make a principled "case against self-defense" through use of force, since it is not a neutral remedy, but an exercise of power, which entrenches legal hegemonies.[86] Counterterrorism operations have blurred the line between the use of force and law enforcement (e.g., targeted killings). In practice, they have often provided an unsatisfactory remedy to address "the root causes of non-state violence or terrorism"[87] or even contributed to novel insecurity. Proponents of alternatives to self-defense stress the need to prioritize economic and social collaboration, in order to enable states to address the underlying problems and confront inequalities.

Proponents of alternatives to self-defense stress the need to prioritize economic and social collaboration, in order to enable states to address the underlying problems and confront inequalities.

This ambition to narrow the case for the applicability of self-defense under Article 51 is reflected in different positions on the use of force in Gaza. For instance, Palestine has argued that the war in Gaza cannot be justified as self-defense, since it is not an isolated event, but a continuation of the annexation and occupation of Gaza and the West Bank, or part of a longer history of aggression,[88] which constrains self-defense (e.g., like an *actio libera in causa*).[89] Others caution that self-defense cannot be open-ended, but is tied to temporal limitations, which make it necessary to contemplate alternatives to use of force (e.g., cessation of hostilities).

STRENGTHENING CONSTRAINTS AGAINST ABUSE

What is the way forward? Realistically, the argument for self-defense against terrorist acts by non-state actors is unlikely to go away in the near future, despite various legal contestations. The clock cannot be turned back. At the same time, it is becoming evident, also through the war in Gaza, that lessons from 9/11 have not been learned. The methods of self-defense that have been deployed in the War on Terror have not provided sufficient protection for civilians and infrastructure. The extension of the scope of self-defense requires effective constraints, not only under the law governing conduct in warfare (jus in bello), but also the law on resort to armed force (jus ad bellum). Both bodies of law have separate purposes and may apply concurrently.[90] Constraints under the law of self-defense do not simply cease to apply by virtue of the fact that the exercise of self-defense may lead to armed hostilities.[91]

The principles of necessity and proportionality are more malleable in nature than the classical rules of attribution of conduct to states. They have been defined largely through the interests of states responding to terrorist attacks in the past two decades and have been used to turn a blind eye on human costs of self-defense operations. They are in need of greater specificity and rebalancing, in order to prevent powerful states from carrying out borderless and endless self-defense operations under the guise of "counterterrorism." This clarification is in the long-term interests of states claiming self-defense and those who are at the receiving end of it. It should be provided through more explicit ICJ jurisprudence and/or the definition of principles by the General Assembly, which has adopted a resolution on the "inadmissibility of the policy of hegemonism in international relations,"[92] and also clarified the definition of aggression (Resolution 3314).[93]

Necessity is an enabling and a limiting factor for self-defense under customary law. It has two dimensions: it requires the victim state to exhaust peaceful alternatives to armed force against non-state actors and it limits the response to measures necessary to halt and repel the attack or bring it to an end.

Necessity as a Constraint

Necessity is an enabling and a limiting factor for self-defense under customary law. It has two dimensions: it requires the victim state to exhaust peaceful alternatives to armed force against non-state actors and it limits the response

to measures necessary to halt and repel the attack or bring it to an end.[94] The ICJ has argued that the necessity requirement should be "strict and objective," leaving no room for "discretion."[95] There are several ways to balance the conflicting interests of self-defense through necessity, in order to prevent hegemonic uses of force.

The first one is greater caution toward exhaustion of alternative remedies (i.e., "no choice of means"), and a de-hegemonic approach to consent and collaboration in the context of the consideration of necessity of armed force. A de-hegemonic reading places greater emphasis on the need to promote collaborative approaches prior to the use of force, including alternatives to military force (e.g., law enforcement, mutual cooperation), to mobilize local response schemes to threats, and to consider the long-term implications of forcible strikes, in order to confront power imbalances and geopolitical inequalities in decisions on self-defense.

Based on this premise, the underlying macro question needs to be examined more thoroughly, namely whether forcible counterterrorism measures carry reasonable prospects of success or increase the risk of terrorist threats. If use of self-defense is likely to increase the risk of attacks, it can hardly be deemed to meet the necessity test. In cases where measures have reasonable prospects of success, promoting localized response should be given priority. The host state should be given adequate time and opportunity to address attacks by non-state actors through its own law enforcement or other lawful means.[96] In case of inability, cooperation and consent should be sought before the necessity assessment in order to mitigate power asymmetries between the victim and host state.[97]

If use of self-defense is likely to increase the risk of attacks, it can hardly be deemed to meet the necessity test.

A second important factor is the distinction in the choice of targets against which force may be lawfully directed. The ICJ confirmed in the *Oil Platforms* case that the "nature of the target" forms part of the necessity and proportionality of self-defense.[98] Necessity requires the victim state to distinguish between forcible action against the non-state actor and the host state. It covers forcible measures against non-state actors on the territory of the host state to halt and repel the threat, but does not necessarily allow use of

For instance, it is impermissible to use counterterrorism operations as a pretext to target state institutions, change borders, or justify regime change.

force against the state itself. For instance, it is impermissible to use counterterrorism operations as a pretext to target state institutions, change borders, or justify regime change. Such actions destabilize international peace and security and fall within the purview of collective security. The ICJ made this clear in the *Armed Activities* case, in which it criticized the scope of Uganda's self-defense argument. It stated that Article 51 "does not allow the use of force by a State to protect perceived security interests beyond the parameters" of Article 51.[99] If use of force in self-defense against non-state actors causes collateral damage to the host state, such damage should be repaired.[100] Such compensation may be justified in cases where the territorial state is unable to suppress the attacks and the defending state exceeds its duty to direct defensive action against the terrorist target only.[101] It provides additional incentives to comply with necessity and proportionality standards.

The immediacy requirement of self-defense is a third key element. It sets limits to the length of self-defense. Some states have defended an open-ended concept of self-defense in the war on terror based on the permanent "imminence" of potential novel threats.[102] They have argued that immediacy does not have to be shown in relation to each forcible operation, once the victim state is engaged in hostilities with terrorist actors. This understanding stretches necessity beyond its limits. Self-defense cannot be continuously reinvented to deal with future abstract threats. It is tied to defensive goals, rather than punitive or preventive action. Once the original attack has been halted, and the threat of imminent attack has been repelled, the case for self-defense loses its force.

Proportionality: Beyond Ends Justify Means

The proportionality requirement serves to ensure that measures that are necessary in response to an armed attack still operate within the general framework of self-defense. It seeks to create a balance between the legitimate aim of self-defense and the means used to achieve that aim.[103] Examples like the War on Terror or the response to the October 7 attacks indicate an urgent need to define the independent space of *jus ad bellum* proportionality. This requirement is not per se excluded by the existence of an armed conflict and applies in addition to proportionality under *jus in bello*.

Proportionality involves different dimensions. The first is means-end proportionality, concerning the relationship between defensive means and defensive ends. The defensive military action and the overall extent of force used must be proportionate to the legitimate primary aim of self-defense, i.e., to halt and repel the attack, or to avert an imminent armed attack.

Means-end proportionality does not require a strict comparison of casualties caused by attack and response. But it sets limitations. The purpose of self-defense is to allow states to defend themselves against armed attacks, not to provide punishment for attacks—this is the function of individual criminal responsibility.[104] Certain measures, such as the failure to provide sufficient support to the civilian population, may lack a sufficient nexus to defensive aims.[105] The Chatham House Principles clarify that "the force used, taken as a whole, must not be excessive in relation to the need to avert the attack, or bring it to an end."[106] This makes it difficult to justify an "'all-out' war to destroy the enemy."[107] Using self-defense as a form of sanction may turn it into an illegitimate reprisal.

The exclusive application of means-end proportionality is subject to criticism from counter-hegemonic perspectives, since it prioritizes the goals of defensive force against non-state actors over human costs. It rationalizes a securitization of human casualties: the defensive ends justify the means. This problem is addressed by a second dimension of proportionality: proportionality in the narrow sense. It is a bedrock principle of a de-hegemonic reading of self-defense. It concerns the question of whether the possible benefit of defensive force is proportionate in relation to the overall cost of the use of force, including unnecessary harm to civilians or military objects. Some voices claim that such a proportionality test overstretches *jus ad bellum* proportionality, since it integrates humanitarian considerations into the scope of assessment.[108] However, this argument is not persuasive. The two assessments are distinct. *Jus in bello* proportionality takes a microscopic view focused on the proportionality of specific measures in the context of armed conflict, whereas *jus ad bellum* proportionality takes a holistic view on the harm caused by a defensive action "as a whole." The ICJ confirmed this in the proportionality assessment in the *Oil Platforms* case, when it argued that it "could not close its eyes to the scale of the whole operation."[109]

The exclusive application of means-end proportionality is subject to criticism from counter-hegemonic perspectives, since it prioritizes the goals of defensive force against non-state actors over human costs. It rationalizes a securitization of human casualties . . .

Some soft law documents, such as the Chatham House Principles, reflect this proportionality understanding. Principle 5 specifies that "the physical and economic consequences of the force used must not be excessive

in relation to the harm expected from the attack,"[110] such as effects on civilians. According to this reading, the amount of civilian harm caused by defensive measures, which exceed the need to halt and repel or discourage future attacks, may render the claim to self-defense disproportionate. Some voices have gone a step further. Adil Haque has asked in the context of the war in Gaza whether the total amount of civilian casualties caused renders the defensive force disproportionate.[111] Mary Ellen O'Connell had questioned in the aftermath of 9/11 whether the costs of "ground invasions following terrorism" may ever satisfy the necessity and proportionality test of self-defense.[112] Such understandings give *jus ad bellum* proportionality an additional role in humanizing warfare.

Strengthening Process-Based and Discursive Forms of Accountability

The biggest problem of extending claims of self-defense is that there is no effective arbiter to monitor and constrain excessive use of force. The Security Council has mostly reacted ex post and through ambiguous language. States are often reluctant to speak out against violations for political reasons. ICJ jurisdiction over the use of force remains highly selective. This makes constraints dependent on broader process-based or discursive forms of accountability and articulations of legal positions through principles, debates, or soft law instruments.[113]

There are several ways to curtail hegemonic uses of self-defense through procedural and discursive checks and balances. The first one is the development of evidentiary standards governing the exercise of self-defense. It is necessary to ensure greater equality in security practices and protect vulnerable states against fabricated claims of self-defense. As a general rule, the state claiming self-defense bears the burden of establishing a case for self-defense (burden of proof).[114] However, the exact evidentiary threshold (standard of proof) remains contested.[115] There are no uniform criteria. Soft law instruments, such as the Leiden Policy Recommendations on Counterterrorism and International Law[116] or the Chatham House Principles[117] insist on the duty of states to substantiate claims of self-defense based on objective material and information (e.g., publicly available information and data) and explanations

However, in practice, states have used rather generic statements when justifying their actions in letters under Article 51. Some P5 members (e.g., the United States, UK, France) have contested a formal duty to disclose evidence . . .

on necessity and proportionality. However, in practice, states have used rather generic statements when justifying their actions in letters under Article 51. Some P5 members (e.g., the United States, UK, France) have contested a formal duty to disclose evidence,[118] while others, including those at the receiving end of self-defense operations, have called for more transparent and evidence-based justifications.[119]

The reluctance to formulate evidentiary standards entrenches legal hegemonies. It creates a risk that the law of self-defense is used as a camouflage for unchecked uses of force. As Judge Krylov noted in 1949 in the *Corfu Channel* case, one should not "condemn a State on the basis of probabilities," rather international responsibility must be established by "clear and indisputable facts."[120] Similarly, self-defense should be grounded in facts that are capable of objective assessment and verification.[121] Self-defense claims should not only focus on the enabling factors of use, such as the armed attack requirement or the necessity of response, but contain substantiated information as to how the legal constraints deriving from imminence, necessity, and proportionality are met.[122] Providing this information ex post, i.e., after the use of force, leaves significant leeway for abuse. The Chatham House principles offer a reasonable rule of thumb:

"The more far-reaching, and the more irreversible its external actions, the more a state should accept (internally as well as externally) the burden of showing that its actions were justifiable on the facts."[123]

If evidence is based on protected intelligence information, it must be subject to strict internal scrutiny of the Security Council, and at least existing domestic safeguards should be disclosed. It is necessary to integrate the underlying information and reasoning into letters under Article 51, in order to facilitate meaningful scrutiny.

Second, stricter attention to transparency of claims and their substantiation through evidence and reasoning is a foundation for a more open discussion of self-defense. Lack of transparency and inequality of voice is one of the main driving forces of hegemonic assertions of power. If only states using self-defense express their legal positions and speak the law of self-defense, expansive interpretations are likely to persist or extend. As Mexico emphasized in 2020 in the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, the process surrounding Article 51 letters is an important element ensuring discursive checks and balances.[124] The Security Council is not only a letter box for communications, but a broader forum for accountability of self-defense claims in UN structures. The information provided must be sufficiently accessible to states. As part of a de-hegemonic approach toward

self-defense, further procedures should be developed to enable states to react to claims. The "Arria-formula meetings," which are convened at the initiative of one or several Council members to hear the views of individuals, organizations, or institutions on matters within the competence of the Council provide an additional means to enhance discursive accountability. They enable members of the Global South or States that do not use force to gain greater visibility in discourses of law of self-defense.[125]

Third, the decision-making structures of the Council itself need to be revisited. It needs to take a more active role in dealing with Article 51 communications, in order to exercise its jurying function in the interplay between collective security and self-defense. Expanded claims of self-defense against terrorist acts have involved uses of force that conflict with the prerogatives of collective security under the UN Charter. The passive reaction of the Council, or its silence, to these practices enhances the perception of double standards in relation to the use of force. In exceptional cases (e.g., ISIS, Houthi attacks), the Council has issued resolutions ex post that have been read as providing a stamp of legality for measures taken. This ex-post logic creates incentives for states to test the limits of self-defense even further without Council approval. It is necessary to facilitate greater accountability structures through deliberation and assessment of Article 51 claims in UN debates. This can be done in two ways: through ex ante involvement of the Council and deliberation on the evidentiary base and scope of self-defense claims, and the creation of a special committee monitoring the exercise of self-defense in the individual circumstances, in order to counter risks of abuse during the operation and prevent endless wars of self-defense.

Finally, the General Assembly can take on a stronger role as a forum of accountability in the case of paralysis and stalemate in the Council. The Assembly bears a residual responsibility in the area of international peace and security. It enjoys recommendatory powers under Article 10 and 13 of the UN Charter, but has asserted the authority to adopt resolutions with a "determinative effect."[126] In 1950, UN members affirmed the power of the Assembly to recommend collective action, including the use of force, in the Uniting for Peace Resolution (Resolution 377 (V)).[127] In the *Wall Opinion*, the ICJ has recognized "an increasing tendency over time for the General Assembly and the Security Council to deal in parallel with the same matter concerning the maintenance of international peace and security," which turned into "accepted practice" in the UN system.[128] Based on these developments, the Assembly could play a triple role in relation to self-defense. Drawing on the example of the definition of aggression, the Assembly could

develop principles to clarify the scope and limits of self-defense. Building on the Uniting for Peace precedent, it could recommend or authorize measures of self-defense against non-state actors in cases where the Council is paralyzed. It is further possible to envisage a role for the Assembly in exercising scrutiny over self-defense claims. In 2022, the Assembly created a novel accountability mechanism in the aftermath of the stalemate over Ukraine, in order to curb the unchecked use of veto powers.[129] It requires P5 members to explain the reasons for the use of the veto power not only to the Council, but to the Assembly as a whole. A similar mechanism could be created in relation to uses of force under Article 51. A state exercising use of force would be compelled to justify and explain the foundations and modalities of self-defense before the Assembly, in cases where the Council is blocked or fails to exercise scrutiny, based on a conflict of interest of Council Members. Such a step would provide systematic and wider attention to self-defense claims and increase discursive checks and balances against abuses of Article 51. Both measures are the spirit of General Assembly Resolution 34/103. Strengthening the role of the Assembly would respond to criticisms by those who view the Council as the institutionalized embodiment of sovereign inequality in the UN system.

CONCLUSION

The UN General Assembly had recognized in the 1970s that the spread of spheres of influence and the pursuance of hegemony through use of force is a "serious threat to international peace and security" and that it is in the "common desire of all peoples to oppose hegemonism."[130] These insights continue to provide important signposts for the future of the law of self-defense against terrorist acts.

For many decades, the traditional state-centric reading of self-defense, relying on attribution on attacks by non-state actors, has served as a means to curtail the application of self-defense in favor of collective security. The aftermath of 9/11 has triggered expanding interpretations of self-defense, enabling the exercise of self-defense against non-state actors. This interpretation is permitted by the wording of Article 51. However, it requires new reflections about the nature and limits of self-defense, especially in the context of the resurgence of imperial and expansionist ambitions. The emergence of the Unable or Unwilling doctrine marks an ambivalent addition to the interpretation of self-defense, which goes beyond the text Article 51, exceeds classical criteria of attribution, and remains subject to unilateral interpretation. It should be read, at best, as an indicator for the

necessity test under self-defense. The broader construction of self-defense as an inherent right against attacks by non-state actors should not be understood as a license for sanction or punishment, but rather as a defensive measure, geared at halting and repelling the attack.

Both the selectivity and stalemate of the collective security system and contemporary attacks on the prohibition of the use of force make it more necessary than ever to refine safeguards and constraints. Some initiatives in this direction are being developed by states, expert groups, and scholars. There are a number of ways in which threats of abuse of self-defense can be curtailed. They include a greater focus on de-hegemonic approaches toward consent and cooperation prior to the exercise of self-defense, the development of clearer evidentiary standards, the option of compensation in case of the violation of necessity or proportionality criteria, broader transparency and discursive accountability relating to claims of self-defense under Article 51, and a reinvigoration of the role of the General Assembly.

NOTES

1. Carsten Stahn, "Terrorist Acts as 'Armed Attack': The Right to Self-Defense, Article 51 (½) of the UN Charter, and International Terrorism," *The Fletcher Forum of World Affairs* 27, no. 2 (2003): 35–54, http://hdl.handle.net/10427/76983.
2. Christian J. Tams, "Self-Defence Against Non-State Actors: Making Sense of the 'Armed Attack' Requirement," in *Max Planck Trialogues* (Cambridge University Press, 2019), 90–173; Michael P. Scharf, "How the War against ISIS Changed International Law," *Case Western Reserve Journal of International Law* 48, no. 1 (2016): 36–37, https://scholarlycommons.law.case.edu/jil/vol48/iss1/3; Jutta Brunnée and Stephen J. Toope, "Self-Defense Against Non-State Actors: Are Powerful States Willing But Unable To Change International Law?," *International & Comparative Law Quarterly* 67, no. 2 (2018): 263–86, 10.1017/S0020589317000458; Monica Hakimi, "Defensive Force Against Non-State Actors: The State of Play," *International Law Studies* 91 (2015): 1–31, https://digital-commons.usnwc.edu/ils/vol91/iss1/1/; Terry D. Gill and Kinga Tibori-Szabó, "Twelve Key Questions on Self-Defense against Non-State Actors," *International Law Studies* 95 (2019): 482–87, https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=2914&context=ils.
3. Ntina Tzouvala, "TWAIL and the 'Unwilling or Unable' Doctrine: Continuities and Ruptures," *American Journal of International Law Unbound* 109 (2015): 266–270, 10.1017/S2398772300001574; Emre Senbabaoglu, "The Unwilling or Unable Doctrine Under the Right of Self-Defence Against Non-State Actors: Its Challenges to Third World States And an Alternative Normative Framework" (PhD diss., University of Sussex, 2023), 1–293, https://hdl.handle.net/10779/uos.26067631.v1.
4. Eric A. Heinze, "International Law, Self-Defense, and the Israel-Hamas Conflict," *The US Army War College Quarterly: Parameters* 54, no. 1 (2024): 71–86, 10.55540/0031-1723.3273; Terry Gill, "The Jus ad Bellum and the War in Gaza," *Journal of International Peacekeeping* 27, no. 3 (2024): 249–263, https://doi.org/10.1163/18754112-27030002.

5. Nico Krisch, "International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order," *European Journal of International Law* 16, no. 3 (2005): 369–408, https://doi.org/10.1093/ejil/chi123; Ahmed Dawood, "Defending Weak States Against the 'Unwilling or Unable' Doctrine of Self-Defense," *Journal of International Law and International Relations* 9 (2013): 1–37, https://ssrn.com/abstract=2239817; Victor Kattan, "The Use and Abuse of Self-Defence in International Law: The Israel–Hezbollah Conflict as a Case Study," *Yearbook of Islamic and Middle Eastern Law* 12 (2005–06): 31–50, http://dx.doi.org/10.2139/ssrn.994282.
6. Tom Ginsburg, "Authoritarian International Law," *American Journal of International Law* 114, no. 2 (2020): 221–260, https://doi.org/10.1017/ajil.2020.3.
7. On February 24, 2022, Russian President Putin justified the "Special Operation in Ukraine" as an exercise of self-defense under Article 51 of the UN Charter and as a tit-for-tat for previous violations of international law in Iraq, Libya, and Syria. See "Full Text: Putin's Declaration of War on Ukraine," *The Spectator*, February 24, 2022, https://www.spectator.co.uk/article/full-text-putin-s-declaration-of-war-on-ukraine/. States who have been at the receiving end of Western practices have remained indifferent, also in light of the hypocrisies of past justifications of armed force.
8. Eyal Benvenisti, "The Resilience of International Law in the Face of Empire," Just Security, February 17, 2025, https://www.justsecurity.org/107820/resilience-international-empire/.
9. Article 51 does not include a scale requirement. The precise threshold remains contested. In *Nicaragua,* the ICJ stated that attacks by non-state actors, such as armed groups, must be equivalent to attacks "conducted by regular forces" and go beyond "mere frontier" incidents. See ICJ, *Case Concerning Military and Paramilitary Activities in and against Nicaragua*, Judgment of June 27, 1986 (Merits), ICJ Rep. 1986, 93, para. 195. In *Oil Platforms*, the Court recognized that the accumulation of a series of smaller events may amount to an armed attack. ICJ, *Case Concerning Oil Platforms (Iran v. United States of America)*, Judgment of November 6, 2003, ICJ Rep. 2003, 161, paras. 65 et seq. The Leiden Policy Recommendations specify that the attack should be "large-scale." See Nico Schrijver and Larissa van den Herik, "Leiden Policy Recommendations on Counter-terrorism and International Law," *Netherlands International Law Review* 57, no. 3 (2010): 531–550, https://hdl.handle.net/1887/42298.
10. Stahn, "Terrorist Acts as 'Armed Attack,'" 37.
11. Claus Kress, "The Fine Line Between Collective Self-Defense and Intervention by Invitation: Reflections on the Use of Force Against 'IS' in Syria," Just Security, February 17, 2015, https://www.justsecurity.org/20118/claus-kreb-force-isil-syria/.
12. Dire Tladi, "The Nonconsenting Innocent State: The Problem With Bethlehem's Principle 12," *American Journal of International Law* 107, no. 3 (2013): 570–576, 10.5305/amerjintelaw.107.3.0570.
13. Christian Tams, "The Use of Force Against Terrorists," *European Journal of International Law* 20, no. 2 (2009): 359–397, 379–380, https://doi.org/10.1093/ejil/chp031.
14. In the letter under Article 51, Turkey justified Operation Spring Peace by the need "to counter" an "imminent terrorist threat." See United Nations Security Council, Letter Dated 9 October 2019 from the Permanent Representative of Turkey to the United Nations Addressed to the President of the Security Council, S/2019/804, (October 9, 2019), https://docs.un.org/en/S/2019/804.

15. United Nations Security Council, 5503rd Meeting, S/PV/5503, (July 31, 2006), 4, https://documents.un.org/doc/undoc/pro/n06/450/42/pdf/n0645042.pdf. Israel justified the attacks by the "ineptitude and inaction of the Government of Lebanon." See also United Nations General Assembly-United Nations Security Council, The Situation in the Middle East: Measures to Eliminate International Terrorism, A/60/937-S/2006/515, (July 12, 2006), https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Lebanon%20S2006515.pdf.
16. United Nations Security Council, Letter Dated 11 September 2002 From The Permanent Representative of the Russian Federation to the United Nations Addressed to the Secretary-General, S/2002/1012, (September 12, 2002), https://digitallibrary.un.org/record/473636?ln=en&v=pdf.
17. The OAS condemned the operation as "a violation of the sovereignty and territorial integrity of Ecuador and of principles of international law." See Organization of American States Permanent Council, Convocation of the Meeting of Consultation of Ministers of Foreign Affairs and Appointment of a Commission, CP/Res 930 (1632/08), (March 5, 2008).
18. Gorm Rye Olsen, "The October 2011 Kenyan Invasion of Somalia: Fighting al-Shabaab or Defending Institutional Interests," *Journal of Contemporary African Studies* 36, no. 1 (2018): 39–53, https://doi.org/10.1080/02589001.2017.1408953.
19. Brazil noted this in 2018: "We have witnessed an increase in the number of letters submitted to the Council seeking to justify military action, especially in the context of counterterrorism." See United Nations Security Council, 8175th Meeting, S/PV.8175, (February 6, 2018), Brazil, 24, https://documents.un.org/doc/undoc/pro/n18/033/16/pdf/n1803316.pdf. See generally Dustin A. Lewis, Naz K. Modirzadeh, Gabriella Blum, *Quantum of Silence: Inaction and Jus ad Bellum* (The Harvard Law School Program on International Law and Armed Conflict, 2019), 49–59, http://dx.doi.org/10.2139/ssrn.3420959.
20. ICJ, *Case Concerning Military and Paramilitary Activities in and against Nicaragua*, para. 186.
21. On norm dynamics, see Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (1998): 887–917, https://www.jstor.org/stable/2601361.
22. Ashley Deeks, "Unwilling or Unable: Toward a Normative Framework for Extraterritorial Self-Defense," *Virginia Journal of International Law* 52, no. 3 (2012): 483–550, 538, https://ssrn.com/abstract=1971326.
23. United Nations General Assembly-United Nations Security Council, Identical letters dated 29 December 2015 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council, A/70/673-S/2015/1048, (January 4, 2016), para. 4, https://digitallibrary.un.org/record/816573?ln=en&v=pdf. Syria noted that "Any attempt to invoke Article 51 of the Charter to justify military action on Syrian territory without coordination with the Syrian Government manipulates, distorts and misinterprets the provisions of that Article."
24. United Nations Security Council, Letter dated 23 September 2014 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General, S/2014/695, (September 23, 2014), https://digitallibrary.un.org/record/779957?ln=en&v=pdf.

25. Adil Haque, "Self-Defense Against Non-State Actors: All Over the Map," Just Security, March 24, 2021, https://www.justsecurity.org/75487/self-defense-against-non-state-actors-all-over-the-map/.
26. Emre Senbabaoglu speaks of a "new Standard of Civilization" in the "War on Terror." See Senbabaoglu, "The Unwilling or Unable Doctrine," 47.
27. States have historically invoked self-help doctrines as a legal remedy to justify unilateral measures against other states that violated their interests, without resort to judicial or other formal processes. Self-help has been constrained by customary foundations of self-defense, the Covenant of the League of Nations, and the UN Charter. See Math Noortmann, *Enforcing International Law: From Self-help to Self-contained Regimes* (Routledge, 2005), 17–75.
28. In the nineteenth century, states relied on "vital interests," i.e., interests that are essential to their security and independence in order to protect their spheres of influence, if necessary, through war. See Martin Wight, "Interests of States," in *Foreign Policy and Security Strategy*, ed. David Yost (Oxford University Press, 2023), 149–168.
29. Olivier Corten, "The 'Unwilling or Unable' Test: Has it Been, and Could it be, Accepted?," *Leiden Journal of International Law* 29, no. 3 (2016): 777–799, 798, 10.1017/S0922156516000315.
30. Principle 11 of the "Principles Relevant to the Scope of a State's Right to Self-Defense Against an Imminent or Armed Attack by Non-State Actors" (Bethlehem Principles) states: "The requirement for consent does not operate in circumstances in which there is a reasonable and objective basis for concluding that the third state is colluding with the non-state actor or is otherwise unwilling to effectively restrain the armed activities of the non-state actor such as to leave the state that has a necessity to act in self-defense with no other reasonably available effective means to address an imminent or actual armed attack." The principles are reproduced in Daniel Bethlehem, "Self-Defense Against an Imminent or Actual Armed Attack By Nonstate Actors," *American Journal of International Law* 106, no. 4 (2012): 770–777, 10.5305/amerjintelaw.106.4.0769.
31. Paulina Starski, "Right to Self-Defence, Attribution and the Non-State Actor-Birth of the 'Unable and Unwilling' Standard?," *Heidelberg Journal of International Law* 75 (2015): 455–501, http://dx.doi.org/10.2139/ssrn.2692422.
32. Principle 12 of the Bethlehem Principles.
33. Principle 12 of the Bethlehem Principles.
34. Senbabaoglu, "The Unwilling or Unable Doctrine," 146.
35. Mexico expressed concern "regarding recent interpretations of the right to self-defense in response to armed attacks perpetuated by non-State actors." See United Nations General Assembly, *Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization*, UN Doc. A/75/33, (United Nations General Assembly, March 1, 2018), para. 83, https://docs.un.org/en/A/75/33.
36. Haque, "Self-Defense Against Non-State Actors."
37. Stefan Talmon, "Germany Supports Expansive Interpretation of the Right to Self-Defence Against Attacks by the Houthis on Commercial Shipping in the Red Sea," GPIL–German Practice in International Law, January 23, 2024, https://gpil.jura.uni-bonn.de/2024/01/germany-supports-expansive-interpretation-of-the-right-to-self-defence-against-attacks-by-the-houthis-on-commercial-shipping-in-the-red-sea/.

38. Leonie Brassat, "The Lawfulness of Military Strikes Against the Houthis in Yemen and the Red Sea," EJIL: Talk!, May 19, 2024, https://www.ejiltalk.org/the-lawfulness-of-military-strikes-against-the-houthis-in-yemen-and-the-red-sea/.
39. Martin Fink, "Protecting Commercial Shipping With Strikes into Yemen: Do Attacks Against Merchant Shipping Trigger the Right of Self-Defence?," EJIL: Talk!, January 26, 2024, https://www.ejiltalk.org/protecting-commercial-shipping-with-strikes-into-yemen-do-attacks-against-merchant-shipping-trigger-the-right-of-self-defence/.
40. United Nations Security Council, 9527th Meeting, S/PV.9527, (January 10, 2024), 4, https://docs.un.org/en/S/PV.9527.
41. Talmon, "Germany Supports Expansive Interpretation of the Right to Self-Defence."
42. United Nations Security Council, 9527th Meeting, 6.
43. United Nations Security Council, 9527th Meeting, 6, 8. Switzerland took an intermediate position. It stated that self-defense should be "strictly limited to military measures aimed at intercepting attacks against merchant ships, and warships to protect those ships."
44. Stahn, "Terrorist Acts as 'Armed Attack,'" 39.
45. Dapo Akande and Marko Milanovic, "The Constructive Ambiguity of the Security Council's ISIS Resolution," EJIL: Talk!, November 21, 2015, https://www.ejiltalk.org/the-constructive-ambiguity-of-the-security-councils-isis-resolution/.
46. United Nations Security Council, Resolution 2722 (2024), S/RES/2722, (2024), (January 10, 2024), para 3, https://digitallibrary.un.org/record/4033392?ln=en&v=pdf.
47. Permanent Mission of El Salvador to the United Nations, Measures to Limit International Terrorism (Community of Latin American and Caribbean States, October 3, 2018), https://statements.unmeetings.org/media2/19408950/el-salvador-on-behalf-of-celac-e-.pdf.
48. ICJ, *Case Concerning Oil Platforms,* 161. The Court discussed the law of self-defense in the context of inter-state attacks. See para. 51.
49. ICJ*, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of July 9, 2004, ICJ Rep. 2004, 136. The Court held that Article 51 "recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another and that attacks against Israel were not imputable to a foreign State." See para. 139.
50. ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment of December 19, 2005, ICJ Rep. 2005,168, para. 146.
51. Christian Tams, "Light Treatment of a Complex Problem: The Law of Self-Defence in the Wall Case," *European Journal of International Law* 16 (2005): 963–978, 974, https://ssrn.com/abstract=1413895.
52. ICJ, *Legal Consequences of the Construction of a Wall*, para. 139.
53. ICJ, *Legal Consequences of the Construction of a Wall*, Separate Opinion of Judge Higgins, para. 33 and 34.
54. ICJ, *Legal Consequences of the Construction of a Wall*, Separate Opinion of Judge Kooijmans, 219, para. 35.
55. ICJ, *Legal Consequences of the Construction of a Wall*, Declaration Judge Buergenthal, para. 6.
56. In *Armed Activities*, Judge Simma noted in his Separate Opinion: "A restrictive reading of Article 51 might well have reflected the state, or rather the prevailing interpretation, of the international law on self-defense for a long time. However, in the light of more recent developments not only in State practice but also with regard to

accompanying *opinio juris*, it ought urgently to be reconsidered, also by the Court." See ICJ, *Armed Activities*, Separate Opinion Simma, para. 11.

57. ICJ, *Legal Consequences of the Construction of a Wall,* Separate Opinion of Judge Kooijmans, para. 35.
58. ICJ, *Armed Activities*, para. 146.
59. ICJ, *Armed Activities*, para. 147.
60. ICJ, *Armed Activities*, Separate Opinion of Judge Kooijmans, paras. 27–32, Separate Opinion Simma, paras. 7–15.
61. ICJ, *Armed Activities*, Separate Opinion of Judge Kooijmans, paras. 27–32, Separate Opinion Simma, paras. 7–15.
62. ICJ, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, July 19, 2024, para. 261.
63. ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, Order of January 26, 2024.
64. See ICJ, *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory*, Separate opinion of Judge Yusuf, para 17, and Joint Declaration of Judges Nolte and Cleveland, para 8 ("when the presence of occupying forces becomes a vehicle for achieving annexation, the occupying Power violates the prohibition of the acquisition of territory by force under the jus ad bellum and thereby loses any possible justification for the presence of its forces, including on the basis of the right of self-defence.")
65. The doctrine was formulated by the Bush administration in 2002. It asserted that the United States is entitled to use military force preemptively, in order to respond to threats posed by "rogue states" or terrorist actors who possess weapons of mass destruction. See Christian Henderson, "The Bush Doctrine: From Theory to Practice," *Journal of Conflict and Security Law* 9, no. 1 (2004): 3–24, https://doi.org/10.1093/jcsl/9.1.3.
66. Bethlehem, "Self-Defense Against an Imminent or Actual Armed Attack By Non-state Actors."
67. Bethlehem, "Self-Defense Against an Imminent or Actual Armed Attack By Non-state Actors," 773.
68. Dire Tladi, *Extraterritorial Use of Force against Non-State Actors* (Brill, 2022), 71–72.
69. Bethlehem Principle 11.
70. Bethlehem Principle 12.
71. Eliav Lieblich, "Self-Defence Against Non-State Actors and the Myth of the Innocent State," in *Global Rights? Human Rights in Complex Governance*, ed. Nehal Bhuta and Rodrigo Vallejo (Oxford University Press, 2024), 225–256.
72. Adil Haque, "Enough: Self-Defense and Proportionality in the Israel-Hamas Conflict," Just Security, November 6, 2023, https://www.justsecurity.org/89960/enough-self-defense-and-proportionality-in-the-israel-hamas-conflict/.
73. Marko Milanovic, "Does Israel Have the Right to Defend Itself?," EJIL: Talk!, November 14, 2023, https://www.ejiltalk.org/does-israel-have-the-right-to-defend-itself/.
74. Nicholas Tsagourias, "Self-Defence Against Non-state Actors: The Interaction Between Self-Defence as a Primary Rule and Self-Defence as a Secondary Rule," *Leiden Journal of International Law* 29, no. 3 (2016): 801–825, https://doi.org/10.1017/S0922156516000327.
75. Tams, "Self-Defence Against Non-State Actors," 166.
76. Gill, "The Jus ad Bellum and the War in Gaza," 256.

77. The idea of self-defense as a non-state centric right is reflected in Principle 6 of "The Chatham House Principles of International Law on the Use of Force by States in Self-Defence," *The International and Comparative Law Quarterly* 55, no. 4 (2006): 963–972, https://www.jstor.org/stable/4092626. It states that "Article 51 is not confined to self-defence in response to attacks by States. The right of self-defence applies also to attacks by non-state actors."
78. Harold Hongju Koh, "The Obama Administration and International Law," U.S. Department of State, March 25, 2010, https://2009-2017.state.gov/s/l/releases/remarks/139119.htm.
79. The "reasonable basis" test falls below a preponderance of evidence standard, which looks at a balance of probabilities. See Jasmin Johurun Nessa, "Self-Defense in International Law: What Level of Evidence?," Just Security, July 8, 2019, https://www.justsecurity.org/64796/self-defense-in-international-law-what-level-of-evidence/.
80. See section titled, "Strengthening Process-Based and Discursive Forms of Accountability."
81. See United Nations Security Council, Letter dated 10 December 2015 from the Chargé d'affaires a.i. of the Permanent Mission of Germany to the United Nations Addressed to the President of the Security Council, S/2015/946, (December 10, 2015), https://digitallibrary.un.org/record/814224?ln=en&v=pdf. ("ISIL has occupied a certain part of Syrian territory over which the Government of the Syrian Arab Republic does not at this time exercise effective control. States that have been subjected to armed attack by ISIL originating in this part of Syrian territory, are therefore justified under Article 51 of the Charter of the United Nations to take necessary measures of self-defence, even without the consent of the Government of the Syrian Arab Republic.")
82. Haque, "Self-Defense Against Non-State Actors."
83. Nicholas Tsagourias, "Israel's Right to Self-Defence against Hamas," Articles of War, December 1, 2023, https://lieber.westpoint.edu/israels-right-self-defence-against-hamas/.
84. Gill, "The Jus ad Bellum and the War in Gaza," 257.
85. For instance, Anthony Anghie has qualified self-defense in the "War on Terror" as a form of "imperialism." Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge University Press, 2005), 272–310.
86. Robert Knox, "Against Self-Defence," Legal Forum, October 25, 2024, https://legalform.blog/2024/10/25/against-self-defence-robert-knox/.
87. Senbabaoglu, "The Unwilling or Unable Doctrine," 199.
88. United Nations General Assembly-United Nations Security Council, Identical letters dated 21 May 2021 from the Permanent Observer of the State of Palestine to the United Nations addressed to the Secretary-General, the President of the General Assembly and the President of the Security Council, A/ES-10/867–S/2021/493, (May 24, 2021), https://digitallibrary.un.org/record/3928275?ln=en&v=pdf; Ralph Wilde, "Israel's War in Gaza is Not a Valid Act of Self-Defence in International Law," Opinio Juris, November 9, 2023, https://opiniojuris.org/2023/11/09/israels-war-in-gaza-is-not-a-valid-act-of-self-defence-in-international-law/.
89. Chile Eboe-Osuji, "Calibrating Proportionality and Self-Defense in Gaza," Lawfare, December 7, 2023, https://www.lawfaremedia.org/article/calibrating-proportionality-and-self-defense-in-gaza.
90. See Christopher Greenwood, "The Relationship between Ius ad Bellum and Ius in Bello," *Review of International Studies* 9, no. 4 (1983): 221–234, 222, https://doi.org/10.1017/S0260210500115943; Eliav Lieblich, "On the Continuous and Concurrent Application of Ad Bellum and In Bello proportionality," in *Necessity and*

Proportionality in International Peace and Security Law, ed. Claus Kreß and Robert Lawless (Oxford University Press, 2020), 41–76.

91. By contrast, Israel has adopted the view that the October 7 attacks and their aftermath have caused an "ongoing armed conflict between Israel and Hamas and other terrorist organizations in Gaza," which makes it unnecessary to analyze "the conditions under which Israel may resort to the use of armed force" under *jus ad bellum*. See Ministry of Foreign Affairs, *Hamas-Israel Conflict 2023: Key Legal Aspects* (State of Israel, November 2, 2023), https://www.gov.il/BlobFolder/news/hamas-israel-conflict2023-key-legal-aspects/en/English_Documents_Hamas-Israel%20Conflict%202023%20-%20Some%20Factual%20and%20Legal%20Aspects%20-%20Israel%20Ministry%20of%20Foreign%20Affairs%20(2%20NOV%202023).pdf. This approach, according to which the outbreak of armed hostilities supersedes proportionality under *jus ad bellum*, has been defended by Yoram Dinstein in *War, Aggression and Self-Defence* (Cambridge University Press, 2017), 282–283.
92. United Nations General Assembly, Resolution 34/103, Inadmissibility of the Policy of Hegemonism in International Relations, (December 14, 1979), https://digitallibrary.un.org/record/10622?ln=en&v=pdf.
93. United Nations General Assembly, Resolution 3314 (XXIX), Definition of Aggression, (December 14, 1974), https://docs.un.org/en/A/RES/3314(XXIX).
94. The criteria were developed in nineteenth century practice after the Webster formula in the *Caroline* case (1837): "instant, overwhelming, leaving no choice of means, and no moment for deliberation." See Letter from Secretary of State Daniel Webster to British Minister to the United States Lord Alexander Baring Ashburton (July 27, 1842), http://avalon.law.yale.edu/19th_century/br-1842d.asp.
95. ICJ, *Oil Platforms*, para. 73.
96. Deeks recommends prior attempts "to act with the consent of or in cooperation with the territorial state" and requests the "territorial state to address the threat itself and provide adequate time for the latter to respond." Deeks, "Unwilling or Unable," 506.
97. Senbabaoglu, "The Unwilling or Unable Doctrine," 206.
98. ICJ, *Oil Platforms*, paras. 196–197.
99. ICJ, *Armed Activities*, para. 148.
100. Senbabaoglu, "The Unwilling or Unable Doctrine," 202.
101. Nicholas Tsagourias, "The Use of Force Against Terrorist Attacks: The Two Facets of Self-Defence," *Saint Louis University Law Journal* 68, no. 2 (2024): 327–348, 346, https://scholarship.law.slu.edu/lj/vol68/iss2/6. This understanding finds support in Articles 21 and 27 of the International Law Commission's Articles on State Responsibility, which imply that a territorial state may seek compensation for material harm suffered (e.g., damage to infrastructure) even in the course of a lawful self-defense operation against non-state actors. Article 21 recognizes lawful self-defense as a circumstance precluding wrongfulness. Article 27 envisages the possibility ("without prejudice to") of "compensation for any material loss" in cases, where state action is justified by a "circumstance precluding wrongfulness." The duty to provide reparation for unlawful action is contemplated by Article 31.
102. Terry Gill, "The Temporal Dimension of Self-Defence: Anticipation, Pre-emption, Prevention and Immediacy," *Journal of Conflict and Security Law* 11, no. 3 (2006): 361–369, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1098723; Sina Etezazian, "The Nature of the Self-Defence Proportionality Requirement," *Journal on the Use of Force and International Law* 3, no. 2 (2016): 260–289, 282–284, https://doi.org/10.1080/20531702.2016.1208901.

103. Etezazian, "The Nature of the Self-Defence Proportionality Requirement," 264–277.
104. Tsagourias, "Israel's Right to Self-Defense against Hamas."
105. Gill, "The Jus ad Bellum and the War in Gaza," 263.
106. Chatham House Principle 5.
107. International Law Association, *Sydney Conference 2018: Use of Force* (International Law Association, 2018), 11.
108. Yuval Shany & Amichai Cohen, "International law 'Made in Israel' v. International Law 'Made for Israel,'" Articles of War, November 22, 2023, https://lieber.westpoint.edu/international-law-made-in-israel-international-law-made-for-israel/.
109. ICJ, *Oil Platforms*, para. 77.
110. Chatham House Principle 5.
111. Haque, "Enough: Self-Defense and Proportionality."
112. Mary Ellen O'Connell, "The Lessons of 9/11 for October 7," EJIL: Talk!, October 28, 2023, https://www.ejiltalk.org/the-lessons-of-9-11-for-october-7/.
113. Larissa van den Herik, "Article 51's Reporting Requirement as a Space for Legal Argument and Factfulness," in *Necessity and Proportionality in International Peace and Security Law*, ed. Claus Kreß and Robert Lawless (Oxford University Press, 2020), 221–244; Larissa van den Herik, "The UN Security Council: A Reflection on Institutional Strength," in *The UN Security Council and the Maintenance of Peace in a Changing World*, ed. Anne Peters and Christian Marxsen (Cambridge University Press, 2024), 109–185.
114. This follows from the fact that self-defense is an argument that may preclude the wrongfulness of action, i.e., the violation of the sovereignty of the territorial state. See International Law Commission, Responsibility of States for Internationally Wrongful Acts, United Nations, 2001, Article 21.
115. Nessa, "Self-Defense in International Law"; Herik, "The UN Security Council," 136–146.
116. Schrijver and van den Herik, "Leiden Policy Recommendations on Counterterrorism and International Law," 531–550, paras. 42, 44, 48.
117. Chatham House Principle 4.
118. United Nations General Assembly-United Nations Security Council, Letter dated 8 March 2021 from the Permanent Representative of Mexico to the United Nations addressed to the Secretary-General and the President of the Security Council, UN Doc. S/2021/247, 16 March 2021, p. 32 (US), p. 35 (France), p. 64 (UK), https://digitallibrary.un.org/record/3905536/files/A_75_993--S_2021_247-EN.pdf.
119. Herik, "The UN Security Council," 138–141.
120. ICJ, *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)*, Judgment of April 9, 1949, Dissenting opinion by Judge Krylov, 72.
121. Senbabaoglu, "The Unwilling or Unable Doctrine," 177.
122. Para. 48 of the Leiden Policy Recommendations on Counterterrorism and International Law lists a duty to explain as fully as possible "the nature of the threat and the necessity for anticipatory military action."
123. Chatham House Principle 4.
124. Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, *Identification of New Subjects: Analysis of the Application of Articles 2 (4) and 51 of the Charter of the United Nations*, UN Doc. A/AC.182/L.154 (United Nations General Assembly, February 7, 2020), file:///Users/admin/Downloads/A_AC.182_L.154-EN%20(1).pdf.
125. Senbabaoglu, "The Unwilling or Unable Doctrine," 181.

126. ICJ, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276*, Advisory Opinion of June 21, 1970, ICJ Rep. 1970, 16, 50.
127. United Nations General Assembly, Resolution 377 (V) A, Uniting for Peace, A/RES/377(V), (November 3, 1950), https://www.securitycouncilreport.org/un-documents/document/ip-a-res-377-v.php.
128. ICJ, *Legal Consequences of the Construction of a Wall,* paras. 27–28.
129. United Nations General Assembly, GA Resolution 76/262 of 2022, Standing Mandate for a General Assembly Debate When a Veto is Cast in the Security Council, A/RES/76/262, (April 28, 2022), https://www.securitycouncilreport.org/un-documents/document/a-res-76-262.php.
130. United Nations General Assembly Resolution 34/103, preamble, para. 1 and 5.