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Terrorism and the Law of the Use of Force

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1. Introduction

Notwithstanding the extraordinary attention attracted by the spectacular terrorist attacks on New York and Washington of Sept. 11th, as well as the wide pallet of reactions they provoked, one issue has been virtually absent from public discussion in the media and elsewhere: this is the question of the legality of the use of force against Afghanistan in response to the terrorist attacks. As a result of imprecise and sometimes misleading remarks by some decision-makers, the public at large remains uninformed or even confused about the legal framework in which force was used in this particular instance. This issue is of great importance, though. In the first place, because it constitutes a significant breakthrough in the Law of Use of Force. Secondly, because this breakthrough has created a new legal basis for military intervention.

This paper will be concerned with legality of the use of force in response to the Sept.11th terrorist attacks on the United States. Two different questions will be analysed: first, it will look at whether the decision to act militarily in response to the attacks was lawful; the second question refers to the legality of the way in which this anti-terrorist operation was conducted. The significance of this legal situation will then be assessed. Finally, this piece will argue for a codification of the use of force in response to terrorist attacks.

2.The Legality of the Decision to Act

The first question to be analysed is whether the behaviour of the competent international body, the UN Security Council, following the attacks conforms to International Law. In order to do so, this section will outline the international legal mechanisms foreseen to react to situations in which peace is endangered, and explain how they are meant to work. This will be compared with the path of action actually chosen by the Security Council allowing the US to employ force.

2.1. The Regulation of the Use of Force

The use of force among states is governed by Title VII of the United Nations Charter, an international treaty with an almost universal membership. This treaty installed a system of collective security based upon the ban of the use of force. Article 2 (4) reads: "All

Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." This ban is universally recognised as *ius cogens*, i.e., as peremptory law from which no derogation can be accepted.

The Charter provides for only two exceptions to the ban on the use of force, one of which is an intervention by the Security Council. As a precondition, the Security Council must have previously qualified the situation as a "threat to international peace and security" in accordance with Art. 39 of the Charter.

Art. 39 reads as follows:

"The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

While art. 41 refers to measures not involving the use of armed force, art. 42 reads: "Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security."

To make things clear: when a situation endangering world peace arises, the UN Security Council is the sole body endowed with the authority to act.[1] It is up to the Council to decide whether to declare the situation as "a threat to peace and international security". This characterisation does not automatically entail an authorisation to use military force to correct the situation. Rather, it is a pre-condition that empowers the Council to subsequently take further measures, including the use force. The Council can well authorise the use of force. But it can also choose to leave it at that, if it is considers that the gravity of the situation does not warrant military action. Without an explicit authorisation to do so, forcible measures aimed at removing the threat are outlawed.[2]

The second exception to the prohibition of the use of force is the right of self-defence embodied in Art. 51 of the Charter. If a state is the victim of an armed attack, it is allowed to use force in self-defence. Art. 51 explicitly states that "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". As this piece will show, under the Charter system, this right is timely limited until the Security Council takes the necessary measures. As soon as this happens, the state acting in self-defence has to terminate the forcible action.

When force is neither used in self-defence against an armed attack nor authorised by the Security Council, it constitutes a breach of the UN Charter. This said, the next step is to determine on which legal basis the operation against Afghanistan was conducted.

2.2. Determining legality

In general, the decision to act in self-defence is independent from a formal approval of the Security Council. A state victim of aggression does not need any pronouncement of the Council to invoke its right of self-defence, which is enshrined in the Charter as an "inherent" right. Rather, in a system of collective security like the Charter system, the drafters conceived of self-defence as a temporary reaction destined to avert the aggression until the Security Council took hold of the situation. The only pre-condition for this right to be legally invoked is the existence of an "armed attack," and here is where the difficulties

begin. According to International Law, an armed attack can only be committed by states. Non-state actors are not subjects of International Law and are therefore not contemplated in the Charter system.

The issue is further complicated by the fact that there is no unitary definition of the terms "armed attack"/"aggression" [3]. The closest to an official definition is the enumeration laid down in General Assembly Resolution 3.314.[4] According to this resolution, the following acts qualify as an act of aggression:

- "the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation (...) or annexation (...);
- bombardment (...) or use of any weapons by a State against the territory of another State;
- the blockade of ports or coasts of a State by the armed forces of another State;
- an attack by the armed forces of a State on the land, sea or air forces of another State;
- use of armed forces of a State which are within the territory of another State with the agreement of the receiving State in contravention of the (...) agreement;
- action of a State allowing its territory (...) to be used by (an)other State for perpetrating an act of aggression against a third state;
- the sending by or on behalf of a State of armed bands (...) which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein."

A terrorist attack does not fit into any of these categories. Only actions carried out by states are accommodated in the definition.[5]

However, this list in non-exhaustive. It is followed by a provision recognising the Security Council's authority to determine an act of aggression in cases not contemplated in the resolution. This means that in the case that a situation does not fit any of the mentioned categories, the Security Council can characterise it as an act of aggression.

Therefore, the situation after the terrorist attacks of Sept. 11th looked as follows: an attack had unquestionably taken place. Still, it did not fit into any of the categories envisaged in the definition of aggression, since terrorist attacks by non-state actors are not contemplated, and self-defence can only be invoked against such an act. In order to solve this problem, the Security Council could have formally characterised the Sept. 11th attacks as aggression. By doing so, it would have fulfilled the precondition necessary for the right of self-defence to be applied in accordance with the Charter.

The Security Council also had another option: characterising the terrorist attacks as a "threat to international peace and security" and authorising forcible measures under its authority. This option would apply art. 39 in combination with art. 42.

In short: the Security Council could either qualify the attacks as an act of aggression, making it possible for the US to lawfully act in self-defence, or qualify the situation as a threat to peace, which would enable itself to take forcible measures later on. In any case, the legality of the counter-operation depended solely on the Security Council. Its behaviour was to determine whether the operation was going to be legal or not.

2.3. Previous Practice

Prior to September 2001, the Security Council had never qualified an act of international terrorism as an act of aggression. Neither had it authorised the use of force in response to this kind of attack. Rather, every time that a state had responded to terrorist attacks with forcible measures, the Security Council had condemned these reactions as illegal.

In the past, a few states - notably Israel and the US - had justified forcible responses to terrorist attacks on nationals abroad by invoking the right of self-defence. They targeted military and other installations allegedly forming part of a terrorist organisation's infrastructure, arguing that the right of self-defence covers the use of force against a state harbouring that organisation.

Israel took such measures in 1968 against Lebanon and in 1985 against Tunisia, and the US followed by acting against Libya in 1986, Iraq in 1993, and Sudan and Afghanistan in 1998.[6] In the Security Council resolutions to which they were subject, these actions were condemned almost unanimously. The legal argument that self-defence covered forcible measures in response to terrorist attacks was rejected. States preferred to stick to a narrow conception of self-defence, reluctant to create new legal justifications for the use of force. The main problem with this doctrine is that these measures are virtually indistinguishable from forcible reprisals, which are unequivocally unlawful.[7]

However, a close examination of the relevant resolutions reveals that disapproval decreased in severity over time. All Security Council members condemned the Israeli bombings against Lebanon in 1968. In the 1985 campaign against Tunisia, the USA accepted the Israeli argument that it was acting in self-defence before the Security Council. When the US undertook the same kind of action in 1986 against Libya in response to terrorist attacks against US citizens abroad invoking self-defence, most states rejected the argument. However, the UK and France joined the US in the Security Council in vetoing a resolution condemning the attacks. When the US attacked Baghdad for the alleged assassination attempt on ex-President Bush, only Russia and the UK expressed support for the US legal argument, while China condemned the action. In the most recent instance, the US targeted installations in Afghanistan and Sudan in response to terrorist attacks on two of its Embassies. While the Security Council did not condemn the attack, Russia, Pakistan and some Arab states did. Nonetheless, even those states displaying sympathy towards the action refrained from supporting the legal doctrine. To sum up, while condemnation of these kinds of measures gradually lost vigour, states continued to regard them as unlawful.

Over the past decade, the Security Council qualified state-supported terrorism as a "threat to international peace and security" in a number of resolutions. However, what it qualified as "threats to peace" were not the acts of terrorism themselves, but their support by states. The Security Council has generally refrained from directly addressing terrorist organisations in its resolutions because they are not subjects of International Law. Accordingly, they were not considered interlocutors in inter-state relations.

2.4. A "hybrid" legal basis

What actually happened in the Security Council following the attacks of September 11th looks quite different from what was conceived in the Charter. It also represents a watershed in the Security Council's practice. The Council passed two resolutions on the matter within a few days time.[8] Resolution 1368 characterised the terrorist attacks as a "threat to peace", and recognised the right of individual and collective self-defence. It also declared the Council's readiness to authorise military action. A second Security Council resolution adopted a few days later, Resolution 1373, reaffirmed once again the right of individual self-defence and characterised "any future terrorist attack to come" as a threat to international peace.[9]

The behaviour of the Security Council can be described as anomalous – if not contradictory. In the first place, it recognises the right of self-defence without having determined an act of aggression. Failing to

fulfil this precondition, the resolutions skip the formal link between this notion and aggression. The right of self-defence can only be lawfully invoked in response to an armed attack. However, the terrorist attacks are characterised as a "threat to peace", which, as explained above, does not have the activation of self-defence as a legal (and logical) consequence.[10] A state is only empowered to act in self-defence after having been the victim of an armed attack, and not when it merely confronts "a threat to peace".

More importantly, as explained above, one state can only act invoking the right of self-defence for a limited period of time, i.e.: "until the Security Council has taken the necessary measures". Contrary to this provision, in Resolution 1373 the Security Council took a set of measures while recognising the persistence of the US' right of self-defence. Although Resolution 1368 had expressed the Security Council's readiness to authorise military action, this authorisation never materialised. The Security Council could have easily authorised the victim of an armed attack, alone or in conjunction with other states, to use force against the aggressor. This is not only permitted[11], but also usual practice. It was done before in the Korean War in 1950, and more recently in the 1990 Gulf War following Iraq's invasion of Kuwait. In both instances, a coalition of states, led by the US, aided the state attacked acting in self-defence. However, in the present case, the Security Council renounced its authority to issue any authorisation. This effectively left the operation entirely to the US.

In sum, the Security Council did not choose either option. It did not pick the first option, since it did qualify the situation as a threat to peace after art. 39, but without authorising enforcement action under art. 42. Neither did it take the second option, since it did recognise the US right to self-defence under art. 51, but without fulfilling the precondition of determining the existence of an armed attack. At most, this qualification as an "armed attack" could be implied by the invocation of the right of self-defence. Equally important, the Council itself declined to take hold of the situation, even in the attenuated form of issuing a mandate. The solution chosen was "something in-between" both options.

However, the fact that the Security Council did not use the mechanisms provided for in the Charter does ***not*** mean that its behaviour is illegal. As the body endowed with the primary responsibility for the maintenance of international peace and security, the Security Council is actually free to follow this path.[12] The Charter provides for mechanisms to be used in cases where world peace is endangered, but it does not envisage anything like "corrective" measures for the case that the Council acts in a different way. Indeed, the Council has acted in manners diverging from the Charter provisions in previous instances.[13] The only limits set by the Charter to the Council's action is "that it should act in accordance with the Purposes and Principles of the United Nations".[14]

Therefore, legal experts concur that despite the formal anomalies of the Security Council's behaviour the cited resolutions allowed for an intervention in self-defence.[15] The legal basis for the use of force in this particular instance is self-defence. The US decision to intervene can be regarded as legal. While the Security Council did not authorise the use of force, it admitted its legality. The "hybrid" legal basis for permitting the US intervention in Afghanistan nevertheless highlights an important fact: that this basis constituted a new legal construction (the authorisation to act in self-defence against a terrorist attack), whose consequences were still untested at the time of its approval. The next chapter will show that this legal basis proved inadequate to respond to terrorist acts.

It is possible to think of various reasons that might have led the Security Council to behave the way it did. The psychological impact and surprise provoked by the

dimensions of the terrorist acts, the hasty issue of the resolutions, and above all the US determination to be able to conduct the counter-operation on its own. Whatever the reasons might be, the Security Council has acted to the detriment of its own role as the primary body for the maintenance of international peace security.

2.5. Consequences for the Law of Use of Force

The UN Security Council's reaction to the Sept. 11th events has set a precedent allowing states to use forcible measures in response to terrorist attacks.[16] This represents a breakthrough in the Law of Use of Force in more than one sense:

First, it accepts a broadening of the use of force in self-defence, since it can now be invoked in cases of terrorist attacks. The notion of self-defence comes to include the repulsion not only of attacks carried out by states, but also by terrorist organisations. The Security Council practice regarding international terrorism explained above gives an idea of the magnitude of this novelty.[17]

Second, a non-state actor – a terrorist network - has been accommodated in the regulation of this right. For the first time, it can lawfully be the object of actions conducted in the exercise of the right of self-defence.

Thirdly, it also represents a certain modification of the understanding of state responsibility. To date, states had an international duty to "refrain from organising, instigating, assisting or participating in terrorist acts in another state or acquiescing in organised activities within its territory directed towards the commission of such acts".[18] Also, refusal by states to extradite indicted terrorist has sometimes been subject to condemnations by the Security Council, which often characterised the situation as a "threat to peace and security".[19] The novelty is that the breach of this duty can entail the use of force in the territory of the harbouring state. While the state of Afghanistan was not made directly responsible for the attacks emanating from the terrorist organisation Al-Qaida, the forcible measures carried out in response were inflicted on Afghan territory. The Council's behaviour suggests that the fact that the harbouring state promoted or merely acquiesced in the existence of terrorists warrants the violation of its territory. For the purpose of legitimising the use of force, harbouring terrorist cells is equated with an armed attack.

3. The legality of the way of conducting the operation

3.1. Conditions of self-defence actions

As we have seen, the legal basis chosen for the use of forcible measures in reaction to the Sept. 11th attacks was art. 51 of the Charter (self-defence) rather than art. 42 (Security Council intervention) with the particularities explained above. This choice obviously entails clear advantages for the US, which has a greater autonomy in the conduct of the operation. Action carried out in self-defence allows more operational independence than collective security measures. However, the exercise of self-defence also entails legal restrictions limiting the scope of the action.

A state having recourse to force in self-defence is subject to the following legal conditions:

- First, the use of force needs to be exclusively directed to repel the armed attack of the aggressor State;
- Second, the need for forcible action has to be immediate[20];
- Force needs to be proportionate to the purpose of driving back aggression;
- Finally, the use of force needs to be terminated as soon as the aggression has

come to an end or the Security Council has taken the necessary measures.

- Obviously, actions carried out in self-defence also need to comply with Humanitarian Law.[21]

The US operation in Afghanistan needs to be measured against these legal requirements. In this light, it becomes clear that the legality of the use of force in response to the Sept. 11th attacks invoking art. 51 rests on precarious grounds. The main problems can be located in following points:

The first set of difficulties concern the **finality** of the operation. A self-defence action may not pursue any further objective than repelling the attack. However, the US Government presented its action as intended to "prevent and deter"[22] future attacks. These objectives do not coincide with the objectives of a self-defence operation. Rather, the stated finality of the operation makes it appear as punitive. This allows characterization of the action as countermeasures, which are outlawed in International Law.

Secondly, there is the technical difficulty that the attack as such was already accomplished. A self-defence action needs to be directed solely at putting an end to the aggression. It is difficult to see how the self-defence operation can put an end to an attack that was terminated the on same day it began. The US no longer had the possibility of repelling the attack, and therefore, there was no immediate need for halting the aggression.

This point leads us to a second set of problems with the new doctrine, which refers to the **scope** of the operation. The self-defence action should end once the attack is over. Now that the Council has admitted that an action in self-defence can be carried out even after the terrorist attack has finished, it is impossible to determine when the operation should end. By the same token, defensive operations can involve the use of force in the territory of a number of different states, since terrorist networks are often organised internationally.

Such an extensive permission to use military force is legally unjustified and offers clear opportunities for abuse. The state victim is granted virtually discretionary powers to decide against whose territory, how often and for how long it wishes to use force.

Finally, a third problem touches upon the **target** of the anti-terrorist reaction. Self-defence needs to be proportionate to the attack, i.e., the means need to be in accordance to the intended aim of the operation. In the case of a response to terrorist acts, action conducted in self-defence can justify an operation directed at the destruction of infrastructures used by the terrorist organisation responsible, such as training facilities or military installations. It also allows for the detention of terrorists. But targeting facilities not forming part of the terrorists' infrastructure cannot be justified under self-defence. Neither can actions aiming at overthrowing the regime be covered by art. 51. Only the Security Council has the authority to decide such measures. If not covered by its mandate, these actions constitute a breach of the ban on use of force codified in art. 2(4) of the Charter. It should be kept in mind that, even if the armed actions were meticulously restricted to terrorist objectives, these are still in violation of the territorial integrity of the state on whose soil these targets are located.

These breaches show that the conduct of the operation in Afghanistan was not in accordance with the conditions imposed on a self-defence operation.

The result of the legal analysis is as follows: while the use of force by the US invoking self-defence can be regarded as legal, the exercise of this right was not conducted in a lawful way. The operation does not conform to legality because it was founded on an inappropriate legal basis: self-defence. Indeed, it is difficult to think of a lawful

exercise of the right of self-defence against a terrorist organisation, because this right was designed for countering aggression by a state.

At this point, it becomes clear that self-defence cannot serve as a legal basis for a counter-terrorist operation, because the restrictions of the former do not match the requirements of the latter. Counter-terrorism operations and the figure of self-defence do not structurally suit each other.

3.2. An incoherent doctrine

In light of the above, the "new legal situation" clearly lacks coherence: on the one hand, the UN Security Council reaction to the Sept. 11th events has marked a precedent extending the right of self-defence to include forcible measures against terrorist organisations. On the other hand, self-defence has proved to be an inadequate legal basis, since a counter-terrorist operation largely exceeds the lawful limits of a self-defence operation.

Moreover, the new doctrine is not only incoherent, but also dangerous. It is dangerous because it creates a new legitimisation of the use of force in international relations. This gravely undermines the UN Charter system, a non-interventionist regime intent on avoiding war through the comprehensive outlawing of the use of force. The extension of the notion of self-defence undermines existing legal inhibitions for the use of force in international relations. According to the precedent set in Afghanistan, a state is entitled to use force against another state in response to an attack perpetrated by terrorists based in its territory. This means that any state victim to a terrorist attack could act militarily against another by claiming that the perpetrators responsible for the attacks are installed in its territory.[23] The veracity of such claims will prove difficult to determine, since evidence is normally furnished by secret services and is not made public. In principle, any state victim of a terrorist attack could inculpate another, using art. 51 as a pretext. Here, the danger of abuse is evident.

It is apparent that a Security Council intervention would have been a far more suitable response to a terrorist attack than self-defence, because the Council could determine the scope of its action. However, having refrained from intervening in this particular instance, it seems rather unlikely that it will behave differently in future. This means that irregularities in the conduct of self-defence operations will most probably become more frequent. It is regrettable that following Sept. 11th the Security Council refrained from availing itself of the mechanisms envisaged in the Charter for situations where peace is endangered. It is equally regrettable that it failed to issue a mandate according to art. 39. With its actions, it has contributed to undermine its own significance as the body primarily responsible for the maintenance of international security.[24]

3.3. The need for regulation

The problem of the legality of counter-terrorism operations could be solved through another means: a regulation of the use of force in response to international terrorist attacks through the adoption of an international convention.

This convention should include at least following elements:

- an agreed definition of terrorism, with criteria determining what kinds of actions qualify as terrorist acts. However difficult this might be, the European Union has already taken up the challenge, releasing an official definition last year;
- the specific conditions under which forcible action is permissible;
- the conditions and limits to which the recourse to force is subject.

Codifying the use of force against terrorism would allow the international community to influence the responses to the attacks to come before they occur. Through such a convention, forcible measures against international terrorists should be incorporated into legality in a concerted and controlled way.

The convention should be drafted in such way that states are permitted to react to terrorist attacks without undermining the existing non-interventionist system. This is a delicate balance that can only be achieved through careful design. It should be kept in mind that the current system of collective security is founded upon the prohibition of the use of force. Exceptions to this ban need to be interpreted narrowly. It is therefore necessary to impose clear limits on these exceptions in order to reduce their inherent perils of abuse.

Nevertheless, codification is a better alternative than continuing to broaden the right of self-defence. Granted, the Charter system never worked perfectly, but it succeeded in avoiding major conflagrations. The system we need for the future will have to accommodate new threats while essentially preserving the non-interventionist regime. Since there is still no perfect formula suggesting how this should be done, it is time for the international community to start thinking about how to cope with the new environment. What is definitely unwise is to let new rules develop as events unfold, leaving their formulation to the will of the powers that happen to be involved.

Endnotes

[1] Art. 24 of the United Nations Charter reads as follows: "In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf".

[2] This is the case even though some governments have recently tried to justify forcible action merely on UN Security Council Resolutions containing this characterisation, but lacking a mandate for enforcement measures. For the case of Iraq see: White, Nigel D.: "The Legality of the threat of force against Iraq", *Security Dialogue*, 30(1), March 1999. For Kosovo, see Portela, Clara: "Humanitarian Intervention, NATO and International Law", *BITS Research Report 00.4*, December 2000

[3] An "armed attack" is a subcategory of "aggression". See Gaja, Giorgio, In What Sense was There an "Armed Attack"?, *European Journal of International Law* (WTC Forum), Vol. 12, No. 5 (2001) However, art. 51 of the French version of the Charta employs the term "aggression" in the place of "armed attack". Here, both terms are used indistinctly.

[4] See General Assembly Resolution 3.314 (XXIX) adopted on 14 December 1974, see art. 3 of the Annex. However, this definition cannot be referred to as "official", because UN General Assembly resolutions, unlike Security Council resolutions and International Treaties, are not legally binding.

[5] Terrorist attacks can fit into paragraph *g* only in case that the responsibility of a state for the perpetrator's acts can be determined.

[6] For a more detailed account, see Gray, Christine: *International Law and the Use of Force*, Cambridge 2001, pp.115-119

[7] Reprisals are coercive measures taken by a State against another who has violated International Law, its purpose being to coerce the addressee to bring its policy into line with the requirements of the law. Since the adoption of the UN Charter reprisals are only admitted when carried out by economic, financial or other peaceful means. See Partsch, F.J.: Reprisals, in: R. Bernhardt (ed.), *Encyclopaedia of Public International Law*, Vol. III (1992), pp. 200-205

[8] Resolution 1368 was adopted on Sept.12th, and Resolution 1373 on Sept. 28th.

[9] This second Resolution also entails a comprehensive package of measures to combat international terrorism, all of them non-military in nature. The package is so far-reaching that it is said to go beyond the competence of the Security Council. See Condorelli, Luigi: Les attentats du 11 Septembre et leurs suites: Où va le Droit International?, *Révue Général de Droit International Public*, 2001/ 4

[10] Legal experts coincide that the attacks are best characterised as crimes against humanity rather than as threats to peace. See Krajewski, Markus: Terroranschläge in den USA und Krieg gegen Afghanistan – Welche Antworten gibt das Völkerrecht?, *Kritische Justiz* 4/ 2001 and Cassese, Antonio: Terrorism is Also Disrupting Some Crucial Legal Categories of International Law, *European*

Journal of International Law, Vol. 12, No. 5 (2001). However, it has been noted that both characterisations are not necessarily exclusive. See Murphy, Sean D.: Terrorism and the Concept of "Armed Attack" in article 51 of the UN Charter, *Harvard International Law Journal*, Vol.43 (1), Winter 2001

[11] The Security Council in unable to enforce mandate itself. Art. 43 of the Charter prescribed the following: "Members of the United Nations (...) undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities". However, these agreements have never been signed. Consequently, Security Council Resolutions have always been enforced by member states through an authorisation, which is equally lawful.

[12] See footnote 1.

[13] Following the North Korean invasion of South Korea, the Security Council determined the existence of an armed attack in the sense of art.39, but then refrained from making use of the coercive measures envisaged in arts. 41 and 42. Instead, it simply recommended to all members of the UN to provide to South Korea the necessary aid to repel the armed attack.

[14] See art. 24(2) of the Charter.

[15] Even those who maintain that the Security Council Resolutions did not authorise the use of force concede that forcible measures were legal. See Murphy (2002) and Stahn, Carsten: Security Council Resolutions 1368 (2001) and 1373 (2001): What They Say and What They Do Not Say, *European Journal of International Law* (WTC Forum), Vol. 12, No. 5 (2001)

[16] Indeed, Security Council Resolution 1373 went as far as characterising not only the September 11th attacks, but also "any terrorist attack to come" as a "threat to peace". It has been noted that this provision exceeds the competencies of the Security Council, who is empowered to qualify "threats to international peace" on a case-by-case basis, but not to approve provisions of a conventional nature. This can only be lawfully done by states. See Condorelli (2001)

[17] In general, this matter has always been difficult to handle at UN level, given the lack of agreement as to how to define the term "terrorism"- obviously, most Third World countries rejected any definition which would characterise as terrorism efforts by colonised peoples to resist foreign rule.

[18] As early as in 1970, the UN General Assembly Resolution popularly called "Friendly Relations Declaration" set out the international duty of states to "refrain from organising, instigating, assisting or participating in terrorist acts in another state or acquiescing in organised activities within its territory directed towards the commission of such acts". See GA Resolution 2625 (XXV) of 24 October 1970.

[19] See Security Council Resolution 1267 (1999) concerning the demands on the Taliban regime to extradite terrorists.

[20] Generally, the doctrine cites a now universally accepted formula originally used by US Secretary of State Webster in 1842 in the so-called Caroline case. The necessity for forcible reaction needs to be "instant, overwhelming, leaving no choice of means and no instant for deliberation". See Cassese (2001)

[21] International Humanitarian Law is defined as the part of International Law intended to limit the effects of war on people and property, and which protect certain particularly vulnerable groups of persons. Its main conventional expression is the Geneva Conventions and their Additional Protocols.

[22] The Representative of the United States to the United Nations stated in front of the Security Council on the aftermath of the launching of the anti-terrorist operation: "In response to these attacks (...) United States armed forces have initiated actions designed to prevent and deter further attacks on the United States", 7 Oct. 2001

[23] It should be noted that the terrorist attack perpetrated at the Indian Parliament in December 2001 provoked clashes between the conventional forces of nuclear states India and Pakistan at their border in Kashmir.

[24] Over the last few years, efforts by certain states, notably the US, to legitimise unilateral forcible actions had already effectively diminished the UN Security Council's role in international security. See footnote 2.

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