

INTERNATIONAL LAW ON THE USE OF FORCE AND HYBRID WARFARE

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Abstract

This article will consider the primary legal issues under international law on the use of force presented by Hybrid warfare. The legal terminology with regards to warfare has developed separately under laws on the use of force and the laws of armed conflict. Under the UN Charter, for example States have the obligation not to use force in their international relations and to settle any dispute peacefully. It constitutes a general prohibition on the threat or use of force and concludes that 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 any other manner inconsistent with the Purposes of the United Nations. Nevertheless, the UN Charter provides exceptions to the use of force through self-defence and the authorization of the Security Council to maintain or restore international peace and security. Mainly concerns are raised about the abuse of such thresholds by adversaries for their own tactical and strategic advantage.

Keywords: International law; use of force

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List of abbreviations

Commentary GC I: Commentary on the Geneva Conventions of 12 August 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field

DPH: Direct Participation in Hostilities

EU: European Union

GA: General Assembly of the United Nations

GC I: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field

GC IV: Convention (IV) Relative to the Protection of Civilian Persons in Times of War

GCs: Geneva Conventions of 1949

IAC: International Armed Conflict

ICC: International Criminal Court

ICCPR: International Covenant on Civil and Political Rights

ICJ: International Court of Justice

IHL: International Humanitarian Law

IHRL: International Human Rights Law

LOAC: Law of Armed Conflict

NIAC: Non-International Armed Conflict

Introduction

This article will consider the primary legal issues under international law on the use of force (Jus ad Bellum) presented by Hybrid warfare. The legal terminology with regards to warfare has developed separately under laws on the use of force and the laws of armed conflict and the following chapter will focus on the concept of the use of force, armed attack, and aggression all of which appear under the UN Charter and relates firmly to modern conflicts.

Firstly, it is important to discuss the nature of the prohibition on the use of force, and then its interpretation and application to HW features that potentially amount to the use of armed force. Under the UN Charter, States have the obligation not to use force in their international relations and to settle any dispute peacefully according to Article 2(4) of the Charter. It constitutes a general prohibition on the threat or use of force and concludes that 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 any other manner inconsistent with the Purposes of the United Nations.

The **main aim** of the research is to analyse primary legal issues under international law on the use of force presented by Hybrid warfare. The legal terminology with regards to warfare has developed separately under laws on the use of force and the laws of armed conflict. The extensive effort to regulate the use of force, aggression, and armed conflicts through the mechanism of legal regulations, has resulted in the development of international law throughout treaties, rules, and principles, particularly by the end of the 19th century and the beginning of the 20th century. For this purpose, discussions over the past two decades focused on the evolution of modern wars and the transformation in means and elements of warfare, mainly through scholars from multiple disciplines who focused their attention on defining and examining hybrid warfare⁵

Methodology: to get the necessary information and data for research complement, the author used independent internet resources and knowledge gained by Lithuanian and EU regulation

The recommendations are made based on the personal evaluation of legal regulation in EU and those of other researchers.

Objectives of the research are:

- Public International Law, the only normative regime that purports to be universal and uniform, is traditionally defined as the law between sovereign states, mainly within the context of the rules and principles governing laws of war, peace, security, and as well the protection of territories.
- In parallel, hybrid warfare is an evolving concept in contemporary conflicts that provided a perfect conundrum. This type of warfare is a military strategy blending conventional, irregular tactics⁶, cyber warfare, terrorism, and criminal behaviour within a battlespace to obtain political objectives⁷.

Research Methods:

- The present standard legal analysis in studying primary sources of international law such as treaties, customary international law, general principles of law, judicial decisions, and legal doctrine, especially the UN Charter, Geneva Conventions I-IV and its Protocols I and II that govern armed conflicts both international and non-international.
- A Historical approach was applied to analyse the evolution of warfare based on relevant scholars and theorists that contributed directly or indirectly to modern warfare theories. The Historical approach was applied to cover older and latest sources of literature, and previous and current effective legal acts while addressing the evolution of warfare from conventional to modern conflicts including hybrid warfare to assess and reveal the changes in legal understanding of the use of force in international relations, armed conflict, and its classification.
- The comparative method has allowed for the understanding of the different rules that apply to cyber-attacks and non-state armed groups under different legal regimes.

A legal dogmatic method was employed to analyse the established sources of international law to respond to the complex challenges of such forms.

⁵ See for example, Owens, M., Reflection on Future War, Naval War College Review 2008, p.61-76; Glenn, R., All Glory is Fleeting: Insights from the Second Lebanon War, RAND, Santa Monica 2012; Jordan I., Hybrid War: Is the US Army Ready for the Face of 21st Century Warfare, US Army Command and General Staff, 2008.

⁶ Hezbollah proved to be a perfect example of NSA that employed Hybrid Tactics in its conflict with Israel in Southern Lebanon in July 2006; Hoffman, F., Ibid. p. 35.

⁷ Munich Security Conference Broadened the Hybrid Concept to Include Diplomatic, Information, Military, Economic, Financial, Intelligence and Law Enforcement.

- The Inductive method was used to identify the rules of law by the observation of their effectiveness in contemporary conflicts and to their complex nature that is highly relevant while addressing hybrid warfare in practice.
- Logical and Deduction methods were used to come up with recommendations and formulate conclusions for every chapter that served to complement and guide the author's analysis and theories to build up the relationship between hybrid warfare and international law.

The Use of Force in International Law

This prohibition is discerned as more than mere conventional law or customary international law, it is of jus cogens nature (peremptory norm of international law and considered the highest ethical principles), by which the unconditionality of this norm means that any state practice that constitutes conduct in violation of the article does not change the prohibition but violates it. So, no derogation from these norms is permitted through treaty and customary international law for the creation and modification of its rules.

Historically, the Just War Theory is having a just reason to start a war and is mainly a set of mutually agreed rules of combat. And from a moral perspective, there is a strong presumption against the use of violence and aggression that has its roots in the Christian theology and writings of St. Thomas Aquinas. In the "Summa Theological", Aquinas presented the general outline of what becomes the traditional just war theory by highlighting what kind of activities can be permissible (for a Christian) in war⁸. It has been the concern of just war theorists that the lack of rules to war between belligerents should be denounced and rules shall apply equally to all⁹. There are principles for the just war that need to be met. Firstly, having a Just Cause is considered the most important condition of Jus ad Bellum, as it encompasses the basic principles behind the conflict. That was reflected in the preservation of slavery and the spread of liberty, also the protection of innocent life or defending human rights.¹⁰ Secondly, Right Intentions are for the sake of a just cause, as the aim of the use of force must not be to pursue narrowly defined national interests by overwhelming the pretext of fighting aggression, but rather to re-establish a just peace. For instance, Immanuel Kant noted that "possessing good intent constitutes the only condition of moral activity, regardless of the consequences envisioned or caused, and regardless, or even in spite, of any self-interest in the action the agent may have."¹¹

Thirdly, Proper Authority by which war must be launched by a correct governing body and public declaration by which war cannot be secret. Additionally, the last resort highlights that all previous conditions must be exhausted with a reasonable chance of success to avoid unnecessary bloodshed, and finally proportionality by which the end is proportional to the means used¹², and be in line with the magnitude of the initial provocation¹³.

Until the beginning of the 20th century, the use of force by states was considered an acceptable way of settling disputes by which the jus ad Bellum was not limited by legal restrictions as it is today in the UN Charter¹⁴. The only modest exception noticed was Article 1 of the Hague Convention respecting the

⁸ Moseley A., "Just War Theory", in the Internet Encyclopaedia of Philosophy 2009. Available at: <https://www.iep.utm.edu/justwar/>

⁹ Ibidem.

¹⁰ Cline A., Jus Ad Bellum "Just War theory and the Pursuit of War", Learn Religions, July 2019.

¹¹ Moseley, A., Ibidem.

¹² Moseley, A., Ibidem.

¹³ Hubert D. and Weiss Th., The Responsibility to Protect: Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty, International Development Research Centre, Canada 2001, p. 139.

¹⁴ Kemp, G. The Shift from Jus Ad Bellum to Jus Contra Bellum: The Prohibition of the Use of Force in Normative and Institutional Perspective. In Individual Criminal Liability for the International Crime of Aggression, Intersentia Publication, 2015, pp. 47-48.

Limitation on the Employment of Force for the Recovery of Contract Debt (Drago-porter Convention 1907) and was subject to the debtor state's having agreed to an arbitral settlement and complying with it¹⁵.

Likewise, the General Treaty for Renunciation of War as an Instrument of National Policy (The Briand-Kellogg Pact or Treaty of Paris 1928¹⁶) concluded that war would no longer be used as an instrument of national policy or to solve international disputes, outlawing by that the absolute power to resort to war by its prohibition of aggressive war¹⁶. In Article 1 of the Pact, the states declared that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another¹⁷.

The Japanese expansion and conquest violated the country's obligation under the Kellogg-Briand Pact, the League of Nations Covenant, and the Nine Power Treaty. The principles of this doctrine were used in the Sumner Welles declaration of July 1940 on the non-recognition policy of the Soviet annexation and incorporation of the three Baltic States and were strongly pursued until the restoration of independence of Estonia, Latvia, and Lithuania in August 1991. However, prohibitions focused mainly on war, not the use of force, which was later violated by state practice. For example, in the second Sino-Japanese war in 1937, both states considered that their military actions against each other did not amount to war and were not a violation of international law. Therefore, the legal framework that needed a more comprehensive approach to the prohibition on the threat or use of all kinds of military force, found its way in the UN Charter articulating international rules that regulate the use of force in international relations. The Charter articulates the basic principle which is the non-use of force principle under Article 2(4) and exceptions to the basic principle through self-defence under Article 51, and the authorization of the SC under Chapter VII. The Charter was set out to ban the use of force between states by adopting a policy of collective security to be guaranteed by the Security Council, which is responsible for maintaining and restoring international peace and security¹⁸. Nonetheless, the main example that illustrates the significance of treaty interpretation deals with the meaning of the term "use of force" in the UN Charter's Article 2(4) that aims to limit the circumstances in which states may resort to force as a means of resolving their differences.

The Prohibition of Unilateral Threat or Use of Force

The prohibition of the use of force exists under both customary and conventional law (article 2(4) of the UN Charter) and is likely to be presently identical in scope. The ICJ in the Nicaragua case affirmed that when the content of treaty and customary rules are identical, they both continue to exist and apply¹⁹. In addition, the prohibition on the use of force is considered to be *jus cogens* defined in the VCLT as "a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."²⁰ The prohibition is still a standstill norm in international relations, and article 2(4) is considered international law's primary analytical tool for evaluating hostile acts. In addition, the content of the prohibition on the use of armed force is tightly linked with the concept of aggression and armed attack. However, not every use of force amounts to aggression, which is deemed to be the most serious and dangerous form of illegal use of force according to the concept of aggression defined in the UN General Assembly Resolution on the definition of aggression of 1974.²¹

¹⁵ Dörr O., "Use of Force, Prohibition of", *Ibid.* para.4.

¹⁶ Stahn, C. *Jus ad Bellum, Jus in Bello ... Jus post Bellum: Rethinking the Conception of the Law of Armed Force*, *European Journal of International Law*, Volume 17, Issue 5, 1 November 2006, p. 923.

¹⁷ Kellogg- Briand Pact 1928, art I.

¹⁸ Kretzmer D., *The Inherent Right to Self-Defence and Proportionality in Jus Ad Bellum*, *The European Journal of International Law* 2013, Vol. 24, p. 241

¹⁹ ICJ, *Nicaragua v United States of America*, *Ibid*, Reports 1986, p. 14, paras 174-179.

²⁰ Vienna Convention on the Law of Treaties, 22 May 1969, Art. 53.

²¹ United Nations General Assembly Resolution 3314 (XXIX), A/RES/3314, (UNGAR 3314), 14 December 1974, Article 1.

The rules of international law on the use of force found in the Charter and customary international law are easy to state but can be difficult to apply in practice. The primary rule of the prohibition on the use or threat of force is affirmed in Article 2(4) of the UN Charter and described as a cornerstone of international law, it directs that all member states shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the purposes of the United Nations. Debates concerning the interpretation of this article created fundamental division in the international community and evolves on every occasion a new weapon or form of use of force is deployed, that has been noticed in contemporary hybrid campaigns, that requires a better understanding of the foundations and the *lex lata* (the law as it exists) of the present provisions.

The prohibition on the use of force has been interpreted through different approaches, the narrow and broad prohibition. Proponents of the former consider that since article 2(4) prohibits armed or militarized force, then other forms of force are not prohibited (such as cyber-attacks that cause only economic aggression). John Barkham considers that this narrow take on Article 2(4) is not the intended meaning of “force” but a result of its progressive erosion through years, to a point where it has been stripped of its meaning by new warfare methods.²² The latter can be considered armed violence, while other scenarios such as financial regulatory measures, covert economic disruptions, or computer network attacks, may or may not be unlawful under international law of the use of force. On the other hand, according to the proponents of the broad interpretation, force in article 2(4) is not merely armed but can also include threats by economic coercion, missile tests, or military manoeuvres coupled with a promise to resort to armed force.²³ Such force that more swings towards coercion could conceivably consider the above scenarios as a prohibited force. Advocates for the right to use force for humanitarian reasons have shared this view by stating that humanitarian intervention using force does not compromise territorial integrity and is therefore not prohibited.²⁴

Therefore, it is understood that such an intensity threshold is not needed or at least is much lower for an act to constitute the use of force. In other words, while the term “force” is used in Article 2(4) of the UN Charter without defining its content, it is generally accepted that it extends to armed force. This armed force that violates the prohibition on the use of force is not confined to force that is directly against State’s territorial integrity or its political independence only, but rather it includes any use of force that is inconsistent with the purposes of the UN Charter, so a comprehensive ban against all uses or threats of force.²⁵ That highlights the broad scope of Article 2(4) that requires in certain areas a more restrictive interpretation. In doing so a distinctive relationship comes to light between force, armed attack, and aggression.

Aggression and Hybrid Warfare

Hybrid warfare and the emerging role of new actors having the ability to destabilize an order in any state, combined with other non-kinetic means, has attracted the attention of policymakers and security analysts, especially that the 20th century conflicts proved the developing multi-modal features starting from the 9/11 attacks, the conflict in Ukraine, and the emergence of ISIS.²⁶

²² Barkham J., *Information Warfare and International Law on the Use of Force*, New York University Journal of International Law and Politics, 2001, p. 109.

²³ Hsiao A., *Is China’s Policy to Use Force against Taiwan a violation of the Principle of Non-Use of Force under International Law*, New England Law Review, 1998, Vol. 32, p. 715.

²⁴ Valek P., *Is Unilateral Humanitarian Intervention Compatible with the UN Charter*, Michigan Journal of International Law, 2005, vol. 26, p. 1234.

²⁵ Ruys T., *The Meaning of Force and the Boundaries of the Jus Ad Bellum- Are “Minimal”, Uses of force excluded from UN Charter 2(4)*, The American Journal of International Law, 2014, p. 12.

²⁶ Bachmann, S. and Mosquera A., *Hybrid Warfare as Lawfare: Towards a Comprehensive Legal Approach*, In: Cusumano E., Corbe M. (ed.) *A Civil-Military Response to Hybrid Threats*, Palgrave Macmillan, Cham 2018, p. 66.

HW has been defined and analysed based on certain conflicts or operations that occurred recently and involved a hybrid concept. For instance, Frank Hoffman defined HW based on armed conflict between Hezbollah and Israel in Lebanon in 2006, as did McCuen who based his definition on the conflicts in Iraq and Afghanistan. In the same manner, the discussions within military planning strategic circles particularly in NATO focused on hybrid warfare in Ukraine after the annexation of Crimea by Russia.²⁷

In this sense, Damien Van Puyvelde notes “In practice, any threat can be hybrid if it is not limited to a single form and dimension of warfare, because when any threat or use of force is defined as a hybrid, the term loses its value and confuses instead of clarifying the reality of modern warfare”²⁸.

By the end of the Second World War, the crime of aggression was introduced in the constituent instrument establishing the Nuremberg International Military Tribunal 1945 (IMT 1945) which was also used in the Tokyo Judgment in 1948. However, the members of the international community have not been able to agree upon a legal definition of aggression, yet the judgment of the Nuremberg Tribunal makes it clear that acts of aggression are illegal under international law.²⁹ Even before a legal definition of aggression was formed, the ability of the League of Nations or the UN was not impaired to be able to find that certain states were guilty of acts of aggression³⁰. While the UN Charter does not define what constitutes an armed attack or armed aggression, the General Assembly of the United Nations adopted the Resolution 3314 (XXIX) in an attempt to clarify the notion of an armed attack by harkening back to the French language version of the UN Charter which refers to “armed aggression” rather than an “armed attack”, and clarifies the legal framework in which the presumed victim state must manoeuvre when it uses armed forces with the aim of self-preservation³¹.

On the other hand, the concept of aggression is regulated by the Rome Statute of the ICC that was established by an international treaty in 2002 as the only permanent court responsible for the pursuit of individual responsibility for fundamental crimes under International criminal law. It has been noted that the crime of aggression means: “the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a state, of an act of aggression which by its character, gravity, and scale, constitutes a manifest violation of the Charter of the United Nations.”³² Therefore, the crime of aggression as defined in Article 8 bis, must be committed by a person in a position to direct or control the actions of the state or military. It is also understood that the provision of this article shall apply only to persons in a position effectively to exercise control over or to direct the political or military action of a state³³. The definition of aggression set in Article 8bis and conditions for the exercise of the ICC jurisdiction (Article 15 bis and 15) was adopted at the Kampala Review Conference on the Rome Statute in June 2010³⁴, it observed that the purpose of this paragraph is to clarify that.

²⁷ Hybrid Warfare: NATO’s New Strategic Challenge, Defence and Security Committee, NATO Parliamentary Assembly, 10 October 2015. See also, Countering Russia’s Hybrid Threats: An Update, Committee on the Civil Dimension of Security, NATO Parliamentary Assembly, 1 October 2018.

²⁸ Chris Tuck, Hybrid War: The Perfect Enemy, Defense in Depth, Research from the Defense Studies Department, King’s College London, April 25, 2017 <https://Defenceindepth.Co/2017/04/25/Hybrid-War-The-Perfect-Enemy/>

²⁹ Piper D., The General Problem of Defining Aggression: The Legal Control of the Use of Force and the Definition of Aggression, Georgia Journal of International and Comparative Law, 1972, Vol. 2, p.2

³⁰ Ibid. p.2. see Report of the Secretary-General, October 1952, on the Question of Defining Aggression. Criteria applied when a conflict has been accompanied by the use of force, VIII, para. 96. It stated that: “...The League of Assembly made such finding with regard to the Soviet Union’s invasion of Finland in 1939.” See also, The General Assembly Resolution 498 1951. By which it found that both North Korea and Communist China had committed aggression against South Korea.

³¹ Bou-Nader Ph., The Baltic States should adopt the Self-Defense Pinpricks Doctrine: the “accumulation of events” threshold as a deterrent to Russian Hybrid Warfare, Journal on Baltic Security 2018, vol.3, p.14-15

³² Rome Statute of the International Criminal Court 1998, United Nations, Treaty Series, vol. 2187, Article 8 bis/1.

³³ Rome Statute, Ibid., art. 25(3) bis.

³⁴ Bachmann Sascha-Dominik and Kemp G., Aggression as Organized Hypocrisy? – How the War on Terrorism and Hybrid Threats Challenge the Nuremberg Legacy, Windsor Y B Access Just 32012, p.247

To conclude, the threshold requirement under the Rome Statute is considerably narrower than the concept of the act of aggression in Article 39 of the UN Charter. Nonetheless, taking into consideration that contemporary conflicts are not state-centric and that NSAs (armed groups and corporations³⁵) are increasingly entangled in armed conflicts globally, the limited nature of liability for the crime of aggression is regrettably inadequate. “Article 8 bis” suffers from several shortcomings that did not take into consideration the modern realities of warfare. First NSAs such as ISIS, Al Qaeda, Boko Haram that are not attributed or fight on behalf of any state, could find impunity for their actions, as the definition of the act of aggression is only relevant for actions of States which is a reflection to GAR 3314 (XXIX) of 1974.³⁶ The definition of aggression was passed by the UN in 1974, at time where cyber-attacks and the role of NSAs in cyberspace were not yet significant threats in international relations compared to their readiness in contemporary conflicts. The definition of aggression expressed in the language of Resolution 3314 has two perspectives. The first considers some acts of aggression are *prima facie* by the simple use of force in a conflict based on a comparison with previous actions that took place.

It is seen that the activities that developed after the resolution, mainly cyber-attacks were not addressed directly in the resolution but concluded that such activities must be equated to physical attacks to understand their impact.³⁷ This perspective has been reflected in the Tallinn Manual that defined cyber-attacks as “cyber operations, both offensive and defensive, which can reasonably cause injury or death to persons or damage or destruction of objects.”³⁸ Cyber forces can constitute a type of irregular force conducting an attack with effects similar to a conventional force³⁹, by which the assimilation of some cyber-attacks with armed force allows the UNSC to act under Chapter VII and for States to react in self-defence.⁴⁰

Conclusions

1. The right to self-defence against non-state armed groups is granted under international law on the use of force and does not limit the potential originator of armed attacks to States. Hybrid warfare relies heavily on masking attribution that is highly relevant for the proper applicability of the Law on the use of force, particularly in responding to threats or violations of state sovereignty. This necessitates the establishment of legal basis that outweighs the principle of territorial sovereignty and prohibition on the use of force, e.g., through the United Nations Security Council resolution.
2. Cyber operations generated from the territory of another state would threaten the host state’s sovereignty under this standard, as a state might be willing to cease the threat but unable due to the complex nature of cyberspace. Countermeasures under the abovementioned standard must consider

³⁵ Corporations that play a vital role in weapons manufacturing, private security contractors and general corporate action in conflict zones, act independently or in partnership with states in contemporary conflicts. According to Mireille Delmas-Marty, “The relationship between mass atrocities and economic activities was already a live issue at Nuremberg . Corporate criminal involvement in international crimes did not end with the Second World War. To the contrary, new developments in the available means of communication in a globalized and more interconnected world create new opportunities, particularly as some transnational corporations wield greater economic power than some states. These corporations have become major players, which have complex relationships with national governments and the local population.... throughout the world corporations are involved in the commission of serious crimes, either directly or as part of a larger group.” See, Delmas-Marty M., *Ambiguities and Lacunae, The International Criminal Court Ten Years on*, Journal of International Criminal Justice, 2013, vol.11, p. 553

³⁶ Rome Statute, Ibid. Article 8 bis (2) para g.

³⁷ Hogan J., *The Future of War: Cyber-Attacks and Aggression in International Law*, Portland State University 2019, p. 11-12.

³⁸ Tallinn Manual 2.0, Ibid., Rule 92

³⁹ Mendoza J., *Cyber Attacks and the Legal Justification for an Armed Response*, School of Advanced Military Studies, Kansas 2017, p. 18.

⁴⁰ Greco G., *Cyber-Attacks as Aggression Crimes in Cyberspace in the context of International Criminal Law*, European Journal of political Science Studies, 2020, Vol. 4, Issue 1, p. 42.

the host state's technical abilities to identify and prevent such operations, otherwise, it will be considered a breach of basic principles of international law.

3. Based on the above analysis, it is important to note that the core challenge by HW to the prohibition on the use of force is the ambiguity that it is tailored to make a military response difficult to avoid conventional confrontation by operating below the thresholds of the opponents. Such forms can be achieved by hiding and denying agency through the use of proxies, non-attributable forces, and cyber-attacks.
4. Moreover, various means of HW that do not amount to an armed attack or use of force in its physical form, are crucial to the adversary to achieve the political and strategic outcome or even military objectives. This can be seen in disinformation campaigns that play an important role in the escalation and de-escalation of a situation. On the other hand, it is agreed that cyber-attacks that cause injury or death of persons, even damage or destruction of property violate the prohibition to use force in international relations⁴¹.
5. The right of individual and collective self-defence applies irrespective of the type of weapon used to conduct an armed attack, what matters is the scale and effect of such attack. Therefore, a hybrid attack that employs a combination of military and non-military instruments triggers the right to self-defence, provided that its scale and effects are comparable to a conventionally armed attack.

Recommendations

1. To conclude, despite the development in the justifications to use force in international relations as an exception to the exceptions in the UN Charter, the shortcomings in the humanitarian intervention are mostly regulated now and applied under R2P that plays an important role in keeping the balance between the principle of sovereignty and human rights.
2. They also have expanded the opportunity of intervening to stop atrocities in intra-state conflicts that are increasing through HW means and the role of NSAs. States tend to deal with such situations based on their interest by either considering it a NIAC with more rights to use armed force under IHL.

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⁴¹ Tallinn Manual, para. 8 of commentary to Rule 11.

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