

Video Transcript

The Use of Force in International Law – Gleider Hernández

Welcome to my lecture on Chapter 104 which is 'The Use of Force in International Law'.

Now, I think I've alluded in earlier mini-lectures that war was a perfectly permissible tool for international relations from time immemorial, pretty much until the beginning of the 20th century. For centuries, states and other political communities would threaten war against one another in order to achieve foreign policy objectives, in order to secure trading advantage, et cetera, et cetera. The famous term 'gunboat diplomacy' is in reference to this idea that war in certain circumstances was perfectly permissible. But as technology advanced, and as humankind began to become aware of the immense and disproportionate suffering that wars could inflict on a civilian population, especially, and the destruction of the state that it could entail, war began to be taken seriously as an object of prohibition.

The League of Nations, which was founded in 1918, sought to regulate war but it didn't seek to prohibit it entirely. That prohibition would have to wait until 1945, when the League was disbanded and the United Nations took its place, and it would be founded in the UN Charter. Now, before that there was a treaty, the 1929 Kellogg-Briand pact (which was a French-American treaty in the first instance, but other states were invited to join), in which France and the U.S. renounced war as an instrument of foreign policy, and that renunciation formed the basis of what became Article 2 of the UN Charter.

So the prohibition on force in the UN Charter one would hope would be absolute—but, alas, it is not. There are certain exceptions to it, some of which are justified, and other which ones are more controversial. The accepted justifications are if a state is acting in self-defense when force has been used against it. That's contained in Article 51 of the charter. Of course, that is at the bedrock of international law that a state must be able to defend itself against force. Nevertheless, certain operations have been justified in the name of self-defense, or in the broader name of something more nebulous called 'collective self-defense', which has sometimes been stretched beyond definition. The textbook goes into this in more detail. Another exception has been when a state consents to an operation. This might be, for example, if a state is trying to stave off an armed rebellion that is overwhelming its forces and it asks a neighbor or a

powerful ally to intervene in order to protect it. So consent is a mechanism for that to be circumvented.

Now you might have heard of the principles of humanitarian intervention and the so-called 'responsibility to protect', through which a state can intervene in order to forestall a humanitarian catastrophe, or, with responsibility to protect, that all states have a responsibility to protect civilians from suffering. Those doctrines have a measure of practice supporting them. However, they involve the unilateral decision by a state, or a group of states, to intervene, purportedly for human humanitarian concerns, and often give them discretion to do so. And the selectiveness with which states have invoked this doctrine, and the fact that it hasn't been invoked very much, have led generally to the idea that states can't do so unilaterally. And that is why the responsibility to protect has been subordinated to a decision by the UN Security Council, essentially in the exercise of collective security. And the textbook goes into this in much more detail because it is a controversial area, but my view as the author of this book is to tread very carefully because humanitarian intervention is not the humanitarian panacea that it seems. In many respects, it's the discretion of the state to invade or use force against another state unilaterally.

We now move on to collective security, which is the mechanism through which states together ensure security, or the maintenance of international peace and security, across all states. The primary mechanism for that is the United Nations Security Council, which is the organ within the United Nations system vested with the primary responsibility of maintaining international peace and security. In the textbook we go through the various modalities through which the Council could determine that there's a threat to the peace, a breach of the peace, or an act of aggression and can authorise various measures and even impose obligations on all its member states in order to restore international peace and security in certain circumstances. And although there has been deadlock in the past, the Security Council has a long and extensive practice history that shows how the exercise of collective security is ensured.

Now in addition to that, there are various regional organisations that also have the maintenance of international peace and security at their forefront. An example would be the North Atlantic Treaty Organization, NATO. Or another example would be the Economic Community of West African States, ECOWAS. Both of which have commitments to maintaining regional peace and security, and obligations within the constituent instrument that all member states will act collectively to defend another one of the states from being attacked, or force being used against it. So we've got this overlap between an international system

through the UN and various regional and multilateral bodies that can also ensure collective security.

And finally, both the UN and many of these regional organisations often collaborate in what is called 'peace-keeping'. Peace-keeping missions are missions where a multinational force is sent, not necessarily to enforce the interest of one state, but merely to prevent conflicts from spinning out of hand - to provide a buffer while situations and conflicts can be wound down - and hopefully to encourage and nurture a more peaceful settlement of the dispute. All of these are covered in considerable depth in Chapter 14, and I hope that this brief lecture has been helpful.

Thank you.