Has Russia Killed Article 2(4)? Evaluating the effectiveness of the prohibition of the use of force in the conduct of international affairs.

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Abstract

The 24 February 2022 invasion of Ukraine by Russia represents an unambiguous breach of the United Nations Charter's prohibition of the use of force. The significance of the prohibition of the use of force between States cannot be overstated and is recognised in practice and legal doctrine as being 'one of the core values of the international community'. However, argument has been made that the United Nations Charter's rules prohibiting the use of force are no longer relevant to the conduct of international affairs, especially involving major powers. It could be argued that by their conduct States have repudiated the Charter's use of force rules on so many occasions so as to make them wholly ineffective. One could see Russia's invasion of Ukraine as the latest sorry example of this. This article evaluates the question of whether the United Nations Charter's rules prohibiting the use of force are effective and relevant to the conduct of international affairs.

International Law, Use of Force, Article 2(4), Prohibition of Use of Force, Russia, Ukraine, United Nations

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Introduction

On 24 February 2022, Russia launched its large-scale invasion of Ukraine. This was the culmination of weeks of mounting tension during which Russia had been amassing tens of thousands of its troops along the Russia-Ukraine border.[1] At the time of writing, we are over 12 months into this devastating and grinding conflict. It is not often an international lawyer can answer a question of international law without some degree of equivocation, but Russia's invasion of Ukraine is an unambiguous breach of the United Nations Charter's prohibition of the use of force.[2] Furthermore as Green points out 'This holds true notwithstanding the fact that an ongoing armed conflict could be said to have existed between Ukraine and Russia ever since the unlawful annexation of Crimea in 2014'.[3]

The United Nations Charter seeks to regulate the use of force by States in the conduct of their international relations by instituting a normative order based upon three elements: the proscription of the right to wage war (Article 2(4)),[4] except in self-defence (Article 51)[5] and the establishment of the norm of collective security (Chapter VII).[6] In terms of international

[1] For a timeline of events leading up to Russia's invasion of Ukraine see, https://www.reuters.com/world/europe/events-leading-up-russias-invasion-ukraine-2022-02-28/ [Accessed 30 January 2023].

[2] For an excellent and detailed analysis of the lawfulness of Russia's invasion of Ukraine, see James A. Green, Christian Henderson & Tom Ruys (2022) 'Russia's attack on Ukraine and the *jus ad bellum*', *Journal on the Use of Force and International Law*, 9:1, 4-30, DOI: 10.1080/20531702.2022.2056803

[3] *Ibid.* 4.

[4] Charter of the United Nations (1945) 1 UNTS XVI (UN Charter) Article 2(4).

[5] Charter of the United Nations (1945) 1 UNTS XVI (UN Charter) Article 51.

[6] Charter of the United Nations (1945) 1 UNTS XVI (UN Charter) Articles 39-51.

politics and law, the significance of the prohibition of the use of force between States cannot be overstated and is recognised in practice and legal doctrine as being the 'cornerstone of peace in the Charter',[7] 'the heart of the United Nations Charter',[8] and as representing 'one of the core values of the international community'.[9] Moreover, its importance was recognised by the International Court of Justice in *Armed Activities on the Territory of the Congo* who asserted Article 2(4) to be a 'cornerstone of the United Nations Charter'.[10] Besides its place in the United Nations Charter under Article 2(4), the prohibition of the use of force is also accepted as a norm of customary international law.[11] For many, it constitutes a clear example of a peremptory norm of general international law, as defined in Article 53 of the Vienna Convention on the Law of Treaties;[12] meaning that the prohibition of the use of force is

[7] CHM Waldock, *The Regulation of the Use of Force by Individual States in International Law* (1952-II) 82 *Académie de droit international. Recueil des cours* 492.

[8] Louis Henkin, 'The Reports of the Death of Article 2(4) Are Greatly Exaggerated' (1971) 65 *American Journal of International Law* 544; also, according to Henkin, 'the principal development in international law in our time is the law of the United Nations Charter outlawing the use of force in international relations.' Louis Henkin, *How Nations Behave: Law and Foreign Policy* (2nd ed. 1979) 135.

[9] Oliver Dörr, Albrecht Randelzhofer, 'Article 2(4)' in Bruno Simma et al (eds), *The Charter of the United Nations: A Commentary, Volume I* (3rd edn, OUP 2012) 203, para 1.

[10] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* (Merits) [2005] ICJ Rep 168, para 148.

[11] *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America)*
(merits) [1986] ICJ Rep 14, paras 34, 174-8; *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* [2004] ICJ Rep 136, para 87.

[12] Dorr & Randelzhoffer (n 9) 231, paras 67-68; W. Michael Reisman, 'Article 2(4): The Use of Force in Contemporary International Law' (1984) 78 *American Society of International Law Proceedings* 68, 74; Christine Gray, *International Law and the Use of Force* (4th edn OUP 2018) 32.

considered by the international community of States as a whole as a rule from which no derogation is permitted.[13] Notwithstanding this view, however, Russia invaded Ukraine. This leads one to question how one should view Russia's violation of Article 2(4)? Is it a further indication of the diminishing authority of the prohibition of the use of force as a controlling norm of state behaviour? Or could it be seen as Article 2(4)'s saving grace? Based on a testament of the various occurrences of the use of force by States since the Charter's inception, argument has been made that the United Nations Charter's rules prohibiting the use of force are no longer relevant to the conduct of international affairs, especially involving major powers. It could be argued that by their conduct States have repudiated the Charter's use of force rules on so many occasions so as to make them wholly ineffective.[14] One could see Russia's invasion of Ukraine as the latest sorry example of this.

[13] General Assembly Official Records Seventy-fourth Session, Supplement No. 10, *Report of the International Law Commission*, Seventy-first session (29 April–7 June and 8 July–9 August 2019), Chapter V. Peremptory norms of general international law (jus cogens), Text of the draft conclusions on peremptory norms of general international law (jus cogens) and commentaries thereto, Conclusion 2 Definition of a peremptory norm of general international law (jus cogens) 148.

[14] Thomas M. Franck, 'Who Killed Article 2(4)? Or: Changing Norms Governing the Use of Force by States' (1970) 64 American Journal of International Law 809; Michael J. Glennon, *Limits of Law, Prerogatives of Power: Interventionism After Kosovo* (New York: Palgrave 2003); See also, Michael J. Glennon, 'How international Rules Die' (2005) 93 Georgetown Law Journal 939; Michael J. Glennon, The Fog of Law: Pragmatism, Security and International Law (Stanford University Press 2010); Michael J. Glennon, 'The Limitations of Traditional Rules and Institutions Relating to the Use of Force', in Marc Weller (ed), The Oxford Handbook of the Use of Force in International Law (Oxford University Press, 2015) 79; see also Anthony C. Arend, 'International Law and Pre-emptive Use of Military Force' (2003) 26 Washington Quarterly 89.

The invasion of Iraq in March 2003 by a coalition of States led by the United States was similarly alleged to be confirmation of a long-recognised diminution of the United Nations Charter's use of force paradigm.[15][16] Prior to that, the NATO intervention in Kosovo was also claimed to be an example of the failing of the Charter. [17] In a similar vein now, Russia's spectacular breach of the Charter can be seen as clearly exposing the fiction that the Charter remains the controlling normative framework for the regulation of the use of force by States.

This charge of the ineffectiveness of the prohibition of the use of force is long-standing. Famously, in 1970, Professor Thomas Franck published an article with the provocative title, 'Who Killed Article 2(4)? Or: Changing Norms Governing the Use of Force by States'.[18] In his article Franck bemoaned the inability of the United Nation's collective security system and its rule prohibiting the unilateral use of force to restrain the behaviour of States, a key part of which was a detailed examination of the 'corrosive effect of the growing range of individual state claims of special limitations and exceptions to the application of Article 2(4).'[19]

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[15] In 2003 one of the principal proponents of this view was Michael Glennon. Glennon (n 14); see also Arend (n 14) 89.

[16] By the UN Charter's 'use of force paradigm', one is referring to the Charter's rules for the regulation of the use of force by states.

[17] To the list one could also add the US intervention in Guatemala (1954); British invasion of Egypt (1954); Soviet invasion of Hungary (1956); US-sponsored Bay of Pigs invasion (1961); Indian invasion of Goa (1961); Warsaw Pact invasion of Czechoslovakia (1968); N. Vietnam actions against S. Vietnam (1960-75); Vietnamese invasion of Kampuchea (1979); Soviet invasion of Afghanistan (1979); Tanzanian invasion of Uganda (1979); Argentine invasion of the Falklands (1982); US invasion of Grenada (1983); US invasion of Panama (1989).

[18] Franck (n 14) 809.

[19] Richard B. Bilder, 'The United Nations Charter and the Use of Force: Is Article 2(4) Still Workable?', (1984) 78 *American Society of International Law Proceedings* 68.

According to Franck, after an initial period of post-World War Two optimism in which the collective security system of the Charter functioned, in at least an approximate sense, as it had been envisioned, the Charter system began to falter in its aim of regulating the behaviour of States in respect of the use of force. In large part due to the Cold War, the Charter's primary mechanism for maintaining international peace and security, the Security Council, was unable to function as envisaged by the Charter's architects. Consequently, without an effective collective security mechanism for enforcing international rights and even permitting change to them, aggrieved States lacked the necessary confidence or motivation to refrain from resorting to the use of force for their own devices.[20] The use of force by States in furtherance of their national interests relatively quickly became a sad feature of international society. Hence, by 1970, in what was clearly intended as a lament to the seemingly lost opportunity, Franck questioned the continued validity of the Charter's 'normative system'.[21] The frequent recourse to force in the period led him to conclude with the pitiful observation: 'The failure of the United Nations Charter's normative system is tantamount to the inability of any such rule, such as set out in Article 2(4), in itself to have much control over the behaviour of states.'[22]

[20] W. Michael Reisman, 'Article 2(4): The Use of Force in Contemporary International Law' (1984) 78 *American Society of International Law Proceedings* 76.

[21] Franck (n 14) 809.

[22] Franck (n 14) 836. Franck goes on to say 'National self-interest, particularly the national self-interest of the super-Powers has won out over treaty obligations. This is particularly characteristic of this age of pragmatic power politics. It is as if international law, always something of a cultural myth, has been demythologized. It seems this is not an age when men act by principles simply because that is what gentlemen ought to do.'

Franck's assertion did not go unchallenged. In response to his article, Professor Louis Henkin penned a more hopeful reply entitled, 'The Reports of the Death of Article 2(4) Are Greatly Exaggerated'.[23] According to Henkin, whilst the challenges to Article 2(4) and the Charter's use of force norms were considerable these breaches of the rules were not 'necessarily terminal'.[24] Henkin argued that the 'purpose of Article 2(4) was to establish a norm of national behaviour and to help deter violation of it. Despite common misimpressions, Article 2(4) has indeed been a norm of behaviour and has deterred violations.'[25] Even though Article 2(4) had not deterred *all* wars and unlawful forceful interventions by States in the internal affairs of other States, it had, in Henkin's view, deterred States from using force in *some* cases, and in other cases influenced the behaviour of States towards the use of force.[26] Whilst Henkin acknowledged the deterrent effect of Article 2(4) is difficult to 'measure' or 'prove', he argued that traditional inter-state conflict had become not only less frequent but also less likely,[27] which he clearly believed was attributable to Article 2(4).[28]

A problem with Henkin's proposition, however, is that there have been notable instances since the end of the Cold War where the Charter's use of force rule has been severely tested by States. The NATO intervention in Kosovo in 1999 and the US led invasion of Iraq 2003, Russia's intervention in Georgia in 2008 and Crimea and Eastern Ukraine in 2014, provide fertile

[23] Louis Henkin, 'The Reports of the Death of Article 2(4) Are Greatly Exaggerated' (1971) 65 *American Journal of International Law* 544.
[24] *Ibid.*
[25] *Ibid.*
[26] Henkin (n 23) 544, 545, 547.
[27] Henkin (n 23) 544.
[28] *Ibid.*

ground. Added to these examples one could also include the resort to military force by powerful States in Syria, Libya and Yemen. The debate about whether Article 2(4) is effective as a controlling norm of state behaviour, therefore, continues to reverberate and has been brought into sharp focus by Russia's ongoing invasion of Ukraine.[29] How does one square the record of state behaviour with the requirements of Article 2(4) when the gap between the rule and state practice is so striking?[30] Should the divergence be taken as proving the ineffectiveness or pointlessness of law in this area?

Advocating the demise of Article 2(4)

On the face of it the gap between the rule prohibiting the use of force and state practice is glaring and would seem to indicate a dissonance in the relationship that would seem to contradict any claim as to the rule's effectiveness. Along with Franck, it has been claimed that since 1945 the practice of States reflects a wide degree of rejection of the Charter's use of force constraints. A leading exponent of this view has been Michael Glennon who forcefully asserts that since 1945 the actual practice of States demonstrates a complete repudiation of the Charter's use of force rules. He points to:

> [T]he Iran-Iraq War of the 1980s; American air strikes against Iraq (1998-99); Intermittent Israeli actions against Lebanon during the 1990s; the US bombing of Sudan and Lebanon during the 1990s; the US bombing of Sudan and Afghanistan (1998); US

[29] At the time of writing, we are in day 348 of the start of Russia's invasion of Ukraine.
[30] Gray (n 12) 26.

> air strikes against Libya (1986); the Pakistani incursion into Indian Kashmir (1999); the Uganda-Rwanda-Congo war (1997-99); Ethiopia's attack on Eritrea (2000).[31]

To these examples Glennon would also add the NATO intervention on Kosovo (1999)[32] and the US-led coalition invasion of Iraq (2003). More recently one would also include the unlawful interventions by States in Syria since 2011 and the Yemen conflict, the Russian annexation of Crimea and intervention in Eastern Ukraine (2014), along with the ongoing dispute in India and Pakistan. And most recently one would add the Russian invasion of Ukraine (2022).

Allegedly what these cases illustrate is that where States believe the use of force is in their national interest and they have the power to do so, States feel free to use force whenever they consider it will advance their national interests.[33] Moreover, the many instances of States contravening the law of force is not consonant with the interpretation that the Charter's use of force regime remains a valid institution for the regulation of the behaviour of States.[34] Those advocating the prohibition's demise would argue that in interpreting the rule, the number of deviations from it should be given greater weight in the interpretation of the law, or the analysis of the law's effectiveness. Accordingly, where there is widespread deviation from the rule, that

[31] Glennon (n 14) 68.

[32] In response to NATO's intervention Kosovo Glennon asserted that 'the year 1999 marked the moment when it became evident that force was not governed by law.' Glennon (n 14) 4.

[33] See Anthony C. Arend, 'Do Legal Rules Matter? International Law and International Politics' (1997-8) 38 *Virginia Journal of International Law* 104

[34] Michael J. Glennon, '*The Limitations of Traditional Rules and Institutions Relating to the Use of Force*', in Marc Weller (ed), The Oxford Handbook of the Use of Force in International Law (Oxford University Press, 2015) 91

indicates that the law is ineffective and therefore invalid. For example, in the aftermath of NATO's intervention in Kosovo in 1999, Glennon concluded:

> It is impossible to avoid the conclusion that the use of force among states simply is no longer subject – if ever it was subject – to the rule of law. The rules of the Charter do not today constitute binding restraints on interventions by states. Their words cannot realistically be given effect in the face of widespread and numerous contrary deeds.[35]

At the heart of this view is the assertion that States are not bound by those rules to which they do not agree, constituting a basic positivist conception of the nature of international law. Accordingly, extensive deviation from the norm, it is argued, demonstrates a lack of agreement with the rule. This in turn leads to the claim of the rule's demise.[36] Arend and Beck put it thus:

> Based upon what states have been saying and what they have been doing there simply does not seem to be a legal prohibition on the use of force against the political independence and territorial integrity of states as provided in even a modified version

[35] Glennon (n 14) 84.

[36] It has been argued that this is certainly the case where the errant state is a major power, such as the United States. The suggestion is that where a major power acts in breach of the rule, the effect of the breach can be to bring about a change in the rule. See generally Glennon (n 14). According to this line of reasoning major power state practice has a qualitatively different effect than the practice of lesser states.

> of Article 2(4). The rule creating process, authoritative state practice has rejected that norm.[37]

The problem with this 'rejectionist' approach[38] (if one can give it a homogenous character) is that it does not fully address the nuances of the issue of the effect of deviance upon the authority of norms. To begin with, the rejectionist position judges the authority of the use of force rules based solely on their failures, i.e. where States use force in the conduct of their international relations.[39] However, where States use force in the conduct of their international relations, it is easy to identify the failings of the rules in preventing the prohibited behaviour from occurring. At its core, the purpose of Article 2(4), Henkin observes, 'was to establish a norm of national behaviour and to help deter violation of it.'[40] Where there has been a breach of Article 2(4) by a state then, clearly, that state has not been deterred from violating the norm. However, as Henkin posits, how does one effectively measure deterrence? One can see the failures clearly. But, how does one assess the times when States have been deterred from taking action in violation of Article 2(4) by its existence?

According to Henkin, '[i]n inter-state as in individual penology, deterrence often cannot be measured or even proved.'[41] That means that we are left with the less precise and less satisfactory art of inferring the deterrent effect of the rule. Therefore, Henkin goes on to

[37] Anthony C. Arend and Robert J. Beck, *International Law and the Use of Force* (New York: Routledge 1993) 185.
[38] Rejectionist in the sense of arguing that state practice has rejected the normative constraints of the prohibition of the use of force.
[39] Henkin (n 23) 544.
[40] *Ibid.*
[41] *Ibid.*

consider that whilst one cannot necessarily prove deterrence one can look to the picture of conflict and make some meaningful assessments. He points to the fact that there are far less examples of 'traditional' war between nations, although the 2003 invasion of Iraq and the 2022 invasion of Ukraine are examples of 'traditional' war, they are few and far between. Where force is used, Henkin would point out that they tend to be conflicts of smaller scope and duration and generally involve internal conflicts rather than wars of conquest. Henkin would argue that the fact it is unlawful to use force 'cannot be left out of the account' of the decision-making of States.[42] The argument is not that Article 2(4) has had the effect of putting an end to all wars,[43] but rather that the use of force rules has changed the perception that States are at liberty to indulge in war freely, and especially wars of territorial expansion and conquest.[44] This has been the true transforming impact of the Charter.[45]

This is not to say that the number of breaches of the Charter's use of force rules is not a cause for concern. Of course, widespread and persistent violation of any rule will lead to questions about its effectiveness. But, as Henkin says, 'one must not allow it to be seized by "super-realists" to prove that the effort to control international violence by law has again failed and

[42] Ibid.

[43] See Reisman for example, 'Individual actors historically have reserved the right to use force unilaterally to protect and vindicate legal entitlements' W. Michael Reisman, 'Criteria for the Lawful Use of Force in International Law' (1985) 10 *Yale Journal of International Law* 279.

[44] Henkin (n 23) 545; Jane E. Stromseth, 'Law and Force after Iraq: A Transitional Moment' (2003) 97 *American Journal of International Law* 632.

[45] As Stromseth notes, 'The Charter's norms… together represent a great advance over those earlier historical periods in which force could be used for almost any reason.' Stromseth (n 44) 632.

the Charter is now as irrelevant as the Kellogg-Briand Pact.'[46] The question here is whether these breaches signify a general repudiation of the rules by the international community.

To draw the conclusion that the Charter's use of force norms stands, or rather falls, repudiated due to contrary practice of States, it will be argued that it is necessary to demonstrate, on the one hand, that by their breach of the rule the deviant States intended to constitute the existing rule supplanted by the new normative order. Conversely, it is necessary to show that the wider international community agreed with this outcome. Moreover, deviations from an authoritative norm do not inevitably lead to the conclusion that the rule is no longer valid or applicable. Whilst some commentators argue that widespread and consistent violations of Article 2(4) amount to practice sufficient to supplant the Charter and its customary international law equivalent,[47] as Schachter suggests, '[t]his argument is no more convincing than the assertion that if a large number of rapes and murders are not punished, the criminal laws are supplanted and legal restraints disappear for everyone.[48]

[46] Henkin (n 23) 547.

[47] See Glennon (n 14) 16-18, 24; Arend (n 14) 101; See also Richard Falk, 'The conclusion is that the legal effort to regulate recourse to force in international relations has virtually collapsed in state-to-state relations, including such institutional settings as those provided by the United Nations. Representative expressions of this condition of legal collapse include: the Soviet invasion of Afghanistan in late 1979; the laissez-faire approach to the Iran-Iraq War throughout its five years; Israel's discretionary and frequent reliance on retaliatory and preemptive uses of force against its Arab neighbors; and the United States governments blatant reliance on extensive "covert operations" to overthrow the Sandinista government together with its brazen repudiation of the authority of the International Court of Justice (I.C.J.) in the Nicaraguan conflict.' Richard Falk, 'The Decline of Normative Restraint in International Relations' (1985) 10 *Yale Journal of International Law* 263.

[48] Oscar Schachter, 'In Defense of International Rules on the Use of Force' (1986) 53 *University of Chicago Law Review* 130.

This is not to ignore the qualitatively different effect that deviant acts have upon the international legal system, as opposed to the domestic legal system. This is because in the international system, the rule breaker, which are States, are the principal subjects of its rules, the creators of the rules and the interpreters of those rules; a position and role not afforded to rule breakers in the domestic legal system.[49] As a consequence, at the international level, 'every act of a great power that deviates from established interpretations of the law carries the potential to shape a new interpretation.'[50] However, whilst there is the 'potential to shape a new interpretation', the mere fact of a breach is not enough to come to the conclusion that the existing rules are no longer authoritative and are rejected.[51] Any analysis of the impact of violations upon the Charter rules requires a nuanced assessment of the effect of deviance on the authority of the Charter's rules.

The effect of deviance on the authority of the Charter's rules: a record of endurance?

According to Farer the question of the effect of deviance upon the authority of the Charter's rules is 'law's most profound epistemological issue'.[52] To assist this analysis, let us briefly draw upon the common analogy between international and domestic law. In the domestic

[49] Thomas J. Farer, 'The Prospect for International Law and Order in the Wake of Iraq' (2003) 97 *American Journal of International Law* 622.
[50] *Ibid.*
[51] *Cf* Michael J. Glennon, '*The Limitations of Traditional Rules and Institutions Relating to the Use of Force*', in Marc Weller (ed), The Oxford Handbook of the Use of Force in International Law (Oxford University Press, 2015) 79
[52] Farer (n 49) 621.

sphere deviance from rules, such as the prohibition of murder, is an all-too-common occurrence, however, such occurrences do not raise doubts about the authoritative character of the rule. This begs the question, why?[53] There are a number of pertinent reasons and factors - legal, political and social - that influence behaviour. To begin, the rules reflect widely shared views about the kind of behaviour is contrary to public interest. [54] It is believed that, in the absence of rules prohibiting such behaviour, the behaviour would be more widespread. Moreover, the rules are adopted by institutions and through procedures generally considered to endow substantive mores with legitimacy. Overall, the rules are seen as good and a valid means of inhibiting bad behaviour.[55] This same reasoning is applicable to the Charter's use of force rules.

It is universally believed that the use of force by States in the conduct of their international relations is something that should be prohibited except under strict conditions.[56] These conditions have been identified within the Charter as existing in the case of self-defence or where the use of force is authorised by the appropriate body of the United Nations, the Security

[53] *Ibid.*

[54] Franck writes: 'Laws, including the UN Charter, are written to govern the general conduct of states in the light of historic experience and the requisites of good order.' Thomas M. Franck, 'Sidelined in Kosovo?; The United Nations' Demise has been Exaggerated; Break it, Don't Fake it' (1999) 78 *Foreign Affairs* 116.

[55] *Ibid.*

[56] See for example United Nations General Assembly Resolution A/RES/3314 (XXIX) (1974), the 'Definition of Aggression'. The resolution was adopted by consensus. This means that all member states at the time of its adoption expressed support for the resolution, therefore no formal vote was required. The resolution remains highly influential and a key reference point for the shaping of norms and practices related to prohibition of the use of force.

Council, in order to provide for the collective security of the international community.[57] In the absence of such rule, it is argued that the international system would be more anarchic, in the literal sense, resulting in greater instability. Furthermore, the United Nations Charter is a negotiated treaty to which all States in the international system are signatories. This confers legitimacy upon the substantive norms contained within it, such as those that fall within the Charter's use of force rules: the prohibition of the use of force; the primacy of the Security Council for the authorisation of non-defensive uses of force; and the right of individual or collective self-defence.

While the perceived authority of rules continues to exist in domestic society despite extensive deviation, the implication of the rejectionist analysis of the effect of deviance on the United Nations Charter is that no such authority persists in relation to international law, not least where the major powers are involved. As discussed previously, it can be argued that deviant acts have greater impact upon the international system than they do on the domestic system. [58] Accordingly, every act of a state, and especially a great power, that deviates from the established interpretation of the law has the potential to shape a new interpretation; in this case that the rule is no longer controlling and thereby invalid.

[57] The UN Charter seeks to regulate the use of force by states in the conduct of their international relations by instituting a normative order based upon three elements: the proscription of the right to wage war (Article 2(4)), except in self-defence (Article 51) and the establishment of the norm of collective security (Chapter VII).
[58] See earlier discussion; Farer (n 49) 622.

However, such a view does not give sufficient weight to other important considerations when assessing the question of whether the normative framework of the Charter remains authoritative. To assess whether deviant acts achieve the outcome of shaping a new interpretation or repudiation of the rule, it is important to examine more than the fact of the breach but also the nature of the deviance, this being the attitude displayed by the breaching state. This is a view shared by the International Court of Justice in *Military and Paramilitary Activities in and Against Nicaragua* case (hereinafter the *Nicaragua* case) where it was said,[59] 'If a State acts in a way prima facie incompatible with a recognized rule, but defends its conduct by appealing to exceptions or justifications contained within the rule itself, then whether or not the State's conduct is in fact justifiable on that basis, *the significance of that attitude is to confirm rather than to weaken the rule*.'[60] [Emphasis added]

A problem inherent in engaging in the assessment of the 'attitude' of a State towards the authoritativeness of the prohibition of the use of force is that it requires an empirical analysis of the role of international law in national decision-making and this requires empirical study of the internal decision-making processes of States.[61] The key complication in this kind of study is that a state is not a unitary actor; state decision-making on the use of force is made up of an array of moving parts, involving politicians and officials. Gray observes for example that within a state 'there may be a wide range of views, even diametrically opposed views, as to the

[59] *Military and Paramilitary Activities in and Against Nicaragua* (Nicaragua v United States of America) (Merits) [1986] ICJ Rep 14.
[60] *Military and Paramilitary Activities in and Against Nicaragua* (Nicaragua v United States of America) (Merits) [1986] ICJ Rep 14, para 186.
[61] Gray (n 12) 27.

content and importance of international law on the use of force within the branches of government or between those branches.'[62] Moreover, access to information on national decision-making is also difficult to gain. It may only be possible to gain access to materials many years after the events in question.[63] Due to these difficulties with empirical investigation into the prohibition's authority how else can one assess the role played by Article 2(4) in controlling state behaviour? One approach is to look to the language used by States to examine how they explain their behaviour and respond to the behaviour of others.

Evaluating the attitude of States to the breach of Article 2(4)

According to the ICJ in the *Nicaragua* case, looking to the language used by States to judge the effect of the State's act upon the rule is a significant factor for determining the rules authority.[64] The Court confirmed that the breach of a recognised rule does not necessarily constitute its repudiation or indicate 'the recognition of a new rule', but rather, what is important is to discern the attitude of States to the breach of the rule. Therefore, implicit in the Court's reasoning, it is necessary to examine not merely the fact of deviation, it is also necessary to examine: (i) the rationalisation and analysis by the breaching state for its acts, i.e.

[62] *Ibid.*

[63] *Ibid*; Gray notes for example 'the role of the law in the UK decision-making process in the 1956 Suez Crisis came to light only thirty years later when the official papers could finally be published. Cf, Gray notes that exceptionally the Report of the Chilcot Inquiry into the UK's role in the 2003 Iraq War was published in a relatively timely fashion after the event (2016) and also includes exceptional detail examining the decision-making process of the UK government.

[64] See also Gray (n 12) 30.

how did the state justify/explain its act? (ii) The response of the international community to the deviant state and its rationalisation.

When examining a State's rationalisation of its breach, consideration is given to whether, by its rationalisation, the errant State is giving articulation to a new rule, or confirming the authority of the present rule. For example, it is often the case that where a State breaches the Charter norms it will go to great lengths to explain that the alleged *prima facie* breach is nothing of the sort and is actually conforming with the existing rule or constituting a lawful exception to the rule, thereby reaffirming the rule. For instance, when one examines the rationalisations presented by NATO and the US, in respect of the uses of force against Federal Republic of Yugoslavia and Iraq, respectively, it is not apparent that the States involved intended their breaches of the Charter to constitute a repudiation of the prohibition of the use of force. In respect of both instances the breaching act was, broadly speaking, rationalised in one, or both, of two ways; in each case the breach was rationalised as either a lawful exception to the rule or was argued to be in conformity with the rule.

The NATO intervention is an interesting case in point. In the *Legality of the Use of Force* case,[65] Belgium, for instance, argued that NATO's use of force in protecting fundamental human rights in Kosovo had not been directed against the 'territorial integrity or political independence' of the Federal Republic of Yugoslavia and thereby did not violate Article 2(4)

[65] *Legality of the Use of Force* case (Yugoslavia v Belgium), Oral Pleadings, CR 99/15 - see translation version - https://www.icj-cij.org/sites/default/files/case-related/105/105-19990510-ORA-02-01-BI.pdf.

of the Charter. Article 2(4), it contended, only prohibits those interventions directed against the territorial integrity or political independence of a state and as the NATO intervention was not directed against either, the use of force was did not violate Article 2(4) of the Charter.[66] On the other hand the UK argued, in a stroke of masterly ambiguity, that the NATO intervention was legal and was 'justified as an exceptional measure to prevent an overwhelming humanitarian catastrophe.' [67] In both cases the rationalisation employed was situated as conforming to the scheme of the rule as either not breaching the rule or constituting a lawful exception to it.

With respect to the invasion of Iraq in 2003, similarly, the *prima facie* violation of the Article 2(4) was rationalised by the States involved in one of two controversial ways: (i) as a collective security measure authorised by the United Nations Security Council. This was controversial because the authorisation to use force was not made explicitly within Security Council resolutions but instead was 'implied' from the language of the resolutions and the understandings developed through Security Council negotiations and meetings dating back to the first Gulf War in 1990.[68] This argument was forcefully relied upon by States supporting the

[66] *Ibid.*

[67] UK Ambassador Jeremy Greenstock, United Nations Security Council 3988th Meeting, 24 March 1999, S/PV.3988, 12.

[68] This method of argument was rather prosaically referred to as the 'golden thread' argument. The starting point of the 'golden thread' was the statement in the preamble of Security Council resolution 1441 (2002) 'recalling' Security Council resolution 678 (1990). This reference to resolution 678 was argued to be recognition within resolution 1441 of the continuing source of authority of resolution 678. Central to the argument was the interpretation of the terms of resolution 678. An important aspect of the argument was the contention that resolution 678 was not limited to the liberation of Kuwait but also included an authority to use 'all necessary means' for the purpose of restoring peace and security in the region. According to Wedgwood, 'the companion terms of Resolution 678 explicitly authorised UN member states to use all

US-led coalition of States that invaded Iraq in 2003.[69] (ii) as an exercise of lawful self-defence.

Prior to its invasion of Iraq, the United States administration argued that it had the right to use

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necessary means for two stated PURPOSES: to expel Iraq from Kuwait and to enforce all "subsequent relevant resolutions."' (Ruth Wedgwood, 'The Fall of Saddam Hussein: Security Council Mandates and Pre-emptive Self-Defence' (2003) 97 *American Journal of International Law* 579) According to which, the falling within that set of subsequent resolutions is Security Council resolution 687 and its attendant obligations.

In response to the view that with the end of the 1991 Gulf War and the adoption of resolution 687, resolution 678 can to an end, it is noted that in furtherance of achieving its objective of the disarmament of Iraq, resolution 687 expressly re-affirmed resolution 678. According to Greenwood, resolution 687 contained nothing that 'expressly (or impliedly) indicated that the [Security] Council either considered that the mandate contained in resolution 678 had been discharged or that it could not be relied upon in the event of Iraq continuing to pose a threat to international peace and security.' (Christopher Greenwood, 'International Law and Pre-emptive Use of Force: Afghanistan, Al-Qaida, and Iraq' (2003) 4 *San Diego International Law Journal* 34) Therefore, with the continued violation of resolution 687's obligations the authority to use force contained in resolution 678 continued to subsist. It was further contended that the authority of both 678 and 687 had not diminished over the passing of time. According to Wedgwood: 'The United Nations never abandoned or suspended the effort to gain compliance… the United Nations was engaged throughout the interval, attempting to obtain Iraqi compliance by diplomatic means, multilateral economic sanctions, and the graduated threat of force.' (Ruth Wedgwood, 'The Fall of Saddam Hussein: Security Council Mandates and Pre-emptive Self-Defence' (2003) 97 *American Journal of International Law* 580) On 8 November 2002 the Security Council adopted resolution 1441 (2002) which contained reference to the continued non-compliance of Iraq with its disarmament obligations. Resolution 1441 re-affirmed that Iraq was in 'material breach' of resolution 687. This according to Greenwood, was sufficient to legitimate the revival of the authority to use force contained in resolution 678. In Wedgwood's view resolution 1441, 'quietly acknowledges the conditional nature of the Gulf-war cease-fire – invoking the Council's 1991 declaration that the "ceasefire would be based on acceptance by Iraq of the provisions of [resolution 687], including obligations on Iraq contained therein."' (Ruth Wedgwood, 'The Fall of Saddam Hussein: Security Council Mandates and Pre-emptive Self-Defence' (2003) 97 *American Journal of International Law* 580) The non-acceptance of such obligations, accordingly, brought into play the authority of resolutions 678.

[69] See for example the published answer of the Attorney General (Lord Goldsmith) in the House of Lords, United Kingdom Parliament, 17 March 2003; see also United Kingdom Parliament Command Paper (CM5785) 'Iraq – UN Documents of early March 2003'.

force against Iraq, in self-defence, due to the perceived threat that Iraq presented to it. This right of 'pre-emption' was initially articulated in a number of high-profile speeches of the President, George W. Bush.[70] It was then given its most forceful presentation in the United States' National Security Strategy, 2002.[71] This policy document laid out the highly controversial legal basis for the right of 'pre-emptive self-defence' as a species of the lawful right of self-defence. With respect to both rationalisations the States involved went to great lengths to argue that their actions conformed with the prohibition of the use of force; being justified as falling within the scope of lawful exceptions to the prohibition contained within the UN Charter and customary international law – that is Security Council authorisation and lawful self-defence.

Moreover, latterly, from the outset of its invasion of Ukraine in February 2022, Russia has adopted a similar approach to rationalising its conduct as lawful, based on the UN Charter. The core of Russia's claim of lawfulness is the right of self-defence, which was made clear in

[70] See for example the 'State of the Union' address of Tuesday 29 January 2002, https://georgewbush-whitehouse.archives.gov/news/releases/2002/01/20020129-11.html [Accessed 18 January 20023]; also in January 2002, President George W. Bush stated, 'We will not hesitate to act alone, if necessary, to exercise out right of self-defence by acting pre-emptively.' The Independent (London) January 31, 2002; see also a speech given by President Bush at West Point Military Academy, in which he stated, 'We must take the battle to the enemy, disrupt his plans and confront the worst threats *before* they emerge. In the world we have entered, the only path to safety is the path of action. And this nation will act. The Independent (London) June 3, 2002.

[71] 'The National Security Strategy of the United States of America', September 17, 2002.

President Vladimir Putin's infamous television address on 24 February 2022.[72] In his address President Putin made explicit reference to the right of Russia to defend its and that the Russian invasion of Ukraine was undertaken 'in accordance with Article 51 (Chapter VII) of the UN Charter'. This rationalisation was reiterated in a letter sent to the UN Security Council informing it of the measures taken by Russia 'in accordance with Article 51 of the Charter of the United Nations in exercise of the right of self-defence' to which the speech of President Putin of the 24 February 2022 was appended.[73] Additionally, Russia's position was further repeated in a submission on 7 March 2022 made to the International Court of Justice setting out its position with regard to the alleged lack of jurisdiction of the Court in the case of *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*.[74] According to this submission, at paragraph 15, Russia's invasion of Ukraine is 'based on the United Nations Charter, its Article 51 and customary international law. The legal basis for the military operation was communicated on 24 February 2022 to the Secretary-General of the United Nations and the United Nations Security Council by the Permanent Representative of the Russian Federation to the United Nations in the form of a notification under Article 51 of the United Nations Charter. The

[72] 'Address by the President of the Russian Federation', 24 February 2022, 0600 hours, Moscow. The Kremlin, http://en.kremlin.ru/events/president/news/67843 [Accessed 28 February 2023].

[73] Letter dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General, UN Doc S/2022/154 (5 March 2022).

[74] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* 'Document (with annexes) from the Russian Federation setting out its position regarding the alleged "lack of jurisdiction" of the Court in the case', ICJ Report, 7 March 2022, https://www.icj-cij.org/sites/default/files/case-related/182/182-20220307-OTH-01-00-EN.pdf.

relevant letter addressed to the UN Secretary-General with the request to circulate it as a document of the UN Security Council forwarded "the address of the President of the Russian Federation H.E. Mr. Vladimir Putin to the citizens of Russia *informing them of the measures taken in accordance with Article 51 of the UN Charter in exercise of the right of self-defense*" (emphasis added).'[75]Russia's direct reliance on the right of self-defence and explicit reference to its actions being based upon the UN Charter and customary international law is a clear, if somewhat paradoxical, indication of the affirmation of the UN Charter norms related to the prohibition of the use of force, even though its actions constitute a *prima facie* breach of the Article 2(4).

Arguably, by attempting to obscure the real nature of its activities (the breach of the rule) behind the rationalisation of its conduct, the deviant state (here read Russia, US, UK, etc), in doing so 'implicitly recognises the authority of the established interpretation and may be signalling a paradoxical desire to maintain it as one that in general (albeit not in the particular case) serves its national interests. [76] Hence, in advancing the implausible claim that its invasion of Ukraine is a matter of self-defence, Russia is clearly recognising the Charter's prohibition of the use of force, except in self-defence, as the controlling norm for its behaviour. Likewise, States 'may claim to be acting within the spirit of the main norm but responding to a novel

[75] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* 'Document (with annexes) from the Russian Federation setting out its position regarding the alleged "lack of jurisdiction" of the Court in the case', ICJ Report, 7 March 2022, paragraph 15, https://www.icj-cij.org/sites/default/files/case-related/182/182-20220307-OTH-01-00-EN.pdf.
[76] Farer (n 49) 622.

scenario, one not fully envisioned in the prevailing interpretation. Hence, it is not really deviating but only clarifying the proper application of the main norm in the unanticipated circumstances.'[77] Arguably this was the case with, certainly some, United States policymakers and academics when providing the legal justification for the United States' invasion of Iraq;[78] and with respect to some NATO States with respect to Kosovo,[79] most notably the UK, who advanced claims of a right of humanitarian intervention,[80]an argument also advanced by Russia with respect to Ukraine.[81] In the context of all three, Kosovo, Iraq and Ukraine, the deviant State(s) made the choice to justify their conduct by appealing to exceptions or justifications contained within the rule itself.[82]

Whilst a State's rationalisation of its act demonstrates *its* attitude to the rule, an important consideration to be taken into account is the reaction of States of the international community

[77] *Ibid.*

[78] See Taft and Buchwald, Legal Adviser and Assistant Legal Adviser, US State Department, 'Pre-emption, Iraq and International Law', (2003) 97 American Journal of International Law 557.

[79] *Legality of the Use of Force* case (Yugoslavia v Belgium), Oral Pleadings, CR 99/15 (n 61).

[80] See for example the position of the United Kingdom Government in the immediate aftermath of the NATO bombings of the Federal Republic of Yugoslavia as expressed by the United Kingdom Ambassador to the United Nations, Jeremy Greenstock. United Nations Security Council 3988th Meeting, 24 March 1999, S/PV.3988, 12.

[81] See Green, Henderson & Ruys (n 2) 20-24

[82] Of course, such behaviour on the part of the deviant State could lead to the charge that a State's act of rationalising its behaviour in this way as being lawful is merely one of opportunism or cynicism on its part. However, in answer to this claim Gray argues that to claim that a State's explanation of their behaviour is merely cynical manipulation of the rules and no more than ex post facto rationalisations for actions decided on other basis, is not tenable in the absence of empirical evidence that this is in fact the case. Gray (n 12) 30.

to the act[s] of the deviant State[s] to determine their attitude to the rule. Third party responses on the interpretation of the rule are an instrumental part of identifying the content and by extension the validity of the rule. Schachter suggests, for instance, '[w]henever a state has recourse to armed force outside of its territory, the legitimacy of that action is appraised by other states, organisations, non-government groups, and individuals.'[83] States thereby have the option of responding to the breach and articulation of the new interpretation of the rule in a number of ways: (i) States can object to the breach and the articulation of the new interpretation or practice. If they do so they are confirming that the deviant state has breached the Charter norms; (ii) States can acquiesce in the new practice. If they do this, then they are effectively joining the deviant state in confirming the breach as a new interpretation or practice.[84]

Taking Russia's invasion of Ukraine as our example, the response of the international community to Russia's explanation of its actions is a clear illustration of States responding as per option (i). The international community immediately rejected Russia's rationalisation of its conduct and condemned it as constituting a flagrant violation of Article 2(4) and repudiated its claims that this amounted to an exercise of lawful self-defence. This was amply demonstrated by the response of both the United Nations Security Council and General Assembly in a number of diplomatic meetings and string of resolutions, formally repudiating Russia's aggression and

[83] Schachter (n 48) 121.

[84] J. Craig Barker, *International Law and International Relations* (New York: Routledge 2000) 63; According to Farer in order to draw a conclusion one must analyse whether 'as a consequence of those deviations, a preponderance of the subjects of international law accept the news of its [the Charter] demise'. Farer (n 49) 622.

violation of Ukraine's sovereignty and territorial integrity.[85] In particular, Security Council draft resolution S/2022/155 (25 February 2022), which was vetoed by Russia, [86] affirmed, *inter alia*, 'the obligation of all States under Art 2 of the United Nations Charter to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations, and to settle their international disputes by peaceful means...'; it condemned Russia's invasion of Ukraine; and deplored 'in the strongest terms the Russian Federation's aggression against Ukraine in violation of Article 2, paragraph 4 of the United Nations Charter'.[87] Moreover, in response to Russia's veto of the Security Council resolution S/2022/155 (25 February 2022), the General Assembly adopted its hugely symbolic resolution in its Eleventh

[85] See for example, Security Council Meeting Record UN Doc S/PV.8970 (21 February 2022); Security Council Meeting Record UN Doc S/PV.8974 (23 February 2022); Security Council Meeting Record UN Doc S/PV.8979 (25 February 2022); Draft resolution S/2022/155 (25 February 2023) vetoed by Russian Federation (11 in favour, 1 against, 3 abstentions); General Assembly Resolution UN Doc A/RES/ES-11/1 (2 March 2022) Supported by 141 states in favour, with 5 against, 35 abstentions; see also Press release of Eleventh Emergency Special Session, 1st & 2nd Meetings (AM & PM), GA/12404 28 February 2022 - https://press.un.org/en/2022/ga12404.doc.htm [Accessed 1 March 2023]; Press release of Eleventh Emergency Special Session, 3rd & 4th Meetings (AM & PM), GA/12406 1 March 2022 - https://press.un.org/en/2022/ga12406.doc.htm [Accessed 1 March 2023]; Press release of Eleventh Emergency Special Session, 5th & 6th Meetings (AM & PM), GA/12407 2 March 2022 - https://press.un.org/en/2022/ga12407.doc.htm [Accessed 2 March 2022]; General Assembly Resolution UN Doc A/RES/ES-11/6 (23 February 2023).

[86] Draft resolution S/2022/155 (25 February 2023) vetoed by Russian Federation (11 in favour, 1 against, 3 abstentions). The draft resolution was submitted by 82 member states of the United Nations; a number of states which in itself demonstrates the degree of hostility in the international community to Russia's actions; repudiation of its claims; and affirmation of the UN Charter norms.

[87] Draft resolution S/2022/155 (25 February 2023).

emergency special session.[88] The Eleventh emergency special session of the General Assembly was convened under the 'Uniting for Peace' procedure,[89] upon the request of the Security Council.[90] Supported by 141 States in favour, with 5 against (Belarus, Democratic People's Republic of Korea, Eritrea, Russian Federation, and Syria) and 35 abstentions the resolution affirmed 'the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations' and recalled 'the obligation of all States under Article 2 of the Charter to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, and to settle their international disputes by peaceful means'. It then went on to condemn Russia's invasion of Ukraine, '*Reaffirming* that no territorial acquisition resulting from the threat or use of force shall be recognized as legal' [emphasis in original]. Along with deploring '*in the strongest terms* the aggression by the Russian Federation against Ukraine in violation of Article 2 (4) of the Charter.' [emphasis in original] Whilst not legally binding General Assembly resolution ES-11/1 is an excellent indicator of the widespread disapproval of Russia's conduct. More particularly, the language of the resolution demonstrates an overwhelming affirmation of the prohibition of the use of force by the international community. Clearly, in the attitude of most States in the international system, Article 2(4) is very much alive.

[88] General Assembly Resolution UN Doc A/RES/ES-11/1 (2 March 2022).

[89] Under the resolution 377A(V), "Uniting for peace", adopted by the General Assembly on 3 November 1950, an "emergency special session" can be convened within 24 hours if requested by the Security Council on the vote of any nine members, or by a majority of the Members of the United Nations. There have been only eleven such sessions since the founding of the United Nations in 1945.

[90] A request was made by the Security Council in resolution 2623 (2022) (27 February 2022).

Conclusion

If not dead, then how is Article 2(4) alive in the face of numerous breaches of its prohibition? As noted earlier, Article 2(4) clearly does not 'stop' States using aggressive force in their international relations – in an ideal world its effect would be to prevent all resorts to force by States; and, although not the subject of this article, non-state actors. Whilst such an ideal world is not ours, the UN Charter's use of force norms is grounded in a centuries-old preoccupation with establishing limits to war and aggression.[91] To begin, no one seriously disputes that wars of territorial expansion and conquest are unlawful under Article 2(4).[92] This is clearly borne out by the response of the international community to Russia's invasion of Ukraine.[93] There is also a more nuanced yet pervasive influence of Article 2(4) that should not be underestimated. This is that the Charter's use of force norms, prohibiting the use of force, except in self-defence or if authorised by the UN Security Council, if not stopping States from using force, do form a part of their calculations in the conduct of their international relations. Take NATO's intervention in the Federal Republic of Yugoslavia, the US-led coalition invasion of Iraq or Russia's invasion oof Ukraine as examples, in each case the Charter's rules imposed a 'high

[91] See generally for example, Marc Weller (ed), The Oxford Handbook of the Use of Force in International Law (Oxford University Press 2015); Yoram Dinstein, War, Aggression and Self-Defence (Cambridge University Press, 6th edn 2017); Christian Henderson, The Use of Force and International Law (Cambridge University Press 2018); Gray (n 12); Dorr & Randelzhoffer (n 9).

[92] Henkin (n 23) 545; Stromseth (n 44) 632; Dorr & Randelzhoffer (n 9) 203.

[93] See General Assembly Resolution UN Doc A/RES/ES-11/1 (2 March 2022).

burden of justification' on the States involved.[94] Arguably, this burden of justification becomes an important factor in the decision-making of States. However Gray offers words of caution here that it would be 'fundamentally misguided to attribute to international law an exclusive role in controlling States behaviour.'[95] She goes on to say, 'As in the national sphere, legal rules are only one among a variety of factors that may influence behaviour.'[96] So what role do the Charter norms have in controlling state behaviour? Maybe the best that can be hoped for is that whilst the law regulating the use of force by States 'may not yield a simple black-or-white answer, it can quite powerfully 'orient deliberation' and 'guide within broad limits' the decisions of States.[97] It is clear from States' justifications/rationalisations of their actions when employing force that there is recognition by States that they cannot claim a right to use force for any reason; States understand that they must explain and justify their behaviour in relation to the Charter's use of force norms and also to the international community.[98]

[94] Stromseth (n 44) 632; Henkin (n 23) 545; See earlier discussion of justifications/rationalisations provided by states involved.
[95] Gray (n 12) 27.
[96] *Ibid.*
[97] Stromseth (n 44) 632.
[98] *Ibid*