

TERRORISM & COLLECTIVE SECURITY

LAWRENCE L. HERMAN ©

Cassels Brock & Blackwell LLP

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There is no question that morally and politically the U.S. and its allies have a right to respond to the recent attacks on American territory.

Principles of international law often (and regrettably) take a back seat to the way nations behave. But in this situation, international law fully supports both individual and collective action against the perpetrators of these acts.

Legally speaking, the Security Council has a role in this matter. Article 39 of the Charter says,

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

Note the wording. The Security Council can act in cases where there is “any” threat to the peace or breach of the peace. The Charter, which is binding on U.N. members, doesn’t just apply in cases where one State acts against another. The term “threat to the peace” or “breach of the peace” covers terrorist acts as much as State aggression of the kind initiated by Iraq leading to the Gulf War.

This does not mean that the world must wait for Security Council to act or, even if it does, that it has the only role. Independent of the Security Council, and indeed of the

U.N. at large, States have the inherent right in international law to take action collectively to deal with threats to international peace and security and to their own sovereignty.

Article 51 of the U.N. Charter says that nothing in the Charter “shall impair the *inherent right* of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security”.

The notion of individual and collective security is a fundamental principle of international law, quite apart from what the Security Council can or will do under the U.N. Charter. Article 51 codifies that rule. It recognizes that individual and collective self defense is an “inherent right”.

Much has been heard in the present crisis about Article 5 of the North Atlantic Treaty. That provision that sanctions collective action by NATO member States. Article 5 says,

The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence *recognised by Article 51 of the Charter of the United Nations*, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.

Article 5 goes on to say that any collective measures by NATO shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.”

The only issue that may arise here in the interplay between the North Atlantic Treaty and the U.N. Charter is whether action by the U.S. and its allies at some point must give way to actions mandated by the Security Council.

Practically, this won't happen. Any resolution adopted by the Security Council will almost certainly confirm the course of action initiated by the U.S. and its allies (developing as a broad-based global coalition of States) to hunt down and, where possible, to destroy the terrorist organizations responsible.

Importantly, the doctrine of necessity in international law applies in the present circumstances. That doctrine, part of the inherent right of State security, allows States the right to take actions to protect themselves, individually and collectively, in cases of immediate and grave threats to peace and security and to their own sovereignty.

Necessity has been often abused as a means of justifying all kinds of aggressive behavior. In the present crisis, provided that the response is proportional, it would seem that this doctrine can fully support action by the U.S. and its allies to deal with the continuing terrorist threat to its own land and to the international peace and security of the world at large.

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