

## ABSTRACT

Title of Document: IN THE COURT OF WORLD OPINION:  
INTERNATIONAL LAW ON THE USE OF  
FORCE AND CRISIS ESCALATION

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In this dissertation, I examine how international law on the use of force influences the behavior of leaders in international crises. I argue that leaders are less likely to escalate militarily in international crises when the Charter of the United Nations and related legal principles prohibit the use of force compared to when international law allows for the right of self-defense. I argue that international law can constrain crisis actors from employing the large-scale use of force by facilitating the dynamics of reciprocity in crisis-bargaining. Crisis actors who act in accordance with international law can expect to receive greater international support, while actors that violate the law can expect to obtain less support. International law therefore promotes the peaceful resolution of international crises because actors with the support of third parties can credibly signal their intent to employ the use of force in self-defense and deter their adversaries from engaging in the aggressive and illegal use of force in the first place. I find strong support for my theoretical argument using both quantitative

and qualitative methods. Using an original dataset on international law on the use of force in international crises from 1946-2005, I find that leaders are less likely to escalate militarily when international law prohibits the use of force than when they have a right to use force. I also find that intergovernmental organizations are more likely to support leaders who have the right to use force, providing support for the underlying causal mechanism in my argument. Finally, I present a case study of the Cuban Missile Crisis and find that international law contributed to President Kennedy's decision to implement the blockade, instead of employing air strikes against Cuba.

IN THE COURT OF WORLD OPINION: INTERNATIONAL LAW  
ON THE USE OF FORCE AND CRISIS ESCALATION

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# Dedication

For My Mom and Dad

## Acknowledgements

A successful dissertation requires a tremendous amount of work, and a tremendous amount of help (and patience) from advisers, friends, and family members. My dissertation is no different, as I have many people to thank for helping me complete this journey.

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## **Chapter 1: Introduction**

*The US believes that international law plays an indispensable role  
in the world on countless issues, including the use of force.*

*-Abraham Sofaer  
Legal Advisor, President Reagan*

### **Introduction**

On June 25, 1945, representatives from 50 countries met at the United Nations Conference on International Organization in San Francisco to vote on the final draft of the Charter of the United Nations. The significance of the day was not lost on the attendees. As Lord Halifax, the United Kingdom's delegate to the San Francisco Conference, said, "This issue upon which we are about to vote is as important as any we shall ever vote in our lifetime."<sup>1</sup> The diplomats approved the Charter in a unanimous vote the following day; it officially entered into force on October 24, 1945 after the five leading powers - the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom, and the United States - and a majority of the other signatories had ratified it. Today, 193 countries have ratified the Charter and are bound by its legal obligations.

The establishment of the Charter is widely recognized as a pivotal moment in the modern history of the international system. For the first time in history, leaders

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<sup>1</sup> [http://www.un.org/en/aboutun/history/sanfrancisco\\_conference.shtml](http://www.un.org/en/aboutun/history/sanfrancisco_conference.shtml).

and other international actors agreed to a general prohibition on the use of force in their international relations, with only two exceptions: the right to self-defense and authorization by the newly created United Nations Security Council (UNSC). Indeed, the Charter and related legal principles on the use of force continue to make up the normative foundation of the post-World War II era. As the eminent legal scholar Louis Henkin (1989, 38) argues, “The Charter remains the authoritative statement on the law on the use of force: It is the principal norm of international law of this century.”

Despite the significance attributed to the Charter and related legal principles by many policymakers and international lawyers, there exists very little systematic knowledge on the effectiveness of this body of law. Legal scholars, for instance, have produced a substantial literature on the legality of using force, but have failed to adequately address why leaders comply with it. At the same time, political scientists with few exceptions overlook and often dismiss the constraints imposed by the legal principles related to the use of force, despite the increased focus in the literature on the role of international law in security-related disputes.

In my dissertation, I address this lacuna and investigate whether this body of law can influence the behavior of leaders in international crises. I conduct a systematic study on the effectiveness of international law by examining how it alters the decision of leaders to escalate international crises with the large-scale use of force from 1946-2005.<sup>2</sup> I develop a theory that I call institutional reciprocity to explain how

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<sup>2</sup> I use the terms UN Charter, international law on the use force, and international law interchangeably in this dissertation. While I recognize that the other sources of international law, such as customary international law and international courts have modified the Charter, I vary the terms simply for stylistic purposes.

the legal principles related to the use of force can promote the peaceful resolution of international crises. Using an original dataset on international law on the use of force and case studies, I find strong statistical and substantive support for my theoretical argument on how the law can serve as an effective constraint on leaders in times of crises.

### **Compliance Puzzle**

Compliance with international law including the legal principles related to the use of force has long puzzled legal scholars and political scientists. The international legal system lacks overt enforcement mechanisms, such as those that exist in the domestic arena, and actors often have short-term incentives to renege on agreements even if compliance was initially in their interests. As Keohane (1984:99) puts it, “The puzzle of compliance is why governments, seeking to promote their own interests, ever comply with rules.”

Many researchers simply reject the effectiveness of international law, given that it is a primitive system of laws that lacks centralized enforcement mechanisms. Some of these scholars argue that international law has little impact on state behavior, especially in the security realm (e.g., Goldsmith and Posner 2005; Mearsheimer 1994; Waltz 1979). Other skeptics argue that the law often reflects the interests of the most powerful states, and therefore it has no independent effect on state behavior. As Morgenthau (1967:3) states, “the actions of states are determined not by moral principles and legal commitments but by considerations of interest and power. Moral principles and legal commitments may be invoked to justify a policy arrived at by

other grounds, but they do not determine the choice among different courses of action.”

Many legal scholars and in recent years an increasing number of political scientists have called into question realist claims about the futility of international law. While proponents of the law have put forward a diverse set of arguments, the one common theme among them is that international law can influence the behavior of governments. Several notable legal scholars and political scientists working in the normative tradition and relying largely on the logic of appropriateness argue that leaders and other actors comply with international law because of the legitimacy associated with it. They argue that the legitimacy of the law engenders a sense of legal obligation that induces states to comply with it.

Other researchers working in the rationalist tradition agree with normative scholars that the law matters, but they disagree on the reasons why. Similar to the skeptics, they accept that actors are self-interested, yet they argue that compliance with the law can be in the interests of states. Drawing on insights of international relations scholars working in the cooperation literature, these researchers argue that enforcement mechanisms, such as reciprocity, reputation, and coercion can help enforce compliance with international law (e.g., Abbott and Snidal 2000; Keohane 1984; Huth et al. 2011, 2012; Morrow 2007; Simmons 1998, 2010).

A growing body of empirical evidence supports the position taken by the proponents of international law. Several scholars have found that states comply with legal principles related to economic and environmental issues (e.g., Busch & Reinhardt 2003; Goldstein et al. 2007; Mitchell 1994; Simmons 2000). More recently,

scholars have found that international law can constrain governments even in the security sphere. Huth et al. (2011, 2012) find in a series of articles that when the legal principles related to title to territory serve as a focal point, the law both promotes the peaceful resolution of territorial disputes and reduces the resort to force. Legro (1995, 1996) and Morrow (2007) find that states often comply with the legal rules related to the conduct of hostilities during war. Likewise, Leeds and Savun (2007) find that governments generally comply with alliance agreements during war. Finally, Simmons (2009) has recently found that the law has led to better human rights practices domestically.

While scholars studying international law compliance have made important progress in recent years, the literature still suffers from three major problems regarding international law on the use of force. First, despite the burgeoning literature on the role of the law in security-related disputes, political scientists, as noted, continue to overlook and for the most part dismiss the constraints imposed by the Charter and related legal principles. This is a consequential omission, given the widespread importance of this body of law among many policymakers and legal scholars.

Second, while legal scholars have produced a few studies on compliance with this body of law, they all suffer from important research design problems. Most importantly, legal scholars restrict their empirical studies to use of force cases only. This is problematic as it produces a biased sample that limits the inferences that can be made about how international law alters the decision to use force. Focusing only on cases in which force was used makes it impossible to assess how the law



influences the decision to employ force in the first place. The effectiveness of international law therefore should be assessed by how it alters the decision-making of leaders in crises that include both use of force and non-use of force cases.

Third, existing research suffers from important theoretical problems. Rationalists criticize the normative scholars for assuming that leaders largely comply with international law, arguing that the legitimacy of the law as a constant cannot explain the variable nature of compliance. At the same time, normative scholars argue that leaders often comply with international law even in the absence of rationalist enforcement mechanisms. The extant literature, therefore, is unable to fully explain why states comply with the law.

### **Theoretical Framework**

In my dissertation, I overcome the limitations in the extant literature by integrating and ultimately extending recent theoretical and empirical advances made in both the rationalist and normative frameworks to develop a theoretical framework that explains why governments comply with international law on the use of force in the absence of overt enforcement mechanisms. The theory that I develop, institutional reciprocity, explains how international law on the use of force promotes the peaceful resolution of international crises by altering the dynamics of reciprocity in crisis-bargaining.

I argue that international law facilitates the reciprocal use of force in international crises by influencing the support of third parties (i.e. states and intergovernmental organizations) and consequently the payoffs for using force. The

law serves as a “bright-line” that establishes what type of behavior is appropriate in world politics (Morrow 2007). International law on the use of force in particular legalizes and in large part institutionalizes the reciprocal use of force in self-defense. It informs international actors that the aggressive use of force is unacceptable and the right to use force in self-defense is acceptable. As a result, third parties are more likely to support crisis actors with the right to self-defense and withhold support from leaders who violate international law on the use of force.

Third parties can then alter the dynamics of reciprocity in international crises. Greater third party support for the use of force in self-defense and the corresponding lower third party support for the aggressive use of force helps crisis actors commit to the reciprocal use of force in self-defense and deter states from violating international law on the use of force. Consequently, crisis actors can enforce cooperation with international law by employing the reciprocal use of force in self-defense and reducing the payoffs for states that engage in the aggressive and illegal use of force. Based on this logic, I hypothesize that leaders are less likely to escalate militarily when the law prohibits it compared to when they have a right of self-defense.

### **Empirical Findings**

I employ both quantitative and qualitative methods to assess my theoretical expectations on the effectiveness of international law on the use of force. First, I test my theoretical argument on an original dataset on international law on the use of force from 1946-2005. I assess how the legal prohibition on the use of force influences the decision of leaders to employ the large-scale use of force in

international crises. I find strong statistical and substantive support for my hypothesis across a multitude of statistical estimators and alternative research designs. Simply, leaders are less likely to escalate militarily when the law prohibits the use of force compared to when the law permits the right to use force.

Second, I use both quantitative and qualitative evidence to test the underlying causal mechanism in my argument on the behavior of third parties. Statistical tests on international crises from 1945-2006 indicate that intergovernmental organizations (IGOs) as proxies of third parties respond in a manner consistent with my argument. IGOs are more likely to support crisis actors that have the right of self-defense compared to actors that are without the right to use force legally. Additional statistical tests using the related legal concept of aggression produce similar results; IGOs are less likely to support actors that commit aggression than states that have refrained from doing so.

Anecdotal evidence on the behavior of third parties in the 1991 and 2003 Iraq Wars provides additional support for my argument on third parties. While security concerns, of course, played a role in the first Gulf War, primary and secondary sources also indicate that the legality of using force against Iraq contributed to the decision of many states in the international community to support the US-led operation to liberate Kuwait from Iraq. In contrast, the historical record also shows that although many states had reservations about the security implications of invading Iraq, they also withheld support in 2003 in part because the United States and her allies had no legal right to use force against Iraq.

Finally, I present a case study of how international law on the use of force contributed to President Kennedy's decision-making during the Cuban Missile Crisis. The case study focuses on how the law influenced the two primary policy options in this crisis, air strikes against the missile sites in Cuba and the naval blockade. Case evidence including several quotes from President Kennedy and his top advisers indicate that international law influenced their thinking during this crisis. US officials believed that the illegal use of force against Cuba would result in lower international support, while the OAS-approved blockade would engender greater support from friends and allies. The greater support for the blockade led in part to Washington's decision to implement it instead of employing airstrikes.

### **Contributions**

In this dissertation, I make at least four important contributions to the legal and international relations literatures. Most importantly, I find that international law on the use of force can serve as an effective constraint on the behavior of leaders in international crises. This finding overturns the conventional wisdom among many international relations scholars that reject the effectiveness of this body of law, advancing the literatures on both crisis escalation and international law compliance.<sup>3</sup> The results also provide support for legal scholars who espouse the importance of this body of law, yet lack systematic empirical evidence to support their claims.

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<sup>3</sup> To be clear, I am not arguing that the law is more important than traditional explanations of conflict escalation, such as military power and domestic politics, but rather that the legal principles related to the use of force can also contribute to our understanding of conflict processes. In other words, the law complements existing explanations, as opposed to replacing them.

Second, I identify the foundation for international law's authority in world politics. In particular, I explain how the process of law-making establishes international law as a legitimate source of information in world politics. Doing so represents an important contribution since this insight can be applied to other areas of world politics, including other security concerns and even economic relations.

Third, I overcome the limitations of existing theories on international law that restrict their focus to either rationalist or normative arguments by developing a theory on the effectiveness of international law that integrates both approaches. I demonstrate, consistent with the normative framework, that the UN Charter and related legal principles establish standards of appropriate behavior for using force in world politics and how this shapes the incentives of leaders in international crises. In so doing, I contribute to recent trends in the compliance literature that also integrates normative and rationalist approaches (e.g., Kelley 2007; Morrow 2007; Simmons 2009).

Fourth, I develop an innovative research design that avoids many of the limitations in existing empirical research on international law compliance. First, by studying crisis escalation, I focus on the effectiveness of international law instead of compliance with it.<sup>4</sup> Importantly, this allows me to incorporate my work into the conflict literature and address more directly how the influence of international law on crisis-behavior compares to the other explanations for crisis escalation. Second, since all UN member states are obligated to comply with the Charter, my study avoids the problems of selection effects that can create inference problems for analysts (e.g.,

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<sup>4</sup> For stylistic purposes, I use effectiveness and compliance interchangeably in this dissertation.

Downs et al. 1996, von Stein 2005, Simmons and Hopkins 2005). We can therefore have greater confidence that complying with international law is about cooperation instead of states selecting into low-levels of compliance.<sup>5</sup> Finally, my research on the Charter and related sources of legal principles (i.e., customary international law, courts, etc) expands upon the almost singular focus of political scientists on treaty law.

### **Plan of Dissertation**

The rest of this dissertation consists of six chapters. In Chapter 2, I briefly review the Charter and the related legal principles that make up this body of law. The purpose of this chapter is to provide readers with a basic knowledge of this body of law to ensure that readers fully understand the context for my theoretical framework and empirical analyses. In Chapter 3, I review both the political science and legal literatures on international law compliance. In so doing, I focus on the normative and rationalist divide that exists in the literature. Consistent with recent efforts, I find that the leading arguments are problematic and that it is necessary to integrate them in order to overcome their limitations. Finally, I present my theoretical argument on the effectiveness of international law on the use of force.

In Chapters 4-6, I present my empirical evidence with two chapters using quantitative evidence and one chapter with qualitative evidence. In Chapter 4, I test my theoretical expectations on an original dataset on international law on the use of

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<sup>5</sup> I recognize that selection effects may impact my analysis in other ways. For instance, it is likely that the decision to initiate a crisis is related to the escalatory behavior of a leader once in the crisis, the focus of my analysis. I address this in more detail in my research design section below, and conclude that selection bias does not weaken my central finding that law is an effective constraint on leaders.

force, in which I code the legality of using force for over 900 crisis actors. In particular, I examine the relationship between the prohibition on the use of force and patterns of escalation in international crises from 1945-2006. In a series of statistical analyses, I find strong support for my theoretical expectations: leaders are at least 45% less likely to escalate militarily in a crisis when international law prohibits the use of force than when leaders have a legal right to use force. In Chapter 5, I assess whether the United Nations and regional multilateral security organizations are more likely to support states that have the right of self-defense and less likely to support states that have committed aggression. I find that IGOs are at least 38% more likely to support states that have the right to use force.

In Chapter 6, I present a case study of the Cuban Missile Crisis; the historical record indicates that international law contributed to President Kennedy's decision to impose the blockade instead of employing air strikes against the missile sites in Cuba. Finally, I conclude with the implications of this dissertation, policy recommendations, and plans for future research.

## **Chapter 2: The Charter System**

### **Introduction**

In this chapter, I briefly review international law on the use of force. I first introduce the sources of international law, review the Charter of the United Nations, and then discuss the other legal principles that regulate the use of force. In so doing, I put forward my interpretation and understanding of this body of law based on my extensive reading of the legal literature. My purpose is simply to introduce international law on the use of force to help readers better understand the legal principles that make up the body of law under consideration in this dissertation.<sup>6</sup>

### **Sources of International Law**

According to the International Court of Justice (ICJ) statute 38 (1), there are four primary sources of international law: 1) International conventions and treaties, 2) Customary international law, 3) General principles of international law 4) International judicial decisions, and the legal writings of highly qualified scholars. The first three sources are the primary sources of international law and follow a hierarchy in terms of their importance, while the fourth is considered a subsidiary source (Brownlie 1999). Primary sources of international law create and contribute to the development of international law, while subsidiary laws are designed to help

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<sup>6</sup>My intent it not too put forward a comprehensive review of the literature on international law on the use of force. There is an extensive and at times contentious legal literature on this area of law that is beyond the scope of this chapter. For a more comprehensive review of this body of law, see Arend and Beck 1993; Dinstein 2005; Gray 2008; Ruys 2010.



interpret the law. The legal principles related to the use of force draw heavily upon all four sources of international law. I briefly describe each source below.

First, international conventions and treaties make up one of the leading sources on international law, and are widely recognized as the primary source of law today (e.g., Akehurst 1987; Brownlie 2008; Murphy 2006; Scott 2010; Shaw 2008). According to the Article 2.1 (a) of the 1969 Vienna Convention on the Law of Treaties, a treaty is defined as, “an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments.” Signatories (and in many cases ratifiers) are bound by the obligations contained in the respective treaty. Examples of treaties include Peace Treaties, Border Treaties, Extradition Treaties, and Treaties of Friendship.

Second, customary international law makes up the second most important source of international law (e.g., Akehurst 1987; Brownlie 2008; Murphy 2006; Scott 2010; Shaw 2008). This source of law develops through the widespread practice of states. Legal principles must satisfy two criteria to be considered customary international law: 1) state practice must be consistent and uniform in usage and 2) state practice must be based on a sense of legal obligation (*opinio juris*). All states are bound by the rules and regulations that are considered to be customary international law. The 1948 Universal Declaration on Human Rights is widely recognized as customary international law.

Third, general principles of law make up the third source of international law (e.g., Akehurst 1987; Brownlie 2008; Murphy 2006; Scott 2010; Shaw 2008). This

source consists of principles that are common to almost all domestic legal systems or at least types of legal systems (i.e. Civil, Common, and Islamic) in the world.

Examples include principles such as the binding nature of agreements, or principles of procedural fairness before a court of law.

Fourth, the decisions of courts and tribunals and legal scholars make up the final source of international law (e.g., Akehurst 1987; Brownlie 2008; Murphy 2006; Scott 2010; Shaw 2008). As noted above, these two sources are secondary sources that clarify existing laws through their decisions and writings, rather than create new laws. The decisions made by the ICJ have had a major impact on the development of international law on the use of force.

### **Charter of the United Nations**

The Charter consists of a preamble and 19 chapters on the maintenance of peace and security in the post-World War II era. In particular, it includes chapters on United Nations Purposes and Principles, Membership, Organs, Pacific Settlement of Disputes, Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression, International Economic Cooperation, and Non-Self-Governing Territories. The Charter's legal obligations are paramount and supersede the obligations contained in all other treaties.

Most importantly, the Charter of the United Nations also serves as the primary source of law regulating the use of force in world politics. Specifically, it consists of a legal prohibition on the use of force (Article 2(4)) along with two exceptions (Article 51 and Articles 39, 41, and 42).

The prohibition on the use of force is:

*Article 2(4):*

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

The first exception is:

*Article 51:*

Nothing in the present Charter shall impair the inherent right of collective or individual self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by members in exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

The second exception is:

*Article 39*

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.

*Article 41*

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

*Article 42*

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 2(4) prohibits the threat of or use of force, while Article 51 and Articles 39, 41, and 42 allow for the right to individual and collective self-defense in response to an armed attack and they permit the Security Council to authorize the use of force,

respectively. Taken together, the Charter attempts to completely outlaw the aggressive use of force in world politics.<sup>7</sup> As one US delegate to the 1945 San Francisco Conference claimed, “the intention of the authors of the original text was to state in the broadest terms an absolute all inclusive prohibition; ... there should be no loopholes” (Brownlie 1991, 268).

While the Charter is the primary source of law in this area, there are several additional principles from the other sources of international law that help interpret the Charter and in many cases expand upon its general prohibition on the use of force. The ICJ, for instance, in the well-known Nicaragua case that I describe below made clear that customary international law exists alongside the Charter (Nicaragua v. United States 1986, ICJ Report 14). In addition, the ICJ in the same case also ruled that the Charter provisions are dynamic rather than fixed and thus capable of change over time through state practice. As a result, international law on the use of force is far more complex and varied than the simple right to self-defense if an armed attack occurs. Given this, I believe that it would be helpful to review some of the key legal principles in this area of law.

### **Additional Legal Principles**

Scholars, leaders, and other international and domestic actors have all turned to the other sources of international law to help clarify the legal rules related to the use of force. Based on my extensive reading of the legal scholarship (e.g., Alexandrov 1996; Arend and Beck 1993; Dinstein 2005; Franck 1990, 2002; Gray 2008; O’Connell

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<sup>7</sup>There are several, other (and perhaps) more minor rules that state must follow in order to use force in self-defense, such as reporting the right of self-defense to the United Nations. For the sake of brevity in this chapter, I focus on the major principles on using force.

2001; Ruys 2010). I believe that nine principles represent the core of international law on the use of force: 1) scale and effects, 2) necessity and proportionality, 3) location of the attack, 4) anticipatory self-defense, 5) protection of nationals, 6) non-state actors and the extra-territorial use of force, 7) interventions, 8) collective security, and 9) collective self-defense. The first three principles (scale and effects, necessity, proportionality, and immediacy, and location) help interpret the Charter, the next four principles (anticipatory self-defense, protection of nationals, non-state actors, and interventions) exist alongside the Charter, while the latter two help to clarify the collective security system and the right of collective self-defense.

### **Scale and Effects**

The first principle concerns the magnitude of the initial attack that is necessary to trigger the right of self-defense. The Charter's prohibition on the use of force as stated in Article 2 (4) amounts to a comprehensive ban on the use of force. The Charter, however, only permits the collective or individual right of self-defense in response to an *armed attack* (Article 51). Thus, the framers used different language when describing the prohibition on the use of force and the right of self-defense. The decision to use the language "armed attack" instead of more general words, such as the use of force or even aggression suggests that there is a gap between what the Charter prohibits (use of force) and when the Charter permits the right of self-defense (*armed attack*).

Scholars debate about whether this gap is consequential. The central disagreement is about whether the initial use of force must reach above a certain

threshold to trigger the right of self-defense. Some argue that states always have the right of self-defense in response to the use of force, regardless of the magnitude of the level of force used in the initial attack (Wilmshurst 2006). In other words, they argue that a threshold does not exist. In contrast, others argue that the gap is meaningful. These scholars maintain that the gap implies that governments only have the right of self-defense when the initial attack is above some minimal threshold.<sup>8</sup>

In this dissertation, I side with the majority of legal scholars that argue that the gap is meaningful. As such, I move forward with the interpretation that the attack must be of sufficient gravity to qualify as an armed attack and trigger the right of self-defense. Specifically, the use of force must result in or have the intention to cause casualties or significant property damage. Thus, minor border incidents that do not cause casualties or property damage do not permit the right of self-defense. Scholars who hold the majority opinion cite two primary sources of international law that provide evidence to support their position: 1) the Definition of Aggression and its *travaux* (preparatory works) 2) the ICJ's decision in Nicaragua vs. the United States that was later confirmed by the ICJ in several of its other decisions.

First, in 1975, the United Nations General Assembly passed the Definition of Aggression. The purpose of the resolution was to help the international community identify what acts could be understood as either aggression, an armed attack, and so forth. While the international community struggled with precise definitions, the *travaux* and the resolution itself provide some guidance on this matter. As Ruys (2011) argues, the drafting of the resolution indicates that governments generally

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<sup>8</sup> Moreover, coercive measures short of the use of force, such as economic sanctions do not constitute an armed attack.

believe that the use of force can fit into three distinct categories based on the magnitude of force used: 1) the use of force, 2) aggression, and 3) armed attack. The implication of this is that while all three types of force are illegal and aggression constitutes an international crime, only the third category allows for the right of self-defense.

Furthermore, Article 2 of the Definition of Aggression specifically states that some use of force may not be of sufficient gravity. Other articles also distinguish between different levels of force. Article 3, for instance, specifically refers to conduct of particular gravity, such as an invasion by armed forces. The Definition of Aggression, therefore, suggests that there is a distinction between frontier or other minor incidents and armed attacks.

Second, the International Court of Justice's decision in the case brought by Nicaragua against the United States in 1984 provides strong evidence in favor of the threshold argument. The well-known Nicaragua case is one of the most important cases on the use of force. In short, the case concerned the legality of the US's decision to support the contras and use force to help destabilize the Sandinista government in Nicaragua. The US argued that it had the right to use force against Nicaragua based on the principle of collective self-defense on behalf of El Salvador. They claimed that Nicaragua engaged in an armed attack against El Salvador by supporting rebels that were trying to overthrow the El Salvadorian regime.

The ICJ decided in favor of Nicaragua for four primary reasons 1) no evidence of an armed attack by Nicaragua, 2) El Salvador did not request the help of the United States, 3) insufficient evidence that the Nicaragua dispatched troops to

fight in El Salvador, and 4) US was permitted to assist El Salvador domestically based on collective self-defense, but she could not use force in collective self-defense outside of El Salvador's borders. In other words, the ICJ rejected the US position that Nicaragua's support for the rebels fighting the El Salvadorian government amounted to an armed attack that provided the US with the right of collective self-defense.

More specifically, based on both the Definition of Aggression and customary international law, the ICJ ruled that the supply of arms and other forms of assistance to armed bands could not be considered an armed attack. At the same time, the Court acknowledged that a state could be culpable for an armed attack if they directly sent the armed groups on their behalf.<sup>9</sup> As the Court declared, "the court sees no reason to deny that, in customary law, the prohibition of armed attacks may apply to the sending by a state of armed bands to the territory of another state, if such an operation, because of its scale and effects, would have been classified as an armed attack rather than as a mere frontier incident had it been carried out by regular armed forces" (Nicaragua Case, ICJ Reports 1986, 103-104). Thus, the ICJ distinguished between less grave forms of force (e.g. frontier incidents) and grave forms of force (armed attack), and it explicitly acknowledged that a gap exists and consequently appeared to confirm that there is a difference between aggression and an armed attack. Most legal scholars now accept that the Nicaragua case established that there is a minimal threshold for an attack to be considered an armed attack.<sup>10</sup>

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<sup>9</sup> I discuss in greater detail below the specific legal principles related to state support for non-state actors.

<sup>10</sup> The ICJ affirmed the threshold criteria in several cases, such as the Oil Platforms Case (US v Iran) and the DRC v. Uganda.



While the ICJ decision has been widely criticized on the distinction between large- and small-scale attacks, it is consistent with customary international law that the use of force must cross a certain threshold to be considered an armed attack (Gray 2008). Even the eminent legal scholar Yoram Dinstein (2005, 174), one of the leading critics of the Nicaragua decision, accepts that “an armed attack postulates a use of force causing human casualties and/or serious destruction of property...when recourse to force does not engender such results, Article 51 does not apply.”<sup>11</sup>

The ruling made by the Ethiopia-Eritrea Claims Commission as part of the Permanent Court of Arbitration provides a useful example of the threshold requirement (Gray 2008). In this case, both parties disagreed on who started the 1998-2000 war, and consequently disagreed on what party should be held responsible for the damage inflicted during the conflict. Eritrea justified its use major use of force by claiming the right of self-defense in response to Ethiopia’s illegal occupation of its territory, and that they were only responding to Ethiopia’s prior use of force. Ethiopia claimed, in contrast, that the several border incidents that took place between the combatants did not constitute an armed attack, and therefore did not provide Eritrea with the right to employ the large-scale use of force in self-defense. The Arbitration panel rejected the claims made by Eritrea by deciding that the minor incidents initiated by Ethiopia were geographically limited clashes between the adversaries that did not reach the magnitude of an armed attack. Gray (2008) argues that the Court’s decision affirms the gravity condition.

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<sup>11</sup> To be clear, I do not intend to imply that the use of force short of major war does not allow for self-defense. Only that minor border incidents and the like do not allow for a legal right to use force. There are many crises in which cross-border incursions and shelling lasted over a period of several days that allow for the right to self-defense.

In sum, several sources of international law (i.e. customary international law, ICJ decisions in several cases, the Definition of Aggression, etc) all indicate that an attack must be above a certain threshold to amount to an armed attack and trigger the right of self-defense. It is, however, also important to note that this gravity threshold should be set relatively low, as several scholars argue that customary international law also indicates that the minimum threshold required for an armed attack should be interpreted flexibly and it should not be set too high. Thus, we can conclude that while there is a gap between Article 2(4) and Article 51, the difference between the two is relatively narrow and for the most part it only precludes minor border incidents that fail to result in casualties and significant property damage from triggering the right of self-defense.

### **Accumulation of Events**

The above section established that small scale attacks do not permit the right of self-defense. Several commentators argue, however, that there exists a partial exception to this rule, the accumulation of events doctrine (e.g., Blum 1976; Bowett 1972; Dinstein 2005, 202, 230-231; Ruys 2010, 168-169).<sup>12</sup> This principle involves the right to use force in self-defense in response to repeated attacks that are linked in time, source, and cause. In particular, scholars argue that it is widely accepted in customary international law that states may have the right of self-defense in response to a series of repeated minor attacks and/or incidents, even if each individual attack is below the required threshold. In this way, a state can legally use force when it is the

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<sup>12</sup> This issue is especially relevant to attacks from non-state actors. I discuss this in greater detail below.

victim of a series of repeated patterns that in totality amount to an armed attack. Several states have justified the use of force based on this principle; for example, Israel has claimed this right on a regular basis in response to terrorist attacks (i.e., UN Doc. S/2003/976), Lebanon in response to Israeli violations (UN Doc. S/2003/148), Iraq in response to US/UK air strikes (UN Doc. 2/2001370), and Russia in response to sorties from Georgia (UN Doc. S/2002/1012).

The ICJ case *Cameroon vs. Nigeria* provides a useful example of the accumulation of events doctrine (*Cameroon vs. Nigeria*, ICJ Reports 2002). For years, Cameroon and Nigeria were involved in a territorial dispute over their mutual claims of sovereignty to the Bakassi Islands and other nearby islands. As part of the ICJ case, Cameroon blamed Nigeria for several border incidents that took place between the adversaries and requested that the ICJ make a ruling on the attacks. Cameroon also requested that the court consider the incidents collectively, as opposed to rule on each individual attack. Cameroon claimed that they had the right of self-defense because the repeated nature of the small scale attacks amounted to an armed attack, even if each individual attack failed to cross the armed attack threshold. Gray (2008) argues that Cameroon's behavior clearly indicates evidence of the accumulation of events doctrine in customary international law.<sup>13</sup>

In sum, several scholars note that this doctrine holds widespread support in customary international law and that the accumulation of events allows for the right of self-defense in response to a series of attacks.<sup>14</sup>

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<sup>13</sup> The ICJ ruled that the disputed territory belonged to Cameroon.

<sup>14</sup> At the same time, it is important to note that the evidence is not entirely unequivocal. South Africa, Portugal, and Israel have frequently claimed this right and have been largely

## **Intention**

A related legal principle concerns the intent of the state using force. Several sources of law indicate a government can only use force in self-defense when they are the victim of a hostile act or the deliberate use of force. In other words, states do not have the right to use force when the initial attack was an accident or if they were not otherwise intentionally targeted.

In the Oil Platforms case (Iran vs. US), the ICJ affirmed the necessity of intent for determining whether a states has the right to self-defense (e.g., Dinstein 2005, 209-210; Gray 2008, 151-154; Gazzini 2005). In this case, the US used force against Iran in response to two previous militarized incidents. First, an Iranian missile hit the Kuwait tanker, the Sea Isle City, which had been re-flagged as a U.S. vessel. Second, the U.S. frigate Samuel B. Roberts hit a mine in international waters near Bahrain. The US claimed that the attacks amounted to an armed attack by Iran and, therefore, they had a right to self-defense against Iran. The ICJ rejected the US claims and ruled that the Iranian attacks on US vessels in the Persian Gulf did not constitute an armed attack on the US, because Iran was not directly targeting US property, at least based on evidence provided by the US. As Gray (2008) argues, the ICJ decision suggests that an attack should be considered a frontier incident or something similar and not an armed attack when there is no intent to carry out an armed attack, including accidental incursions or incidents where soldiers and/or officials contravene orders from the government.

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condemned by the international community. The criticism, however, was largely due to the disproportionate nature of these attacks (Gray 2008; Ruys 2010).

## **Necessity, Proportionality, and Immediacy**

The principles of necessity, proportionality, and immediacy largely provide the foundation for this body of law and thus play a primary role in helping states and other actors identify when an armed attack has taken place and when a state has the right of self-defense. Together, they maintain that the use of force in self-defense must not be retaliatory or punitive and its aim should be to halt and repel an ongoing attack by employing the use of force that is similar in magnitude to the initial attack.

The ICJ has affirmed the primacy of necessity, proportionality, and immediacy in several cases, such as the Nicaragua case, the Advisory Opinion on the Legality of the Threat or Use of Force of Nuclear Weapons, the Oil Platforms case, and the DRC v Uganda (Gray 2008).

The well-established legal principles are based on customary international law, dating back to an incident known as the Caroline Affair in 1837. In brief, Canadian and British troops attacked *The Caroline*, a ship owned by US nationals, in US waters that they believed was providing aid to Canadian rebels. The troops boarded the ship, killed several Americans, and sent it over Niagara Falls. Following the incident, the US complained to the British about the nature of attack, and that the UK had no right to attack the US ship. In the course of diplomatic correspondence between the two states, US Secretary of State Daniel Webster claimed that a state engaging in anticipatory self-defense, the relevant legal principle, was required to, “show a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation. The action must involve nothing unreasonable or excessive, since the act, justified by the necessity of self-defense must be limited by

that necessity, and kept clearly within it” (Jennings 1938, 66). Both the US and British acknowledged the merits of the Secretary’s logic, and the so-called Webster’s formula was born. In fact, Webster’s formula and the ensuing principles of necessity, proportionality, and immediacy are largely considered a cornerstone of international law and applicable to all areas of self-defense (and other areas of law), even beyond anticipatory self-defense.

### **Necessity**

There are three primary rules that clarify when the use of force in self-defense can be necessary (e.g., Brownlie 1991; Gardam 2004, Cassese 2001). First, the purpose of the use of force in self-defense should be to halt or repel an ongoing attack. Second, necessity is based on the principle of last-resort; the use of force is only permitted when all other peaceful means have been exhausted. Third, in situations when the attacker has terminated the armed attack, self-defense is permitted only if there is compelling evidence that more attacks will imminently follow.<sup>15</sup> In this way, the use of force must be preventive in nature and not be punitive or motivated by punishment (i.e. deterrence alone is not sufficient to allow for right of self-defense).<sup>16</sup> Finally, reprisals are generally agreed to be unlawful.

Israel’s use of force against Iraq’s nuclear reactor in 1981 is a good example of a state violating the necessity principle. In response to the Israeli air attack that destroyed Iraq’s suspected nuclear facilities, the United Nations Security Council passed a resolution condemning the use of force as a violation of the Charter (1981

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<sup>15</sup> The accumulation of events principle discussed above is also relevant here.

<sup>16</sup> I discuss the rules for using force after the armed attack has ended in the immediacy section below.

UNYB, 275; UN Doc S/14510). Even the United States, a frequent supporter of Israel, criticized her for failing to exhaust all peaceful means.

### **Proportionality**

Proportionality implies that the use of force in self-defense must not exceed in magnitude or in scale the initial attack triggering the right of self-defense (e.g., Advisory Opinion on Nuclear Weapons, ICJ Reports 1996; Gray 2008; Simma 2002).<sup>17</sup> There are two principles that help clarify the proportionality principle: the target and location of the response.

First, the use of force in self-defense must generally be directed at the source of the armed attack.<sup>18</sup> The US abided by this principle when it used force against Iraq in 1993. In April 1993, there was a failed assassination attempt against the former US President George Bush in Kuwait. Within two months, the United States traced the explosives to the Iraqi government and concluded that Saddam Hussein was responsible for the attack. On June 26, 1993, the US employed air strikes against Iraqi Intelligence headquarters in response to the attack. When the US justified the use of force to international community, they emphasized that its military raid was solely aimed at the target directly linked to the operation against President Bush (e.g., Gray 1995; Kritsiotis 1996; Reisman 1994).

Second, the location of the response is also an important consideration. When the attack is an isolated incident, it is generally recognized that the victim state has to limit itself to what is commonly referred to as an “on the spot” reaction. In other

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<sup>17</sup> States, however, are not restricted to employing the same weapons or approximately the same number of troops as used in the initial attack.

<sup>18</sup> It is insufficient for the target to simply be a military target.

words, they are only allowed to use force against its adversaries in the exact location of the attack. In contrast, customary international law has established that victim states have greater flexibility in responding with force when they are targeted by consecutive and/or large scale attacks. Put differently, when a state is the victim of a series of repeated attacks, it may use force that would otherwise be considered to be disproportionate. A victim state, therefore, is not obligated to restrict itself to an on the spot reaction following several attacks, but rather it may use force beyond the location of the attack.

Several states have used this rule to justify large-scale attacks following a series of repeated, but small-scale attacks, especially against non-state actors. In 2006, Israel used this rule to justify its response to Hezbollah's attack that resulted in several fatalities and the kidnapping of two Israeli soldiers. Israel claimed that it was targeting Hezbollah throughout Lebanon, even beyond the exact location of attack in Southern Lebanon, due in part to the fact that Hezbollah had engaged in several attacks against Israel dating back years (e.g., Redsell 2007; Ronen 2006; Zimmerman 2009).<sup>19</sup>

### **Immediacy**

Immediacy makes up the final principle stemming from the Caroline Incident and Webster's Formula (Ruys 2010, 99-103). It is generally regarded that a state acting in self-defense should only use force when the armed attack is in process (i.e. repel or halt an attack). Scholars argue that according to customary international law that the

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<sup>19</sup> The international community largely criticized Israel since even taking into consideration the repeated nature of attacks, Israel still engaged in the disproportionate use of force.



exact time between the beginning of the armed attack and the initiation of self-defense should be interpreted somewhat flexibly (Ruys 2010). This is for two primary reasons.

First, the bureaucracy of government often requires that states have additional time to make a final decision about employing the use of force. For instance, the different branches of government often have to negotiate and agree to the exact nature of the response, as well as prepare appropriate military plans for the response. The US raid on Iraqi intelligence discussed above is a useful example of flexible nature of the immediacy principle. The US Secretary of State Madeleine Albright declared that the US required a time lag to properly investigate the assassination attempt and identify those responsible for it (Murphy 2001).

Second, the accumulation of events doctrine is once again relevant here, and allows for a time lapse between the initial attack and the use of force in self-defense. If there is compelling evidence that further attacks will follow, states can use force even after the attack has ended in order to prevent and impede future attacks.

The crisis between the UK-Yemen in 1964 is another useful example of the immediacy principle. In 1964, Yemen attacked Saudi Arabia – a UK colonial possession. A day later, the UK responded with air raids against a police station in Harib, Yemen. When the UK justified its response, they claimed that, “defensive measure undertaken by a responsible Government requires preparation and the proper approval just as any other measures. In the present case, such planning and approval was necessary to ensure that those responsible... were involved in the attack and the civilians in the town of Harib were not involved” (UN Doc. S/PV.1109). In sum,

there is widespread agreement that the use of force in self-defense can under certain conditions be carried out after the initial armed attack has ended.

### **Location**

Article 51 states that the use of force is prohibited “against the territorial integrity or political independence of any state.” This leaves open the question about how to classify attacks against state property outside of the territory in question, such as embassies and military bases. While there is some debate, commentators largely agree that a state can be the victim of an armed attack, regardless of geographic location, as long as the attack is on official emanations of the state in question, such as embassies, armed forces, or other official state property. In this way, an attack does not have to take place on the territory of the targeted state in order to be considered an armed attack.

The ICJ affirmed this principle in the case brought forward by the United States against Iran (Ruys 2010, 201; Schachter 1985; *United States v Islamic Republic of Iran*, ICJ Reports 1980). In November 1979, Iranian militants attacked and seized control of the US Embassy in Tehran, seizing control and holding 52 members of the US diplomatic staff hostage. In May 1980, as the hostage crisis was still ongoing, the ICJ ruled that Iran had violated the most fundamental principle of relations between states and it violated its legal obligations to the United States. The ICJ furthermore called for the immediate release of the hostages, among other considerations. Several legal scholars maintain that ICJ decision suggested that the attack on the US embassy constituted an armed attack.

### **Anticipatory/Interceptive Self-Defense**

Anticipatory self-defense is one of the more controversial legal principles. The debate concerns whether states still have this legal right to use the preemptive use of force, since the UN Charter specifically states that there is only a right to self-defense if an armed attack occurs. Despite the precise wording of the Charter, Arend and Beck (1992, 79) argue “it is also clear that there a great many states that... support the proposition that in certain circumstances it may be lawful to use force in advance of an actual armed attack.”

Consistent with the widespread practice if not belief of states, I believe that there is a limited right to anticipatory or interceptive self-defense.<sup>20</sup> Specifically, I concur with Dinstein (2005) who argues that states have a right to interceptive self-defense in that the beginning of an armed attack does not have to be synonymous with the first shot fired. Rather, it is more about whether the attacking state has passed some sort of threshold, irrespective of the actual use of force. In other words, a state does not have to absorb the first hit in order to have the right to self-defense. The right to anticipatory self-defense, however, is a very limited right; a state can only use force if there is clear and compelling evidence that an attack is imminent.

The 1967 Israel-Arab War is largely considered one of the few genuine cases of the anticipatory use of force since 1945 (Oren 2002; Shapira 1971; UNYB 1967, 195-196). In June 1967, Israel preemptively used force by launching surprise air strikes against Egypt. Israel claimed that it had the right to preemptive self-defense

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<sup>20</sup> I feel comfortable accepting the legal right to interceptive self-defense since there seems to be more dissension among legal scholars than states.

for five primary reasons: 1) Egypt began massing its troops in the Sinai Peninsula, 2) Egypt expelled the UN forces from this area, 3) Egypt declared that the Straits of Tiran were closed to Israel, 4) Egypt and Jordan signed a defense pact, and 5) Iraqi troops began deploying in Jordan. Israel claimed the Egyptian actions in combination indicated to them that there was clear and compelling evidence that an attack was imminent, and that therefore they had the right to interceptive or anticipatory self-defense. While there was some criticism of Israel, mostly by Arab nations, the international community largely accepted that Israel had the right of self-defense in response to the aggressive actions taken by Egypt.

### **Protection of Nationals**

Another controversial principle is whether attacks on private citizens or other non-governmental actors abroad permit governments to use force in self-defense. Several scholars argue that there is a doctrine, the so-called protection of nationals principle, that allows states to use force to protect nationals abroad. Researchers have posited several reasons to justify why there is a legal right for states to protect nationals. First, it was legal under customary international law long before the creation of the Charter (e.g., Bowett 1958). Second, scholars argue that an attack on a state's citizens is tantamount to an attack on the state's homeland (Arend and Beck 1992). Third, some lawyers have suggested the right to protect nationals is a use of force that falls below the threshold of Article 2(4). In other words, it is a "de minimis" use of force that does not constitute illegal aggression. In contrast, several other leading scholars all

reject the right to protect nationals since there was not an attack on the territory or an official body of the state (e.g., Akehurst 1987; Henkin 1979; Ronzitti 1985).

Regarding state practice, Frank (2002) argues that when the facts are widely seen to warrant a preemptive intervention on behalf of endangered citizens abroad, and if the UN is unable to act, there is a legal right to use force to protect nationals. He argues that the international community is most likely to condone the use of force as long as the motive of the state is genuinely to protect its citizens, the use of force is proportionate, and it results in minimal collateral damage. As such, he concludes based on customary international law that there is a right to protect nationals when there is clear evidence of extreme necessity.

Following Franck and several other leading scholars, I accept that states have a very limited right of self-defense to protect nationals in foreign states, as long as several conditions are satisfied. First, nationals must face imminent threat of injury or they must be in grave danger. Second, the state they are residing in must be unwilling or unable to protect the foreign nationals. Third, the use of force must only be used to protect the nationals. In short, the protection of nationals exists, but it is a very limited right.

The Israeli rescue operation in Entebbe, Uganda in 1976 is widely recognized as the quintessential case of the protection of nationals doctrine (Ruys 2010; 96-98; UN Doc. S/PV.1939). In June 1976, Palestinian terrorists hijacked an Air France plane with 248 passengers and flew it to Entebbe, Uganda. The hostage-takers released all non-Israeli passengers. On July 4 Israeli Special Forces without the authorization of Uganda carried out a successful rescue operation, freeing all but

three of the hostages who died during the course of the operation or shortly thereafter. At the United Nations, Israeli defended its action as legal and even cited legal scholars, such as Derek Bowett during the debate held at the UN. While there was some criticism of Israel, the Council and the General Assembly refrained from criticizing her.

The international reaction to another rescue attempt provides further support for a limited right to protect nationals that are threatened abroad (Ruys 2010, 229). In 1978, Egypt claimed the right to protect nationals after Arab gunman seized and held several Egyptian hostages in Cyprus. Without permission, Egypt entered Cyprus to free the hostages and even engaged the Cypriot soldiers in a battle that resulted in a number of casualties for both sides. Despite this, Egypt was not censured, and no discussion was held at the UN (Ruys 2010).

Finally, the international community has also not hesitated to condemn states when the use of force goes beyond the strict right to protect nationals (Gray 2008, 156-160). For example, the US relied in part on the protection of nationals doctrine to justify its interventions in Panama (1989), Grenada (1983), and the Dominican Republic (1965). Many states, however, doubted that the US intentions were limited to the protection of its nationals. Instead, they claimed that it appeared that the US's real intentions were to overthrow or at least weaken the ruling governments in all three cases. As such, the US found itself heavily criticized; the General Assembly condemned all three interventions and the OAS condemned the Panama invasion, while the US was only saved from condemnation by the Security Council by the threat of vetoes from both the United Kingdom and France.

## **Non-state Actors and Extra-Territorial Use of Force<sup>21</sup>**

In recent years, the use of force against non-state actors, such as terrorist and rebel groups, and in some cases their state supporters have become two of the most important principles regulating the use of force. This is in response to the changing nature of political violence, whereby non-state actors have become increasingly responsible for acts of violence against both states and citizens across the globe. In particular, there are two primary questions relating to the use of force by non-state actors: 1) can non-state actors commit armed attacks and trigger the right of self-defense and 2) can a victim state use force against states that support non-state actors. I begin with the first principle.

First, traditionally, only a state could be responsible for an armed attack and a non-state actor could be culpable for an armed attack if the attack could be attributed to a state. More recently, however, international law has responded to the growing relevance of non-state actors and the changed nature of political violence (e.g., Cassese 2001; Franck 2001, 2002<sup>22</sup>; Greenwood 2003; Lubell 2001; Schachter 1989; Tams 2009; Wilmshurst 2008). As such, since 1993, it can be accepted that a state can respond in self-defense to the use of force against non-state actors, even when the non-state actor resides in another country and the attack cannot be attributed to the host state.<sup>22</sup> As Franck (2002, 67) argues, “It is becoming clear that victim-states

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<sup>21</sup> For the sake of brevity, I combine rebel groups and terrorists into a single category on assessing the right self-defense in response to attacks by non-state actors. I understand that there are some differences between the two, but the major restrictions and criteria for responding with force are similar across the two actors.

<sup>22</sup> I rely on 1993 as the year when this body of law changed due in large part to the widespread support for the US following its use of force against Iraq in 1993 after the assassination attempt against President Bush. While the armed attack was committed by a state, it is an example of state terrorism as it targeted a head of state.

may invoke Article 51 to take armed countermeasures against any territory harboring, supporting or otherwise tolerating activities that culminate in or give rise to insurgent infiltrations or terrorist attacks.”

There are some important restrictions, however. First, the attack must be large; the required threshold is larger than it is for attacks by states. Second, the acts must form part of a consistent pattern of attacks and not merely be an isolated or a sporadic attack. Third, a target state can only enter the territory of another state to attack the non-state actor if the host state is either unwilling or unable to stop the non-state actor. Fourth, it must be clear that law enforcement, as opposed to military actions, would be unsuccessful. In other words, the use of force must be a last resort. Fifth, forcible reprisals aimed at punishing non-state actors that are punitive in nature are unlawful; only protective actions that are necessary to prevent a major attack or imminent attack are allowed (e.g., Cassesse 2001; Wilmshurst 2008).

Several recent events suggest that states are now permitted to use force against non-state actors or related acts of terrorism. Most importantly, the United Nations Security Council settled any lingering uncertainty over this principle when it authorized the use of force against Al-Qaeda following the attacks on 9/11. Likewise, both the NATO and OAS invoked the right of collective self-defense, implying that the US was the victim of an armed attack.

Second, the international community’s reaction to the US use of force after the Embassy Bombings in Kenya and Somalia in 1983 provides further support for this right (Lubell 2010; Dinstein 2005; Ruys 2010). Following the Embassy bombings, the US claimed it had the right to self-defense because it was the victim of



a series of attacks domestically and abroad by Al-Qaeda. US officials also claimed that its use of force was aimed at preventing and deterring future attacks, and were only carried out after Sudan and Afghanistan refused to take actions against Al-Qaeda. The international community largely supported the US. With the exception of Libya and Iraq, Arab states did not condemn the US, while Pakistan provided the US with use of its airspace. Russia did condemn the attack, although it nonetheless claimed that states have the right to use force against terrorists.

The second principle concerns whether states can be held to account for the action of a non-state actor. That is, can a victim state use force against states that support non-state actors. The ICJ's ruling in the Nicaragua Case helped to clarify when a state has the right to use force against state supporters of non-state actors. The fundamental issue is the relationship that exists between the state and the relevant non-state actor. Lubell (2010) argues that the relationship between a host state and non-state actor can fit into five categories: 1) the non-state actor is a state organ or de facto organ of the state, 2) the non-state actor receives some form of aid, support, or instruction from the state, 3) the non-state actor is independent, but host state gives it permission to operate from its territory, 4) the state claims to have no ties to non-state actor, but is unwilling to interfere with the actions of the group, and 5) the state is unable to act against the non-state actor even if it disapproves of it on its territory.

Across the five possibilities, there are three categories of attribution (Lubell 2010). First, attacks by the non-state actor can be attributed to the state, second, the attacks by the non-state actor cannot be attributed to the state, but the state bears some

responsibility for the actions of the non-state actor, and finally the state has done nothing wrong, but the non-state actor is still operating from its territory.

While the second and third conditions of attribution are illegal under international law, they do not allow the victim state to use force in self-defense against the host state. A target state only has the right to self-defense against the host state if the non-state actor can be considered an organ of the host state. More substantively, the relationship must meet at least one of the following three conditions: 1) the non-state actor is a de jure or de facto organ of the state (i.e. state has effective control of the group), 2) the non-state actor performs governmental functions on behalf of the state, or 3) if it is de facto directed by official authorities of the state. In other words, the actions must be fully attributed to the state to allow for the right to self-defense against the state in question. All other types of support, such as training, logistical, intelligence, weapons, or any other type of assistance do not allow for the right to self-defense against the host state.

The recent conflict between Israel-Lebanon provides a useful illustration of this principle (e.g., Redsell 2007; Ronen 2006; Zimmerman 2009).<sup>23</sup> First, in the summer of 2006, Hezbollah engaged in a two-prong attack against Israel that resulted in both casualties and property damage. Following the attack, the Israeli Prime Minister declared that Israel had the right to self-defense against both Hezbollah and Lebanon. He said that Israel could use force against Lebanon because the attacks emanated from Lebanese territory and because Lebanon had two of its members in the Lebanese parliament at the time. According to international law, while Israel had the right to use force against Hezbollah, they had no right to use force against

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<sup>23</sup> In Chapter 5, I describe the Israel-Lebanon case in greater detail.

Lebanon. Lebanon did not have effective control over Hezbollah, and they did not give Hezbollah the political or legal authority to strike Israel. In fact, while Israel claimed they had the right of self-defense against Lebanon, they also claimed that its use of force was solely directed at Hezbollah.

Finally, in the ICJ case, Democratic Republic of Congo (DRC) v. Uganda, the World Court affirmed and clarified the legal principles relating to the right of self-defense against state supporters of non-state actors (DRC v Uganda ICJ Reports 2005). In this case, the DRC accused Uganda of aggression and interference in its domestic affairs. Uganda claimed it had a right to self-defense because the DRC supported anti-Ugandan rebel groups.<sup>24</sup> In particular, Uganda claimed that the DRC had a “duty of vigilance” to prevent attacks from its territory against them. The ICJ ruled against Uganda and in favor of the DRC. The Court said that while DRC has a duty of vigilance, Uganda was unable to provide sufficient enough of a relationship between the rebel groups and the DRC. As such, the ICJ declared that Uganda had no right to self-defense against the DRC; furthermore, the court claimed that Uganda’s use of force against the DRC violated the Charter.

### **Interventions**

In the international system, there is a general prohibition on military interventions and general principle of noninterference in the internal affairs of states. The international community, and in particular the United Nations General Assembly has affirmed this principle numerous times since 1945. For example, the General Assembly Resolution, the Rights and Duties of States, calls on all states to refrain from

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<sup>24</sup> Uganda’s claim is actually very similar to the one made by the US in the Nicaragua case.

intervening in the affairs of another country. Likewise, in GA Resolutions, the Inadmissibility of Interventions and the Declaration on Friendly Relations, the international community reaffirmed the prohibition against foreign interventions. Indeed, several scholars argue that rules and regulations relating to interventions are uncontroversial with disagreements only occurring over the application of these rules.

While there is a general prohibition on military interventions, there are a few situations when states are permitted to intervene in other states. Three factors in combination generally determine when states can intervene in other states: 1) the level of domestic conflict, 2) the distinction between governments and the opposition/rebel groups, and 3) whether the actor requested the intervention or not.

According to Arend and Beck (1992), there are three distinct categories of civil unrest: 1) low-intensity conflict, 2) civil war, and 3) mixed conflict or internationalized civil wars. First, when the level of domestic unrest is considered low-intensity and/or below the level of civil war, a state can intervene on behalf of a legitimate government when the government invited the state to intervene. Forcible interventions on behalf of governments are unlawful. Likewise, it is illegal to intervene on behalf of opposition groups or other domestic groups that are not affiliated with the government, whether or not they requested the intervention.

There are several examples to show that the international community largely supports interventions on behalf of governments when the level of conflict is below the threshold of civil wars. For example, the UN Security Council supported France when, on numerous occasions, they sent troops to support the Ivory Coast government (Report of the Secretary-General on the UN Mission in Cote d'Ivoire,

S/2004/3; UN Press Release SC/7588). Similarly, the United Kingdom sent troops to support governments in Tanganyika, Uganda, and Kenya, while Senegal also dispatched its troops to protect the Guinea Bissau leadership. In all of these cases, the international community refrained from criticizing the intervening states that were invited by host governments (Gray 2008, 80-85).

On the other hand, there have been several notable occasions when the international community criticized states that forcibly intervened without permission from the host state. For example, the United Nations General Assembly passed several resolutions condemning the USSR for its illegal interventions in Hungary, Czechoslovakia, and Afghanistan (Gray 2008).

Regarding support for the opposition, it is largely recognized that states rarely if ever provide them with military troops. Instead, third parties generally provide the opposition or other domestic actors with either covert support, or other forms of non-military support. The Reagan doctrine is a useful example of this in that the US provided aid, but it was almost always below the level of overt military support (Franck and Weisband 1971; Reisman 1988; Vertzberger 1998).

Second, the legal rules relating to foreign intervention are different in the context of civil war. In civil conflict, the deciding factor is the level of control or authority the government is able to demonstrate. When the control of the government is contested and non-state actors control at least some of territory of the state, it is illegal for foreign states to intervene, even if the government requests assistance (Arend and Beck 1993; Moore 1983; Schachter 1990). It is also unlawful to intervene on behalf of the opposition or rebel groups in civil war.

Third, there is an important exception to this general prohibition on interventions in civil war. Based on the so-called proportionate counter-intervention rule, in mixed or internationalized conflict, states can intervene on behalf of the recognized government when there was a prior intervention on behalf of the rebel groups against the government.<sup>25</sup>

Three illustrations can serve to demonstrate the proportionate counter-intervention rule in practice. First, towards the end of the 1998 Civil War in the Democratic Republic of Congo/Zaire, the United Nations distinguished between external forces invited by the government and those of Rwanda and Uganda who forcibly invaded (Gray 2008, 80-82). Likewise, the Security Council condemned Angola for its intervention on behalf of the opposition in the 1997 Congo (Brazzaville) Civil War (Gray 2008, 92). Gray (2008) argues that these two examples support the legal rules on interventions and are generally representative of the behavior of the Security Council, especially since the end of the Cold War.

Second, when states intervene in civil conflict, they almost always try to claim that their intervention is in response to a prior intervention. The international community has also not hesitated to condemn states that claimed that a prior intervention took place when it is clear that there was no prior intervention. For example, the General Assembly condemned the USSR for its unlawful interventions

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<sup>25</sup> The counter-intervention should generally be limited to the territory of the state experiencing mixed conflict and not spread to the prior intervening state, although if the aid to the rebels reaches the level of an armed attack, the state supporting the government can respond against the territory of the state providing support to the rebels (Arend and Beck 1992).

in Czechoslovakia and Afghanistan (Reisman 1987; UNYB 1968, 1980).<sup>26</sup> Likewise, the Council criticized Turkey for its invasion of Cyprus in 1974, even though Ankara claimed that their intervention was in response to a prior intervention (Gray 2008, 94; UNYB 1974).

Third, similar to situations of domestic unrest, states rarely if ever openly provide military troops to the opposition in civil conflict. For example, the United States provided covert support to non-state actors in Angola, Cambodia, Afghanistan, and Nicaragua, instead of their own troops (Gray 2008, 106-107). US behavior in Laos between 1958-1960 is a useful example of how support varies for government and opposition forces (Gray 2008, 105). When an unfriendly government ruled Laos, the US only provided covert support to opposition forces, while in contrast, when a friendly group came to power in Laos, the US supported the government with the overt use of military force. The US even permitted Laos to claim that it provided military support for its bombing raids against rebel forces.

Finally, humanitarian interventions, pro-democratic interventions, and other types of regime-change are all illegal.

### **Collective Security**

The framers of the Charter envisioned a three step process for the use of force in self-defense. First, a state could act in self-defense when it was necessary to respond to aggressive actions (i.e. repel or halt an ongoing attack). Second, the victim state should report the aggressive act to the United Nations Security and cease using force

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<sup>26</sup> It is interesting that after the end of the Cold War, Russia admitted that the Brezhnev doctrine was illegal.

(even if the use of force is legally permitted by the right of individual self-defense), and third, the Council would then take the lead in dealing with the attacker. The Council, therefore, was supposed to play a central role in the regulation of armed conflict, including the right of self-defense.

Chapter VII contains the key provisions for the Council's duties and obligations. According to Article 39, the Council has jurisdictional basis over the right to use of force when a state was the victim of an armed attack. In other words, the Council has responsibility for determining whether a threat to peace, breach of peace, or act of aggression has taken place, and consequently make a recommendation for further action as set forth in Articles 41 and 42. Article 41 permits the council with employing sanctions against the illegal use of force, while Article 42 allows the Council to use force against the aggressive state in the event that sanctions failed.<sup>27</sup>

Based on this institutional set-up, the Charter was supposed to create a robust collective security apparatus. The international community, however, has failed to implement the collective security system envisioned by the Charter. As such, individual self-defense and more recently member states acting under the auspices of United Nations Security Council make up the primary exceptions to the legal prohibition on the use of force.

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<sup>27</sup> Article 43 called for member states to make troops available to the Council for the purpose of establishing a standing army in order to carry out its obligations under Article 42. Member states, however, have completely failed to implement Article 43.



## **Collective Self-Defense**

Although rare in practice, customary international law and Article 51 provide for the right to collective self-defense in response to an armed attack. The ICJ in the Nicaragua decision also affirmed and clarified the criteria that permit the right of collective self-defense. First, the victim state must request assistance from another state; that is, a third party cannot use force in support of the victim state unless its help was formally requested. Second, the victim state must have been the victim of an armed attack. Lower levels of force or other types of force, such as protection of nationals, anticipatory self-defense, and the extra-territorial self-defense do not allow for the right to collective self-defense.

## **Conclusion**

In this chapter, I introduced the legal principles related to the use of force. To that end, I first introduced the sources of international law, reviewed the Charter's prohibitions on the use of force along with the two primary exceptions, and finally I put forward the additional legal principles that make up this body of law. In the next chapter, I put forward my theoretical framework and in the following chapters I present my empirical analyses that are based on the review of international law on the use of force contained in this chapter.

## **Chapter 3: Institutional Reciprocity**

### **Introduction**

In this chapter, I put forward my theory, institutional reciprocity, to explain how the legal principles related to the use of force can constrain leaders from employing the aggressive and illegal use of force in international crises. I argue that international law on the use of force contributes to the peaceful resolution of international crises by facilitating the reciprocal use of force in international crises. In particular, the law helps leaders credibly signal their commitment to using force in self-defense and deter the aggressive use of force from taking place. This argument consists of two-parts.

First, the law serves in an informational capacity and clarifies when it is appropriate to use force in world politics. Specifically, it establishes that the aggressive use of force is inappropriate and the right of self-defense is appropriate. As such, the law essentially institutionalizes the reciprocal use of force in self-defense. Second, by serving in this capacity, the law alters the support of third parties and increases the costs for the unlawful use of force. Crisis actors can expect international and domestic actors to withhold support when they employ the aggressive use of force and provide greater support when they have the right of self-defense. Actors with a higher expectation of third party support can therefore credibly signal that they will use force in self-defense and consequently they can deter the aggressive use of force from occurring in the first place.

The remainder of this chapter is organized as follows. First, I briefly identify the problems in the current international law compliance literature. Second, I briefly discuss how reciprocity operates in the context of international crises. Third, I argue that the law-making process allows international law to be considered a legitimate source of information in world politics. Fourth, I discuss how international law influences the support of international actors. Fifth, I present my theoretical argument and explain how international law on the use of force can serve as an effective constraint on leaders in international crises.

### **Problems in the International Law Compliance Literature**

In the international law compliance literature, the fundamental issue is why states ever uphold their legal obligations. This is largely because the international system lacks overt enforcement mechanisms, such as those that exist in the domestic arena and states and other actors often have short-term reasons to violate their obligations, even if compliance was initially in their interests. As Thomas Franck (1988; 705) puts it, “The surprising thing about international law is that nations ever obey its strictures or carry out its mandate.”

Legal scholars and political scientists have largely coalesced into two major theoretical camps - normative and rationalist - to address the compliance puzzle. Proponents of the normative approach emphasize the legitimacy of international law and the importance of legal obligations to explain why states abide by international law. They often assume that states comply with international law because of its legitimacy. On the other hand, rationalists reject that states feel any sense of

obligation to comply with international law, and instead argue that the law must be self-enforcing in order for states to comply with it. In other words, actors will only comply with international law when it is in their interests to comply with it. I begin with the normative framework.

### **Normative Framework**

Based on a logic of appropriateness, the normative framework largely assumes *opinio juris* (the sense of “legal obligation”), in which “a state is drawn toward compliance with international law because compliance is considered the morally right or legitimate thing to do” (Franck 1990). International legal scholars point to the “pull toward compliance” (Franck 1990) or “obligation of obedience” (Chayes and Chayes 1995), or even that international law develops into a part of a state’s “internal value set” (Koh 1997) to explain why states comply with international law.

Normative scholars also argue that sanctions or enforcement mechanisms are unnecessary to induce compliance with the law. Henkin (1979) argues, for instance, that law is obeyed because it is accepted as authoritative by the community it governs, while Chayes and Chayes (1995) argue that sanctions are unnecessary and often counter-productive. Finally, Hart (1963) posits that sanctions are a secondary determinant of state behavior, and argues instead that actors comply with the law when they internalize it and accept it as an authoritative source of rules governing their behavior.

Normative scholars have put forward three major theoretical frameworks to explain compliance with the law: 1) the managerial school, 2) process- and fairness-

based framework, and 3) transnational legal processes. First, Chayes and Chayes's managerial framework (1993, 1998) is largely recognized as the most comprehensive theoretical framework in the normative school. They argue that actors have a general propensity to comply with international law, and point to three factors to explain why governments feel this way; first, international law saves on transactions costs by identifying appropriate conduct, second, treaties are consent-based in that states that have signed/ratified them have consented to being bound their legal obligations, and finally, there is a general norm of compliance that permeates the international system.<sup>28</sup> The important implication of their argument is that uncertainty about the nature of the legal obligation itself or a limited capacity to comply with the law explains why actors violate the law, as opposed to weak or nonexistent enforcement mechanisms. As such, they argue that compliance can be increased or "managed" by creating more transparent agreements, robust dispute resolution mechanisms, or other forms of military/financial assistance to reduce the uncertainty or capability shortfalls that largely explain noncompliance.

Second, Thomas Franck's legitimacy theory is also one of the leading arguments in this field (Franck 1995). In an effort to explain why states feel a sense of obligation towards the law, he argues that states obey the rules that they perceive to have "come into being in accordance with the right process" (Franck 1995, 706). In other words, Franck's focus is on the process of law-making; when the process is legitimate, states will comply with international law, while he argues that noncompliance is usually the result of illegitimate processes. Franck argues that four

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<sup>28</sup> The consent-based theory of international law is also one of the leading explanations in the compliance literature. I omit it from my literature review because it is contained within the managerial school, as noted above.

factors determine whether a process is considered legitimate: determinacy, symbolic validation, coherence, and adherence. In short, determinacy is about the clarity of the rule or norm, symbolic validation refers to the presence of procedural practices that provide a rule with legitimacy, coherence refers to the connection between rational principles and the rule, and adherence refers to the connection between the rule and other rules that help interpret the new law. He concludes that when these four factors are present, the law is considered legitimate and states and other actors feel a sense of legal obligation to comply with it.

Third, Harold Koh has recently developed a theory of transnational legal processes to explain compliance with international law. Koh emphasizes the interaction between international and domestic actors and norm internalization. He argues that when transnational actors – state and non-state actors – interact, norms of compliance emerge that are then internalized by domestic actors. The internalization of norms by these actors leads them to being incorporated into domestic legal institutions. States are then more likely to comply with international law as they become ensconced with them at the domestic level.

In a similar vein, several scholars have put forward arguments about how norm diffusion and socialization processes can induce states to comply with international law. Finnemore and Sikkink (1998) argue that social pressures from other states can lead governments to adopt norms, including legal rules. Put differently, reputational concerns based on normative considerations instead of rationalist ones can contribute to compliance with the law. Likewise, Thomas (2001) argues that repeated interactions can foster compliance with the law by changing a

government's identity to valuing legal rules and obligations. Finally, Kelley (2007) in her work on the International Criminal Court (ICC) finds that many states act in accordance with the Rome Statute because of an affinity towards the court or *pacta sunt servanda* (nations have an obligation to abide by treaty commitments), instead of rational calculations.

### **Problems with Normative Framework**

Despite the contributions made by scholars working in the normative school, several rationalist-scholars argue that the normative school has serious limitations. As Guzman (2008, 8) argues, norms-based theories have failed to provide a “satisfying theory of how or when states comply with international law or when international law is more or less likely to work.” Put differently, they have failed to explain the variation in compliance across issues areas and within and between states. With respect to the managerial school, Guzman argues that the managerial school may be useful at explaining coordination problems, but it fails to provide a theory for all types of problems in political science.

Likewise, Hathaway argues that norms-based theories fail to provide guidance with respect to why some laws succeed at bringing about compliance and others do not. Her basic point, like Guzman, is that it fails to explain the variance in compliance. Goldsmith and Posner (2008) reject norms-based theories outright because they believe models of compliance should be based on rationalist assumptions. Finally, Keohane (1997) also argues that much of the legitimacy-based accounts are circular in that the legitimacy of international law engenders the "pull of

compliance", yet the "compliance pull" brings about the legitimacy of the law. In other words the compliance pull is both a cause and effect of legitimacy.

### **Rationalist Framework**

In response to the problems with the normative approaches, both political scientists and legal scholars have in recent years adopted a rational choice framework for analyzing international law compliance. As Guzman puts it, "(T)o generate a model in which international law matters, then, it is necessary to identify a mechanism through which violations are sanctioned in some fashion... a model of international law must turn on the impact of sanctions on states." In other words, international law can only be influential in world politics when it inflicts costs on states that violate it. To that end, scholars working in this literature have largely drawn on insights from the international cooperation literature to provide a foundation for theorizing about the effectiveness of international law (e.g., Abbott and Snidal 1998, 2000; Keohane 1984; Martin 1992; Martin and Simmons 1998).

Within this approach, scholars argue that legal obligations must be self-enforcing in order for governments to comply with them. In other words, in the absence of centralized enforcement in an anarchic international system, compliance must be in the narrow self-interests of the relevant actors. As such, the majority of scholars focus on how enforcement mechanisms, such as reputation, reciprocity, sanctions, and domestic institutions can induce compliance with the law.

First, reputation has recently become one of the leading enforcement mechanisms used to explain compliance with international law (e.g., Gibler 2008;



Simmons 2000; Tomz 2007; Valentino et al 2006). The basic logic of reputation suggests that the expectation of future benefits from cooperation with third parties generates compliance today. Simply, a state that complies with international law will be viewed as more reliable partner, and, in turn, will find a greater number of states to cooperate with and benefit from in the future. States therefore have strong incentives to develop and maintain a reputation for compliance with international law. As Keohane puts it, reputation can be understood as “diffuse reciprocity”, in which future interactions with third parties over at time  $t+1$  can bring about enough benefits to generate compliance with international law at time  $t$ .

The few available empirical studies of reputation appear to support the importance of this mechanism. Gibler (2008) finds that states who comply with their alliance commitments are more likely to enter into alliance agreements in the future. Simmons (2000) argues that concern for a favorable reputation explains why governments abide by Article VIII of the International Monetary Fund. Finally, Tomz (n.d.) uses embedded surveys and finds that domestic actors prefer that their leaders comply with international law because of reputational considerations.

Second, scholars have long recognized that reciprocity can contribute to international law compliance and international cooperation, more generally. Based on the logic of reciprocity, states can enforce cooperation by responding to or threatening to respond to violations with similar conduct. Mutual defection or the threat of it can therefore prevent actors from defecting or renegeing on agreements in the first place. International law contributes to reciprocal enforcement by establishing “bright lines” that allow actors to identify when defection has taken place, and to

ensure that governments avoid escalatory spirals that can follow defection (Morrow 2007; Von Stein 2010).

In the legal literature, Morrow has thus far been one of the few scholars to explicitly test this mechanism by applying it to compliance with international humanitarian law in interstate wars. He argues that ratification, especially joint ratification, “strengthens reciprocity and leads to compliance generally through effective deterrence” (Morrow 2007: 560). In addition, he finds that democracies are less likely to violate the laws of war because they are more capable of sending a credible signal about their intentions to comply with the treaties that they have ratified.

Third, some scholars argue that coercion can explain compliance with the law. States engaging in coercive statecraft can enforce cooperation by employing both carrots (i.e., increased aid, trade agreements, etc) and sticks (i.e., sanctions, military intervention, etc). Scholars have found some support for the role of coercion in generating compliance with the law. Hafner-Burton (2005) finds that governments that value human rights practices can use the promise and benefits of preferential trade agreements to coerce states into compliance. Likewise, Lebovic and Voen (2009) show that the World Bank has reduced aid to counties with questionable human rights practices. Indeed, Thompson (2010) argues that sanctions are actually more prevalent in the international system than most scholars recognize since it is often the threat of coercion that induces compliance with the law.

Finally, other scholars working in the rationalist tradition have turned to domestic politics to explain compliance with international law. Proponents of the so-

called domestic legalism approach have put forward two primary reasons to explain why democracies are more compliant than non-democracies: 1) accountability and 2) transference. First, drawing on insights from the institutional logic in the democratic peace literature, scholars argue elections make democratic leaders more accountable to domestic actors, most notably elites (e.g., Huth and Allee 2003; Russett and Oneal 2001). As such, democratic leaders are more likely to be punished at home if they violate their international legal agreements, as the fear of being removed from office deters democratic leaders from violating the law in the first place.

Several scholars find support for the role of democratic legalism in promoting compliance with the law. McGillvray and Smith (2002) find that citizens punish leaders for reneging on agreements and impairing the future benefits from cooperation. Likewise, Leeds (2003) finds that democracies are more likely to honor their alliance agreements than nondemocratic leaders. Many scholars also find argue that democracies have better human rights practices (e.g., Hathaway 2001; Keith 2002; Neumayer 2005).<sup>29</sup>

Second, several scholars argue that leaders from states with greater respect for legal institutions and the rule of law, such as in democracies will transfer this behavior over to the international arena and be more likely to pursue foreign policies that are consistent with international law (Doyle 1986, Huth and Allee 2003; Maoz and Russett 1993; Russett and Oneal 2001; Simmons 1998; Slaughter 1995). In

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<sup>29</sup> Other scholars, however, have failed to find that democracies are associated with higher levels of compliance. Gartzke and Gleditsch (2004) argue that democracies actually make less reliable allies in times of crises. Likewise, Simmons (2000) finds that democracies are less likely to comply with international monetary agreements.

contrast, leaders from nondemocratic states who have less experience with legal rules will be reluctant to incorporate the law into their decision-making.

Democratic legalists have put forward three primary reasons to explain why democratic leaders are more likely to resort to international legal principles in their foreign affairs (Simmons 1998). First, democratic leaders are more likely to accept rules-based constraints in their international relations since they operate under constitutional traditions domestically that place limits on executive power. Second, democratic leaders become accustomed to working within institutionalized settings, such as regulated political competition that regulates and limits their behavior. Third, democratic states with independent judiciaries are more likely to feel an affinity towards and trust international legal rules and institutions. In sum, democratic leaders who become inculcated in legal institutions and traditions are more likely to turn to international law in the international arena compared to nondemocratic leaders.

### **Problems with Rationalist Framework**

Despite the insights produced by rationalists, several norms-based scholars have criticized these approaches, most prominently Martha Finnemore, Stephen Toope, Ian Hurd, and Christian Reus-Smit. Finnemore and Toope (2003) argue that international law is more than formal, treaty-based law, and that such a narrow conception of law and legalization weakens rather than strengthens research on compliance. Rather, they argue that international law is a broad social phenomenon deeply embedded in the practices, beliefs, and traditions of societies, and shaped by

interaction among societies. Explanations for compliance, therefore, must go beyond rationalist enforcement mechanisms

Similarly, Reus-Smit (2003) argues that rationalist approaches cannot explain high levels of compliance with international law. He claims, in contrast, that some states feel a sense of obligation to comply with international law, and thus all rational choice models require a foundation of legitimacy. Finally, Hurd (1999) argues that scholars should not simply accept that coercion and self-interest have a monopoly on explaining compliance in the international system, and that there are important reasons to believe that the legitimacy of norms, institutions, and international law can influence the behavior of states.

Rationalist scholars have also identified the limitations in their own framework. Guzman, for instance, argues that reciprocity and sanctions are unable to serve as robust enforcement mechanisms, since it must be in the interests of states to either implement sanctions or withhold cooperation, two conditions, he argues, that are unlikely to exist in most cases, especially in security-related disputes. Likewise, von Stein (2010) argues that several factors must be present for reciprocity and sanctions to serve as credible enforcement mechanisms.

Reputation also suffers from several problems, as many scholars have noted. Downes and Jones (2002) argue that reputation may not travel well across issue area, limiting the power of this mechanism. States also have to weigh various reputational concerns (i.e. resolve) beyond compliance with the law that may attenuate the constraining effects of this mechanism (Keohane 1997). Finally, Thompson (2010) argues that reputation suffers from the same problems as reciprocity and sanctions in

that it may not be in the interests of third party states to refrain from cooperating with states that violate the law.

We can therefore conclude that despite the important contributions made by both rationalist and normative scholars, the extant literature suffers from some important theoretical limitations. Rationalists criticize the normative scholars for assuming compliance, rather than specifying the precise conditions or factors that can generate compliance. In other words, rationalists argue that the constant of legitimacy cannot explain the variable nature of compliance. At the same time, normative scholars argue that leaders often comply with international law when the leading rationalist explanations are absent from the political context. As such, enforcement mechanisms may only explain some of the variation in compliance, and that they actually may be unnecessary to constrain the behavior of states and other actors in the international system.

In this dissertation, I seek to overcome the limitations in both approaches by developing a theoretical framework that integrates insights made by both normative and rationalists scholars. First, I argue consistent with the rationalist choice scholars that legal obligations must be self-enforcing in order for states to comply with them at high-levels. Second, I draw on insights made by normative scholars and argue that international law serves as a credible source of information that establishes appropriate standards of behavior regarding the use of force in world politics. In this way, the law as a normative standard shapes the incentives for using force. I now turn to developing this theory in greater detail below.

## **Theoretical Framework**

In this section, I put forward my theoretical framework on how international law on the use of force can constrain the behavior of leaders in international crises. I first discuss the conditions that are required for reciprocity to promote cooperation in world politics and international crises in particular. Second, I describe how international law can serve a credible source of information. Third, I discuss how the law shapes the behavior of third parties and ultimately alters the dynamics of reciprocity between crisis actors.

### **Reciprocity and Crisis Bargaining**

Reciprocity plays a fundamental role in the international relations of states. Keohane (1986, 6) defines reciprocity as, “exchanges of roughly equivalent values in which the actions of each party are contingent on the prior actions of the others in such a way that good is returned for good, and bad for bad.” In other words, actors who engage in reciprocal actions respond to cooperation with cooperation and to defection with defection. As scholars have long recognized, reciprocity can help promote cooperation in the international system. Actors can induce cooperation by increasing the costs of defecting when they defect in kind, while they increase the benefits of cooperation by cooperating as well. Indeed, Keohane (1984, 314) argues that reciprocity may be “the most effective strategy for maintaining cooperation among egoists.”

Reciprocity plays a similar role in crisis-bargaining by altering the incentives for using force in international crises. Reciprocity can contribute to the peaceful

resolution of crises because it can increase the costs of employing the aggressive use of force (i.e. defecting). In this way, crisis actors will be less likely to use force when they expect their adversaries to do the same, since this will increase the costs of using force. In contrast, they will be more likely to use force when they believe that their adversaries will refrain from using force (or employ low-levels of force), as this will result in relatively lower costs for them. Put differently, the costs for employing the aggressive use of force (i.e. defecting) will be greater when actors respond to the use of force with the reciprocal use of force (i.e. mutual defection), while the costs for using force will be lower when states refrain from employing the use of force in retaliation. As such, crisis actors can deter their adversaries from using force by threatening to respond with the use of force in kind.

While reciprocity can promote cooperation in crisis-bargaining, it must meet certain conditions to serve as an effective deterrent in international crises. Most importantly, it can only be successful when the threat of the reciprocal use of force deters an actor from employing force in the first place. This requires that actors have sufficient incentives to commit to mutual defection, since they will be only able to credibly signal their intention to use force in response when this is true. In contrast, when actors lack the incentives to use force in kind, they will be unable to credibly threaten to respond to the aggressive use of force. Thus, actors can only deter the use of force when it is in their interests to use force. In this way, reciprocity can only promote the peaceful resolution of crises when crisis actors have the incentives to employ the reciprocal use of force.



While scholars have identified several ways to promote reciprocity, international law can also facilitate reciprocity in international crises by providing actors with the incentives to employ the reciprocal use of force, and thus, it can help them deter states from initiating the use of force against them. First, the law serves as a “bright-line” that establishes what type of behavior is appropriate and what type is inappropriate (Morrow 2007). The legal principles related to the use force make clear that the aggressive use of force is unacceptable and the right to use of force in self-defense is acceptable. In this way, this body of law essentially institutionalizes the reciprocal use of force in self-defense. Second, by serving in this role, the law alters the payoffs for using force. The law influences the support of international actors, who are more likely to support the use of force in self-defense and withhold support for the aggressive and unlawful use of force. Crisis actors therefore face greater payoffs for using force in self-defense and lower payoffs for initiating the use of force. As a result, leaders with the support of international actors can credibly signal their commitment to the reciprocal use of force in self-defense, and consequently they can deter their adversaries from engaging in the illegal use of force in the first place.

In the remainder of this section, I develop this logic more thoroughly. First, I explain how international law can serve as credible source of standards regarding the appropriate use of force, and second I argue that the law in combination with third parties can alter the incentives for using force and consequently change the dynamics of the reciprocal use of force in international crises.

## **The Legitimacy of International Law**

In this section, I establish that international law can serve as an authoritative information transmission mechanism (i.e. bright-line) in world politics that can shape the dynamics of reciprocity in international crises. In so doing, I argue that international law on the use of force has two key features that allow it to serve as an authoritative source of information. First, the credibility of the law serves as a focal solution that establishes a common and specific set of standards that clarifies what is and what is not acceptable behavior regarding the use of force. Second, by identifying when the use of force is appropriate it makes clear that aggressive use of force is wrong and that using force in self-defense is right. Taken together, international law serves as a credible source of information that influences the behavior of leaders and third parties in international crises.

In recent years, a handful of studies have begun to take seriously the informational role played by international law. Huth et al. (2011), for instance, argue that when the legal principles related to the title to territory serve as a focal point, they can help lead to the peaceful resolution of territorial disputes. Other scholars have argued that international courts, such as the International Court of Justice and International Criminal Court, can also serve as a focal point and facilitate cooperation between actors (Allee and Huth 2005; Huth et al 2011, 2012; Mitchell and Powell 2011; Powell and Mitchell 2007). Finally, Morrow (2007) integrates information and enforcement problems and argues that the legitimacy of international humanitarian law increases the likelihood that reciprocity as an enforcement mechanism can lead to compliance with the laws of war.

While these studies have advanced our understanding of international law, they have their own important limitations. Specifically, many scholars accept the authority of international law without establishing how it acquires this distinction; they simply assume that international law is legitimate by its very nature. The problem with this assumption is that scholars in other fields have already established that information must meet certain criteria in order for actors to rely on it to update their beliefs on the issue in question (e.g., Chapman 2007; 2009; Gilligan and Krehbiel 1989, 1990; Lupia and McCubbins 1998; Thompson 2006, 2009). Scholars interested in international law, therefore, must identify the source of international law's authority before accepting it as credible source of information in world politics.

### **The Process of Law-Making**

In this section, I establish how international law can serve as a legitimate source of information regarding the use of force in world politics. In so doing, I first argue, drawing on insights from the IO literature, that laws must be diverse and representative to be considered credible. Second, I argue that the law-making process determines whether international law satisfies the diverse and representative conditions. Finally, I apply this logic to my specific interest in international law on the use force and show that it can serve as a credible source of information regulating the conduct of the states in their international relations.

Scholars that focus on institutions have established that information can be considered credible when it is developed through both diverse and representative processes (e.g., Gilligan and Krehbiel 1988, 1990; Thompson 2006, 2009).

Representative institutions consist of members with a wide preference distribution, while diverse institutions produce information that is similar to the median preferences of its clients states (Thompson 2006). Thompson (2006, 2009) argues, for instance, that the United Nations Security Council produces credible information because it satisfies both of these conditions. It is, according to Thompson, diverse because of the wide preference distribution of member states at the UNSC, and it is meets the representative criteria as the median preference is similar to that of the international community.

Similar to the institutions literature, international law can also be considered a credible source of information when it is established through diverse and representative processes. In contrast to the institutions literature, however, the process of law-making (opposed to the member composition of the relevant body) can explain when the law satisfies both of these factors. Specifically, when states and other actors enact laws through fair and consent-based processes, they meet the representative and diversity conditions that are required for information to be considered legitimate.

First, international law satisfies the representative condition when it is based on the wide-spread consent of states. The consent-based theory of international law claims that laws that are based on the approval of states are more likely to be accepted as authoritative by the international community. In contrast, legal principles that lack consent are unlikely to be viewed as illegitimate. The implication of this is that legal principles that are based on the wide-spread consent of states (i.e. representative of states in the international system) have a greater sense of authority than laws that lack it. Such laws are thus able to serve as an authoritative source of information. On the

other hand, unilateral declarations and other laws that receive support from a smaller or limited number of states in the international community are unable to serve in an information role, since they are likely to be rejected by many states as illegitimate.

Second, legal principles meet the diversity condition when they are enacted through fair processes. In the context of international politics, this indicates that the information from diverse institutions resembles the median preferences of the international community. Likewise, fair rules are those that have “come into being in accordance with the right process” (Franck 1990). Among other considerations, they are inclusive of the preferences of states in the international system. Fairness assures, for instance, that the superpowers are unable to force their preferences on the international community. As such, legal principles that reflect the preferences of the international community are able to provide credible information. In contrast, rules that are enacted outside of such processes fail to serve in this role.

I now apply these criteria to international law on the use of force. In short, the historical record clearly indicates that international law on the use of force was established through both consent-based and fair processes, thereby allowing it to serve as a credible source of information. This is true for four primary reasons.

First, both the US and the USSR - two leading powers in 1945 - were not alone in crafting the Charter. Scholars have long recognized that it was a political bargain between the great powers and weaker states (e.g., Ikenberry 2001). The Charter, therefore, can be understood as both diverse and representative of the international system. Second, developing nations and other minor powers have also influenced the development of customary international law and even many UN

General Assembly Resolutions (diversity and consent). Customary international law is especially relevant since it only exists when all states accept it (consent).

Anticipatory self-defense and the protection of nationals are two essential legal principles that are based on customary international law. UNGA resolutions, while not legally binding, have proven critical in interpreting the Charter (e.g., Gray 2008) (fairness). The ICJ in the Nicaragua Case, for instance, relied on the UNGA's Definition of Aggression in its decision that favored Nicaragua over the United States. Third, international courts also play a role in this body of law. As a landmark case on the use of force, the ICJ's ruling in the Nicaragua case has influenced how states interpret this law (fairness). ICJ decisions are also independent of powerful states; the US refused to participate with the ICJ in the Nicaragua case even withdrawing from the compulsory jurisdiction clause, but the court's ruling has had a major impact on the development of international law despite US objections (Gray 2008). Finally, the UNSC can authorize the use of force, and as Thompson and others argue, it is both representative and diverse and thus it can produce credible information.

### **Appropriate Standards of Behavior**

When legal principles are established through diverse and representative processes, they can provide information to actors by establishing standards of appropriate behavior in world politics. The law serves as a regulative norm that orders and constrains the conduct of states. The law informs domestic and international actors about what constitutes cooperation and defection regarding the use of force in

international politics. Given this, international law acts as a focal solution to promote orderly and consistent patterns of behavior among states and other actors in the international community (Keohane 1982).

By establishing what is right and wrong, the law has the potential to alter the behavior of crisis actors and shape their expectations regarding the payoffs for using force. As Morrow (2007) puts it with respect to the international humanitarian law, “agreement on normative standards generally and treaties specifically can be thought of as being captured in the common conjecture [in equilibrium]. They matter when they induce a particular pattern of behavior that a different agreement would not. Compliance then is a property of the equilibrium behavior that institutions induce in actors.” The same logic can be applied to international law on the use of force. Because the use of force, under certain conditions, clarifies what acts constitute violations and which do not, the law establishes standards of appropriate behavior regarding the use of force. By serving in this role, it shapes the expectations of members of the international community about when the use of force is appropriate. As such, deviations from the recognized standard are open to punishment, while actions that are in accordance with the law are likely to be rewarded.

More specifically, the law under certain conditions clearly establishes that the aggressive use of force is inappropriate and the right of self-defense is appropriate. In this way, the clarity and authority of international law is directional in nature in that it authorizes one type of force (self-defense) and prohibits another type (armed attack). International law, therefore, stands out as a unique source of standards that informs actors about what types of actions are permitted in the international system.

The historical record indicates that the international community recognizes international law on the use of force as an authoritative source of standards in world politics. Legal scholar Christine Gray (2004) argues the history of the use of force since 1945, and the response from the international community, indicates that states almost always agree on the law and it is only a few controversial cases that there is dissension on the legal principles. Disagreements in the international system typically involve the facts of the incident or application of the law to the relevant facts, but not the law itself. States and other international leaders have also reaffirmed the Charter's prohibition several times since 1945 (Gray 2008). At the 2005 World Summit, for instance, the international community overwhelmingly reaffirmed the law of the Charter. Likewise, as the authors of the High Level Panel on Threats, Challenges and Change of the United Nations put it, "we believe that the Charter of the United Nations, properly understood and applied, is equal to the task [of regulating the use of force]."

In sum, I first established that credible sources of information must satisfy the diversity and representative conditions. Legal principles can meet these conditions when they are enacted through consent-based and fair processes. The historical development of international law on the use of force indicates that it meets these requirements. The legal principles on the use of force therefore can serve as a legitimate source of information in world politics. Second, I showed that the credibility of international law identifies when it is appropriate to use force in world politics. In particular, the law permits the right of self-defense and prohibits the



aggressive use of force. In the next section, I put forward my argument for how the law as a source of credible information can alter the dynamics of crisis bargaining.

### **Crisis Bargaining and Reciprocity**

In this section, I present my theoretical framework on how the law can constrain leaders in international crises. As noted, this is a two-stage process: first, I argue that the law influences the behavior of international actors, and second, I posit that third parties impact the behavior of leaders in international crises. Taken together, international law on the use of force helps leaders deter aggressive actions from taking place by helping them commit to the use of force in response to an armed attack.

### **Third Party Incentives**

In this section, I put forward my argument for exactly how international law influences the support of third parties, and ultimately the dynamics of crisis bargaining. In particular, when international law permits the right to self-defense, third party leaders can feel more confident that they are using their own limited resources in a worthwhile and justifiable effort. In addition, the legal right to use force can provide political cover at home should the third party leader determine that he wants to support the crisis actor. In contrast, when international law prohibits the use of force, domestic actors will be uncertain about the merits of supporting crisis actors. Given this, third party leaders are more likely to support the use of force when

it is consistent with international law and oppose the use of force when crisis actors violate the law.

To start, states and intergovernmental (IGOs) make up the international actors that can influence the behavior of crisis actors. Third party states include friends and allies in the international community, but also neutral and even adversary states. IGOs include both regional and international organizations. The latter include, but are not limited to NATO, ASEAN, OAS, the Arab League, and the OAU. The recent NATO-led operations in both Libya and Kosovo are good examples of the actions of regional organizations. The pool of third party actors is thus open; if the actor can influence the costs of using force in the ways discussed below, then crisis actors must incorporate their expected behavior into their decision-making.<sup>30</sup>

The existing literature offers some insights on the incentives of third party leaders. Most of the theoretical arguments on the behavior of third party states in international conflict can be found in the alliance literature, and especially the alliance reliability literature that seeks to understand when allies honor their commitments to war combatants. The literature typically offers two explanations to explain variation in alliance support – major power/military capabilities and regime-type – in which the focus of both mechanisms is on how they affect the costs for upholding commitments.

Regarding the role of power, scholars argue that powerful states are less likely to be reliable allies because they can afford the reputational costs that come with violating alliance commitments. The empirical literature, however, offers

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<sup>30</sup> As I discuss below, third parties can provide military, economic, and diplomatic support. In this way, my argument on third parties is not limited to overt military support, such as providing troops.

contradictory findings. Some scholars have found that major powers are less likely to support allies (Krause and Singer 1997; Leeds 2003), while others have found no effect for this relationship (Sabrosky 1980). On the other hand, Gartzke and Gleditsch (2004) find that powerful states are actually more likely to intervene to protect allies in war.

Second, several scholars have argued that democratic leaders are more likely to uphold their alliance commitments than leaders from nondemocratic states (Fearon 1994; Gaubatz 1996; McGillivray and Smith 2002). Because democratic leaders can be punished at home for violating international agreements and damaging the reputation of the state, they are unlikely to violate their alliances.<sup>31</sup> More recently, in an offshoot of this argument, some scholars argue that more democratic states are more likely to support other democracies because of an affinity towards fellow liberal states.

There are also some important works on third party behavior beyond the alliance reliability literature. Huth (1998) tests the determinants of major powers interventions in a sample of international crises. Consistent with much of the alliance literature, he mostly focuses on military capabilities and regime-type variables, although he develops more sophisticated arguments on the role of domestic politics on the decision to intervene by going beyond hypotheses based solely on broad categories of regime type. Finally, Butler (2003) in an important study that goes beyond military capabilities and regime type assesses how concepts related to Just War Theory influenced interventions by the US during the Cold War. He finds that

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<sup>31</sup> Gartzke and Gleditsch (2004), however, find that democracies make less reliable allies.

several factors can affect US behavior, although his results are to be interpreted with caution given that he only considers interventions by the United States.

While these insights are certainly important, they are limited with respect to explaining when third party actors in general decide to support crisis actors. First and most importantly, while allies may be more likely to fight together than other states (e.g., Werner and Lemke 1997; Huth 1998), nonallies can still support crisis actors. The problem is that the logic of alliance reliability may not apply to nonallies. Most of the alliances arguments are based on the reputational costs for violating an international agreement, which is a consideration that is absent for nonallies. Second, inasmuch as military power and the regime type may be important determinants of alliance reliability, there are likely to be more than two determinants for why states intervene in a conflict. That is, it is unlikely that only military power and democracy explain all of the variation in patterns of third party support. Finally, the literature only considers overt military interventions, which overlooks the other avenues that third parties can influence conflict outcomes, such as IGO support, diplomatic/political support, and other forms of material support (e.g., training, equipment, intelligence).

Nonetheless, the existing literature shares one commonality which is that third parties seek to minimize both international and domestic costs when they decide to intervene to support allies and friends in the international community. Drawing on these insights, but offering an alternative to the existing literature that relies almost exclusively on military power and regime-type, I argue below that international law

on the use of force can help third parties minimize both domestic and international costs.

International law can help third party leaders make decisions about whether to support the crisis actor or decline his request. This is for two primary reasons. First, the legal principles related to the use of force provide third party actors with information about the motivations of the crisis actors and about the general merits of using force. Second, international law provides domestic cover to third party leaders who decide to assist crisis actors.

### **Limited Resources**

Third party leaders must be selective about when to support crisis actors with their own limited resources and security concerns. Their primary concern is whether they believe that expending resources in support of the crisis actor is worth it, since they are likely to have their own crises or requests from other states in the future. They therefore must be cautious with their resources and avoid expending them in questionable cases. Leaders are therefore only likely to support crisis actors when it entails relatively limited costs to them and it is consistent with their preferences.

The problem, however, is that third party leaders suffer from asymmetric information. There are two sources of this uncertainty. First, while these leaders have some information about the merits of using force, they are still at an information disadvantage relative to crisis actors. Second, they lack information about the motivations of crisis leaders. That is, there is likely to be some uncertainty about why the leader is using force. They therefore require additional information to help them

make a decision about whether they should support the crisis actor. International law can provide them with this much needed information.

Using force that is consistent with international law on the use of force provides information to the third party that the leader is not employing aggressive actions. In other words, because the overriding legal principle is self-defense, third parties know that lawful behavior is defensive in nature. Even the legal principles that expand upon the Charter's restrictions on the use of force are also opposed to the aggressive use of force. For instance, necessity and proportionality – the cornerstones of international law that are based on customary international law – ensure that the use of force is a last resort. Likewise, the use of force in the protection of nationals which is also based on customary international law only permits the right to use force after peaceful means have been exhausted. The same logic applies across the many legal principles related to the use of force.

There are three primary reasons why leaders benefit for complying with the legal principles related to the use of force in international crises. First, when crisis actors act consistently with international law, they are signaling their benign intent to the international community (Thompson 2006, 2009). Third party leaders know they are using force only as a last resort. They know that they will be unlikely to unnecessarily expend resources when the use of force is consistent with international law, since wars of choice and other aggressive actions are illegal. This informs third parties that the leaders' intentions are not hostile in nature. On the other hand there is likely to be greater uncertainty about the motives of states when they use force that violates international law. Third party states will be less likely to support crisis actors

when they question their motives. Middle East scholar Shibley Telhami (2003) made this point regarding third party reaction to the US use of force in Iraq, “Most are... concerned that the war in Iraq was merely the opening move in a larger strategy; they ask themselves which country will be next.”

Second, states that support leaders that are acting in self-defense can be more confident that they will be less likely to face a greater number of adversaries. As members of the international community know that the state is acting in self-defense, fewer third parties will support the adversary and state that violated international law. The third party is thus less likely to have to engage other third parties in the conflict. The opposite is also true. When a third party supports a state that has violated international law, it is more likely to be opposed by a larger coalition in war. The result is that third parties can expect to pay higher costs in the conflict for supporting states that violate international law, and lower costs for supporting states that comply with it.

Third, international audience costs in the form of reputation costs will be lower given that they are coming to the aid of a state, rather than supporting a belligerent state that is responsible for initiating a conflict. In other words, they do not have to worry about any international consequences for supporting the legal use of force, since states that support aggressive nations may themselves suffer international audience costs. It appears that the United Kingdom’s reputation, for instance, was likely harmed by supporting the United States in the 2003 Iraq War, while France’s international standing seemed to improve after refusing to support the US in the invasion of Iraq. In contrast, third party actors have little reason to worry about any

international ramifications for supporting the lawful of force. Few states suffered reputational costs, for instance, for supporting the US in both the first Gulf War and in the US-led war against Afghanistan following the attacks of 9/11.

### **Domestic Cover**

Leaders of third parties have to ensure domestic political support before supporting crisis actors, even if they want to help them. Since these leaders are also accountable at home, they have to make sure that they will not be punished at home for using force to help another state. In other words, leaders have to justify the use of force to domestic actors. International law is also helpful here because it provides domestic cover to third party leaders.

Third party domestic publics, like all domestic actors, have problems of asymmetric information when it comes to foreign policy. They are unsure about the merits of using force, especially when it comes to the use of force for other states. Because of this, they often look to elite actors or cues to provide them with information about international relations.

International law can provide this information to domestic actors for two primary reasons. First, the public's preference is largely consistent with behavior that is in accordance with international law. Research indicates that domestic actors are more pacific than leaders when it comes to using force (e.g., Eichenberg 2000; Kull and Destler 1999; Oneal, Lian, and Joyner 1996; Jentleson 1992; Jentleson and Britton 1998). The public is also likely to be even more reluctant to support the use of



force for other states. Given this, public support for war is typically greatest for military operations that could be considered largely defensive in nature.

The preference of defensive action is consistent with international law on the use of force. Third party publics therefore can use international law a source of information to assess the merits of using force. When behavior is consistent with international law, they know that the use of force is broadly consistent with their preferences. On the other hand, when the use of force is contrary to established legal principles, third party publics have reason to doubt whether they should support the crisis actor. Given this information, citizens will be more inclined to support the use of force that is in accordance with international law on the use of force.

Second, the behavior of other international actors can influence the support of third party domestic actors. As domestic actors look to international actors as a type of elite cues, the policy stances of international actors can inform domestic actors about the merits of using force. As international actors are more likely to support behavior that is consistent with international law, domestic actors are subsequently more likely to do the same. In contrast, international opposition to the use of force is also likely to trickle down to third party domestic publics.

Given these two reasons, the authority of international law provides domestic cover to leaders who want to support crisis actors with the use force or provide other forms of assistance. As such, when leaders support actions that are consistent with international law, domestic elites will be less likely to criticize the leader for using force unnecessarily. Leaders who feel more secure at home will be more confident about supporting another state. In this way, international law not only affects

domestic actors of the state in question, but also the domestic public of potential allies and other states in the international community.

### **Potential Objections**

Despite the above argument, some scholars, especially skeptics of international law, may argue that strategic considerations trump international law, especially for the decision to support other states with military support. While this was true to some extent during the Cold War with respect to at least active military support, the evidence also suggests that the law also influences states.<sup>32</sup> In a study of the United Nations General Assembly, Franck (1984) found that states were largely unbiased in their support of other states. Even during the Cold War the decision to support or condemn other states was largely consistent with international law on the use of force. Additionally, Schachter (1991) argues that although there is some bias, "votes show that the reactions to the use of force are not always dictated by political affinities in disregard of facts and law. States that are friendly to or even closely allied with an accused state have not hesitated to cast their votes against that state when the issues were clear".

Indeed, anecdotal evidence indicates there are several examples when the international community acted in a manner consistent with the law instead of supporting questionable actions by allies and other friends in the international community (Gray 2008, ch. 2). For example, the support of self-determination movements related to decolonization including the condemnation of many Western states, the widespread support for the US following 9/11, the Embassy bombings in

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<sup>32</sup>I empirically assess the reaction of third parties to international law in Chapter 5.

Kenya and Tanzania, and the mostly muted reaction of the international community's to Israel's use of anticipatory self-defense in the Six Day War were all consistent with international law. Likewise, when a state violates the Charter, the international community often acts in concert to criticize that state, such as repeated condemnations against Apartheid South Africa and Rhodesia for illegal "hot pursuit" raids into neighboring countries, the US's criticism of France, the UK, and Israel in the 1956 Suez Crisis, and Iraq's invasion of Kuwait in 1990.

Finally, even though the UN Security Council has authorized the use of force only on a handful of occasions, support from the institution is only likely when the proposed use of force is consistent with international law. In other words, the UN is unlikely to authorize an illegal action, as evidenced by the US-led invasion of Iraq in 2003.<sup>33</sup> Regional organizations behave in similar ways. For instance, in the Cuban Missile Crisis, the Organization of American States approved a naval blockade, but was unlikely to support US air strikes on Cuba which would have been illegal (Chayes 1974).

In sum, third party leaders who have limited resources and their own strategic interests must prioritize their own welfare and exposure when they are thinking about supporting crisis actors. They therefore are only likely to assist crisis leaders under limited conditions. International law on the use of force can help them decide when it is in their interests to intervene. The law can help leaders identify courses of action that will both minimize the costs of using force and ensure political support at home. We can therefore safely conclude that when crisis actors act in accordance with international law, third party leaders will be more likely to support them. In contrast,

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<sup>33</sup> Humanitarian intervention appears to be a partial exception.

when leaders act contrary to international law, third parties will be less likely to support them.

### **Leader Incentives**

In this section, I establish that third parties can alter the payoffs for crisis actors, with more support leading to higher payoffs and lower support leading to lower payoffs.

International actors can inflict two types of costs on crisis actors: direct costs and what I refer to as indirect costs. First, they can directly influence the payoffs from conflict by altering the material and nonmaterial resources at the disposal of crisis actors. Second, international actors can also inflict indirect costs on leaders by altering the support of domestic actors, who look to international actors for information on the merits of using force.

### **Direct Effects**

International actors can directly influence war outcomes in two primary ways; third parties can provide both material and nonmaterial support to crisis actors. Regarding the former, it can be thought of largely as burden-sharing that can directly alter the costs of using force. Material support can furthermore be divided into active and latent support. With respect to active support, third parties can provide troops, equipment, and access to air, land, and maritime areas. Turkey, for instance, refused to allow the US to enter Iraq from its territory in the 2003 Iraq War. UN peacekeepers while made up of soldiers from individual countries operate under and require authorization from UN member-states. Latent support typically consists of training,

intelligence, and monies for using force. In the 1973 Arab-Israeli war, US equipment was vital to Israel's ability to turn the course of the war in their favor (Oren 2003). Both forms of material support can influence the payoffs for using force as they both can have a meaningful impact on the expected course of the conflict.

First, when a crisis leader acts in accordance with international law, he can expect to receive higher levels of military support from third parties. Burden-sharing can have a powerful effect on the calculus of leaders (Byman and Waxman 2002; Chapman 2007; Voeten 2005).<sup>34</sup> It can serve to both increase the aggregate military power of the leader in question and offset the costs of using force. Research has established, for instance, that more powerful coalitions are more likely to win wars (Reiter and Stam 2002; Choi 2004). Similarly, we also know that leaders who fight with larger coalitions suffer lower numbers of military and civilian fatalities (Valentino et al. 2010).

More specifically, there are several advantages for waging multilateral conflicts. First, the combined military power is obviously greater than it is for the unilateral use of force. This is especially relevant for smaller states that may be unable to use force without external support. Second, individual states with their own strengths can employ their resources to their area of specialty. In other words, the

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<sup>34</sup> Allies who share the costs of war are likely to expect a division of the spoils. I recognize that this can reduce the benefits of multilateral efforts, but I believe that states still, on average, prefer multilateralism. First, I assume leaders prefer to reduce the certain costs of war rather than the more uncertain benefits of victory. Second, leaders who value public goods are especially likely to benefit from third party support and the lower costs of warfare. Finally, wars of conquest and expropriation are rare under the Charter system, as would be expected. Finally, allies who provide resources other than troops are less likely to expect a share of the spoils.

multilateral use of force provides states with a certain degree of flexibility that they may otherwise lack for the unilateral use of force. Third, multi-front wars require that the targeted state divide its resources across the different fronts, which makes it weaker in any given front. Finally, multilateralism gives states greater access to strategic or otherwise valuable territory, while denying it to their common adversary.

International law therefore can serve as an important constraint because of how it influences support from members of the international community.

Multilateralism can provide leaders with major advantages in wars, and thus their payoffs from war should be higher. In contrast, the unilateral use of force carries heavier costs for leaders, which may be prohibitive for many crisis actors. Crisis leader should thus have a preference for complying with international law in order to secure the support of allies and other friends in the international community.

The crisis between the US and Libya provides a nice illustration of how much crisis actors value the support of international actors. In 1986, two Americans died and several hundred more were injured in a terrorist attack at a nightclub in Germany. The US blamed Libya for the attack and responded with heavy air strikes against Libya. President Reagan claimed that the US has the right to use force against Libya, because Washington had evidence that Libya was responsible for the attack and that Libya planned to engage in future attacks. Importantly, President Regan used information obtained from an intelligence asset at the Libyan Embassy in East Berlin to make his case about the culpability of Libya. According to one CIA official, however, President Reagan used this information to the “consternation” of the CIA, since it risked blowing the cover of a valued source (O’Connell 2004). Nonetheless,

it was so important for President Regan to justify his decision to use force, he believed it was worth the price of the intelligence asset.

Second, nonmaterial support can also help leaders in crisis bargaining. When a leader receives political support from the international community, he will feel justified in using force and perhaps more acceptant of the costs involved. For instance, Schachter (1991, 1620) argues that "[leaders] are mindful of the political costs of adverse opinion even though they may persist in the questionable use of force... states accused of illegality take pains to show their conduct to be legitimate self-defense." Likewise, the increased support can help the crisis actors coerce or otherwise persuade his opponent to capitulate. One way to think about this is that diplomatic and political support can increase the resolve of the crisis actors. Thus, if the international community is able to put enough pressure on the state, the leader in question can avoid the costs of using force by forcing his opponent to accept a deal.<sup>35</sup>

Regime-change in Haiti provides an illustrative case of the logic of the former case. Within six months of the United Nations Security Council passing Resolution 940 authorizing member-states "to use all necessary means to facilitate the departure from Haiti of the military leadership", President Clinton was able to reach an agreement with the military junta to step down and allow former President Aristide to return to power. Of course, while other factors contributed to the military junta's decision to capitulate, the power of an united international community supporting the

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<sup>35</sup> There are also long-term effects of violating international law. States that repeatedly violate international law on the use of force may find that international actors become increasingly intolerant of them. In other words, an accumulation of violations may have important consequences over the long haul even if it reactions are tempered at first.

US's preference for regime-change, as evidenced by UN Resolution 940, played a role in the bloodless coup.

### **Indirect Effects**

The indirect effects of international actors influence the behavior of leaders by informing domestic actors about the merits of using force. This argument is based on the idea that leaders are accountable to domestic actors and they must maintain their support to stay in power.

Domestic actors, however, lack information about foreign policy and are unable to judge the behavior of the leaders. Given this, they look to international actors for information about the merits of using force. Thus international law influences domestic actors by first informing the behavior of international ones.

While there are different arguments on the specific causal mechanisms at play, the interest here is on how international actors serve as elite cues to domestic actors and provide them with the necessary information. International actors can serve in this role because they meet the conditions that are necessary for domestic actors to turn to for credible information. Specifically, citizens value their support for two primary reasons; first, they may share common interests with the third parties (i.e., trusted cues) , or second, the diverse set of opinions provides an external check for domestic actors on the merits of using force even for those who may doubt the value of the institution (Grieco et al. 2011).

Specifically, international actors can provide both formal and informal actions and statements to inform domestic actors about the legitimacy or justification for the



use of force. The UN Security Council, for instance, can authorize the use of force or even issue condemnations. Likewise, the UN General Assembly, while not legally binding, can pass resolutions signaling the support of the international community or at least a certain segment of the international system. The UN Secretary-General who has a certain degree of authority as the leader of the UN can similarly issue formal statements about the use of force.

Regional organization can also authorize actions, as the OAS approving the blockade in the Cuban Missile Crisis. These organizations can also issue public denunciations of the certain courses of action. Finally, third party leaders can voice their support or not for the use of force. As French President Jacques Chirac said in the lead-up to the 2003 Iraq war that, “Nothing, nothing justifies this.”<sup>36</sup> On the other hand, third party leaders can publicly declare support for other nations, as the US often does for Israel.

The effect of international law on third parties therefore has important consequences domestically. Domestic actors can update their beliefs about the behavior of leaders once they receive this additional information. Put differently, this information creates an opportunity for citizens to know whether they should punish leaders for using force inappropriately, and thus it can serve as the mechanism for how international law can constrain states. Given this, they will punish them if the new information indicates that they acted in a manner different from what they wanted them to do. In contrast, if this new information confirms that they acted appropriately, then citizens have no reason to sanction them.

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<sup>36</sup> [http://articles.cnn.com/2003-02-10/world/sprj.iq.wrap\\_1\\_statement-of-mutual-defense-iraq-standoff-nato?\\_s=PM:WORLD](http://articles.cnn.com/2003-02-10/world/sprj.iq.wrap_1_statement-of-mutual-defense-iraq-standoff-nato?_s=PM:WORLD)

There are three primary ways that international actors can influence domestic ones. First, burden-sharing can serve as an important signal to domestic actors about the merits of using force. Since domestic actors prefer to minimize the costs of using force, burden-sharing can be an especially attractive option for leaders. The ability of leaders to minimize the costs of using force by sharing the costs of force can provide especially valuable information to domestic actors. In particular, when other nations are willing to share the burden for the use of force, this indicates to domestic actors that the use of force is worthwhile. In this way, the contributions of allies can serve as a costly signal to domestic actors about the merits of using force. The lack of support, however, can raise doubts among the domestic public about the necessity of using force.

The available evidence is consistent with the importance of third parties. In a comprehensive review of US public opinion on 12 instances of the use of force between 1979-2003, Eichenberg (2005) finds strong support for the public's preference for multilateral actions compared to unilateral actions. He finds, for instance, that in five cases (i.e. Lebanon Peacekeeping, North Korea nuclear confrontation, Bosnia, Kosovo, and Somalia), the public's support for using force was at least 10 percentage points higher when either the UN or NATO was mentioned in the survey.<sup>37</sup> He points out that the differences are significant in that in a majority of the cases in his study, the majority of the public only supports using force when it is multilateral in nature.

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<sup>37</sup> In several of the other cases in his study, Eichenberg finds that multilateralism increases support for using force, although the differences are smaller compared to the five examples cited above.

Similarly, when a leader uses force without international support, it may lead citizens to doubt the legitimacy of the mission. Recent work in the public opinion literature suggests that while citizens are sensitive to casualties in war, they are more sensitive when they doubt the legitimacy of the mission (e.g., Gelpi et al. 2009). International actors can inform the domestic public about the merits of using force. If a leader uses force without the support of domestic actors and the expected costs of the war become relatively high, the leader is more likely to face a domestic backlash compared to a conflict when the decision to use force was justified with the support of international actors.

Second, there are reputational consequences for using force against the wishes of the international community. Scholars working in a variety of literatures have found that citizens value the reputation of the state (McGillivray and Smith 2008; Tomz 2007). Reputation can be especially important for compliance with international law (Guzman 2008). When leaders use force multilaterally, they will be seen as reliable partners who make more credible promises. This makes future gains from cooperation both easier and less costly. Since citizens value the future benefits of cooperation, leaders have incentives to develop and maintain a cooperative reputation. As a result, if a leader violates international law and receives little international support, domestic actors can criticize the leader on grounds that he is undermining the future gains from international cooperation.

Third, the behavior of third parties can also influence the support of the domestic opposition. The opposition elite (or other members of the elite in non-democracies), play a central role in the political survival of leaders. They can hold

leaders accountable by potentially removing them from office or by impeding their preferred policies, especially if they are in the legislature or serve as a veto player in another institution (e.g., military leader). The opposition also has incentives to undermine the leader. To bolster their own political fortunes, they would like to call the leader incompetent and argue that his policies threaten the security and interests of the state.

The opposition elite, however, must be selective about when to criticize the leader. If the opposition challenges the leader under adverse conditions, it risks undermining its domestic support or it may face counter-attacks by the leader, which may be especially costly in non-democratic regimes. Consequently, the opposition is more likely to condemn the leader when they are more likely to receive support from other domestic actors or if the leader's coalition is already weak or divided. In contrast, when the public already supports the leader, the opposition will be unlikely to oppose the public and weaken their own domestic standing. Put differently, it would not be in the opposition's interest to challenge the leader when he already has the support of the people.

Thus if a leader is considering the use of force that is consistent with international law, he can expect to silence the opposition. In this case, opposition elites have few incentives to condemn the policies of the leader. If the domestic opposition challenges the legal use of force, the opposition risks being seen as putting politics ahead of national security. Similarly, as Schultz (2003b) argues, the opposition risks being blamed at home if they failed to initially support the use of force and the conflict becomes costlier than expected. Therefore, the opposition has

incentives to challenge the illegal use of force, but few reasons to condemn the lawful use of force.

The US invasion of Iraq once again helps illustrate the importance of international actors, especially the United Nations. According to a USA TODAY/CNN/Gallup Poll conducted shortly before the invasion, 60% of the US public supported the war. However, support for the war dropped to 54% without UN authorization and to less than 47% if President Bush were to fail to even seek the approval of the Security Council. It is also important to realize is that while the UN help shaped the support of domestic actors, UN support was actually endogenous to international law. That is, many states refused to support the US invasion of Iraq because it violated international law on the use of force.

### **Theoretical Expectations**

The above discussion leads directly to some theoretical expectations regarding how international law can promote the peaceful resolution of international crises.

Reciprocal interactions help explain the decision of crisis actors to escalate international crises with the large-scale use of force. International law on the use of force facilitates the reciprocal use of force and minimizes aggression actions by helping leaders credibly commit to the use of force in self-defense. International law alters the costs and benefits of using force in international crises by influencing the support of international and domestic actors. Third parties are more likely to support states that comply with international law and withhold support from states that violate the law. Leaders face greater costs both at home and internationally for violating

international law, while they can minimize the costs by abiding by the legal principles related to the use of force. As such, leaders with the support of third parties can engage in successful deterrence in international crises since the payoffs for the reciprocal use of force are greater than they are for initiating the use force. Therefore, we should expect that leaders will be more likely to comply with international law on the use of force in order to avoid the costs of engaging in the aggressive use force.

My primary hypothesis is:

**H1: Leaders are less likely to employ the large-scale use of force in international crises when international law prohibits the use of force compared to when leaders have a legal right to use force.**

## **Conclusion**

In this chapter, I presented my theoretical framework for understanding how international law can effectively constrain leaders in international crises. In so doing, I put forward my theory of institutional reciprocity. By serving as a credible source of information, international law can effectively constrain leaders because violating it increases the costs of using force, while complying with it reduces these costs. Third parties make up the key mechanism here. Third parties are more likely to support actions that are in accordance with international law and oppose behavior that is not consistent with it. Leaders value the support of third parties because they alter the dynamics of reciprocity. Leaders with the support of third parties can credibly commit to the reciprocal use of force and deter actors from pursuing aggressive actions. Given these theoretical expectations, I hypothesized that leaders will be less

likely to escalate international crises when international law prohibits the use of force compared to when it allows for the right to self-defense.

## **Chapter 4: International Law and Crisis Escalation**

### **Introduction**

In the previous two chapters, I introduced the most important principles on international law on the use of force, and I presented my theoretical framework, institutional reciprocity. I argued that international law on the use of force can be an effective constraint on the behavior of leaders in international crises. I posited that international law facilitates the reciprocal use of force and helps crisis actors deter their adversaries from initiating the aggressive use of force against them. The law influences the dynamics of reciprocity by altering the support of international and domestic actors. Because the credibility of international law establishes appropriate standards of behavior in world politics, I suggested that domestic and international actors are more likely to support actions that are in accordance with international law on the use of force and oppose actions that violate the relevant legal principles. As such, I concluded that leaders are more likely to comply with international law to lower the costs of using force.

In this chapter, I empirically assess my theoretical framework and present the results of my statistical analyses. Using an original dataset on international law on the use of force in international crises since 1945, I find that this body of law is an effective constraint on leaders in international crises. Specifically, my findings suggest that leaders are at least 45% less likely to escalate militarily in a crisis when international law prohibits the use of force than when a leader has the right to use force.



The rest of this chapter is organized as follows. First, I introduce my universe of cases and discuss the original dataset on the legality of using force that I created for this dissertation. In this section, I also include an example of how I coded the international law on the use of force variable. I then discuss the statistical complications that are common to empirical analyses such as mine. Third, I present the statistical and substantive results. Fourth, I present an alternative and innovative research design to account for any potential spurious effects in my statistical results on the effectiveness of international law. Fifth, I consider the role of international law within several sub-populations of my analysis, such as powerful states, major powers, democratic leaders, and so forth. Finally, I conclude with the implications of my empirical analyses.

### **Research Design**

I use the International Crisis Behavior (ICB) dataset from 1946-2005 to test my theoretical expectations on the effectiveness of international law on the use of force. As defined by Brecher and Wilkenfeld (2000), an incident must meet three conditions to be considered an ICB crisis: a state perceives a threat to one or more basic values, a heightened perception of involvement in military hostilities, and an awareness of a finite time horizon for decision-making.

While I understand that most studies conflict initiation and escalation use the Militarized Interstate Disputes data (MIDs) (Maoz 2005) to assess arguments on crisis escalation, ICB is an appropriate universe of cases for my purposes for three primary reasons. First and most importantly, ICB crises, on average, occur at

relatively higher levels of severity compared to the MID data. In a comparison between MID data and a new dyadic-based ICB dataset, Hewitt (2003) finds that ICB crises, across several different criteria, are more severe than MID data.<sup>38</sup> The higher level of severity helps ensure that the results are not spurious. As many MID data occur at relatively minor levels of hostilities, leaders may have little interest in escalating them to a higher-level, irrespective of the law. It is unlikely, for instance, that leaders will routinely escalate minor border incidents that are common in the MID data. Thus, there is likely to be a strong positive correlation between the prohibition on the use of force and the decision to refrain from escalating the dispute. The correlation, however, will have little to do with international law, and more to do with the fact that a leader has little incentive to escalate a relatively minor incident. In contrast, in the ICB data, there is a greater likelihood that each dispute will escalate to high-levels of force. The effect of law on the peaceful resolution of international crises using the ICB data is less likely to be spurious and more associated with the effectiveness of international law.

Second, the MID data is problematic since there is no description of many of the actual events in the MID data. Due to this limitation, it would be difficult to code the legality of using force for most MID data, as information on the facts of the case that contribute to the legality of using force are missing. Finally, other scholars have used ICB to test many theories of conflict, most notably the work on audience costs (Gelpi and Griesdorf 2002), the democratic peace (Rousseau et al. 1996), and major power interventions (Huth 1998). In sum, the strengths of the ICB data and the

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<sup>38</sup> Although ICB crises are on average more severe than MID data, it is important to note that the use of force is not required for inclusion into ICB. About 20% of crises begin when a state makes a political threat.

limitations of the MIDs data make the ICB data an appropriate universe of cases to empirically assess my theoretical argument.

It is also important to discuss how I built the data used in the analysis, since I had to reorganize the standard ICB data and collect additional information to test my hypotheses on the behavior of crisis-actors.<sup>39</sup> To that end, I researched the ICB summaries (Brecher and Wilkenfeld 2000), the recently released ICB dyads data (Hewitt 2003), standard conflict sources (e.g., Clodfelter 2002; Sarkees 2010), and other studies that have used ICB (Gelpi and Griesdorf 2002; Gelpi 1997; Rousseau et al 1996).

First, the unit of analysis in my data is the crisis-actor. I also distinguish between challenger and target states in my analysis: a state is coded as the challenger if it was the first state to express dissatisfaction with the status quo, while the defender of this initial action (i.e. the trigger in ICB language) is the target.<sup>40</sup> There are 455 challengers and 455 targets across the 303 crises in my data.

I distinguish between challengers and targets because the relevant legal principles permitting the right to use of force vary in large part for challengers and targets. The strict right of self-defense to an armed attack mostly applies to target states. When targets have the right to use force, for example, they are usually responding to an attack from another state, such as Iraq's armed attack against Kuwait in 1990 that triggered Kuwait's right of self-defense.

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<sup>39</sup> ICB has recently created a dyadic data set. Nonetheless, I rely on my own dataset for several reasons. First, the dyadic data does not contain information at the dyadic level for many of the variables used in this analysis. Second, the dyadic data does not distinguish between challengers and targets.

<sup>40</sup> This coding rule is consistent with other empirical work that uses the ICB data (e.g., Gelpi and Griesdorf 2002; Huth 1998; Rousseau et al. 1996).

In contrast, the legal principles are typically different and more varied for challengers; the majority of these cases include: 1) response to non-state actors including terrorists and rebel groups, 2) the right to protect nationals in foreign states, 3) intervention in other states, 3) anticipatory self-defense, and 5) self-determination efforts during decolonization. As a result, challengers are not responding to an armed attack by another state, but rather they are responding to some action by either a non-state actor, the interaction between a non-state actor and another state as in a civil conflict, or the occupation of a state by a colonial power. Given the systematic variation in the legal principles for challengers and targets, it is important to account for this in my empirical analyses, as I do by distinguishing between challengers and targets.

Second, similar to the Militarized Interstate Disputes (MIDs) data, I disaggregate ICB crises with multiple actors into several challenger-target observations. Given this, several crises have more than one challenger and target. There are, for instance, two observations in the 2001 Afghanistan War: in the first the United States is the challenger and Afghanistan is the target and in the second observation, the United Kingdom is the challenger and Afghanistan is the target. Third, it is possible for a state to be both the challenger and target in a given crisis. For example, in the crisis leading to the Gulf War, Iraq is the challenger against Kuwait, but it is the target against the United States, United Kingdom, France, and so forth.<sup>41</sup>

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<sup>41</sup> This is similar to the MIDs data, only that they code Iraq-Kuwait and US-Iraq as two different MIDs; nonetheless the number of observations and the variables of interest are consistent across the data sets.

Fourth, crisis actors must be states or in a select few cases colonies that were on the verge of receiving statehood.<sup>42</sup> I, however, exclude non-state actors from my analysis. Even though non-state actors indirectly caused many international crises, they do not serve as crisis-actors in my data.<sup>43</sup> On the other hand, I include colonies as crisis actors. I differentiate between non-state actors and colonies because many of the latter had already developed the institutions and sense of statehood by 1946, whereas many of the non-state actors lack these institutional features.<sup>44</sup> Finally, I drop all inter-war crises from my analysis because they are less relevant for analyses on the decision to initiate the use of force.

### **Response Variable: Crisis Escalation**

Crisis escalation is the primary response variable in my analysis. ICB codes four different levels of crisis escalation: 1) no clashes, 2) minor clashes, 3) severe clashes, and 4) war. In my analysis, I collapse the four category variable into two categories, in which the variable receives a one if the leader in question engaged in severe clashes or war, and zero otherwise.<sup>45</sup> Escalation values are based off of the highest level of violence for each actor in the crisis-dyad.

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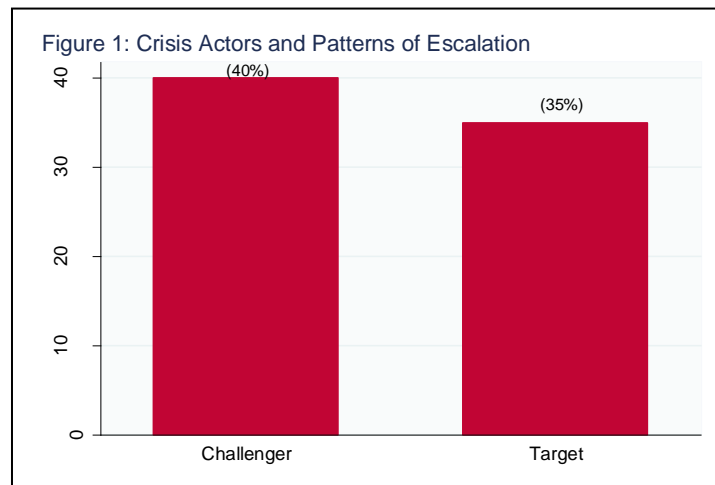
<sup>42</sup> Once again, this coding rule is consistent with previous studies that have used ICB (Gelpi and Griesdorf 2002; Huth 1998; Rousseau et al. 1996).

<sup>43</sup> For instance, while Al-Qaeda obviously attacked the US first on 9/11, I code the US as the challenger and Afghanistan as the target, in which the US had the right to use force against Afghanistan because Al-Qaeda was considered a de facto organ of Afghanistan. This is consistent with the coding rules in the ICB dataset.

<sup>44</sup> In other words, I view non-state actors, such as the Cuban exiles invading the Dominican Republic as something that is categorically different from Indonesia fighting the Dutch for independence.

<sup>45</sup> As a robustness check, I estimated my models using the entire four category scale. The results remained the same. I also estimated my equations on a response variable that was coded a one if war occurred, and zero otherwise. My results remained the same.

In Figure 1, I display the distribution of my response variable. As Figure 1 indicates, there are 466 challengers and 466 targets.<sup>46</sup> Challengers escalated to the large-scale use of force in 188 out of the 466 crisis-dyads (40%), while targets escalated 160 times (35%). Finally, both states escalated 150 times amounting to 32% of all crisis dyads. The results indicate that crisis escalation occurs at relatively high rates in ICB crises.



### **Theoretical Variable of Interest - International Law on the Use of Force**

I utilize a two-step process to code this variable. First, I collected data on the facts of each crisis, and second, I applied international law to the facts. I researched several legal works to identify the relevant legal issues (e.g., Alexadrov 1996; Arend 1993; Crawford 2003; Dinstein 2005; Franck 2002; Gray 2008; O'Connell 2001; Ruys 2010) and other sources to code the facts of the crises (e.g., Brecher and Wilkenfeld

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<sup>46</sup> Due to missing data, however, I only estimate my equations on 449 crisis-actors.

2000; Clodfelter 2008; Sarkees et al. 2010). I use the legal principles below to code the right to self-defense category.<sup>47</sup>

- 1) A state only has the right to self-defense if it suffered casualties and/or property damage. Frontier incidents or other minor violations of the use of force do not allow for the right to self-defense.
- 2) The use of force in self-defense must also be necessary. Three conditions are required to meet this condition: a) alternative, non-violent means are not available, b) states can only respond if a limited attack was part of a series of attacks; in contrast, an isolated attack does not permit the right to self-defense, and c) the response must be defensive in nature and aimed at preventing future attacks from taking place. Punitive actions are not allowed.
- 3) Attacks on foreign emanations, such as embassies are an armed attack and allow for the right to self-defense.
- 4) The use of force to protect nationals in foreign states is only allowed under the following conditions: a) nationals must face an imminent threat or be in grave danger, b) the host state must be unwilling or unable to protect the nationals, and c) the use of force may only be used to protect the nationals and not for any other reason.
- 5) Anticipatory or interceptive self-defense is allowed if there is clear and compelling evidence that an attack is imminent.
- 6) Interventions are lawful if they are consistent with the credible non-intervention rule or the proportionate counter-intervention rule. The former holds that interventions are legal when a government invites another state to intervene and domestic conflict is at or below the threshold of civil war. Interventions are illegal when the state is engaged in a civil war. It is also illegal to intervene on behalf of the opposition or rebel groups. The proportionate counter-intervention rule is relevant when a state is involved in a mixed or internationalized civil war (other states have already intervened). Under these conditions, a state can counter-intervene on behalf of the government, but not the opposition. Also, the intervention must be limited to the territory of the state in civil war, unless the prior intervention reaches the threshold of an armed attack. In this case, the counter-intervenor can use force against the initial attacker on its territory. Finally, humanitarian interventions, pro-democratic interventions, and other types of regime-change are illegal.
- 7) States are allowed to respond in self-defense against terrorist groups, rebels, and other non-state actors as long as four conditions hold: 1) the attack must be large-scale and greater than the threshold for armed attack by another state, 2) attack must be part of consistent pattern of attacks and not an isolated incident, 3) the host state must be unwilling or unable to stop the group, 4) it must be clear that other

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<sup>47</sup> See Chapter 2 for more information on the relevant legal principles.

alternatives, such as law enforcement will not work, and 5) self-defense must be defensive in nature; punishment is not permitted.

8) States can use self-defense against a state supporter of a non-state actor if the host state has effective control of the non-state actor, or the group is considered a de facto organ of the state. In other words, the state must be directly responsible for the attack by the non-state actor. All other types of support, such as training, logistical, intelligence, weapons, or any other type of aid do not constitute an armed attack by the state supporting the non-state actor.

9) A state is allowed to defend another state that is a victim of an armed attack. The victim must also request help. Lower levels or other legal principles, such as protection of nationals, anticipatory self-defense, and extra-territorial self-defense do not allow for the right to collective self-defense.

10) The United Nations Security Council can authorize the use of force.

### **Israel-Lebanon Coding Example**

I also believe that it would be useful to review an example of how I coded this variable since many readers may be unfamiliar with the legal principles related to the use of force. As such, I describe below how I coded this variable for the international crisis that led to the 2006 Israel-Lebanon War.

In the first stage, I identify the factual circumstances that led to the outbreak of the Israel-Lebanon war in 2006. In the second stage, I apply the legal principles to the facts to determine if Israel had the legal right to use force against Lebanon. Also, it is important to note that Hezbollah is not included as a crisis actor in my data.

While Hezbollah's actions and their relationship to the Lebanese government are important legal considerations for Israel's right to self-defense against Lebanon, non-state actors are, as noted above, excluded from my analysis.

On July 12, 2006, Hezbollah terrorists inside Lebanese territory fired a number of Katyusha rockets and mortars at Israeli villages near the border. At



approximately the same time, another group of Hezbollah fighters crossed into Israeli territory, kidnapped two Israeli soldiers and killed three other members of the Israel Defense Forces (IDF). Immediately following the attack, Israeli troops attempted, but failed to rescue the kidnapped soldiers. Five additional members of the Israeli Army were killed during this operation to save the abducted soldiers. Shortly thereafter, Israeli Prime Minister Ehud Olmert declared that the use of force by Hezbollah was an act of war and that it was attributable to Lebanon. Prime Minister Olmert claimed that Israel had a right to self-defense against Lebanon, which he argued was justified because the attacks emanated from Lebanese territory and Hezbollah ministers were part of the Lebanese cabinet. The Lebanese Prime Minister Fouad Siniora denied responsibility and knowledge of Hezbollah's actions, claiming that Israel had no right to self-defense against the Lebanese state (e.g., UN doc SG/SM/10563; UN doc S/2006/515; Zimmerman 2009).

There are two central legal questions relevant to the use of force in this crisis: 1) did Hezbollah's actions constitute an armed attack and 2) whether Hezbollah's actions were attributable to Lebanon.

Regarding the first principle, the Hezbollah attack can only be considered an armed attack if it meets three primary conditions. First, it must result in the loss of life and/or significant property damage.<sup>48</sup> Second, Israel only has the right to use force if the attack was part of a series of attacks, rather than an isolated incident. Third, the Israeli use of force must be considered necessary.

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<sup>48</sup> In addition, since Hezbollah is a non-state actor the threshold is higher than it is for the use of force by states.

First, by both killing several Israeli soldiers and causing serious property damage, Hezbollah's use of force met the threshold of an armed attack. Second, the attack on Israel was not an isolated incident as Hezbollah's attacks on Israel were part of a consistent campaign of attacks against Israel going back several years. Third, given that Israel had a right to respond to an attack in progress and that there was a relatively high expectation of future attacks by Hezbollah, Israel actions can also be judged as necessary (Zimmerman 2007). As legal scholar Zimmerman (2007) argues, "... there seems to be no doubt that these acts involving both relatively large-scale and protracted cross-border shelling and incursions into the territory of another state, did amount to an armed attack..." In sum, Hezbollah's actions clearly reached the threshold of an armed attack.

The second relevant legal principle concerns Lebanon's responsibility for the attacks. Lebanon can only be held accountable for the actions of Hezbollah if the relationship between the two met at least one of three conditions 1) Hezbollah is a de jure or de facto organ of Lebanon, 2) Hezbollah performs governmental functions on behalf of Lebanon, or 3) if Hezbollah is de facto directed by official authorities of Lebanon.

First, Hezbollah cannot be considered a de facto organ of the state (Gray 2008; Redsell 2007; Ronen 2006; Zimmerman 2009). According to the International Law Commission Articles on State Responsibility, a non-state actor is only part of the government if the group or persons responsible for the attack is formally incorporated into the institutions of the state in question (ILC Commentary, article 4 ). Put differently, the specific individuals responsible for the attack must be part of the

government. This is important for this crisis since Hezbollah had two ministers in the Lebanese Parliament at the time of the attack. Nonetheless, Hezbollah cannot be considered part of the government because even though the political wing of Hezbollah was part of the political apparatus, the military forces responsible for the attack on Israel were not. Given the separation between the military wing of Hezbollah that engaged in the armed attack and the political wing that was part of the government, Lebanon cannot be held responsible for the actions of Hezbollah based on this criteria.

Second, the relationship between Hezbollah and Lebanon also failed to meet the second condition (Gray 2008; Redsell 2007; Ronen 2006; Ruys 2010; Zimmerman 2009). The available evidence indicates that Hezbollah was not acting on behalf of the government of Lebanon when it attacked Israel. Hezbollah therefore had no legal or political authority from the Lebanese government to strike Israel.

Third, Hezbollah cannot be considered a *de facto* organ of the state, even though they had two ministers in the government. Based on the Nicaragua case discussed in Chapter 2, the actions of a non-state actor can only be attributed to a state if it sent troops or otherwise ordered troops to attack Israel on its behalf. The Nicaragua decision demands that the specific attack be traced to the government, as opposed to a general level of control. First, the two ministers in government failed to meet this criteria since, as noted above, they were not involved in the attack. Second, to my knowledge, there is also no evidence that indicates that the Lebanese government sent troops or otherwise ordered the attack (Redsell 2007; Ronen 2006; Ruys 2010; Zimmerman 2009).

In sum, while the magnitude of Hezbollah's attacks reached the threshold of an armed attack, the group's use of force cannot be attributed to the sovereign state of Lebanon. Israel therefore had no right to use force against Lebanon, even though Prime Minister Olmert put forward a legal argument to justify his use of force against Lebanon, and even notified the United Nations that Israel was acting in self-defense.

Therefore, in my dataset, I code Israel a "1", or that international law prohibits the use of force. On the other hand, since Israel had no right to use force against Lebanon, but employed the large-scale use of force against its neighbor and it reached the threshold of an armed attack, I code Lebanon a "0" or that international law allowed Lebanon the right to self-defense.

### **Summary Statistics**

In Figure 2 and 3 (below), I display the basic summary statistics for this variable. First, as you can see from Figure 2, the challenger has the right to self-defense only 46 times, in which he escalates 34 times (74%) and refrains from escalating 12 times (26%). In contrast, in the 420 crisis-dyads in which international law prohibits the use of force, the challenger does not escalate 269 times or in 64% of these cases, but does escalate 36% of the time (151 cases).

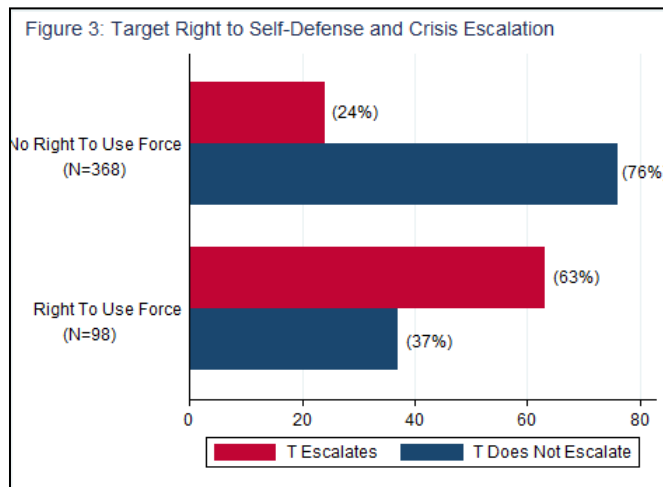
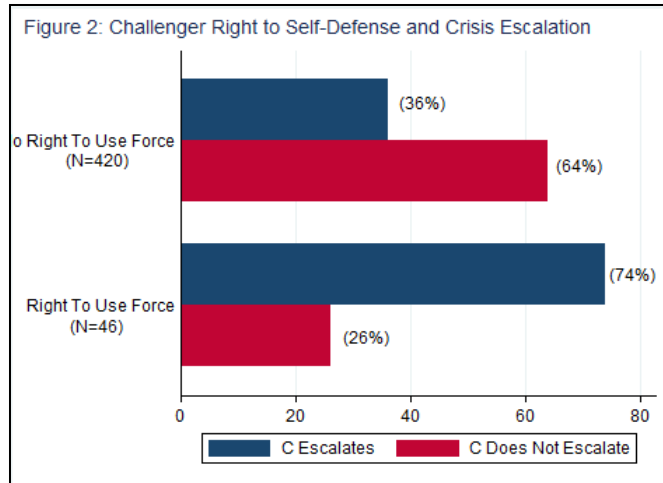


Figure 3 presents the results for the target. The target is allowed to use force 98 times and escalates 62 times or in 63% of the cases and does not escalate in 36 crises or 37% of the time. On the other hand, in the 368 crisis-dyads that the target is prohibited from using force, he chooses not to escalate 280 times or in 75% of the cases, and only escalates 88 times (23%).

The distributions of my key variables reveal some interesting patterns. First, as expected, when international law prohibits the use of force, both challengers and targets are unlikely to escalate international crises with the large-scale use of force,

respectively at 64% and 75%. The figures also indicate that targets are also more likely to have the right to use force compared to challengers. This is to be expected since most of the cases of the right to self-defense belong to targets. On the other hand, legal principles are more varied for challengers, and occur less frequently in the data. Overall, the raw data suggests that international law can be an effective constraint on leaders in international crisis. Of course, it is necessary to confirm this finding by controlling for other possible explanations of crisis escalation and using more formal empirical tests.

Finally, the coding rules for the control variables can be found in Appendix A.

### **Estimation Procedures**

I use logistic regression with robust standard errors to estimate both the challenger and target equations. I also rely on 95% confidence intervals to display the statistical significance for each coefficient estimate. When the confidence intervals do not cross zero, the variable is statistically significant at the .05 level using a two-tailed test.

I use Clarify (King et al. 2000; Tomz et al. 2001) to estimate the quantities of substantive interest. Specifically, I present the predicted probabilities, first differences, and the percentage change for all of my international law variables.<sup>49</sup> In my empirical analyses, the predicted probability is the probability that a crisis-actor escalates the crisis for a given explanatory variable. I compute the first differences (or change in probability) by subtracting the predicted probability that the leader escalates when international law prohibits the use from the predicted probability that the leader escalates when he has the right to self-defense. The percentage change is

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<sup>49</sup> I only present the coefficient estimates for my control variables.

calculated by dividing the first difference by the baseline predicted probability that leader escalates when international law allows it.

### **Estimation Issues**

Similar to most statistical analyses, I recognize that there are some potential complications in my empirical analysis, including; 1) the interrelated decision of crisis actors to escalate with force, 2) selection effects regarding my universe of cases, and 3) the endogenous nature of my international law variable. I address each in turn below.

First, it is likely that the decision to escalate for both challengers and targets is interrelated. As a result, the error terms across the two equations may be correlated, potentially biasing my results. As a robustness check, I estimated a bivariate probit model to account for the bias. My results are similar using this estimator, although they are a bit weaker for the challenger. I also estimated a bivariate ordered probit model for my four category response variable. Once again, the results were consistent with the main findings presented in this chapter. I present the logit results to keep the presentation of my analysis as straightforward as possible.

Second, my analysis may suffer from selection bias in that the decision to escalate the crisis is related to the decision to initiate the crisis in the first place. As a result, my findings on international law may be biased.

There are two potential sources of the type of bias associated with selection effects. First, it is possible that leaders select into crises when they have a right to use force and consequently they expect to receive greater support from third parties.

Given this, the crises in my sample may consist of leaders who are more likely to comply with international law. Second, and in contrast to the first reason, leaders that initiate crises may be especially resolved and have already incorporated international law into their decision-making. By selecting into crises in the first place they may have already accounted for and perhaps discounted the constraints of international law. Such leaders therefore are less likely to comply with international law on the use of force.

The two selection effects stories, while obviously different from one another, still suggest that international law on the use of force is most effective in the pre-crisis stage. Although I am sympathetic to the logic of selection effects and the potential bias it can cause, neither argument has pernicious effects on my findings for at least three reasons.

I begin with the second selection story from above. In this case, the bias favors the null hypothesis in that international law does not constrain leaders; importantly, this makes it more difficult to find a statistically significant result that is consistent with my hypothesis. Given that my sample of crises is made up of leaders who have already discounted international law at least according to this selection story, we should not expect to find that law influences leaders in international crises. However, since I find a statistically significant result for my international law variable despite this potential bias, we can be confident that international law does in fact constrain the behavior of leaders.

Second, the first selection effects story suggests that the bias may favor a significant result in that leaders only select into crises with favorable legal claims.



While this could potentially be problematic, the available data suggest otherwise. In particular, the small number of challengers with the right to use force (11% of the observations) suggests that this logic is not motivating the behavior of leaders who initiate international crises. That is, if challengers selected into crises with the right to use force, we would expect to see a much larger percentage of challengers with the right to self-defense than the 11% that is currently in the data. Admittedly, the one limitation of this argument is that I do not have data on the entire universe of potential challengers to compare how often potential challengers with the right to use force initiate crises compared to potential challengers without the right to use force initiate crises.<sup>50</sup> Nonetheless, the small number of challengers with the law on their side suggests that challengers are not selecting into crises when they have a legal advantage.

There are also two conceptual reasons to discount the bias associated with this type of selection effect. First, challengers often initiate crises by responding to some trigger that is not a direct threat from another state, such as the development of nuclear weapons or support for non-state actors. In such situations, a leader may have to initiate a crisis to address the security threat, regardless of the legality of using force.<sup>51</sup> The implication of this is that it reduces the universe of cases in which challengers can select themselves into crises with favorable legal claims. Thus, while challengers can select into crises with the legal right to use force at times, there are many crises where challengers are put in the position of responding to some event,

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<sup>50</sup> As I discuss below, the nature of my international law variable limits the usefulness of using a statistical estimator to account for this type of selection bias.

<sup>51</sup> To be clear, while a leader is responding to some event, he is the challenger since it is his decision to issue a threat and initiate a crisis against another state.

minimizing problems of selection effects in the analysis. Second, states may initiate crises before they actually make a decision about whether to use force. It is only during the crisis that challengers learn about the issue in question, the relevant legal principles, and the resolve of the state in question, all of which can affect the utility and ultimately their decision to resort to the use of force. Selection bias therefore does not exist since states are unable to select into crises with the legal right to use force when they are undecided about whether to use force when they initiated the crisis.

In sum, while I acknowledge that selection bias is important and a relevant consideration for crisis behavior, I believe that for all of the reasons discussed above that selection effects do not have a pernicious effect on my statistical results.

While the bias should not raise any concern about the credibility of my findings, a Heckman model or similar variant could nonetheless be used to account for any selection effects. Unfortunately, my analysis does not lend itself to selection models, at least in a manner consistent with existing empirical analyses in the literature. In order for a Heckman model to reduce the bias, I would have to first estimate a selection equation, in which international law is the independent variable and the onset of crisis is the dependent variable, and then an outcome equation similar to the analysis in this chapter. Scholars interested in the interrelated nature of onset and escalation typically use dyad-years, politically relevant dyads or something similar as the sample for the selection equation. The problem, however, is that international law on the use of force is not a meaningful variable in the selection equation of this type since this body of law requires some type of hostile interaction

to be relevant. In other words, there would be little to no variation on the legal right to use force variable in the research design typically used by scholars. I am therefore unable to use a sample-selection estimator to account for selection bias; nonetheless, as discussed above, selection bias does not appear to be a problem for my empirical analyses.<sup>52</sup>

Finally, the third complication involves the potentially endogenous nature of my international law variable. There are three potential sources of bias in this case. First, both the challenger and target variables are, to some extent, conditional on the behavior of the other. In other words, the key independent variable is endogenous to the behavior of the actors in the crisis. Second, similar to other areas of law, it is possible that leaders that abide by this body of law are only selecting into low-levels of compliance. Third, some readers may believe that international law is, in general, endogenous to the interests of the most powerful states. I start with the third point.

First, while some scholars have argued that international law reflects the interests of the most powerful states (e.g., Goldsmith and Posner 2005; Mearsheimer 1994), there are several reasons why international law can serve a meaningful role in world politics independent of the states that established it (e.g., Abbott and Snidal 1998; Chayes and Chayes 1995; Franck 1990; Henkin 1979; Keohane and Martin 1995). In this way, international law while endogenous at the creation becomes an exogenous influence on state behavior. This is true for at least three reasons.

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<sup>52</sup> I am, however, working on creating a universe of cases for a selection equation that would include some minimum level of conflict, such as MID's at a lower level of hostilities, civil conflicts, rebel delegation, nuclear proliferation, and kidnapping or other attacks on foreign nationals or the location where they are residing.

First, both the US and the USSR - two leading powers in 1945 - were not alone in crafting the Charter. Scholars have long recognized that it was a political bargain between the great powers and weaker states (e.g., Ikenberry 2000). Second, as discussed earlier, many of the most important legal principles on the use of force emerged long before the international crises addressed here. Thus, even though a powerful state may have supported a specific principle years ago, there is no guarantee that the same guidelines will serve its interests today. The Caroline incident is a useful example of this of this logic. In 1837, the US as the weaker party called for restrictions on the preemptive use of force by a major power against non-state actors residing in its territory. It is likely, however, that today the US would prefer fewer restrictions on the right to use force against non-state actors. Nonetheless, Webster's formula stands as a cornerstone of international law, despite the US's rise to power since the Caroline Affair.

Finally, developing nations and other minor powers have also influenced the development of customary international law and even many UN General Assembly Resolutions. While the latter are not legally binding, UNGA resolutions have proven critical in interpreting the Charter; for example, the ICJ in the Nicaragua Case relied on the UNGA's Definition of Aggression in its decision that favored Nicaragua over the United States (e.g., Gray 2008).

Second, some readers may be concerned that leaders select into compliance with the Charter by ratifying a treaty or another source of international law. In short, selection problems are largely absent from this body of law. All states are obligated to comply with the two primary sources of law in this area - the Charter and customary

international law.<sup>53</sup> In other words, the variation in the international law variable used here is not found in who signs or ratifies the treaty which may be endogenous, but rather how the legal right to use force varies across crises. Thus, we can have greater confidence that the results presented here are about cooperation instead of states selecting into compliance.

Third, my variable of theoretical interest may be endogenous in that a leader only has a right to self-defense if he is the victim of an armed attack. In such cases, his legal claims are largely a function of the level of force used by other states and vice-versa. Given this, the international law variable is endogenous and the results may be biased. Fortunately, the bias resulting from this form of endogeneity favors the null hypothesis in my empirical analyses, making it more difficult to find a statistical significant effect for the peaceful effect of international law.

To see this, consider the behavior of a challenger state. A challenger is more likely to engage in an armed attack (and provide the target with the legal right to use force) when it expects that the target will be unlikely to respond with force.<sup>54</sup> That is, challengers are likely to use force when they expect favorable outcomes, so they will select relatively weaker targets that will be less likely to respond with force even though they have the legal right to do so.<sup>55</sup> Thus, the direction of the bias suggests that the target in this example should be less likely to respond with the large-scale use of force when it has the right to self-defense. As the logic of my argument implies

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<sup>53</sup> In addition, the decisions of international courts apply to all states.

<sup>54</sup> The logic of my argument here is premised on the notion that states want to minimize the costs of using force.

<sup>55</sup> My argument is based on the average situation. There are likely to be scenarios where states will be willing to accept the costs of the illegal use of force. Powerful states or major powers may be capable of absorbing the costs violating international law, for example. I take up this issue below when I examine the conditional relationships.

that states with the right to self-defense should be more likely to respond with force, the bias favors the null hypothesis, thereby making it more difficult to find support for my hypothesized relationship.

A similar logic explains how the bias influences cases when international law prohibits the use of force. A challenger state will be more likely to avoid using force if it expects that the target will respond with force to an armed attack. The challenger behaves this way to avoid the costs of using force against an adversary who he thinks will be likely to use force in return. Thus we should expect on average that targets that lack the legal right to use force are actually more likely to use force, since they are more powerful and can expect a greater outcome in war. Once again, the bias here favors the null hypothesis making it more difficult to find statistical significance for my theoretical argument.

The above explanation makes it clear that endogeneity does not bias my results; however, it is possible to use instrumental variables and/or matching methods to account for any residual endogeneity concerns. The instrumental variable approach is problematic for analyses on international law on the use of force. To estimate a simultaneous equation or any other estimator that uses instrumental variables, it is necessary to find an instrument or another variable that is related (i.e. correlated) to my key independent variable, but is unrelated to crisis escalation, my response variable. Unfortunately, it is unlikely that there is a variable that is related to the prohibition on the right to use force, but that is unrelated to the decision to escalate with force. As a valid instrument likely does not exist, this method is inappropriate for the empirical analyses in this chapter.

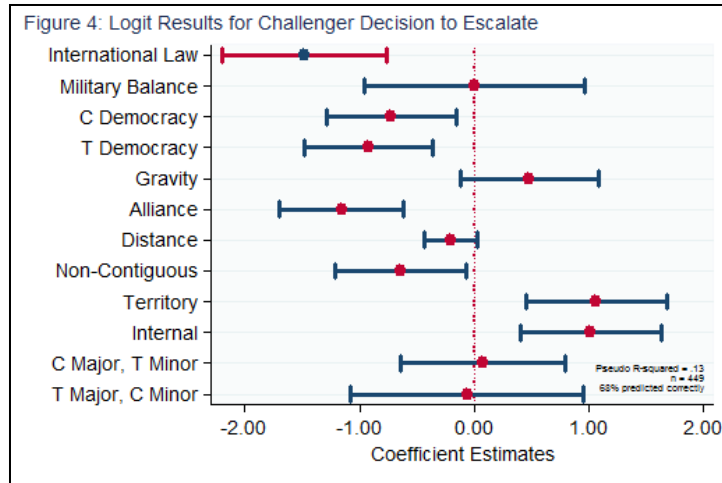
Matching methods provides another way to account for the endogenous nature of my international law on the use of force variable. In brief, the motivation for matching is to make sure that the distribution of the control variables is more evenly matched for observations that include the prohibition on force and for observations that allow the legal right to use force. More technically, as Iacus et al. (2011) argue, the empirical distributions of pre-treatment control variables are roughly equivalent. The idea is to create a dataset in which the control variables in the treatment (observations with prohibition on the use of force) and control groups (observations without the legal prohibition) are more similar in order to more accurately assess the causal impact of the treatment effect (i.e. international law on the use of force).

While several matching procedures have been developed in recent years, I use the coarsened exact matching (CEM) technique to assess the effect of international law (Iacus et al. 2011). The results after matching were nearly identical to the ones presented in this chapter.<sup>56</sup> As such, I present the unmatched results below, but include the matched results along with a description of how CEM works in Appendix B. I now turn to my empirical results.

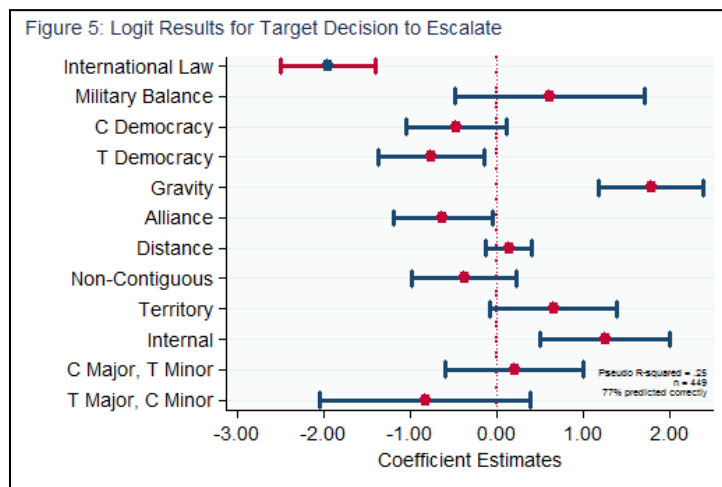
## **Empirical Results**

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<sup>56</sup> For both the challenger and target equations, I matched on regime type for the combatant and adversary, the combatant's military capabilities, gravity of the crisis, and the alliance variable.



The empirical results suggest that international law on the use of force can effectively constrain leaders in international crisis. Across all of my equations, international law’s prohibition on the use of force is associated with a decreased likelihood of escalation. Specifically, in Figures 4 and 5, we see, consistent with my argument, that the coefficient estimate on the international law variable for both challengers and targets is negative and statistically significant as the confidence intervals do not come close to crossing zero. The negative coefficient estimates indicate that the prohibition on the use of force is associated with a smaller likelihood of crisis escalation by both challenger and target leaders.





Several diagnostic tests confirm the statistical significance of my results. Likelihood Ratio, Wald, and Lefrange multiplier tests are all statistically significant and thus provide evidence that the model specification with the legal prohibition performs better than a model of escalation without it. Thus, we can safely conclude that models of escalation that include my variable of theoretical interest are a better specification than models that fail to account for international law.

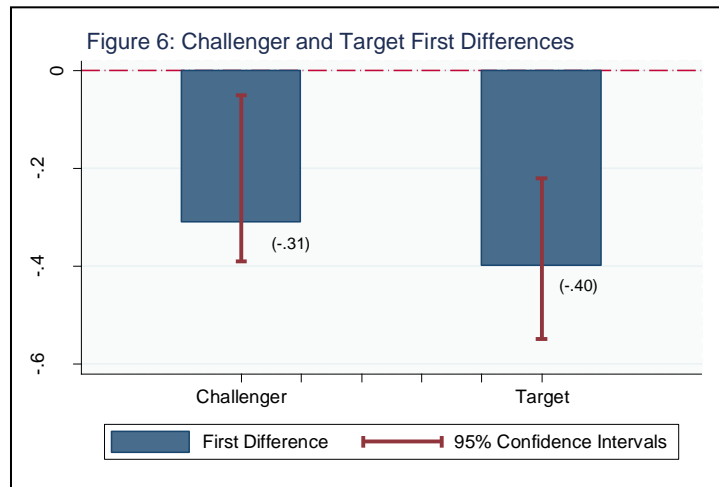
Second, model fit statistics suggest that the both the challenger and target equations perform well; that is, they accurately predict cases of escalation and no escalation in the data. Regarding the challenger, the area under the ROC Curve is 72% and the number of cases correctly classified is 65%. The tests for the target provide even stronger evidence. The area under the ROC Curve is 82% and the number of cases correctly classified is 77%.

In sum, the diagnostic tests and model fit statistics provide strong evidence that the equations are both well specified and strong predictors of crisis escalation. Thus, we can have greater confidence in the robustness of the statistical results; leaders are clearly less likely to escalate international crises when international law prohibits the use of force compared to when they have the right to self-defense.

Beyond the statistical significance, the post-estimation results provide evidence that the prohibition on the use of force has a meaningful impact on the behavior of leaders. I display the substantive effects in Figures 6-8. The probability that challengers with a right to use force escalate is .65, but this drops to .34 when international law prohibits the use of force, which results in a first difference of -.31

(Figure 6). Thus, challengers are 48% less likely to use force when they do not have the right to self-defense (Figure 7).

International law has an even stronger effect on the behavior of targets. When the leader of a target state has the right to use force the probability he escalates is .56. In contrast, when he does not have the right to respond in self-defense, the probability he escalates is only .16. This results in a first difference of -.4 (Figure 6) indicating that the target is 71% less likely to employ the large-scale use of force in crises (Figure 8). Once again, the results indicate that when international law prohibits the use of force, leaders are less likely to escalate militarily in international crises.



Overall, I find mixed results across my control variables for both challengers and targets (Figures 4 and 5). Regarding the realist variables, I find that the gravity of the crisis is a strong predictor of crisis escalation, although the variable is only borderline significant for the challenger. As expected, when the crisis is over more serious issues, crisis actors are more likely to escalate. In contrast, military power is not a significant predictor of crisis escalation. Although this may seem surprising, it is

consistent with many studies of crisis behavior and theoretical arguments that suggests that power is likely to have its strongest effect before the onset of a crisis or militarized dispute (e.g., Schultz 2003a, Weeks 2008). I find no support for the major-power variables, which is consistent with the findings for the military power variable.

On the other hand, I find strong support for the alliance variable. When the crisis actors are involved in an alliance, both challengers and targets are less likely to escalate the dispute. Non-contiguous challengers and targets are as expected more likely to escalate the crisis. Finally, as the distance between adversaries increases, both challenger and targets states are less likely to escalate the crisis, although this variable is only borderline significant for target states.

In addition to the realist variables, I also control for regime-type and the issue at stake in the crisis. I find the democratic states are less likely to escalate crises militarily. I also include the adversary regime-type variable and find that it is negative and significant for the challenger, and negative, but not significant for the target. The results provide support for the argument that democracies are generally more pacific than nondemocratic states. Finally, I find, as expected, that crises over territorial disputes are more likely to escalate compared to crises over policy and other issues. Moreover, I also find that crises involving internal issues are more likely to escalate compared to territorial ones. This is consistent with the growing evidence that much of conflict today can be traced to domestic sources.

It is also instructive to compare the substantive results for the control variables with my theoretical variables of interest. In Figures 7 and 8, I present the percentage

changes for all the statistically significant variables to conduct this assessment. I begin with challenger states.

As noted above, challengers are 48% less likely to escalate militarily when international law prohibits the use of force compared to when it allows for the right of self-defense. Importantly, this number is larger compared to the percentage changes for all of the control variables. For instance, democratic challengers and targets are only 17% and 28% less likely to escalate the crisis, respectively, a relatively high number but still less than international law. The alliance variable has the second largest percentage change at -36%, meaning that challengers who share an alliance with targets are 36% less likely to escalate the crisis. Once again, however, this number is still smaller than it is for the international law variable. Grave crises and ones over territorial and internal issues are only 10%, 22%, and 22% more likely to escalate militarily, respectively; all three are less than the percentage change for the effect of international law. Non-contiguous states and states that are relatively distant from another geographically are also less likely to escalate, but the percentage change is still smaller than the international law variable.

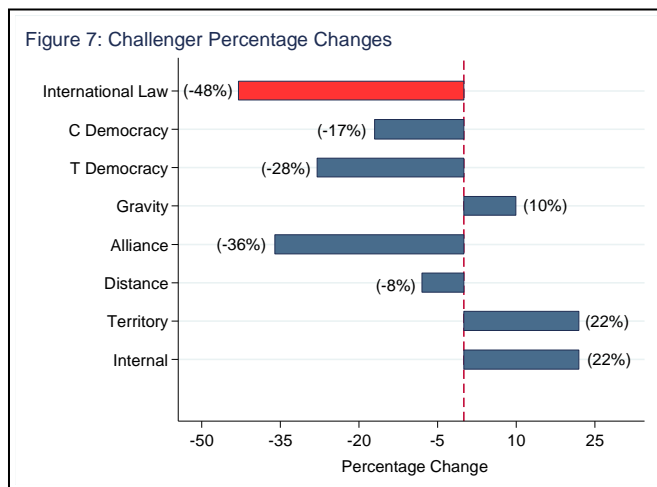
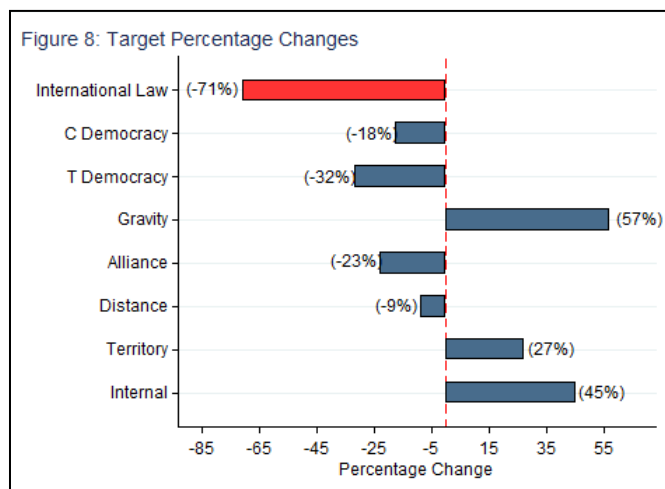


Figure 8 displays the percentage changes for the variables that are statistically significant for the target. As noted, targets are 71% less likely to escalate when international law prohibits the use of force compared to when it allows for the right to self-defense. Similar to the challenger results, this percentage change is larger than it is for all of the other variables in the model. When targets are involved in grave crises, they are 57% more likely to escalate military, a very strong substantive result, but still smaller than the international law variable. Targets are 32% and 18% less likely to escalate when they or the challenger are democratic, both smaller than 71%. In disputes fought over territorial and internal issues, targets are 27% and 45% are more likely to escalate, respectively. On the other hand, targets are 23% less likely to escalate when they have an alliance with challengers. Likewise, targets are less likely to escalate as the distance increases between them and the challenger and when they and the challenger are not contiguous. In short, we see that international law has a stronger substantive impact on patterns of escalation in international crises than the control variables.



The preceding section established that the prohibition on the use of force is associated both statistically and substantively with the lower likelihood of escalation in international crises. The results hold for both challengers and targets, even controlling for several factors that have been shown to influence crisis escalation. The substantive results for international law are larger than they are for all of the control variables, providing further evidence in favor of the role of international law in international crises. Consistent with my theoretical expectations, we can therefore conclude with confidence that there is a strong general relationship for the use of force and the propensity of leaders to escalate international crises. Simply, challenger and target states are less likely to escalate crises with the large-scale use of force when international law prohibits the right to self-defense than when it allows for the right to use force.

### **Robustness Check: Coincidence of Interest**

In the previous section, I established the legal prohibition on the use of force is associated statistically and substantively with lower levels of escalation in international crises. The results are consistent with my theoretical expectations regarding the role of international law on the use of force in world politics. I recognize, however, that some readers may believe that my statistical results on international law are spurious in that the legality of using force is correlated with the initial (or imminent) attack suffered by the state in question. In other words, leaders respond with force when they are attacked and refrain from responding militarily

when they are not attacked. In this way, it is not the law that leaders are reacting to, but rather the use of force in general.

In this section, I address this concern by presenting an alternative research design that seeks to isolate the effects of international law. To that end, I follow recent work by Schultz (1999) on the democratic peace, who sought to distinguish between the information and institutions explanations for democratic peace by developing a research design with opposite predictions for each theoretical argument. Specifically, using a research design that focused on the behavior of target states, he argued that the information argument predicts that targets should be more likely to back down against democratic challengers, while the institutional argument predicts that targets should be more likely to escalate against democratic challengers. In a series of statistical tests, Schultz found that targets of democratic states were more likely to back down, providing support for the information argument. Schultz's work has led in part to the information argument being accepted as the leading explanation of the democratic peace.

In this section, I present the results from an empirical analyses that attempts to do something similar to Schultz's work on the democratic peace. While I am unable to emulate exactly what he did, the below research design comes close and should address any concerns that readers may have about the relationship between the effectiveness of international law on the use of force and patterns of escalation in international crises. In particular, I create a research design that distinguishes between standard conflict expectations regarding the use of force and legal expectations about the use of force.

Specifically, I create a polychotomous variable with three categories to measure the legal prohibition on the use of force. The three categories produce three mutually exclusive binary variables. The first variable, “Right to Self-Defense” measures the legal right of self-defense and equals 1 if the state has the right to use force and zero otherwise. The second variable, “No Right to Self-Defense (Attacked)” equals 1 if the state was the victim of an attack by a state or non-state actor but the attack did not reach the level of activating the right of self-defense, and zero otherwise.<sup>57</sup> The third variable, “No Right to Self-Defense (Not Attacked)” equals 1 if the state was not attacked and has no right to self-defense and zero otherwise.

The purpose of this variable is to clarify whether the law or the use of force is driving state behavior or if states are just responding to the use of force. The legal argument indicates that there should be a statistically significant difference between the Right of Self-Defense and No Right to Self-Defense (Not Attacked) as well as the Right to Self-Defense compared No Right to Self-Defense (Attacked). However, there should be no difference in patterns of escalation between the No Right to Self-Defense (Not Attacked) and No Right to Self-Defense (Attacked) variables.

In contrast, standard conflict explanations predict a different set of results. According to the conventional wisdom, states are expected to use force when they are attacked and refrain from using force when they are not attacked. Thus, there should be a statistically significant difference between the Right of Self-Defense and No Right to Self-Defense (Not Attacked) and a difference between No Right to Self-

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<sup>57</sup>As discussed in Chapter 2, there are several reasons why a state may have been attacked, but it does not have the right to self-defense.



Defense (Not Attacked) and No Right to Self-Defense (Attacked). There should, however, be no difference between No Right to Self-Defense (Attacked) and Right to Self-Defense. Standard conflict explanations predict no difference between these categories because in both cases force was used against the state in question. While the magnitude of the attack may be smaller or a single, isolated incident, there are several reasons why levels of escalation should be relatively the same for both categories.<sup>58</sup> States that have been attacked even if it is relatively small are likely to account for both domestic political pressures and their reputations for resolve in their decision-making. In other words, there are good reasons to believe that states that have been attacked have the necessary incentives (i.e. accommodate domestic actors and develop or maintain reputation for resolve) to respond with force, even if the attack was relatively small or by a non-state actor, etc. Thus, we can expect states to respond with force to any level of attack.<sup>59</sup> In sum, this variable and research design should help establish whether a legal or conflict threshold is driving the results presented in this dissertation.

The summary statistics for the international law on the use of force variable reveal some interesting patterns. Among the 422 observations in the data, the challenger has the right to self-defense in 44 cases (10%), no right to self-defense (force) in 153 observations, and no right to self-defense (no force) 225 times (53%). Likewise, the target has the right to self-defense 80 times (19%), no right to self-

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<sup>58</sup> In addition, IR scholars rarely distinguish between different levels of force used by challengers in studies of conflict escalation.

<sup>59</sup> Nonetheless, I recognize that some readers may still be concerned about this final comparison. To alleviate any remaining skepticism, the response variable I use in this analysis is based on three categories which permits a more fine-grained measure of escalation.

defense (force) in 135 cases (32%), and no right to self-defense (no force) in 207 observations (49%). First, although the right to self-defense is fairly rare, challengers and targets have a right to self-defense in 10% and 19% of the time, respectively. The figures also indicate that targets are also more likely to have the right to use force compared to challengers. This is to be expected once again since most of the cases of the explicit right to self-defense belong to targets. On the other hand, legal principles are more varied for challengers, and occur less frequently in the data.

Finally and most importantly, when force is used, it is almost always at a level below the right of self-defense. For example, among the 197 observations where force was used against challengers, they did not have the legal right to use force in 78% of observations. Likewise, in the 215 observations in which force was used against targets, they did not have the right to self-defense 63% of the time. The patterns in the data suggest that states are aware of the threshold that activates the right to self-defense, and therefore limit their use of force to a level before this line in order to avoid giving their adversaries the legal right to respond with force and the benefits that come along with it

Crisis escalation is the primary response variable in my analysis. I create a three category variable to account for different levels of escalation that can occur in a crisis.<sup>60</sup> Escalation values are based off of the highest level of violence that the respective actor engages in during the crisis. The variable equals 0 when the crisis actors did not engage in any level of escalation, 1 when the crisis employed the minor or limited use of force, and 2 when the crisis actor engaged in severe or clashes or

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<sup>60</sup> As a robustness check, I estimated my models using the entire four category scale. The results remained the same. I also estimated my equations on a response variable that was coded a one if war occurred, and zero otherwise. My results remained the same.

war with the adversary. Regarding the distribution of this data, the challenger escalated to the large-scale use of force in 58 observations (13%), employed limited force in 201 cases (48%), and refrained from using force in 163 crises (39%). The target used the large scale use of force in 73 observations (17%), employed limited force in 145 crises (34%), and did not use force in 204 cases (48%).

### **Estimation Results**

I use a bivariate ordered probit estimator (Sajaia 2009) to test my hypothesis on crisis escalation. I use this estimator to account for the fact that the challenger and target decisions to escalate are separate, but interrelated decisions.<sup>61</sup> I also rely on 95% confidence intervals to display the statistical significance of each coefficient estimate. When the confidence intervals do not cross zero, the variable is statistically significant at the .05 level using a two-tailed test.<sup>62</sup>

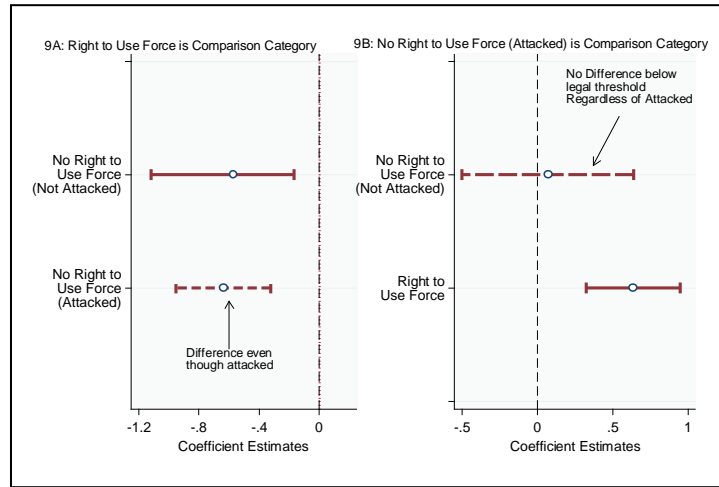
The empirical results indicate that international law on the use of force can effectively constrain leaders in international crisis. In Figure 9A, I present the coefficient estimates for the categorical international law variable for the challenger, in which the Right to Self-Defense is the comparison category. I expect that both variables in the equation – No Right to Self-defense (Not Attacked) and No Right to Self-Defense (Attacked) to be negatively associated with the decision of challenger states to escalate militarily. The results reported in Figure 9A confirm my theoretical expectations and the statistical results from earlier in this chapter. When international

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<sup>61</sup> Specifically, the bivariate ordered probit allows us to estimate separate equations for both the challenger and target and still incorporate the correlation between the disturbances of the two equations.

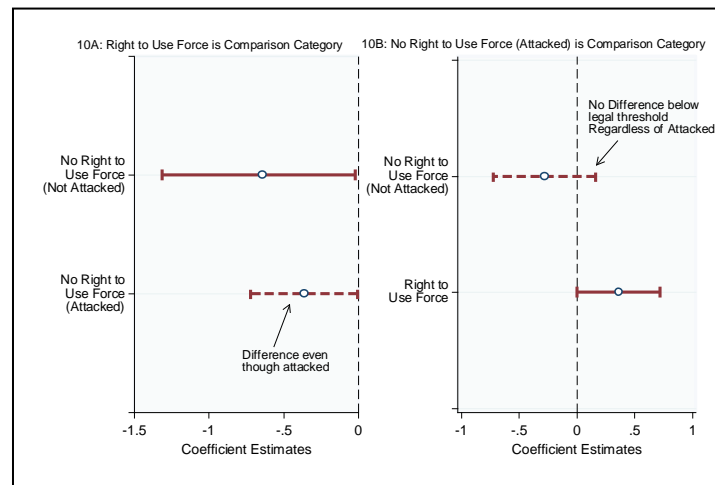
<sup>62</sup> Coding rules for the control variables can be found in Appendix A.

law prohibits the use of force challenger states are less likely to escalate with the large-scale use of force, regardless of whether force was used against them or not.

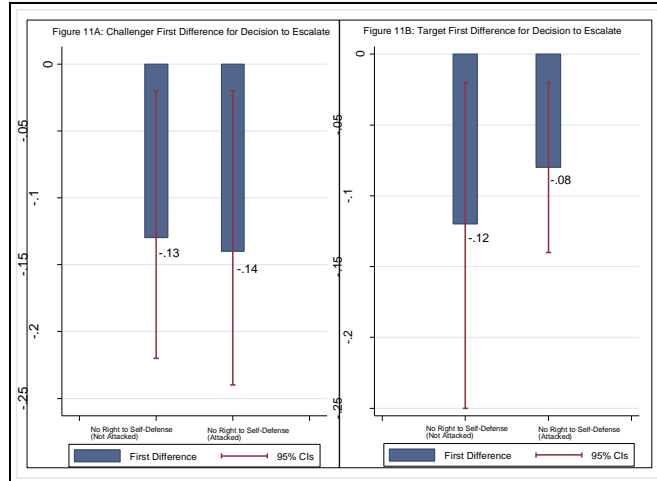


In Figure 9B, I report the results with No Right to Self-Defense (Attacked) as the comparison category. As a reminder, the purpose of this test is to ensure that the prohibition on the use of force and not general patterns of conflict are driving my results. The coefficient estimate comparing No Right to Self-Defense (Not Attacked) and No Right to Self-Defense (Force) is not statistically significant. The coefficient estimate is near zero with the confidence intervals clearly crossing zero, meaning that when international law prohibits the use of force, there is no difference in the decision to escalate for challenger leaders who have been the victim of an attack or not. The final coefficient estimate in Figure 9B confirms that states are more likely to escalate when they have the Right to Self-Defense compared to when they lack the Right to Self-Defense (Attacked). The results for the challenger, therefore, clearly align with the legal expectation, rather than the standard conflict explanations. States are less likely to use force below the legal threshold than above it.

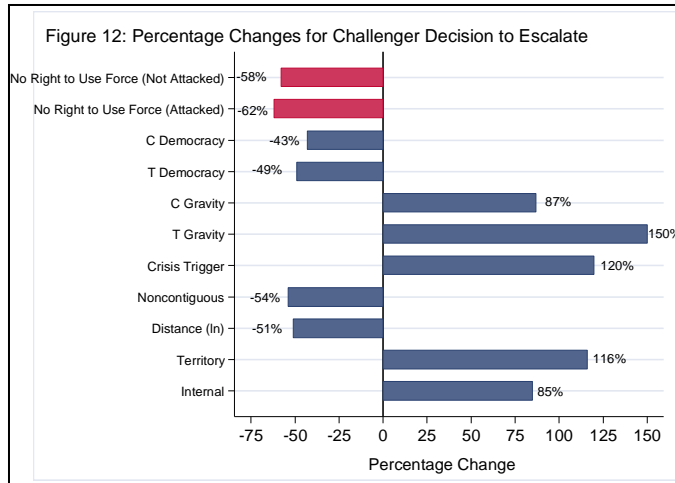
The statistical results for the target produce similar findings (Figure 10). Target leaders are less likely to escalate when international law prohibits the use of force than when they have a right to self-defense (Figure 10A). When international law prohibits the use of force, there is no statistical difference in patterns of escalation when force has been used against targets compared to crises when force has not been used against them.



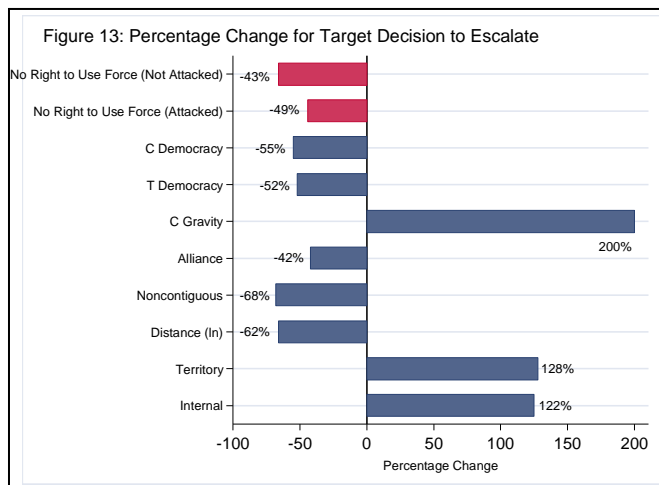
The results provide support for my theoretical argument on international law on the use of force. First, when international law prohibits the use of force, both challengers and targets are less likely to escalate compared to when they have the right to self-defense. Second, when international law prohibits the use of force, leaders escalate at similar levels, regardless of whether force was used against them or not. The empirical results indicate that the legal prohibition on the use of force and not the use of force in general makes up the line of demarcation for leaders in international crises. Put differently, it is not a coincidence of interest, but rather the UN Charter and related legal principles that explain state behavior in international crises.



I present the post-estimation results to demonstrate the substantive effects for the legal prohibition on the use of force categorical variable. In Figure 11, I present the first differences for the statistically significant comparisons for the decision to escalate with the large-scale use of force. As Figure 11A indicates, the predicted probability that challengers escalate militarily decreases by 13% and 14% when they have No Right to Self-Defense (Not Attacked) and when they have No Right to Self-Defense (Attacked), respectively, compared to when they have a Right to Use Force. The results are similar for target states (Figure 11B). The probability that targets escalate drops by 12% and 8% when targets go from having the Right to Self-Defense compared to when they have No Right to Self-Defense (Not Attacked) and when they have No Right to Self-Defense (Attacked), respectively.



In Figure 12, I present the percentage changes for the international law and statistically significant control variables. Challengers are 58% and 62% less likely to escalate when they have No Right to Self Defense (Not Attacked and Attacked, respectively) compared to when they have the Right to Use Force. The percentage change performs well compared to the control variables. It is, for instance, larger than all of the control variables that are associated with less escalation (democracy and distance-related variables).



The results are also strong for target leaders (Figure 13). When targets have No Right to Use Force (Not Attacked), they are 43% less likely to escalate than when

they have a Right to Use Force. Likewise, when they have No Right to Self-Defense (Force), they are 49% less likely to use force compared to when they have a right to self-defense. Once again, the size of the percentage changes suggests strong support for my argument. In addition, while the percentages changes are only larger than the alliance variable, they are roughly the same size as the other variables that predict less escalation (democratic and distance-related variables).

In sum, the statistically significant results and the meaningful percentage changes indicate that the constraints imposed by international law have a substantively meaningful impact on challengers and targets. Both types of states are far less likely to escalate military in international crises when international law prohibits the use of force compared to when international law permits the right to self-defense. The statistical results clearly indicate that it is a legal threshold that explains leader behavior in times of crises, which hopefully alleviates any concerns about the spuriousness of international law.

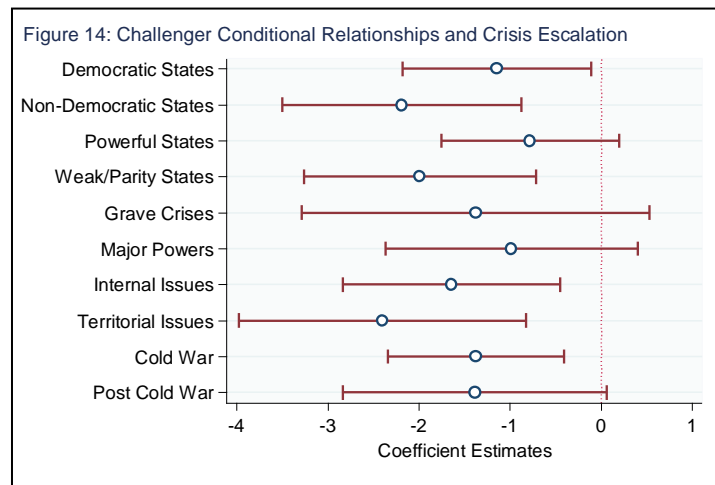
### **Robustness Check: Conditional Relationships**

While the results provide strong evidence in favor of my argument, it is also useful to further investigate the relationship between international law on the use of force and crisis escalation. One way to do this is to examine the effect of international law within different populations in the data. The purpose of this extension is to determine whether the peaceful effect of international law is robust across different types of states and crises. Specifically, I assess the role of international law in several different groups of challengers and targets including: 1) democratic states 2) non-democratic



states, 3) powerful states, 4) weak/parity states, 5) grave crises, 6) major powers, 7) internal issues, 8) territorial issues, 9) Cold War and 10) post-Cold War.

Within each group, I estimate the effects of international law using the same estimator, control variables and response variable that I used above. I also present the substantive effects by computing the percentage changes for the effect of international law in each group.



The results for challenger states are presented in Figure 14. The coefficient estimates for both democratic and non-democratic states are both negative and statistically significant indicating that the effect of international law is consistent across regime-type. This is an important finding since some scholars working in what is known as the democratic legalism literature have argued that democratic states may be more inclined to comply with international law.<sup>63</sup> The basic argument advanced is that democratic states with strong rule of institutions domestically learn to operate within legal constraints and consequently transfer this behavior to the international

<sup>63</sup> I, of course, recognize that these results do not speak to a comparison between democratic and nondemocratic regimes. Nonetheless, it is still interesting that the law is effective among nondemocratic states.

arena (e.g., Simmons 1999; Slaughter 1995). On the other hand, leaders from nondemocratic states who lack these institutions are more inclined to pursue their interests, regardless of the constraints imposed by international law. The results here indicate, however, that leaders from both democratic and nondemocratic states act in accordance with international law, reinforcing the strong general results from earlier in this chapter.

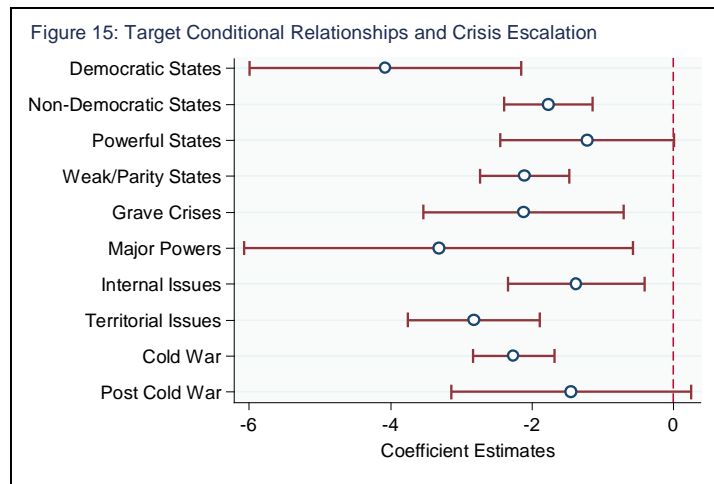
The results for several sub-populations that are associated with realist explanations, such as military power, gravity of the crisis, and the behavior of major powers are also presented in Figure 14. The findings suggest that strategic considerations may attenuate the effectiveness of international law. When the challenger is a powerful state (i.e. possesses more than 60% of the dyadic military capabilities), the coefficient estimate for international law is negative, but it misses statistical significance at the .05, but makes it at the .10 level. International law produces similar results for the other two realist variables; both the gravity of the crises and major powers are negative, but miss statistical significance at the .05, but again make it the .10 level. The results suggest that realist variables have a dampening impact on the pacifying effect of international law.

While proponents of international law may find these results troubling, they are consistent with my theoretical argument. Because the prohibition on the use of force adds a cost for using force illegally, some states especially powerful ones may be able to absorb these costs and use force illegally despite the lower payoffs. This also explains why the results show that relatively weak states are less likely to

escalate militarily when international law prohibits it. Simply, they are unable to overcome the costs that are associated with doing so.

The same logic holds for grave crises; leaders may believe that the costs of the unlawful use of force are not enough to prevent them from employing the large scale use of force when the stakes are high in that such crises produce other considerations which may trump the costs of violating international law. The weaker results (still statistically significant at less restrictive levels) for the strategic calculations, while perhaps disappointing from a legalistic perspective, nonetheless are consistent with my argument and standard patterns of crisis escalation in the extant literature.

Finally, the results for the other sub-groups, such territorial concerns, internal issues, Cold War, and post-Cold War are consistent with the general findings from above. The one partial exception is that international law just misses statistical significance at the .05 level for the post-Cold War level. Nonetheless, since it is borderline significant, I include it here as a significant predictor of lower levels of military escalation. The result for the territorial concerns variable is consistent with the territorial integrity norm argument in that wars over territory are increasingly rare (Zacher 2001). The result when the crisis is over internal issues provides further evidence for the general pacific effect of international law. Finally, while some readers may be surprised that the effect of international law exists even during the Cold War, it is consistent with my argument and some of the empirical findings in this dissertation, such as the case study on the Cuban Missile Crisis in Chapter 5.



The conditional relationships for target states provide even stronger evidence in favor of international law on the use of force (Figure 15). Similar to the challenger, international law is associated with lower levels of escalation for both democratic and nondemocratic states. Once again, this illustrates that the constraining effects of international law on the use of force extend beyond regimes with strong domestic rule of law institutions.

The realist variables (i.e. military power, grave crises, major powers) produce the strongest difference between challengers and targets. While the strategic calculations dampen the constraints of international law for challengers, it has no such effect for targets. That is, targets are less likely to escalate militarily when international law prohibits the use of force than when it allows it, even when target state are much stronger than their adversaries, are major powers, or are engaged in grave crises.

The difference between challengers and targets can in all likelihood be explained by the selection effect that exists for challengers, but is absent for targets. There are two important selection effects. First, powerful challengers who use force

in violation of international law have already incorporated the costs of doing so into their decision to use force. In other words, by the very nature of being challengers, they initiate crises with the knowledge that they can accept the costs of using force.

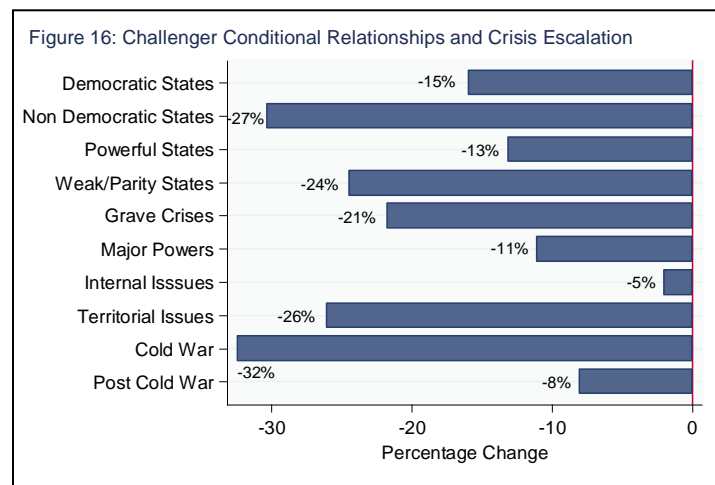
Second, weaker challengers are unlikely to initiate the use of force against stronger targets and provide them with the right to self-defense since they would be unable to absorb the costs of doing so. Thus, the deterrent effects of relatively strong targets reduce the likelihood that weak challengers will violate international law and provide targets with justification to respond with force. In this way, the expectation of how international law will affect the behavior of targets alters the behavior of challengers when they are considering using force against targets.

Cold War, territorial issues, and internal issues all produce similar results as challengers in that international law still reduces the likelihood of military escalation even within these sub-populations. The effect of international law just misses statistical significance at the .05 level during the post Cold War Era. Nonetheless, the result is borderline significant and generally consistent with the pacifying effect of international law on crisis-actors.

Thus, with the exception of the realist conditions for challenger states that can be explained within my framework, the statistical results for the sub-populations indicate that the legal prohibition on the use of force is associated with less escalation in international crises for both challengers and targets. The findings provide strong support for the effectiveness of the legal prohibition on the use of force.

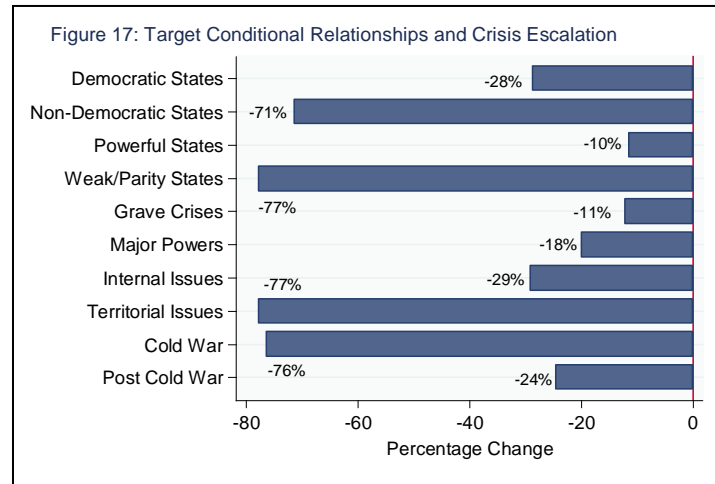
In Figures 16 and 17, I present the substantive results in the form of percentages changes for the impact of international law within each group under

consideration. Regarding challengers (Figure 16), the findings indicate that there is a large range for the percentage changes with a low of -5% (internal issues) and high of -32% (Cold War). Two realist variables – powerful states and major powers – produce, as expected, relatively small percentage changes at -11% and -13, respectively. It is also interesting that non-democratic variable (-27%) has a larger substantive impact than the democratic variable (-15%); nonetheless, both indicate a meaningful substantive impact for regime-type. The strong substantive impact during the Cold War (-32%) is consistent with the statistical findings from above. Finally, the two groups with the lowest percentage changes are crises over internal issues (-5%) and post-Cold War ones (-8%). The results, while interesting are actually consistent with one another. Many crises since the end of the Cold War involve internal issues, in which there is greater uncertainty over the law in this area and states may be more inclined to violate the law due to this uncertainty.



The percentage changes for target states are presented in Figure 17. There are two interesting patterns here. First, there is once again a wide range here with the

highest percentage change at -77% (Territorial Issues and Weak States) and the lowest at -10% (Powerful States). Second, the percentage changes are on average larger for target states compared to challenger states. This is consistent with the statistical and substantive results from earlier in this chapter, which indicate the international law is a stronger constraint on targets than it is for challengers.



More specifically, the three realist variables – Powerful States, Grave Crises, and Major Powers produce the smallest effects at -10%, -11%, and -18%, respectively. While these three variables are all statistically significant, it is interesting that they provide the lowest substantive impact. As explained earlier, this is largely consistent with how strategic influences can attenuate the constraints of international law. The Cold War, Territorial Issues, Weaker States, and Non-Democratic states all produce the highest percentage changes. For the most part, the findings are consistent with both the substantive effects for challengers and the statistical results. Finally, the Post Cold War, Internal Issues, and Democratic States all produce percentage changes that are relatively high and substantively meaningful.

## **Conclusion**

In this chapter, I empirically assessed my theoretical argument on the effectiveness of international law in international crises. I find strong support for my expectations: both challenger and target leaders are less likely to escalate militarily when international law prohibits the use of force compared to when they have a right to self-defense. The results are statistically and substantively consistent across a range of empirical analyses, including several sophisticated robustness checks and alternative research designs. We can therefore be confident that the prohibition on the use of force is associated with lower levels of escalation in international crises.



## **Chapter 5: International Law and Third Parties**

### **Introduction**

In the previous chapter, I used statistical analysis to assess my primary hypothesis on the influence of international law on the use of force and crisis escalation. I found strong support for my theoretical argument on the pacifying role of international law. Crisis actors are less likely to escalate militarily when international law prohibits the use of force compared to when they have a right to use force. The result holds for both challenger and target states. My findings are also robust to multiple specifications, estimators, and different samples. In short, we can safely conclude that the prohibition on the use of force is associated statistically and substantively with less escalation in international crises

Notwithstanding the strong results, I recognize that I did not explicitly assess the behavior of third parties in the previous chapter, the underlying causal mechanism in my argument. In this chapter, I overcome this potential limitation and test whether the law alters the behavior of third parties. To that end, I first consider whether international and regional multilateral security organizations - as representatives of third parties - are more likely to support states that act in accordance with international law and condemn states that act contrary to it. Second, I assess how the law influenced third party support for the US-led wars against Iraq in 1991 and 2003.

Regarding the quantitative tests, I use the ICB dataset created for the previous chapter to empirically assess the support of third parties. I use two different variables to test this relationship. First, I consider whether international and regional multilateral security organizations (IGOs) are less likely to support states that lack the legal right to use force in self-defense and are consequently more likely to support states that have the right to use force in self-defense. Second, I consider whether IGOs are less likely to support states that have violated international law by committing aggression and thus are more likely to support states that have refrained from engaging in aggression.<sup>64</sup> As expected, the statistical results indicate strong support for my theoretical argument on the behavior of third parties. Third parties in the form of IGOs are more likely to support states that have the right to use force in self-defense and less likely to support states that have committed aggression.

Second, I briefly review how the international community reacted to the 1991 and 2003 wars against Iraq. While traditional security concerns played a role, I also find that international law influenced the behavior of third parties, who were more likely to support the legal use of force against Iraq in 1991, but largely withheld their support for the unlawful invasion of Iraq in 2003.

The remainder of this chapter is organized as follows. First, I explain why I use IGOs to empirically assess the behavior of third parties. Second, I briefly review research design and measurement issues, including how I coded the new IGO support variable created for the empirical analyses in this chapter. Third, I present the results in the form of coefficient estimates and the quantities of substantive interest for both tests. Fourth, I present the qualitative evidence from the Iraq Wars. Finally, I

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<sup>64</sup> I recognize that the two tests appear to be very similar. I address this in detail below.

conclude with implications of my findings for my theoretical argument and the role of law in general.

### **Third Parties and IGOs**

In this section, I explain why I use international and regional multilateral security organizations to test my theoretical expectations on the behavior of third parties.

There are two primary and interrelated reasons that I use IGOs to measure the behavior of third parties: 1) they reflect the preferences of individual states and 2) practical considerations. First, IGOs, especially multilateral security organizations reflect the policy preferences of states in the international system. By design, IGOs provide a means to vote, authorize, or otherwise implement the various policies of governments. As such, IGOs are endogenous to the behavior of states, as scholars have long recognized.<sup>65</sup> Indeed, scholars have increasingly turned to IGOs to measure the preferences of states (e.g., Gartzke 1998; Reed et al. 2008; Voeten 2000, 2004). As Reed et al. (2008, 1207-1208) argue, “states use UN votes to express their preferences on issues related to positions taken by blocs of states, and on issues related to ongoing dyadic disagreements.” IGOs, therefore, constitute a reasonable way to measure the preferences of states in the international system.<sup>66</sup>

Second, it would be practically impossible to research the policy positions of all governments for every single crisis. Whether in formal press statements, informal

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<sup>65</sup> While at first endogenous, IGOs can become an exogenous constraint on states (Keohane 1984; Martin and Simmons 1998, 2003).

<sup>66</sup> This is especially true because I collect data on both the United Nations (including the UN General Assembly) and regional organizations. Thus, even if the UNSC fails to pass a resolution, there are other IGOs that can serve to provide information on the preferences of states.

comments, debates in the United Nations, and so forth, leaders express a variety of opinions about international events in multiple ways and outlets. It would require a considerable amount of time to collect all of this information, which is beyond the resources of this dissertation. In contrast to this approach, using IGOs as a proxy for third party behavior allows for a practical and efficient way to identify and collect information on the preferences of international actors.<sup>67</sup> I turn to this below.

### **Research Design**

Similar to the previous chapter, I use the International Crisis Behavior (ICB) data from 1946-2005 to test my hypotheses on the role of IGOs. Once again, three conditions are required for an incident to be included in the ICB data: a state perceives a threat to one or more basic values, a heightened perception of involvement in military hostilities, and an awareness of a finite time horizon for decision-making (Brecher and Wilkenfeld 2000).

There are several different types of crises in my data. For example, the United States and North Korea experienced three crises over the latter's illicit nuclear weapons program in 1993, 2002, and 2006. Libya and Malta also experienced a crisis about off-shore oil deposits in 1980, while Guyana and Venezuela were in a crisis over the construction of a hydroelectric project in disputed territory in 1983.

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<sup>67</sup> I recognize that collecting information on the behavior of major powers makes up an alternative way to measure third parties. While ICB has information on the response of the US, USSR/Russia, France, and the UK, it lacks any information on the foreign policy behavior of China. Without this information, it would be difficult to assess the behavior of third parties. Efforts are currently underway to collect this information for future research on the role of third parties.

Finally, several crises ended in interstate wars such as the ones between Chad and Libya and the multiple Arab-Israeli crises.

Similar to Chapter 4, the crisis-actor is the unit of analysis here; I again distinguish between challengers and targets in my analysis because the legal principles vary systematically across the two sets of actors. I also disaggregate ICB crises with multiple actors into several dyadic observations (Maoz 2005).<sup>68</sup> Third, I also drop all inter-war crises from the analysis. Given these coding rules, there are 344 crises and 910 crisis actors in my data during this time span (455 challengers and 455 targets).

### **Response Variable**

The response variable in this chapter is IGO support, both for challengers and targets. The primary source of this variable is the ICB data; however, I also consulted several other sources to code this variable due to incomplete information in ICB. Some of the most important ones include, the United Nations Yearbook, British Yearbook of International Law, Keesings, and IGO websites including regional organizations.

Consistent with the ICB data, I collected data on both international and major regional and/or security organizations.<sup>69</sup> The latter institutions include the Arab League, North Atlantic Treaty Organization, Organization of American States, Organization of African Unity, Southeast Asia Treaty Organization, Central Treaty

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<sup>68</sup> Several crises have more than one challenger and target.

<sup>69</sup> I limited my focus to major regional organizations for two reasons. First, since I am interested in how IGOs in part affect domestic actors, it is likely that only salient or well-recognized IGOs can serve in this role. In other words, major regional security organizations are the relevant type of IGO for my study. Second, data limitations make it difficult to collect public statements from every possible IGO.

Organization, and the Warsaw Treaty Organization. Regarding the latter, I used data from both the United Nations Security Council and the United Nations General Assembly.<sup>70</sup>

To code the variable used in my analysis, I considered an IGO to support the challenger (target) if it either support the challenger (target) or condemn the target (challenger). The result is that my variable captures both support for the state in question and/or disapproval of the adversary. Support includes authorization to use force (including emergency military forces and peacekeepers) or resolutions favoring the initiator even if it does not include explicit approval for the use of force.<sup>71</sup> Condemnation includes sanctions leveled against the defender, as well as public statements and resolutions criticizing it. All other actions including no action, mediation/good offices, discussion without resolution, and mutual call for action (i.e. cease-fire) do not count as IGO support in the analyses conducted in this chapter.

It is also important to recognize that I include cases of IGO support that are beyond the explicit authorization to use force. Nonetheless, I believe that this is justified for three primary reasons.<sup>72</sup> First, crisis actors still face international political costs when IGOs condemn or otherwise disapprove of their actions, even if it falls short of the use of force. Thompson (2007, 2009) argues, for instance, that states try

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<sup>70</sup> When the actions of the regional organization and international organization conflict with one another, I code the variable based on the actions of the United Nations. The lone exception is that I followed the actions of the regional organization if the UN refrained from supporting/condemning the relevant actors.

<sup>71</sup> In crises that include multiple resolutions or attempts at resolutions, I base my coding on the final resolution or attempted one. As a robustness check, I coded cases based on the highest level of support/condemnation instead of the final action and the results remained the same.

<sup>72</sup> In a similar vein, Chapman (2009) considers how IGO actions short of the authorization to use force affect presidential approval.

to avoid international condemnation, with the implication being that international political costs are an important consideration for leaders in international crises.

Second, IGOs can still send a signal to domestic actors about the merits of the proposed policy even when they fail to authorize the use of force. As such, IGOs can still have an indirect influence on leaders by informing the opinions of domestic actors.

Third, as is well known, IGOs have only formally authorized the use of force on a very small number of occasions. The small number of observations limits the inferences that can be made with such a small number of cases. Because of this and along with my theoretical justifications as expressed above, I believe that focusing on formal support/condemnation from IGOs is an appropriate test of my argument.

Regarding the distribution of this variable, challengers have received IGO support in 69 observations (15%), while targets have received support in 89 observations or 20% of the time. The data indicates that IGO support is relatively infrequent and targets receive greater IGO support than challengers.

Several examples can help illustrate the behavior of IGOs in international crises. Regarding challengers, the United Nations Security Council, the United Nations General Assembly, and several regional organizations supported the United States and the United Kingdom following 9/11. Likewise, the United Nations authorized the use of force against Iraq in 1990 and the Organization of American States supported the United States during the Cuban Missile Crisis. The Arab League has supported Arab states on numerous occasions in several crises against Israel and NATO supported the US and European states in Kosovo in 1998.

Regarding targets, the United Nations condemned Iraq and supported Kuwait on several occasions, beginning with Iraq's invasion in 1990. The United Nations Security Council condemned South Africa and Rhodesia numerous times for their raids into neighboring states in pursuit of rebel groups. Finally, the United Nations Security Council and the Arab League both condemned Israel in 1982 following its raid on the Beirut International Airport in December.

## **Theoretical Variables of Interest**

### **Legal Right to Self-Defense**

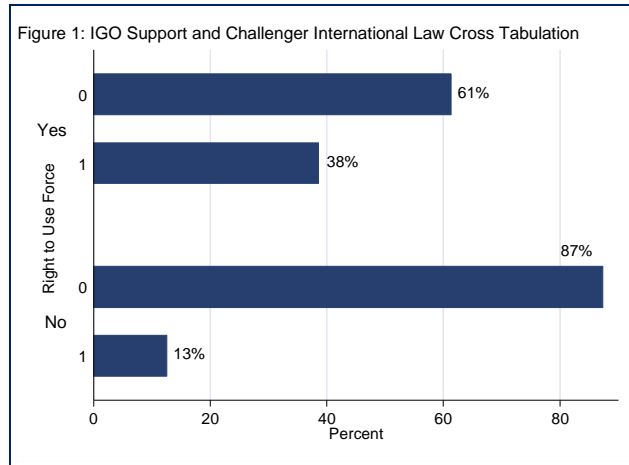
In this section, I describe the coding rules for my two variables of theoretical interest in this chapter. The first variable is based on the legal right to use force measure that I created for the statistical analysis in Chapter 5; however, I make one minor, but important change to the variable. Because my response variable in this chapter is IGO support, I recoded the cases where UN authorization made the use of force legal (i.e. Korean War) to no legal right to use force.<sup>73</sup> This is to ensure that my response and explanatory variables are not measuring the same concept. The final variable then is a binary dummy variable that is coded a 1 if the state is prohibited from using force, and it is coded a zero when the actor has the right to individual self-defense. I expect the legal prohibition on the use of force to be associated with less IGO support.<sup>74</sup>

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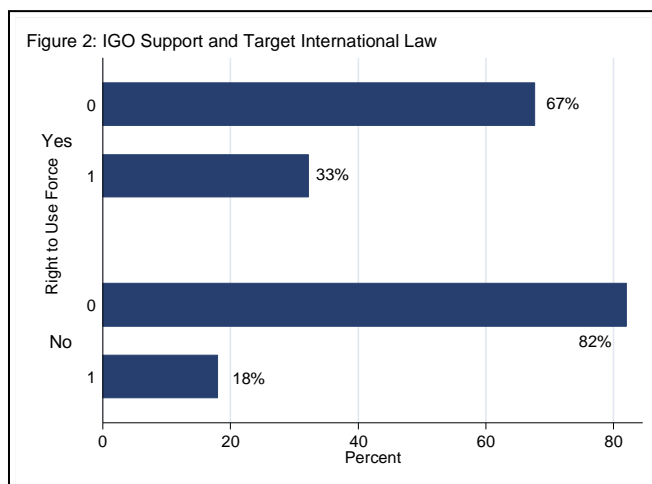
<sup>73</sup> As a robustness check, I also drop all these cases from the analysis and the results remained the same.

<sup>74</sup> Please see Chapter 4 for coding rules for this variable.





In Figure 1, I present the summary statistics for the relationship between this variable and IGO support. First, when the challenger has the right to use force, he receives IGO support 38% of the time, while in the absence of the right to use force, he only receives IGO support 13% of the time. We see similar results for the target (Figure 2). When the target has the right to use force, he receives IGO support 33% of the time, but only receives it 18% of the time when he does not have the right to use force. At first glance, the patterns in the data are consistent with my theoretical expectations: third parties are more likely to support states that have the right to self-defense, compared to when they lack this right.



## **Aggression**

The second variable in this chapter captures whether the actor in question violated international law on the use force by committing aggression. The variable is a dummy variable that equals 1 if the actor committed aggression but failed to reach the threshold of an armed attack and zero otherwise.<sup>75</sup> I expect this variable to be negative, as IGOs should be less likely to support states that violate international law.

This variable, while similar in many ways to the first one used, is nonetheless different in important ways. Most importantly, as, discussed in Chapter 2, it is possible for a state to commit aggression that is below the level of an armed attack. This is the well-known gap between the two concepts in which a state may be the victim of a force, but it does not have the legal right to respond in self-defense (e.g., Dinstein 2008; Gray 2010; Ruys 2010).<sup>76</sup> Several examples are included below to help clarify the difference between aggression and an armed attack.

First, it is possible that the initial use of force fails to reach the threshold of an armed attack. As established in Chapter 2, the use of force must result in the loss of life and/or significant property damage. All other uses of force, while illegal, do not permit for a legal right to use force in self-defense. For instance, minor border/frontier incidents often fit in this category of law. Second, it is also possible that there is some uncertainty about what state was responsible for the initial attack and what state is the defender. In such cases, it is impossible to identify who

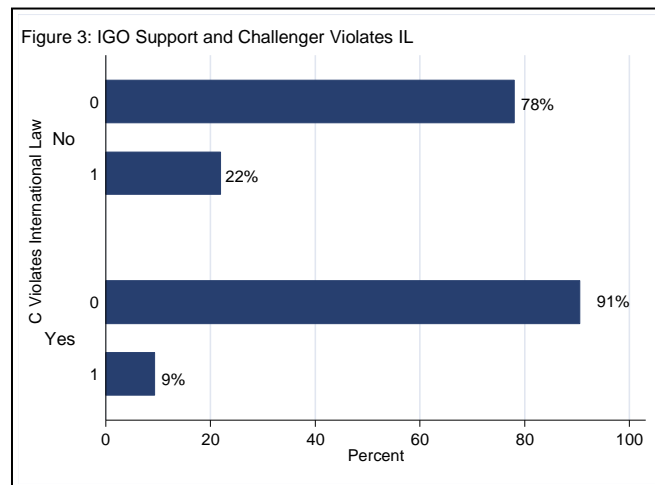
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<sup>75</sup> See Appendix C for coding rules on aggression.

<sup>76</sup> In addition, there is a third category of force known as *de minimis* use of force that does not constitute a violation of international law. Such uses of force are considered to be very minor and therefore do not even reach the threshold of aggression.

committed the armed attack and who has the right to self-defense. Finally, attacks by non-state actors often fail to reach this threshold, especially before the accumulation of events threshold is reached. Likewise, the relationship between a non-state actor and its state supporter can fail to meet the effective control standard. In such cases, the support for the non-state is aggression, but it is not an armed attack.

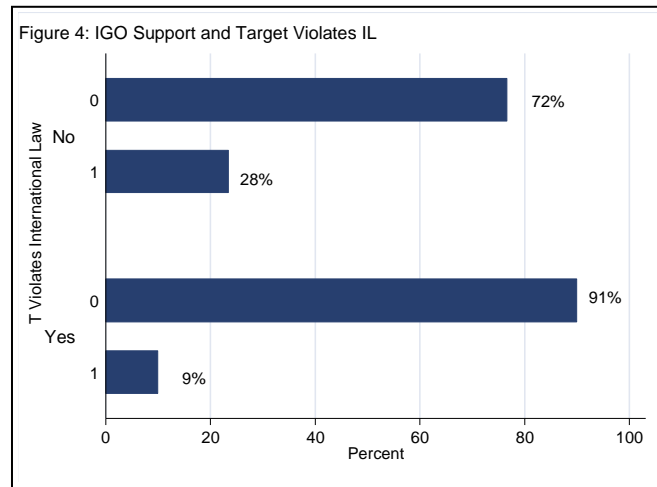
In short, this second measure while similar to the first, still constitutes an alternative legal concept. It therefore provides a distinct way to assess how IGOs respond to violations of the legal principles related to the use of force by crisis actors. In addition to the theoretical justification, it provides for a useful robustness check on the first variable. Thus, we can conclude that it is appropriate to include both measures in this chapter.



In Figures 3 and 4, I present the summary statistics for this variable. When a challenger commits aggression, he only receives IGO support 9% of the time, while he receives IGO support 22% of the time when he does not violate the law.<sup>77</sup> We find

<sup>77</sup> Some readers may be surprised that IGOs support crisis actors who have violated international law. Almost of these cases are made up of regional IGOs supporting violators who been the victim of an attack by non-state actors. For instance, NATO supported the coalition effort in Kosovo, an illegal humanitarian intervention. The Arab League also

even stronger patterns for target states. When a target violates international law in the form of aggression, he receives IGO support in only 9% of the cases, while he receives IGO support in 28% of the cases when he did not violate international law.



Overall, the basic patterns in the data provide strong support for my theoretical expectations on the behavior of third parties. Both challengers and targets are more likely to receive IGO support when they do not violate international law. Likewise, they are more likely to be condemned by IGOs when they commit aggression. Of course, while these findings are useful, it is important to assess my argument on third parties in a more formal way using statistical analyses. I turn to this below.

## Empirical Results

I use logistic regression with robust standard errors to estimate my theoretical expectations on the behavior of third party support. I also rely on 95% confidence intervals to display the statistical significance of each coefficient estimate. When the

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routinely supports Arab states that support non-state actors that use force against Israel even though such support constitutes aggression.

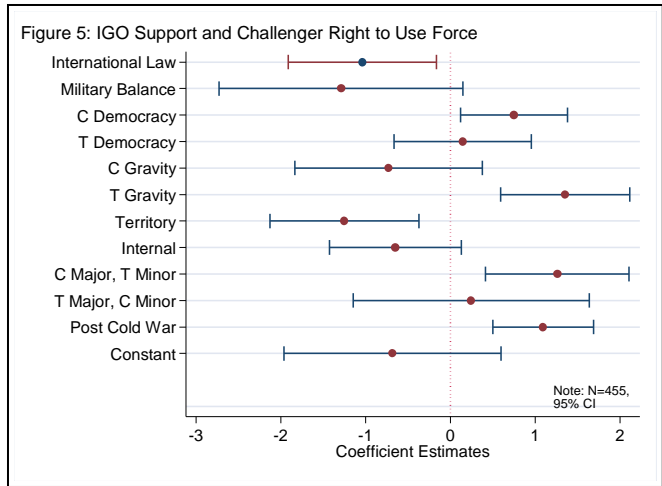
confidence intervals do not cross zero, the variable is statistically significant at the .05 level using a two-tailed test.

I use Clarify (King et al. 2000; Tomz et al. 2001) to estimate the quantities of substantive interest. I present the predicted probabilities, first differences, and the percentage change for all of my international law variables.<sup>78</sup> In my empirical analyses, the predicted probability is the probability that an IGO supports the crisis for a given explanatory variable. I compute the first differences (or change in probability) by subtracting the predicted probability for IGO support when the actor has the right to use force (or does not violate international law) from the predicted probability for IGO when the actor does not have the right to use force (or violates international law). The percentage change is calculated by dividing the first difference by the baseline predicted probability.

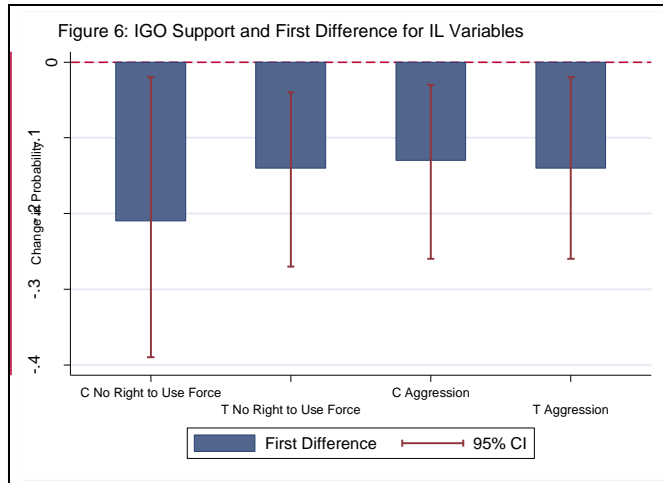
In Figure 5, I present the coefficient estimates for the challenger for the model specification with the legal right to use force variable. As expected, the variable of interest is negative and statistically significant, meaning that challengers are less likely to receive IGO support when they do not have the legal right to use force, compared to when they have the right of self-defense. This implies that challengers with the legal right to use force variable are more likely to receive IGO support. The finding indicates strong statistical support for my argument on the behavior of third parties. IGOs are less likely to support states that lack the legal right to use force than states with the right to use force.

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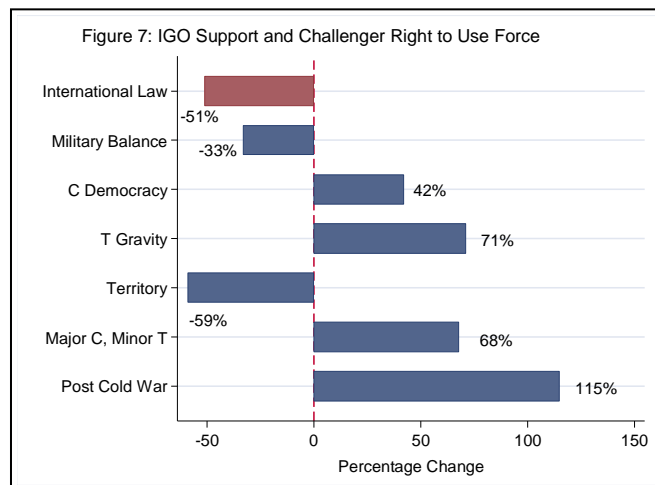
<sup>78</sup> I only present the coefficient estimates for my control variables.



The control variables behave mostly as expected. First, it is interesting that several control variables are significant; for instance, democratic challengers are more likely to receive IGO support than non-democratic challengers. Likewise, challengers that are major-minor power dyads are more likely to receive support from IGOs than major-major and minor-minor dyads. As expected, IGOs are more active in the post-Cold War period compared to the Cold War Era, and crises over territory are less likely to receive IGO support. Relatively strong challengers are less likely to receive IGO compared to weaker challengers. While this may seem surprising at first, it makes sense when this result is understood in combination with the finding on the major-minor variable in that once major powers are accounted for, stronger challengers are less likely to receive IGO support. Finally, it may be surprising that the target gravity is positive and significant, but the challenger gravity variable is not statistically significant.



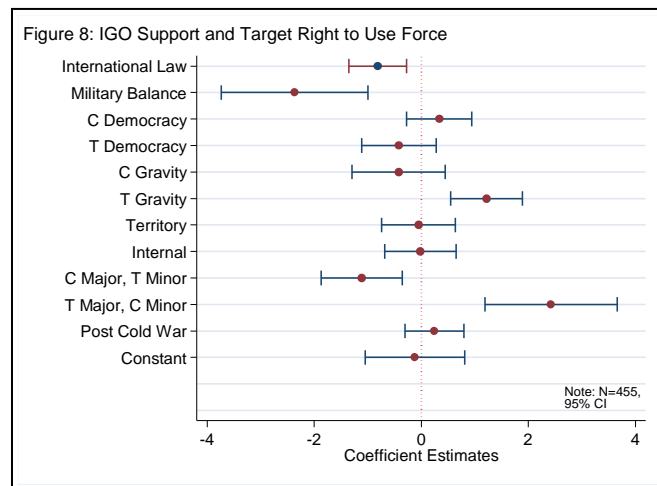
In Figure 6, I present the first difference for all of my variables of theoretical interest. When the challenger has the right to use force, the probability he receives IGO support is .41, while it drops to .21 when the challenger does not have the right to use force. The resulting first difference is .20 and the percentage change is -51% (Figure 7). Thus, IGOs are 51% less likely to support challengers who lack the legal right to use force compared to challengers with the right to use force in self-defense.



In Figure 7, I present the percentage change for the international law on the use of force variable and all of the statistically significant control variables. The international law variable performs relatively well compared to the other variables.

The substantive effect is larger than three other statistically significant variables and is within the same general range as all the other significant variables with the exception of the Post- Cold War variable. The magnitude of this variable is expected, given that IGOs have been much more active following the end of the Cold War compared to during the Cold War.

The results are similar for target states. As you can see in Figure 8, the right to use force is negative and statistically significant suggesting that IGOs are less likely to support targets that lack the right to self-defense compared to targets with the right to self-defense. Once again, this is consistent with my theoretical argument on the behavior of third parties, and in particular IGOs.



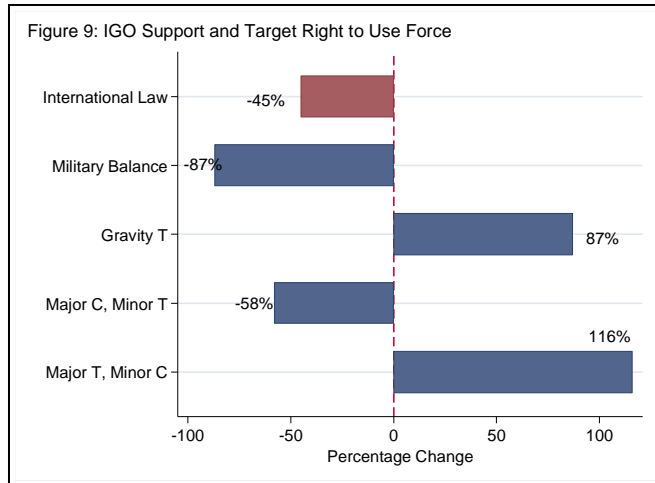
The control variables, however, are relatively weaker in the target equation. First, a target is less likely to receive IGO support when it is major power and they are a minor power. In contrast, a target is more likely receive IGO support when it is a major power and the challenger is a minor power. Targets are also more likely to receive IGO support when it is a grave crisis for them. Finally, similar to challengers,



stronger targets are also less likely to receive support. This again makes sense when it is considered in combination with the findings on the major power variables.

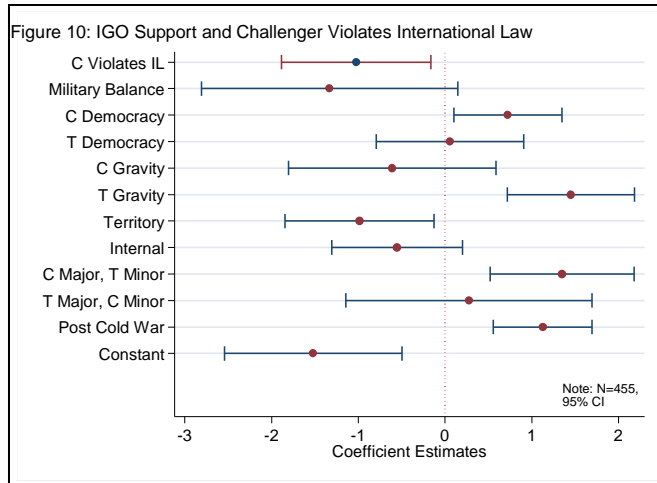
In Figure 6 above, I present the first differences for the target. The predicted probability for targets with the right to use force is .31, but it declines to .17 when targets lack the right to use force. This leads to a first difference of -.14 and a percentage change of -45% (Figure 9). Targets are therefore 45% less likely to receive IGO support when they lack the right to use force compared to when they have the right to use force.

The percentage change for all of the statistically significant variables can be found in Figure 9. The substantive effects for the target are not as strong as they are for the challengers. While the target produces a meaningful percentage change at -45%, it is weaker than the other significant control variables, although it is relatively similar in size to the effect of challengers that are major powers. Both the military balance and the gravity variable are about twice as strong as the prohibition on the use of force variable, while the percentage change for the target major power is much larger at 116%. Nonetheless, the target percentage change -45% should still be considered to be a substantively meaningful effect.

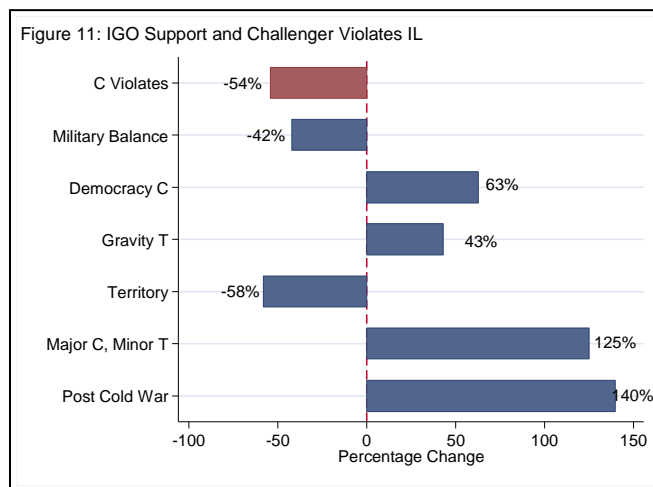


The results clearly provide strong statistical and substantive support for the relationship between the legality of using force and the support of third parties. IGOs are less likely to support both challengers and targets that lack the legal right to use force compared to challengers and targets with the legal right to use force in self-defense.

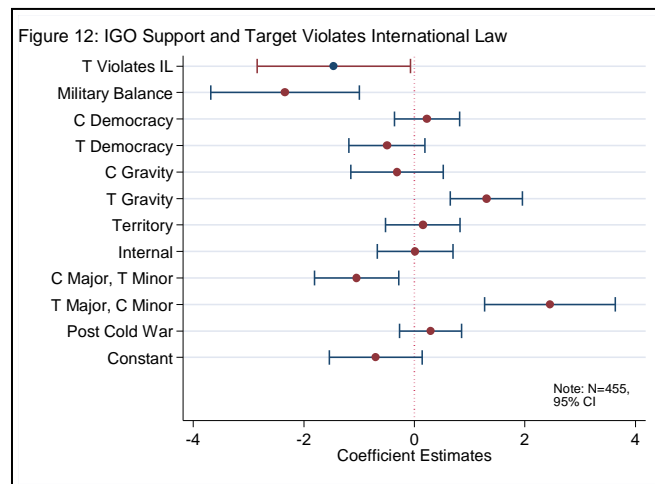
In this section, I assess how IGOs respond to crisis actors that commit aggression. In so doing, I use the same response variable as above - IGO support, but use aggression as the key independent variable. As described above, this variable is useful because it provides an alternative way to conceptualize international law and it provides for a useful robustness check on the first variable used in this chapter.



The results for the challenger are presented in Figure 10. As expected the variable is negative and statistically significant, indicating that challengers who commit aggression are less likely to receive IGO support compared to challengers that refrained from doing so. The substantive results also provide strong support for my argument. When challengers have not committed aggression, the probability they receive IGO support is .24, but it drops to .11 when they have committed aggression. This produces a first difference of -.13 (Figure 6) and a percentage change of -.54% (Figure 11). Thus, IGOs are 54% less likely to support challengers that violate international law compared to challengers that do not commit aggression.

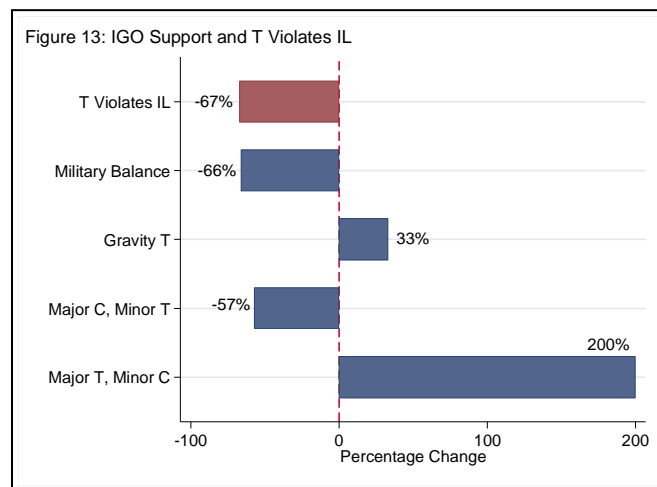


I present the percentage changes for all of the statistically significant variables in Figure 11. Because the results for the control variables are similar to the first set of equations, I limit my discussion here to a comparison of the controls and my variable of interest. Similar to above, the aggression variable performs well relative to the control variables. The substantive effect (-54%) is larger than the size of the military balance variable, gravity, and about the same size as the territory and democracy variables. The major power variable and the post-Cold War variable, however, are both substantially larger than the magnitude of the aggression variable. Despite this, the relationship between IGOs and international law on the use of force is both statistically and substantively meaningful.



The results for the target produce similar results (Figure 12). First, we see that the coefficient estimate for targets the aggression variable is negative and statistically significant. Thus, IGOs are less likely to support states that commit aggression compared to states that do not. Regarding the substantive effects, the predicted probability for targets who receive IGO support is .21, but this drops to .07 when targets violate international law. The resulting first difference is -.13 (Figures 6) and

the percentage change is -67% (Figure 13). Targets are therefore 67% less likely to receive IGO support when they violate international law compared to when they do not violate international law. The substantive effects for the target are strong, even relative to the other control variables (Figure 13). The magnitude is larger than the military balance variable, the gravity variable, and the challenger major power variable, while only the target major power variable is greater than the international law variable.



Overall, we see strong and consistent statistical and substantive results for the behavior of third parties, measured in this chapter as IGOs. IGOs are more likely to support crisis actors when they have a right to use force compared to when they do not have a right to use force, and they are less likely to support actors who commit aggression than states that do not violate the law in this manner. We can therefore be confident that the underlying mechanism in my theoretical framework is true, providing further support for my primary argument in this dissertation on the constraints imposed by international law. Simply, states act in accordance with

international law in order to minimize the material and nonmaterial costs that international actors can impose on them.

### **Case Evidence**

In the previous section, I established using statistical methods that third parties conceptualized as IGOs are more likely to support states that have the right to use force and less likely to support states that commit aggression. In this section, I briefly use evidence from Gulf War I and II to reinforce the statistical findings, and to further trace how third parties respond to the legality of using force. My purpose in presenting evidence from the Gulf Wars is to highlight the role of international law and how it contributed to the decision of third parties to support the United States. In so doing, I am not claiming that the law is more important than the standard explanations of third party behavior (strategic interests, economic relations, domestic politics, etc.); rather, I am simply suggesting that law in addition to these arguments contributed to the decision-making of third parties during the Iraq Wars. The contribution, therefore, is to identify a new mechanism that scholars interested in conflict and crisis bargaining have mostly overlooked.

In particular, I am interested in the relationship between the legality of using force and the ability of the US and the UK to obtain international support, including UN authorization for the use of force in 1991 and 2003.<sup>79</sup> The case evidence supports my theoretical expectations: the US, UK, and coalition partners received greater

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<sup>79</sup> A point of clarification is needed here. I of course recognize that the UN can legally authorize the use of force; my interest is on the other legal principles that provide states with the right to individual self-defense. In other words, I show below that UN authorization is in large part endogenous to international law on the use of force.

support from third parties during the first Gulf War than during the 2003 War, including authorization from the UN to use force in 1991, but the failure to obtain one in 2003. The historical record also indicates that the legal principles related to the use of force explain in part the different levels of support from the international community.

The remainder of this section is organized as follows. First, I briefly review the events surrounding the two crises that led to these two wars. I then discuss the legality of using force for each war. Third, I review how international law influenced the behavior of the international community. I conclude with the implications from the statistical and qualitative evidence presented in this chapter.

### **1991 Iraq War**

On August 2, 1990, Iraq invaded Kuwait, defeated the Kuwaiti military in a decisive victory, and occupied the Arab state all within six hours. International reaction was immediate: the US, the United Nations Security Council, and even the Arab League all condemned Iraq and demanded that Saddam Hussein completely and immediately withdraw his forces from Kuwait. Iraq steadfastly refused to comply with the demands of the international community. After several months of stalemate between Saddam and the international community, the US led a coalition of forces backed by UN Resolution 678 to liberate Kuwait from Iraq leading to the outbreak of the first Gulf War (Brecher and Wilkenfeld 2000; Sarkees and Wayman 2010).

During the months leading up to Operation Desert Storm, the US prioritized international support and largely received it. Indeed, the sense of unity displayed by the international community throughout the crisis was remarkable. Nearly 40 countries

provided troops and over 20 states contributed military supplies and hardware. Financial assistance was even greater. US allies and friends contributed \$54 billion, which helped to offset the \$60 billion costs for the war. Even states such as Jordan that opposed the war effort still avoided condemning the US outright in the months preceding the war. Finally, the widespread support for the US position culminated in United Nations Resolution 678 passed on November 2, 1990 authorizing states to use “all means necessary” against Iraq if Saddam Hussein failed to withdrawal his troops from Kuwait (e.g., Baker 1995; Clodfelter 2008; Freedman and Karsh 1993; Powell 1995; Woodward 1991).

The evidence clearly indicates that the legality of using force to repel Iraq from Kuwait was one of the most important factors in the almost universal consensus of the international community to authorize the use of force against Iraq. There are two questions that are pertinent to the lawful behavior of the United States and the international community as it relates to the lawful use of force against Iraq. First, did Iraq’s attack on Kuwait constitute an armed attack, providing Kuwait with the right to self-defense? Second, did the international community have the right of collective self-defense on behalf of Kuwait, even if Iraq committed an armed attack against Kuwait?

First, Iraq’s invasion of Kuwait and subsequent occupation and annexation clearly reached the threshold of an armed attack. Second, Kuwait requested help from the international community, activating the collective self-defense doctrine and providing the international community with the legal right to repel Iraq from Kuwait. In a call for collective self-defense, the emir of Kuwait claimed,



In the Exercise of its inherent right to of individual and collective self-defense and pursuant to Article 51 of the Charter of the United Nations, Kuwait should like to notify you that it has requested some nations to take such military actions or other steps as are necessary to ensure the effective and prompt implementation of Security Council Resolution 661.<sup>80</sup>

The historical record indicates that international law in part motivated international opinion on this matter. The UN Security Council unanimously passed Resolution 660 stating that the Iraqi invasion of Kuwait was a breach of international peace and security. Many officials in the Bush Administration also believed that the US based on the Charter had the legal right to use force against Iraq without receiving additional authority from the UN (Baker and 1995; Freedman and Karsh 1993, 144). France also believed that the Western states had the legal right to use force, although again they preferred to obtain a UN authorization for using force. The UK Prime Minister Margaret Thatcher also believed that the use of force against Iraq was legal even without UN authorization (Thompson 2009).<sup>81</sup>

Finally, many of the neutral and non-aligned states largely supported the US and the other major powers in the United Nations General Assembly by first supporting economic sanctions and then supporting the use of force against Iraq. For example, the GA stated its concern with Iraq with the statement, “Iraqi aggression and the continued occupation of Kuwait in flagrant violation of the Charter of the United Nations” (UNGA A/45/250).

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<sup>80</sup> Letter to the Security Council, S/21498 13 August 1990

<sup>81</sup> To be sure, Thompson makes that point that even though many Western officials believed they had the legal right to use force, they also preferred to go to the UN for the additional legitimacy and legality that the UN could give them domestically. As noted above, I agree with Thompson and others (Chapman 2007, 2009; Chapman and Reiter 2004; Fang 2005; Thompson 2006, 2009) about the importance of the UN; my specific argument is only that UN behavior is largely endogenous to the other principles on the use of force.

In conclusion, the first Gulf War largely confirms both my theoretical argument on the role of third parties and my statistical findings. The international community largely supported the efforts of the US, UK, and others because it was legal to use force against Iraq. Iraq had committed an armed attack against Kuwait and based on Article 51 of the Charter, Kuwait had the right to individual and collective self-defense. The high levels of support led to Resolution 678 that contributed to the coalition of forces that forced Iraq from Kuwait.

### **2003 Iraq War**

In the previous section, I established that it was legal to use force against Iraq in 1991 and the international community largely responded in kind by showing nearly universal support for using force against Iraq. In this section, I demonstrate that it was illegal to use force against Iraq in 2003 and this led to widespread disagreement among members of the international community, including outright hostility towards the United States even by friends and allies.

In the lead-up to the Iraq War, the US put forward two different legal rationales for the use of force: the preemptive use of force and what is known as the revival argument. The US argued that it had a legal right to use the preemptive use of force due to the changed nature of the threat – weapons of mass destruction, rogue states, and terrorism. In this way, the US tried to shift the imminent threat standard for the right of the anticipatory use of force to a gathering threat standard.<sup>82</sup>

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<sup>82</sup> As discussed in Chapter 2, interceptive self-defense is only allowed when there is clear and compelling evidence that an attack is imminent.

The US legal justification, however, was widely rejected among legal commentators and states including friends and allies. The UK legal adviser Michael Wood argued, “If state practice were to develop in the direction of preemption or if regime change became accepted as a proper objective, it would be open season for all States to attack whom they perceive as threatening them” (Wood 2002). Likewise, even the UN Secretary General declared that the preemptive use of force was unlawful in a statement released shortly before the Iraq War (Annan 2003). Shortly after the war, the ICJ, the UN High Level Panel on Threats, among other sources all rejected the expanded right of preemption put forward by the Bush Administration (Weller 2010). In short, as legal scholar Weller (2010, 143) argues, “the thesis of preventive or preemptive war therefore was widely rejected.”

Due to the rejection of the preemption argument even by the UK, the US, the UK, Australia and other allies moved towards the revival argument as the primary legal justification for using force against Iraq. This argument holds that the force was permitted based on Iraq’s refusal to comply with previous UN Resolutions, including SCR 678 of 1990, SCR 687, and SCR 1441. In other words, a new UN resolution explicitly authorizing the use of force was unnecessary to establish the legality of using force.

Legal authorities and other states once again largely rejected this argument. Regarding UN resolution 1441, Weller makes three key points: 1) the UN resolution did not grant fresh authority to use force, 2) the resolution provided for a finding of non-compliance by the UN arms inspectors, as opposed to individual states, in order to authorize the use of force, and 3) it would be up to the Security Council to

determine the consequences of such violations, including the possibility of using force. In other words, the revival argument did not allow for the US and others to legally wage war on Iraq.

Likewise, the UN Secretary General warned that, “if the US and others were to go outside of the Council and take military action, it would not be in conformity with the Charter” (Annan 2003). The implication of this statement is that the US had no legal right to use force without the Security Council approving it. This is in contrast to the first Gulf War, in which the US had the legal right to use force because of the principle of collective self-defense in response to the Iraqi armed attack.

The illegality of the war in Iraq had important consequences for the US’s ability to mobilize international support. Unlike in the first Gulf War where the US received the support of most states in the international community, the US received very little support this time. The widespread opposition to the war can be seen in three different ways: international opinion was opposed to the use of force in the lead-up to the war, the small amount of contributions made by friends and allies, and finally, statements made in the United Nations immediately after the US, UK, and others commenced hostilities against Iraq.

First, from the very beginning, France, Germany, and Russia opposed the use of force, and instead called for diplomatic options and other non-violent coercive measures. Their positions hardened as the US moved closer towards war. On February 10, French President Jacques Chirac along with the leaders of Germany, and Russia declared, “Nothing today justifies this war.”<sup>83</sup> Later, both France and Russia

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<sup>83</sup> [http://articles.cnn.com/2003-02-10/world/sprj.iq.wrap\\_1\\_statement-of-mutual-defense-iraq-standoff-nato?\\_s=PM:WORLD](http://articles.cnn.com/2003-02-10/world/sprj.iq.wrap_1_statement-of-mutual-defense-iraq-standoff-nato?_s=PM:WORLD)

said that they would veto any resolution authorizing the use of force.<sup>84</sup> Both France and Russia believed that the use of force was unlawful and they thus refused to provide it with legality by passing a resolution in the Council.<sup>85</sup>

Foreign publics also largely criticized the war effort. According to a report in the BBC, “between six and 10 million people are thought have marched in up to 60 countries over the weekend.”<sup>86</sup> In short, as Daadler argues, “The administration is trying too hard to prove something that isn’t. By insisting that the coalition of the willing is larger, deeper, and wider than is in fact the case, the administration only emphasizes the extent of its own isolation. Only Britain is offering minimal support.”<sup>87</sup>

Second, it is also useful to directly compare the levels of political, economic, and military support from the international community for the two wars against Iraq. Coalition combat troops numbered 160,000 in 1990, but only 47,200 (45,000 British troops, 2,000 Australians, and 20 Polish troops) in 2003. In 1990, only a handful of states opposed the war and even fewer were overtly hostile to the US; in contrast the US received widespread condemnation in 2003, including from many friends and allies as noted above. In 1990, the international community provided billions of dollars to the war effort, yet in 2003, the US did not receive a single monetary contribution from other states. In 1991, over 30 countries contributed combat troops, but in 2003 only three did so. Finally, the United Nations authorized the use of force

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<sup>84</sup> This is important as it shows that UN approval is endogenous to state behavior.

<sup>85</sup> In the infamous Downing Street memo, UK officials recognized the questionable legality of using force against Iraq, which is why they suggested going to the United Nations for authorization.

<sup>86</sup> <http://news.bbc.co.uk/2/hi/europe/2765215.stm>

<sup>87</sup> [http://www.brookings.edu/opinions/2003/0324iraq\\_daalder.aspx](http://www.brookings.edu/opinions/2003/0324iraq_daalder.aspx)

against Iraq in 1990, but the US and UK failed to authorize the use of force against Iraq in 2003.<sup>88</sup>

Finally, following the initiation of hostilities, several states condemned the US and its few coalition partners for violating international law in the invasion of Iraq. Russia declared at the UN, “An unprovoked military has been undertaken, in violation of international law and in circumvention of the Charter. The military action... cannot be justified in any way. It is clear to everyone that the use of force against Iraq in an effort to change the political regime of a sovereign State runs totally counter to the fundamental principles contained in the Charter.”<sup>89</sup> China similarly declared that, “Such an action constitutes a violation of the basic principles of the Charter of the United Nations of international law” (UN Doc. S/PV.4726). The Arab League likewise said, “the aggression a violation of the Charter and the United Nations and the principles of international law” (UN Doc. S/PV.4726). The Non-Aligned Movement claimed that use of force against Iraq was a, “violation of the principles of international law and the Charter.”<sup>90</sup> France and Germany both criticized the US and the UK for taking military actions without authorization from the United Nations (UN Doc. S/PV.4726). In short, as the UN Secretary General later said, “I have stated clearly that it was not in conformity... with the UN Charter” (Annan 2004).

In sum, the historical record clearly supports my theoretical expectations on international law and the role of third parties. The large-scale use of force against Iraq in 1990 was legal (even before UN authorization) and the international community

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<sup>88</sup> Ibid.

<sup>89</sup> <http://www.iraqwatch.org/government/Russia/russia-mfa-lavrov-032703.htm>

<sup>90</sup> Ibid.

responded in kind with its nearly unanimous support for the US and other leading nations. In contrast, it was illegal to use force against Iraq in 2003 and few states supported the US and the UK, with many nations showing outright hostility towards the United States and Great Britain.

### **Potential Objection**

Despite the lack of international support, the United States and its coalition partners of course still used force against Iraq. Does the recent Iraq War suggest that the argument advanced in this dissertation about the constraints imposed by third parties is wrong? No; in fact, it is the “exception” that proves the rule. As I have argued throughout this dissertation, international law on the use force alters the costs and benefits for using force by affecting the support of third parties. States face added costs for violating international law and increased benefits for acting in accordance with it. The additional costs/benefits for violating international law, however, may be insufficient to offset the expected payoffs for war. That is, if a leader believes that he can prevail in war even after incorporating the costs for violating international law, then he will choose to use force. The Bush Administration in 2003 behaved this way in that they believed that they could absorb the international backlash for illegally using force in Iraq. This perceived limitation of international law should not be exaggerated, however. As the most powerful country in the world, the US has a unique capacity to absorb the costs of employing the unlawful use of force. Most other states, however, lack the military, political, and economic prowess to flaunt international law.

## **Conclusion**

In this chapter, I sought to demonstrate that third party behavior is consistent with my theoretical expectations. To that end, I assessed how IGOs respond to leaders that violate international law on the use of force, a useful proxy to test the behavior of third parties. Consistent with my theoretical expectations, I found that IGOs are both more likely to support leaders that have the right to self-defense and less likely to support leaders that violate the law. I also traced the behavior of the international community during the 1991 and 2003 wars in Iraq. As expected, I found that international law largely explains why third party states supported the effort in 1991 and opposed the war in 2002. Overall, the evidence presented in this chapter provides strong support for the underlying causal mechanism in my argument that states comply with the legal principles related to the use of force because of international audience costs.



## **Chapter 6: The Cuban Missile Crisis**

### **Introduction**

In the previous two chapters, I used quantitative methods to assess my theoretical expectations on international law on the use of force and crisis escalation. In Chapter 4, I used cross-national research to assess how international law influenced the decision of leaders to escalate international crises. As expected, I found that leaders are less likely to escalate militarily when international law prohibited the use of force than when it allowed for the right to self-defense. In Chapter 5, I more directly assessed the causal mechanisms in my argument by looking at how third parties react to international law on the use force and aggression. Consistent with my argument I found that international and regional institutions are more likely to support leaders who act in accordance with international law than those that violate it. Together, the quantitative evidence provides strong support for my theoretical expectations on the pacifying role of international law on the use of force in international crises.

In this chapter, I expand upon the quantitative evidence and present a case study on how international law on the use of force influenced the decision-making of President Kennedy and his advisers during the Cuban Missile Crisis. The case study is a useful method to study how international law affects foreign policy decision-making. Most importantly, it allows me to directly assess the causal mechanisms and causal pathway that I put forward in my theoretical framework. Using historical evidence including primary source material, I show explicitly how US officials

believed international actors would respond to the legality of using force, and, in turn, how US leaders incorporated the expected support of third parties into their decision-making during this crisis. Thus, my purpose, similar to the previous chapter, is simply to highlight the role of international law in this crisis, and to show that the law operates in a manner consistent with my theoretical argument. The case study is not intended to be a comprehensive account of all the factors that led to the various decisions that took place during this crisis. Rather and once again, the purpose of the case study is solely to isolate the impact of international law.

As I describe in great detail below, the Cuban Missile Crisis provides strong support for my theory of institutional reciprocity. The evidence indicates that international law influenced President Kennedy because of how it impacted the behavior of third parties. Specifically, US officials expected to receive lower support for violating international law by engaging in the preemptive use of force against Cuba, and greater support for acting in accordance with international law by implementing the OAS-blockade. The greater support for the blockade contributed in part to President Kennedy's decision to implement it, instead of employing air strikes against Cuba.

The rest of this chapter is organized as follows. First, I present a short summary of the Cuban Missile Crisis. Second, I review the relevant legal principles and discuss what US leaders knew about international law during the period under investigation. Next, I present evidence showing that US officials believed that international law would affect the behavior of friends and allies in the international community. I then demonstrate how this altered the costs and benefits of the major

policy options, and how this then contributed to the decision to implement the blockade. I then discuss how members of the international community behaved as Washington expected following President Kennedy's decision to implement the blockade. Finally, I address the role that nuclear weapons played in the outcome of this crisis, and conclude with the implications of this study.

## **Background**

On September 4 1962, President Kenney issued a press statement warning the Soviet Union that the US would act if they put offensive missiles in Cuba. A little over a month later, on October 14, a U-2 spy plane flying over the western part of Cuba took pictures of what appeared to be Soviet missile bases under construction at a military installation in San Cristobal. Within twenty-four hours, experts at the CIA's National Photographic Intelligence Center (NPIC) confirmed that the photos were medium range ballistic missiles (MRBMs). The next morning McGeorge Bundy, the National Security Adviser, informed President Kennedy about the nature of the photos and the emplacement of the MRBMs in Cuba (e.g., Abel 1966; Brecher and Wilkenfeld 2000; Allison 1971; Chayes 1974)

On October 16 at around 6:30, President Kennedy convened several of his top advisers and other officials in his administration in a group that what later be called, the Executive Committee of the National Security Council (ExComm). The mission of ExComm was to aid the President in choosing a course of action in response to the placement of the USSR missiles in Cuba. Among the many possible options floated on the first day of the crisis, President Kennedy and ExComm quickly settled on two

major policy options to counter the Soviet missiles in Cuba: surprise air strikes versus blockade. The former consisted of the preemptive use of force in the form of air strikes against the missiles sites, while the latter was made up of a naval blockade to stem the flow of any futures shipments of military goods, accompanied by an ultimatum to remove the missiles (e.g., Abel 1966; Brecher and Wilkenfeld 2000; Allison 1971; Chayes 1974).

ExComm was largely divided between those who favored immediate air strikes along with a possible invasion, and other members that preferred a more diplomatic approach, such as the blockade. Indeed, throughout the crisis, President Kennedy and the other members of ExComm struggled to reach a consensus on whether to choose the air strikes or the blockade. Several officials including General Taylor, McGeorge Bundy and John McCone preferred the use of force over the blockade; even President Kennedy appeared to favor this option at first. As the US President argued at the end of the first meeting, “I don’t think we’ve got much time on these missiles. We may just have to take them out... We’re gonna take out these missiles” (May and Zelikow 1997: 50).

Many of these same officials were skeptical of the blockade, primarily because they thought that it would be unable to remove the missile threat. As President Kennedy argued, “The only thing that I am saying is that we’re not going to get them out with the quarantine. I’m not saying we should lift the blockade or what we should do about the quarantine. But we have to all now realize that we’re not going to get them out” (May and Zelikow 1997: 283). Thus, many in ExComm

avored the air strikes to the blockade because they thought it gave the US the best chance to remove the missiles from Cuba.

On the other hand, other officials including Dean Rusk, Leonard Meeker, George Ball and eventually Robert Kennedy all favored the blockade. While the advocates of the option recognized that it may not force the USSR to remove the missiles, they supported it largely because the loss of international support for using force would be consequential. In particular, policymakers were concerned with how the USSR, as well as friends and allies in the international community would respond to the use of force compared to the blockade. As McNamara argued, "I don't know quite what kind of a world we live in after we have struck Cuba, and we've started it. He continued, "... we ought to work on the consequences of any one of these courses of actions, consequences which I don't believe are entirely clear to any of us" (May and Zelikow 1997: 65). Other officials including Dean Rusk, Marshall Carter, and George Ball shared these concerns on the costs of employing the preemptive use of force.

After four days of deliberations and intense debate, President Kennedy made his decision on the afternoon of October 20 when he decided to implement the naval blockade. At the same time, the US President tasked the military with preparing plans for air strikes and a possible invasion of Cuba, in case the blockade failed to force the Soviet Union to remove the missiles as many suspected that it would. Over the next two days, the President and his advisers met with Congressional leaders and spoke with several foreign leaders to brief them and to obtain their support for the blockade. On October 22, President Kennedy delivered his television address to the

American people to inform the public about his plans to implement the blockade (or “quarantine”) to counter the Soviet missiles in Cuba. On October 24, the US military began to put the naval blockade into effect, about 500 miles from Cuba.

After two days without incident, tensions flared on October 26 when several hostile interactions took place that threatened to escalate the already precarious situation. First, Khrushchev withdrew an earlier offer to remove the missiles in exchange for a US pledge not to invade Cuba, and instead said that the USSR would only remove the missiles in Cuba if the US withdrew missiles from both Italy and Turkey. Second, a U-2 pilot was killed when its plane was shot down flying over Cuba, and third US and USSR fighter jets were launched after an incident near Soviet airspace (e.g., Abel 1966; Brecher and Wilkenfeld 2000; Allison 1971; Chayes 1974).

Given the increased potential for nuclear war, various US and USSR officials met over the course of October 26 and 27 to try to find an agreement to end the crisis short of full-scale war. At the end of the day on October 27, the two adversaries appeared to reach an agreement to end the crisis when President Kennedy agreed to Khrushchev’s second offer to remove the missiles from Italy and Turkey in exchange for the USSR withdrawing its missiles from Cuba, as long as the deal would initially remain private. On the morning of October 28, Khrushchev confirmed his commitment to the peaceful resolution of the crisis and made a public statement declaring that the USSR would dismantle the weapons sites in Cuba. Kennedy immediately followed and applauded Khrushchev’s contribution to peace and said that the US would respect the sovereignty of Cuba and would not invade the country.

The public statements made by both sides signaled the end of the Cuban Missile Crisis.

### **International Law and the Cuban Missile Crisis**

In the remainder of this chapter, I show how international law influenced the decision-making of President Kennedy and his team of advisers. To that end, I first establish in this section that US officials were familiar with relevant legal principles on the two major policy options available to them. Specifically, US policymakers were exposed to international law through two major sources of information: 1) legal memos provided by lawyers from the US State, Defense, and Justice Departments that were produced in the months preceding the crisis and 2) a discussion of the relevant legal principles by ExComm on October 19.

### **Legal Memos**

About two months before the Cuban Missile Crisis, officials in the Kennedy Administration requested that lawyers from the Defense, State, and Justice Departments prepare memos on the lawfulness of potential US actions in Cuba. The purpose of the memos was to provide information about the different policies available to the US should a crisis develop with the USSR and its communist protégé (Chayes 1974: Chapter 2). As Robert Kennedy argued, “we ought to do a serious study of whether the United States could as a matter of international law, take action to prevent long-range missiles from being installed in Cuba, and perhaps of what form that action might take” (Chayes 1974: 17). In other words, in light of the

intelligence reports about the increase in Soviet shipments to Cuba, US officials wanted to be prepared and knowledgeable about the different policy options available to them and the relevant legal issues for using force in Cuba. I begin with the Justice Department memo.

Norbert Schlei, the Assistant Attorney General, Office of Legal Counsel, was the primary author on the report from the Justice Department. Schlei made three important points on the legality of using force in Cuba. First, he argued that a limited right of preemptive self-defense exists since neither the UN Charter nor the OAS prohibits the taking of unilateral action in self-defense prior to the occurrence of an armed attack. Quoting the well-known Caroline Case that was discussed in Chapter 2, he argued, that “preventive action in self-defense is warranted only where the need for it is “instant, overwhelming, leaving no choice of means, and no moment for deliberation” (Chayes 1974: 109). Nonetheless, he also pointed out that this was a limited right and the preventive use of force was not permitted in this case. Thus, he concluded, it is clear that “preventive action would not ordinarily be lawful to prevent the maintenance of missile bases or other armaments in the absence of evidence that their actual use for aggressive attack was imminent” (Chayes 1974: 109).

Second, he also claimed that the UN Charter and the Rio Pact could both authorize various options and provide justification for actions that would otherwise be criticized if undertaken unilaterally. Based on Article 39 of the UN Charter, for instance, he argued that the Security Council could authorize the use of force for a “threat to peace” or “breach of the peace” along with an “act of aggression.” Moreover, he argued that based on Article 25 of the Charter of the OAS and Article 5



of the Rio Treaty, common defense is permitted in response to an armed attack, but also if the “territory or sovereignty or political independence of any American State” is affected by an “aggression which is not an armed attack” or by “any other fact or situation might endanger the peace of America” (Chayes 1974: 110-111). Schlei therefore argued that both the UNSC and the OAS could authorize the use of force when the right of individual self-defense does not exist.

Third, Schlei also highlighted US obligations to the Organization of American States (OAS) and the United Nations. He claimed that even though unilateral action is permitted under the aforementioned conditions, either of these institutions “undoubtedly carries with it a commitment to have recourse to the organizations procedures if at all possible before acting unilaterally” (Chayes 1974: 111). Schlei therefore emphasized the importance of working through international organizations.

Finally, the report also included a section on what the Schlei termed, special hemispheric law. The thrust of his argument was that the Monroe Doctrine allowed for special regional circumstances that allowed for the right to self-defense beyond what is permitted under Charter law.<sup>91</sup> Applied to the crisis at hand, Schlei raised that the US could use force under “less restrictive conditions” thereby allowing the US to use force in response to the placement of the missiles in Cuba (Chayes 1974: 112-115).

The Defense Department memo makes up the second key report. Benjamin Forman, the Assistant General Counsel for International Affairs was the lead author on this report. Dated September 14, he concludes:

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<sup>91</sup> The Monroe Doctrine of course stipulates that control of American territory by a non-American power is considered a danger to the extent that it provides the US with a right to self-defense.

the use of such a measure would not be permissible under the United Nations Charter unless: 1) the Security Council had found the existence of a threat to the peace and had recommended measures, including a naval blockade, in accordance with Articles 39, 41, and 42 of the Charter, 2) such action were, pursuant to Article 51, taken on the basis of individual or collective self-defense because of an armed attack, or 3) such action were taken as a result of a decision by the OAS (Chayes 1974: 22).

Forman raised two additional points in his memo. First, he indicated the United States was “bound” to submit all disputes to the OAS and the UN for consideration. He made clear that the US was obligated to at least seek out guidance from the relevant IGOs. Second, he suggested that either institution could recommend a blockade to deal with a threat to peace, such as the placement of missiles in Cuba (Chayes 1974: 22).

Abram Chayes, the State Department’s legal adviser, produced the third legal memo of import here. This motivation for this memo was slightly different than the previous two reports. Following the Kennedy’ Administration’s decision to suspend U-2 flights over Cuba in September 1962, Rusk asked Chayes to provide an analysis of whether the OAS could legally authorize the flights under its auspices. Rusk wanted to know about the legality of OAS approval in order to know whether the OAS could legitimize the flights, and provide political cover for the United States in case a U-2 was shot down. The report is relevant here because it involved the legality of military options in Cuba, and it helped inform ExComm about the lawfulness of potential policy options during the Cuban Missile Crisis (Chayes 1974: 135-140).

In the report, Chayes made several recommendations about the lawfulness of the use of force in Cuba. First, he concluded that the OAS could address the situation based on the fact that the uncertainty emanating from Cuba could be deemed a threat

to the Americas. In particular, he argued that the OAS could take it up under Article 6 of the Rio Treaty, but not Article 3 since the latter concerns issues of an armed attack, which had not taken place. The report also concluded that based on Articles 2(4) and 53 of the UN Charter, the flights would not constitute an armed attack and thus Cuba would not have the legal right to use force in self-defense (Chayes 1974: 135-140).

In sum, all three memos were in broad agreement regarding the legality of US actions in Cuba. All three indicated that the placement of missiles in Cuba did not constitute an armed attack, and therefore did not allow for a right to self-defense under the UN Charter. In addition, all three reports were in agreement that the OAS could approve a response under Article 6 of the Rio Treaty even without an armed attack or the authorization from the UNSC. Likewise, all the authors suggested that the US faced an obligation to consult the OAS and even the UN before taking any unilateral action.

There was, however, an important exception to the near uniformity across the memos. The section on special hemispheric law - the Monroe Doctrine allowed the US to expand upon the Charter's restrictions on the right to use force - only appeared in the memo produced by the Justice Department. This interpretation of international law failed to make it into the other reports, largely due to the fact that the argument was based on questionable legal principles (Chayes 1974). Schlei later admitted that even President Kennedy rejected the argument. According to Schlei, "... The President was critical of our draft [statement] because it mentioned the Monroe Doctrine. The Monroe Doctrine, he snapped at me, "What the hell is that?" I mumbled some answer about its legal significance, but it was clear that whatever it

was or meant he didn't want to mention it in his statement" (Chayes 1974: 23).

Indeed, Chayes argued that President "buried" the Monroe Doctrine as any sort of legal basis for US actions (Chayes 1974: 23).

Finally, it is important to recognize that the legal analyses in the memos were shared with leading policymakers. Regarding the Justice Department memo, Schlei discussed his memo with several administration officials, including Robert Kennedy and Dean Rusk. Schlei himself suggested that the memo was sent to President Kennedy, John McNamara, Dillon, and maybe even Bundy and McCone. Robert Kennedy would also claim that he set up a meeting to discuss the memo and the problem with Katzenbach, Schlei, and Rusk on September 3. Schlei also later claimed that the memo was a source of the President Kennedy's press statement in early September. The State and Defense Department memos were also shared with other policymakers. Forman at the very least sent his report to Chayes at State. Chayes also claimed that he showed both memos to Rusk, who later discussed it with other administration officials. In sum, we can conclude, as Chayes notes, "that there is no reason to doubt that most of the members of the Executive Committee were generally familiar with the legal background and issues" (Chayes 1974: 24).<sup>92</sup>

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<sup>92</sup> In addition, Meeker noted that if a defensive quarantine constituted "enforcement action" under Article 53 of the Charter, it would require authorization of the Security Council. He then claimed that the US would be able to make a good argument to the contrary and that they would be to prevent a vote against the US position in the UNSC.

## **October 19 Meeting**

The October 19 meeting in Ball's office produced the second major source of information on the relevant legal principles.<sup>93</sup> While the legal questions were raised throughout the first days of the crisis, October 19 is a key point in the discussion on international law as it was at the center of the meeting. It is also important to note that while President Kennedy was leaning towards the blockade on October 19, he by no means had made a final decision on what to do in Cuba. Thus, the legal principles discussed on October 19 still influenced the thinking of the President and ExComm.

At the beginning of the meeting, Rusk called for an "exposition" of the legal framework for the different policies, including the use of force against Cuba. He claimed that a surprise air strike had no support in the law or morality and thus must be ruled out. The Deputy Attorney General Nicholas Katzenbach, however, argued that the US could justify the use of force based on the principle of self-defense. Among the legal experts, Katzenbach was alone in declaring such a broad interpretation of international law (US Department of State 1997:26–50).

Leonard Meeker concurred with Rusk's assessment of the legality of using force. Specifically, Meeker argued that any action must be considered in relation to the UN Charter. As the legal expert at the meetings, he reminded his audience that the Charter contained a general prohibition against the use of force, except in limited circumstances, including the right to self-defense following an armed attack. He also made it clear that the situation in Cuba did not constitute an armed attack, and thus

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<sup>93</sup>The October 19 conversation took place in Ball's office, meaning that transcripts are unfortunately unavailable. Nonetheless, we have a record of what was discussed due to notes and memos taken by Meeker, McCone, and Gilmarc.

the US had no legal recourse to use force based at least on this justification. He then mentioned that the second exception to the prohibition on the use was that the United Nations Security Council could authorize collective self-defense under Chapter VII of the UN Charter. He also noted that this seemed unlikely given that the Soviet Union could veto any such action (US Department of State 1997:26–50).

Meeker then suggested a third legal avenue. He said that the Charter also had provisions for regional actions under Chapter VIII. In particular, Article 52 allowed for regional actions when “such matters relating to the maintenance of international peace and security as are appropriate for region regional action.” He therefore declared that a legal argument could be made under the Charter for the use of force if it were sanctioned under the Rio Treaty. Specifically, based on Articles 6 and 8 of the Rio Treaty, he argued that the use of force could legally be authorized if the Americas were under threat. Meeker also mentioned that it was necessary to obtain a two-thirds vote in the Council to obtain authorization for this (US Department of State 1997:26–50).

Assistant Secretary of State for Latin American Affairs Edward Martin then commented about the possibility of obtaining the necessary 2/3 vote. He said that the US could immediately secure the necessary 14 votes for the blockade and that they could increase the number of votes to 18 or 19 within the next 24 hours. Robert Kennedy made the point that it was necessary to know in advance about OAS support. He argued that it would put the President in an impossible position if the US were to attempt to receive OAS authorization, but then failed to do so (US Department of State 1997:26–50). Martin’s confidence in securing OAS support was

an important factor in support of this option since it provided the necessary legal justification.

In sum, between the legal memorandum and the discussions during the ExComm meetings, we can conclude that ExComm was familiar with the legal issues related to the missiles in Cuba. We can therefore make two important conclusions about what ExComm knew about international law during the Cuban Missile Crisis. First, they knew it was illegal to use force against Cuba as the US was not the victim of an armed attack and an attack was not imminent. In other words, they were aware that the US had no right to self-defense in Cuba. Second, the OAS could authorize the naval blockade and it would be considered consistent with international law.

### **International law and the Preemptive Use of Force**

Among the many possible military options that ExComm debated when the crisis first started, US officials settled on air strikes against the missile sites only as the best course of action for the military track. The advantage of employing the preemptive use of force, as noted above, is that the US believed they could take out most of the missiles in the Cuba.<sup>94</sup> The two key disadvantages were that US expected that the USSR would respond with force elsewhere, and that the US would lose international support. Together, USSR reprisals and the lack of international support greatly increased the costs for using force against Cuba.

Secretary of State Dean Rusk was at the forefront of discussing the consequences of illegally using force. He also consistently called for consideration of

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<sup>94</sup> There was some debate about the percentage of missiles that US could hit in a first strike; opinions varied from around 50% to 90% with majority of experts believing that a higher number was more accurate.

the legal issues. Rusk argued that while the US had to take action, he also cautioned against acting immediately and acting unilaterally since any use of force by the US was likely to affect the US's 42 allies across the world. He similarly suggested that "we could find ourselves isolated and the alliances crumbling" for engaging in the unlawful use of force (May and Zelikow 1997: 56). On October 16, for instance, he claimed that the preemptive use of force would have important consequences in Latin American and among NATO Allies. He argued that pursuing the option would lead to a "maximum communist reaction" causing a potential overthrow of friendly regimes in the region (May and Zelikow 1997: 56).

Others in ExComm concurred with Rusk's assessment of the consequences of the preemptive use of force. Both McNamara and Bundy would later comment in reference to the use of force, "Russian roulette and a broken alliance" indicating that using force was a gamble that would lead to problems with US friends in both Latin America and Europe (May and Zelikow 1997: 104). Likewise, George Ball suggested that President Kennedy provide a 24 hour window to the USSR because of the "sense of affront" that would result from unannounced airstrikes among the international community including US allies" (May and Zelikow 1997: 91). In a memo to President Kennedy, Lovett claimed that he "thought that the missile strike, the first strike, would be very destructive to our alliances" (May and Zelikow 1997: 172). Similarly, Ambassador Bohlen argued on October 16 that if the US were to strike unannounced, "allied reaction would be dead against us, especially if the Soviet Union retaliated locally (or in Turkey or Italy or in Berlin)" May and Zelikow (1997: 81). Even General Taylor who consistently argued for military action including a



ground invasion acknowledged that political problems might make it necessary to provide the USSR with advance notice of a likely attack by the US (May and Zelikow 1997). Finally, in a memo summarizing the meetings of October 17, the President's speechwriter, Theodore Sorensen recalled that two points of discussion during the day were: 1) how successful we would be in justifying to world military action against Cuba and 2) whether the effect on our allies would be worse if we do strike or if we do not (Chang and Kornbluh 1992: 114-115).

The evidence clearly indicates that several leading US officials believed that if the US engaged in the preemptive use of force against Cuba, they would lose the support of friends and allies in the international community. The historical record further indicates that the US believed this would happen because it was unlawful and consequently illegitimate to strike first.<sup>95</sup> Several US officials thought that they would be isolated on the world stage if they used the preemptive use of force against the Soviet Union because it violated appropriate standards of behavior in the international system.

In particular, US policymakers argued that such a strike on Cuba would produce an international response similar to the Japanese surprise attack on Pearl Harbor. Indeed, Pearl Harbor became a critical analogy for ExComm as US officials cited it throughout their conversations. Robert Kennedy was the leading voice in using the Pearl Harbor analogy to warn of the consequences of using force first. In fact, it was Pearl Harbor that primarily changed the Attorney General from a proponent of using force to an opponent of it. In his first recorded reaction, for

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<sup>95</sup>The US also recognized that there would be a negative response from allies if the USSR retaliated with force against or near allies in Latin America and Europe.

example - a scribbled note at the first ExComm meeting – he wrote, “I now know how Tojo felt when he was planning Pearl Harbor” (Kennedy 1971: 9) Later he would comment that, “my brother is not going to be the Tojo of the 1960s”. Robert Kennedy also claimed that,

“With some trepidation, I argued that whatever the validity the military and political arguments were for such an attack in preference to a blockade, America’s traditions and history would not permit such a course of action. Whatever military reasons he and other could marshal, they were nevertheless in the last analysis advocating a surprise attack by a very large nation against a small one. This, I said, could not be undertaken by the US if we were to maintain our moral position at home and around the globe. Our struggle against Communism throughout the world was far more than physical survival – it had as its essence our heritage and our ideals, and these we must not destroy” (Kennedy 1971: 16-17).

Likewise, in a position paper to President Kennedy dated October 18, George Ball argued forcefully in opposition to a preemptive strike because of the illegality and illegitimacy of it:

But I think that – far from establishing our moral strength – we would, in fact, alienate a great part of the civilized world by behaving in a manner wholly contrary to our traditions, by pursuing a course of action that would directly thwart everything we have stood for during our national history, and condemn us as hypocrites in the opinion of the world.

We tried Japanese as war criminal because of the sneak attack on Pearl Harbor” We condemned the Soviet action in Hungary. We took a strong moral line against the use of force by the French and British at Suez when they felt their vital interests were threatened. We have taken a strong line in the United Nations and in other world councils against the dangers of a surprise attack with nuclear weapons.

It is my strongly held view that we cannot launch a surprise against Cuba without destroying our moral position and alienating our friends and allies. If we were to do so we would wake up the following morning to find that we had brought down in ruins the structure of

alliances and arrangements and that our whole post-war effort of trying to organize the combined strength of the Free World was in shards and tatters (Chang and Kornbluh 1992: 119-120).

In sum, Robert Kennedy, George Ball, and other members of ExComm were all concerned that a preemptive strike on Cuba would be considered inappropriate by members of the international community, and, consequently, they would fail to support the US against the USSR. These concerns were not on the fringes of the debate; Robert Kennedy claimed that “ExComm spent more time on this moral question during the first five days than on any other single matter... We struggled and fought with one another and with our consciences, for it was a question that deeply troubled us all” (Kennedy 1971: 17).<sup>96</sup>

The potential loss of international support following the use of force had two important consequences for the United States. First, the US believed with high confidence that the USSR would engage in reprisals elsewhere if they were to strike Cuba. If tensions were to escalate to a major war with the Soviet Union, the US wanted to be sure of allied support in order to be able to confront the Soviet Union with a large amount of international support.

Second, the US also wanted to maintain solidarity with its allies over the long-term in order to help it compete against the Soviet Union during the Cold War. As US officials expected the Cold War to continue unabated for some time, they wanted to

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<sup>96</sup> I of course recognize that US officials referred specifically to the morality rather than international law per say. Nonetheless, as Chayes argues, “it is hard to believe that men as familiar as these with the law in general and the specific international law context of the situation before them could have been unaware or even unmindful of the legal overtones of the moral proposition. Legal norm and morals are two expressions of the same deep human imperative.”

avoid any course of action that would weaken the commitment of its allies since this could help embolden the Soviet Union in future interactions.

Regarding the importance of international support, Rusk argued “the actions also have to be thought of in connection with alliance solidarity. They’re faced with conflicting elements. Unless we’re in a situation where it is clear that the alliance is with us and understands the problem, then an unannounced, or unconsulted, quick action on our part could well lead to a kind of allied disunity that the Soviets could capitalize upon very strongly” (May and Zelikow 1997: 79). Likewise, Adlai Stevenson in a letter to President Kennedy on October 17 wrote that it was important that the US receive the support of much of the world since it is likely that the Soviet Union would engage in reprisals elsewhere if the US used force. Obtaining greater support, he argued, would help offset the costs of a conflagration should the Soviet Union respond with force as US officials expected (May and Zelikow 1997).

In sum, members of ExComm recognized the dangers of engaging in the preemptive use of force. Because the US wanted to maximize international support in case a conflict erupted with the Soviet Union, the reaction of third parties to the preemptive use of force influenced Washington’s thinking on this option. By using force illegally, they would lose the support of the international community and hence face higher costs for using force. This, in turn, lowered the expected payoffs for this policy.

## **International law and the Blockade**

An OAS-approved blockade made up the second leading option to ExComm. Officials believed that the US could maximize international support by obtaining OAS approval for a blockade of Cuba. Beyond implementing the blockade itself, it was critical that the US receive OAS approval for it. Obtaining OAS approval and legality for the blockade would add to the legitimacy of the blockade in the eyes of the international community and thus serve to increase it as a plausible alternative to the large scale use of force among ExComm. Several policymakers therefore prioritized obtaining OAS approval for the blockade in order gain international support.

Dean Rusk once again took the lead in pushing for OAS authorization of the blockade as he argued it would help the US obtain third party support. He argued that the US should consult OAS before taking any action since the OAS provided the “strongest legal basis for whatever action we need to take” (May and Zelikow 1997: 80). He specifically recommended, “First that we stimulate the OAS procedure immediately for prompt action to make it quite clear that the entire hemisphere considers that the Rio Pact has been violated, and over the next days, under the terms of the Rio Pact Treaty” (May and Zelikow 1997: 36).

John McNamara who at first supported air strikes against Cuba later changed his mind to the blockade. In justifying his decision, he listed four major advantages of the blockade: it would cause the US the least trouble with allies, 2), it avoids any surprise air attack on Cuba which is contrary to US traditions, 3) it is the only military course of action compatible with the US’s position as a leader of the free world, and

4) it avoids any sudden military move which might provide a response from USSR that could lead to general war. As you can see, the first reason McNamara provided is directly related to the support of international actors and the second and third reasons are associated with the legitimacy of the blockade (May and Zelikow 1997: 128). Finally, Meeker also favored the blockade because, as noted above, he argued that it was legal and he believed that the consequences of using force were too high.

An important exchange between Ball, Bundy, and Rusk also illustrates the importance of international law and OAS authorization for the blockade.

Ball: The great difficulty of a blockade without a declaration of war is that it is an illegal blockade, that it will be very difficult.

Bundy: It is an act of aggression against everybody else.

Ball: Everybody, including our allies.

Rusk: What? You could have a blockade imposed under Article 8 of the Rio Treaty. After that is within the territorial framework of the Rio.

The conversation nicely illustrates the most important points of my argument. First, US officials were concerned with international law, second, they incorporated how allies would respond to implementing the blockade, as a violation of international law, and finally, the OAS provided legal justification for the blockade and thus it provided assurances to allies about the legitimacy of the mission. Indeed President Kennedy probably said it best, "If we didn't get an OAS resolution, it would have to be a declaration of war and a declaration of War on Cuba at that point would have placed us in an isolated position the whole foreign policy of the US since 1947 has been to develop and maintain alliances in this hemisphere as well as around the world" (May and Zelikow 1997: 155).

Once again, international support had important consequences for President Kennedy's decision. The US believed that a united front among Europe and the Western Hemisphere following the implementation of the blockade would help increase the likelihood that Khrushchev would accept some sort of compromise agreement. The US believed that greater international support would help them prevail in negotiations with USSR and possibly deter them from using force. As Meeker argued, since OAS approval provided a legal basis for the blockade "it changed our position from that of an outlaw acting in violation of international law into a country in accordance with twenty allies legally protecting their position" (Kennedy 1971:121). Along these lines, Thompson argued that, "The Russians have a curious faculty... of wanting a legal basis despite all of the outrageous things they've done. They attach a lot of importance to this" (May and Zelikow 1997: 155).

In sum, despite the advantages of using force, especially early in the crisis, the costs of using force were greater than the benefits of using force. The political costs associated with violating international law and using force against Cuba contributed to the decision of President Kennedy to implement the blockade instead of employing airstrikes and/or a ground invasion against Cuba. Specifically, throughout the deliberations, several members of ExComm repeatedly and consistently argued that violating international law by using force would result in lower international support from allies and increased hostilities from the USSR, and hence, greater costs for using force. Likewise, despite doubts about the success of the blockade in terms of forcing the USSR to remove the missiles, President Kennedy still expected increased support and higher payoffs for this policy contributing to his decision to choose this option.

## **International law and the Post-Blockade Decision**

The previous two sections highlighted how US officials incorporated international law into their decision-making processes. The evidence clearly shows that the expectation of third party support contributed to the decision-making of President Kennedy. In this section, I show that the actual international response was consistent with the thinking of ExComm, providing further support for my argument on the role of international law and crisis bargaining.

First, the show of unity between the US and allies influenced the behavior of the USSR. Robert Kennedy argued “our position around the world was greatly strengthened when the OAS unanimously supported the recommendation for a quarantine. Their willingness to follow the leadership of the US was a heavy and unexpected blow to Khrushchev. It had a major psychological and practical effect on the Russians” (Sorensen 1965: 706). Likewise, one historian concluded that there is reason to think that Moscow was “staggered” by the show of inter-American solidarity (Abel 1966: 131). In an article on November 3, 1962, the *NY Times* concluded that the unanimity of the OAS council together with the support of NATO allies for the blockade surprised the Soviet Union and accounted for much of her diplomatic confusion during the week.

Robert Kennedy also claimed that, “the Latin American countries, demonstrating an unique sense of unity, unanimously supported the recommendations of the United States. In fact, a number of Latin American states contributed men, supplies, and ships during the several weeks that followed” (Kennedy 1971: 35). The evidence, once again, clearly indicates that international actors responded to the



legality of the OAS-approved blockade and most importantly that this influenced the behavior of the USSR. Similarly, months after the end of the crisis, several members of ExComm met to discuss “what ifs”, one of which was... “what would have happened... if the OAS and other Allies had not supported us” (Chayes 1974: 48).

Second, it was in large part international law that influenced the behavior of allies. As Robert Kennedy claimed, “The diplomatic effort was of great significance. We were able to establish a firm legal foundation for our action under the OAS Charter and our position around the world was greatly strengthened when the OAS unanimously supported the recommendation for the quarantine. Thus the Soviet union and Cuba faced the united action of the whole Western Hemisphere” (Kennedy 1971: 29).

Likewise, once the decision was made to implement the blockade, US officials made a concerted effort to demonstrate the legality of the blockade to friends and allies in the international community. As part of the effort to gain international support, Chayes wrote a second memo dated October 23 on the legality of the OAS blockade. Regarding the OAS authorization on the blockade, he concluded,

The recommendation contained in the Resolution for the use of armed force if necessary was thus fully authorized by the terms of the Rio Treaty and adopted in accordance with its procedures. The quarantine being imposed is specifically designed to “ensure that the Government of Cuba” cannot continue to receive from the Sino-Soviet powers the offensive weapons which threaten the peace and security of the Continent. It represents a minimal use of force to achieve the state objectives. The United States action thus falls within the terms of the OAS Resolution (Chayes 1974: 143).

The US sent the memo to many friends and allies in the international community. In fact, Chayes later recalled that the extent of the demand for this

document was a complete surprise to him. As he noted, “the pleas from our diplomatic missions for an exposition of the legal basis for the US action were so insistent and continuous that soon after the OAS action... the memorandum was transmitted in full to all posts” (Chayes 1974: 47). The demand for the US legal argument demonstrated the importance that third party leaders placed on international law as a means to justify their support for US actions in Cuba.

### **The Nuclear Objection**

The evidence presented in this chapter clearly indicates that international law influenced the decision-making of President Kennedy and his team of advisers during the Cuban Missile Crisis. Nonetheless, the most obvious critique of this argument is that nuclear weapons and the threat of nuclear war and not international law contributed to the peaceful resolution of this crisis. While of course it is true that nuclear weapons and the balance of military power in general influenced the outcome of the Cuban Missile Crisis, there are good reasons to believe that law also had a meaningful impact on the termination of this crisis. This is true for two primary reasons.

First, and at the most basic level, multiple factors go into explaining the decision-making of leaders. It is unlikely that a single variable can explain all of the variation in world politics, especially international crisis. In the Cuban Missile Crisis, for instance, scholars have long argued that the conventional military balance, the strategic nuclear balance, along with domestic political considerations, among several other factors have all contributed to the outcome in this crisis. This case study simply

suggests that international law in addition to the more traditional explanations also played an important role in this crisis.

Second, and more substantively, it is not clear that the threat of nuclear war was the leading determinant of crisis behavior here. While US officials believed that the USSR would respond with force to an American military strike most likely in Europe, they also doubted that the USSR would use nuclear weapons. As Press (2005, 132) argues “no one believed that the Soviets would intentionally start a nuclear war. Even if some of the missiles survived an air strike, the Soviets would not authorize a nuclear attack against the United States.” Likewise, Trachtenberg (1985, 143) argues that US policymakers “overtly and deliberately exploited” the risk of nuclear war, because “deterrent threats, by reducing the probability of any direct Soviet retaliation, would increase America’s freedom of action in Cuba.” Primary source material leads to a similar conclusion. A National Intelligence Estimate from October 20 concludes that, “Soviet leaders would not deliberately initiate general war or take military measures, which in their case, would run the grave risk of general war” (Chang and Kornbluh 1992,134–143). Finally, George Ball claimed that “Khrushchev himself would never risk a major war on a fellow as obviously erratic and foolish as Castro” (Chang and Kornbluh 1992,134–143).

In sum, while nuclear weapons of course played an important role in the peaceful resolution of the Cuban Missile Crisis, the evidence presented in this chapter suggests that the law also influenced the decision-making of US policymakers.

President Kennedy chose the OAS-approved blockade in part because he believed

that it would maximize international support, which he could use to his advantage against the USSR in this crisis and throughout the Cold War.

## **Conclusion**

In this chapter, I sought to explain how international law played a role in the peaceful resolution of the Cuban Missile Crisis. President Kennedy and his team of advisers prioritized international law because of how they expected friends and allies in the international community would respond to it. Specifically, they expected that the preemptive use of force as a violation of international law would alienate members of the international community, while the legality of an OAS-approved blockade would find the US acting in concert with friends and allies. The support had important consequences on the resolution of the crisis: US officials believed that less support would lead to lower payoffs and greater support would lead to higher payoffs. Given these considerations, President Kennedy chose the policy with the higher payoffs – the OAS-approved blockade.

Indeed, as Robert Kennedy argued years later, “the strongest argument against the all-out military attack, and one no one could answer to his satisfaction, was that a surprise attack would erode if not destroy the moral position of the United States throughout the world (Kennedy 1971: 27). Likewise, as Chayes concluded, “The factual record is irrefutable, however, that the men responsible for decision did not ignore legal considerations. On the contrary, they made a considerable effort to integrate legal factors into their deliberations... Law and legal considerations played a part in defining and shaping those possibilities. Chayes also argued definitively,

“We may fairly conclude that the rule of Article 2(4) was a significant factor in determining the decision against air strike or invasion and for the lesser measure of a quarantine” (Chayes 1974: 100, 40). In short, the evidence from both primary and second sources is unambiguous: the legal prohibition on the use of force contributed to the peaceful resolution of the Cuban Missile Crisis.

## Chapter 7: Conclusion

### Introduction

Does international law on the use of force - the body of law that regulates the decision to use force between states and increasingly between states and non-state actors - influence the behavior of leaders in international crises? If so, how do the United Nations Charter and the related legal principles on the use of force actually constrain leaders?

Scholars have long disagreed on the role of international law including the legal principles related to the use of force in world politics. Many scholars simply reject the effectiveness of the law, especially in the security realm, given the primitive nature of the international legal system (i.e. no centralized enforcement mechanism). Morgenthau (1967), for instance, doubted the influence of international law in high-security disputes because he believed that sanctions or other enforcement mechanisms were necessary for international law to constrain leaders. Other influential political scientists, such as E.H. Carr, Kenneth Waltz, and Stephen Krasner have all argued that international law is at most epiphenomenal to state interests (Carr 2001; Krasner 2001; Waltz 1979). More recently, prominent legal scholars, Jack Goldsmith and Eric Posner have pointed to the limits of international law and have argued that it has a minor influence on state behavior (Goldsmith and Posner 2005). Several scholars have also argued that international law on the use of force has little influence on the decision of leaders to use force (Arend and Beck 1992; Glennon 2001; Weisburd 2009). Mearsheimer, for instance, argues that the Charter has failed to “push states away from war and promote peace” (Mearsheimer 1994/1995, 7).

Despite the critics, numerous scholars maintain that the law can constrain state behavior, even in the security arena. Scholars favoring a more normative approach, for instance, argue that governments comply with the law in large part because of the legitimacy of it. They argue that leaders feel a sense of legal obligation (“*opinio juris*”) or that the law exerts a “pull toward compliance” (Franck 1990), or states feel an “obligation of obedience” to the law (Chayes and Chayes 1993, 1998). On the other hand, scholars working in the rationalist tradition agree with the critics that the law must be self-enforcing, but they argue that compliance with the law is more common than most critics allow for. In so doing, they draw on standard arguments from the rationalist international cooperation literature to explain the effectiveness of the law (e.g., Huth et al. 2011; Morrow 2007; Simmons 2009).

Despite the ongoing debate among both legal scholars and politics, we still have very little systematic knowledge on international law on the use of force. This omission is not inconsequential. The legal prohibition on the use of force codified in part in the United Nations Charter is largely seen as a pivotal moment in the recent history of international relations. Indeed, the legal rules on the use of force constitute, according to many scholars and policymakers, the primary operating norm of the post-World War II era. Nonetheless, both political scientists and legal scholars continue to ignore how international law on the use of force can constrain leaders and other actors in the international system.

In this dissertation I addressed this important gap in the literature by undertaking a comprehensive study on the effectiveness of international law on the use of force. In so doing, I examined the role of international law in world politics by

assessing how the law alters patterns of escalation in international crises from 1946-2005. Using an original dataset on international law on the use of force and case studies, I found that law can serve as an effective constraint on leaders during international crises.

### **Theoretical Argument**

In Chapter 3, I put forward my theoretical expectations on international law on the use of force. I argued that international law can constrain crisis actors from employing the large-scale use of force by facilitating the dynamics of reciprocity in crisis-bargaining and consequently helping leaders deter the aggressive use of force. I argued that this is a two-part process. First, the law serves as a bright-line that clearly establishes that the aggressive use of force is inappropriate and the lawful use of force is appropriate. This body of law, therefore, legalizes and in large part institutionalizes the reciprocal use of force in international crises. Second, by serving in this role, the law alters the support of international actors, who are more likely to support crisis actors with the right of self-defense and withhold support from actors who violate the law. As such, third party support provides leaders with the resources to credibly threaten to employ the reciprocal use of force in response to aggressive actions. In turn, this can serve to deter attacks from occurring in the first place. I concluded that leaders are less likely to escalate militarily when the law prohibits it, compared to when they have a right of self-defense.



## **Empirical Findings**

In Chapter 4, I tested my theoretical expectations on an original dataset on international law on the use of force. In particular, I examined the relationship between the prohibition on the use of force and patterns of escalation in international crises from 1945-2006. I found that leaders are at least 45% less likely to escalate militarily in a crisis when international law prohibits the use of force than when leaders have a right to use force. I also employed a variety of robustness checks to ensure that the results are robust to standard statistical and conceptual complications in the literature. The strong and consistent findings indicate that the prohibition on the use of force is associated both statistically and substantively with lower levels of escalation in international crises.

In Chapter 5, I directly examined the role of international actors, the underlying causal mechanism in my theoretical argument. To that end, I relied on intergovernmental organizations, such as the United Nations Security Council, United Nations General Assembly, and other major regional multilateral security organizations as proxies for international support. In particular, I assessed whether third parties are more likely to support actors who have the right of self-defense and oppose actors who have violated international law. I found strong support for the logic of my argument: international and regional organizations are at least 38% less likely to support leaders who violate the law, compared to leaders who are in compliance with it.

In this chapter, I also compared the levels of international support for the United States and her allies for the 1990-1991 Gulf War and 2003 Iraq War.

Consistent with my theoretical expectations, I found first that the international community provided much less support in the 2003 Iraq War than the first Gulf War, and second it did so in part because the US and her allies violated international law on the use of force in the 2003 invasion of Iraq. Together, the qualitative and quantitative results presented in this chapter provide strong support for my theoretical argument on how international law influences the behavior of third parties.

In Chapter 6, I assessed my argument in a case study of the Cuban Missile Crisis, in which I found that international law influenced the decision-making of President Kennedy and his advisers during this crisis. US officials expected to receive greater international support for the naval blockade and less third party support and higher costs for employing the preemptive and illegal use of force against the missile sites in Cuba. US officials feared that if they used force without the support from the international community, the USSR would be more likely to respond with force. In contrast, Washington believed that an OAS-approved blockade would deter the USSR from using force to challenge the blockade. The level of international support contributed to the decision to implement the blockade.

In sum, the quantitative and empirical evidence presented in this dissertation provides strong support for my theoretical argument on the role of international law on the use of force in international crises. Crisis actors who act in accordance with international law obtain greater international support, while actors who violate the law receive less support. International law therefore promotes the peaceful resolution of international crises because actors with the support of third parties can credibly

signal their intent to employ the use of force in self-defense and deter their adversaries from engaging in the aggressive and illegal use of force.

### **Implications**

My dissertation has several important implications for the policy and academic communities interested in both international law and conflict. First, my dissertation can help advance the literature's understanding of compliance with international law. Scholars have long argued that reciprocity can promote cooperation and compliance world politics, yet there is a paucity of empirical research on it. To my knowledge, Morrow's (2007) work on the laws of war is the only piece of scholarship that explicitly theorizes and empirically assesses how reciprocity can contribute to compliance with international law. My dissertation that finds strong statistical and substantive support for how the law can influence reciprocal interactions in international crisis provides further support for the role of reciprocity in the international law compliance literature. Scholars can therefore have greater confidence that reciprocity is in fact associated with compliance and continue to pursue the role of reciprocity in both the security and economic realms.

Second, I integrate the role of international actors into the traditional understanding of reciprocal interactions. While scholars have theorized about how domestic actors can influence reciprocity, they have for the most part overlooked how international actors can influence strategic interactions in this context. As my theoretical arguments shows, third parties by altering the costs and benefits of using force naturally fits within the reciprocity framework and compliance with the law

more generally. Future work on law compliance should therefore continue to explore how third parties can affect international law compliance, both within the context of reciprocity and on its own as a distinct mechanism.

My dissertation also has important implications for policymakers. Most importantly, my results clearly indicate that international law on the use of force alters the costs and benefits of using force by influencing third party support in international crises. Leaders can expect to receive greater support and lower costs for complying with the law, and lower support and greater costs when they violate it. As such, this dissertation can help policymakers know when they can expect to receive relatively high levels of international support for using force.

Second, the findings in this dissertation also suggest that the law is most effective when it is clear and well-established. Uncertainty about the law and the facts attenuate the constraining effects of international law. Policymakers and other actors who want to minimize the resort to force in world politics should be motivated to clarify the remaining ambiguities in the legal principles related to the use of force to further promote the peaceful resolution of international crises. The use of force by non-state actors and their state supporters is one area of law that could benefit from further clarification on the relevant legal principles. Likewise, states often violate the law when there is uncertainty over the underlying facts of the relevant crises. Increased monitoring efforts in contentious areas could help lower the likelihood of conflict.

Finally, this dissertation has important implications for scholars interested in the determinants of conflict. The quantitative and qualitative evidence clearly shows

that international law on the use of force can effectively constrain leaders in international crises. My findings overturn the conventional wisdom in the political science literature that either overlooks this body of law or dismisses it. The legality of using force clearly influences the decision of crisis actors to resort to force. As such, my dissertation makes clear that some use of force is legal and some is illegal, and that this has important implications for understanding the dynamics of crisis-bargaining.

### **Future Research**

I plan to conduct several more analyses to further examine how international law on the use of force operates in world politics. Most importantly, I intend to write several more case studies on the specific principle in this body of law, including the anticipatory use of force, interventions in civil wars and other forms of non-international armed conflict, and the extra-territorial use of force against non-state actors. The insights from the case studies will identify specific policy recommendations for how to improve the effectiveness of this body of law.

Second, I will conduct additional tests using the data on the specific legal principles that I have already collected. Specifically, I plan to disaggregate the legal variable I currently use and assess the effectiveness of the specific legal principles, such as the extraterritorial use of force, interventions, anticipatory self-defense, and so forth. I also plan to disaggregate the legal variable across the different sources of international law (i.e. customary international law, treaty law, court decisions, and the writings of legal scholars) and assess how the different sources constrain leaders. It

will be particularly useful to understand how the effectiveness of this body of law varies across both the specific legal principles and the different sources of international law.

Third, I plan to conduct surveys on how citizens respond to international law on the use of force. The surveys will allow me to obtain empirical evidence on the micro-foundations of my argument. While I have preliminary evidence using cross-national state-level data that is suggestive of my argument, I am unable to directly test my theoretical framework on the indirect effects of international law using observational data at the national level. Because this part of my argument is based on the behavior of individuals rather than national leaders, I require data that directly measures how citizens respond to international law instead of inferring citizen support from leader behavior. The results of the survey, therefore, will allow me to more precisely gauge how international law can serve as a constraint on leaders.

Finally, I plan to complement the quantitative and qualitative work by interviewing former legal advisers from the State Department and other elite actors on the role of international law in the policymaking process. For example, I will consider how the law influenced the decision of the US to use force against Afghanistan and especially Sudan in 1998 following the US Embassy bombings in Kenya and Tanzania. Likewise, I am interested in how policymakers handle the ramifications of violating the law when they are considering humanitarian interventions (i.e. intervention in Kosovo). In short, the elite interviews should be an extremely illuminating way to show exactly how this body of law influences leaders in the policy realm.

## **Conclusion**

On October 25, 1962, US Ambassador to the UN Adlai Stevenson and the USSR Ambassador Valerian Zorin engaged in a famous and heated exchange about the situation in Cuba. As Stevenson was questioning Zorin about the missiles in Cuba, the Soviet Ambassador retorted, I am not in an “American Courtroom.” Stevenson immediately countered, “You are in the court of world opinion right now.”

Stevenson’s famous line not only makes up the title of my dissertation, but it is also the underlying logic of my argument. While the international system lacks overt enforcement mechanisms, international audience costs in the context of reciprocity can contribute to compliance with the international law on the use of force. States that violate the law can expect to receive lower support from the international community and subsequently higher costs for using force, while states with the right of self-defense can expect to receive greater support and lowers costs. Third parties, therefore, provide leaders with the necessary incentives to comply with international law on the use of force.

As former State Department Legal Advisor Abram Chayes once said, “international law may not be determinative in international affairs, but it is relevant and influences foreign policy; first, as a constraint on action; second, as the basis of justification or legitimization for action; and third, as providing organizational structures, procedures, and forums within which political decisions may be reached” (Scharf and Williams 2010, 4). My argument in this dissertation reflects the wisdom of Abram Chayes. While I certainly recognize that standard accounts in the

international relations literature (i.e. balance of power, domestic politics, and economic interdependence) explain in large part the decision to use force in international crises, I hope this dissertation makes clear that international law on the use of force also plays an important role in world politics.



## **APPENDICES**

## **Appendix A: Control Variables**

*Military Capabilities:* This is measured as a ratio of military capabilities between each state and its adversary. The measure is the average ratio of three separate indicators of military capabilities: 1) total military personnel, 2) military expenditures, and 3) expenditures per soldier. The primary source for this variable is the Correlates of War National Material Capabilities dataset version 4.0 (Singer et al. 1972, 1987)

*Democracy:* This variable takes on a value of 1 if a state's net Polity score is equal to or greater than 6, and zero otherwise (Marshall and Jaggers 2003). As a robustness check, I used 7 as the cut-point. My results remained the same.

*Accountable Regimes:* This variable is coded a 1 if the regime type was one of the following: 1) democracy, 2) new democracy, 3) mixed nondemocracy, 4) single-party states, 5) military 6) regimes, or 7) dynastic monarchies, and zero otherwise. (Geddes 2003; Weeks 2008)

*Contiguity:* Coded a 1 if the challenger and target share a land or river border, or are separated by less than 400 miles of water, and zero otherwise (Bennett and Stam 2000).

*Distance:* This variable is the natural logarithm of the distance (measured in a kilometers) between the capitals of the challenger and target (Bennett and Stam 2000).

*Alliance:* This variable is coded a 1 if the challenger and target have an offensive or defense alliance or have a credibility pact, and zero otherwise (Leeds et al. 2002)

*Major-Minor Challenger:* Coded a 1 if the challenger is a major power and the target is a minor power, and zero otherwise (Bennett and Stam 2000).

*Major-Minor Target:* Coded a 1 if the target is a major power and the challenger is a minor power, and otherwise (Bennett and Stam 2000).

*Gravity:* Coded a 1 if the crisis was a threat to existence or threat of grave damage to the crisis actor, and zero otherwise, and zero otherwise (Brecher and Wilkenfeld 2000).

*Territory:* Coded a 1 if the crisis was over territorial issues, and zero otherwise (Brecher and Wilkenfeld 2000).

*Internal:* Coded a 1 if the crisis involved non-state actors, and zero otherwise (Brecher and Wilkenfeld 2000).

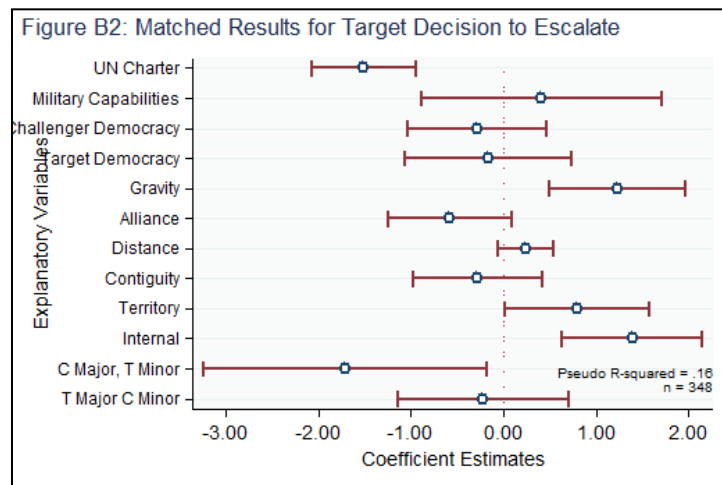
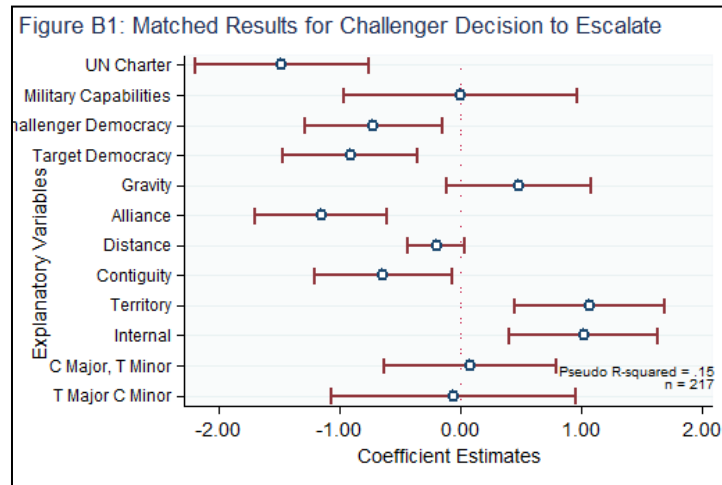
## **Appendix B: Matching**

The Coarsened Exact Matching (CEM) procedure works in five steps. First, I create a new dataset that contains the treatment variable (international law on the use of force) and the control variables from the models used in this dissertation.

Consistent with the purpose of matching, the control variables in this new data are associated with the implementation of the treatment. Second, I coarsen or recode each control variable to create a variable with a smaller number of categories, in which substantively indistinguishable values are grouped together in the new categories. For example, a net Polity variable (1-20) could be coarsened into non-democratic, mixed, and democratic regimes. This coarsening is either done manually or by an automated procedure.

Third, I create strata or categories that include all possible combinations of the values from all of the coarsened variables. For example, a second control variable, GDP, could be added and coarsened into low-income, middle-income, and high-income states. The strata would then include (1) non-democratic, low-income, (2) non-democratic, middle-income (3) non-democratic, high-income, (4) mixed, low-income, and so forth. Observations from the data that fit the combination of values are then placed in the appropriate strata. Fourth, strata that include at least one treated (right to self-defense prohibited) and one control unit (right to self-defense permitted) are retained, while the remaining strata are dropped from the data. Fifth, the coarsened variables from the reduced data set are returned to their original values and the final model is then estimated on the reduced data using the logit estimator that I

primarily rely on in this dissertation. Specifically, after running the matching procedure, I re-estimated my main equations on a reduced, but more balanced sample of 217 challenger observations and 348 targets. As noted above, the results are nearly identical to the ones reported in the main text.



## Appendix C: Aggression

*Right to Self-Defense:* This variable equals 1 if the state is prohibited from using force and zero if the state is prohibited from using force. See previous chapter for detailed coding rules for this variable.

*Aggression:* This variable equals 1 if a state commits aggression but fails to reach the level of activating the right of self-defense, and zero otherwise. The determination of aggression is based on the Definition of Aggression, United Nations General Assembly Resolution 3314 (XXIX).

Specifically, the resolution holds that the following acts constitute aggression:

“(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof,

“(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

“(c) The blockade of the ports or coasts of a State by the armed forces of another State;

“(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

“(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

“(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

“(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

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