

Introduction

The international law on the use of force was based on the assumption that a use of force ought to be defined as an offence under the criminal law and attributed to a state. Thereafter, depending on the circumstances of the case, the state's international responsibility should be established or, in other words, a determination made as to whether the use of force was legal or illegal.

This simplification is necessary, but its success is threatened by a problem: there is no superior authority responsible for classifying the conduct of states where agreement is lacking. The similarity between a pre-state or "primitive" legal system and the international law is that no separate, superior bodies exist that are responsible for enacting norms, applying the same in each specific case, and carrying out the corresponding sentence: the legal norms are created by the same parties that are responsible for applying them.

This article seeks to develop a brief model for analysing the practice of states as regards the attribution of legality to a use of force. To achieve this, the most frequently used categories are described, ascending from self-defence in the strict sense to aggression. The model also shows that, in fact, the use of force is broken down into two elements that are taken into account when attributing legality: the threat and the response. In many cases, the definition of both of these causes sharp controversy, as political factors, apart from legal ones, intervene. Consideration of the time factor in the carrying out of both the threat and the response also plays a significant role. The deliberate nature of the events is, furthermore, related to the nature of the political regimes linked to the threat and response.

Consideration of all these elements, in addition to the various kinds of interest that influence international politics, contribute to the result that, in practice, the attribution of legality is, in many cases, related more to building majorities in favour of, and against, legality, than to a clear declaration of legality or illegality.

Over time, these categories have evolved in the light of various circumstances to form paradigms that have come to prominence at various times. This work traces their evolution from the classical period of international law up to modern times, and seeks to develop a prediction of their probable evolution in the coming decades, raising questions as to the factors which might influence the building of a new paradigm for the 21st century.