

1. Legality: different shades of grey.

When we analyse the attribution of legality to a use of force in the practice of states, what we see is that, in many cases, the process is closer to majority-building than to a clear consensus on the legality or illegality of the action. There is great scope for disagreement, not only because of the ambiguity in the interpretations of the applicable law, but also because of the manipulation of political and legal arguments by states and the existence of interests which, in any given situation, condition the actors' positions.

Here we are dealing with a complex process, which is far from being objective, dispassionate or purely 'rational'¹. A number of historical, institutional, cultural, ideological, religious and psychological factors also exert considerable influence on the evaluation of the threat and how reasonable, or proportionate, the response is.

To reflect as closely as possible the reality of the ways in which the community of states attributes legality to an event involving force, we ought to add three other categories to 'legal' and 'illegal', because a use of force is often considered to be legal or illegal only by a majority of states and, in some cases, opinions as to legality are clearly split among various groups. With all this in mind, we can reduce this question to five categories: legal, generally legal or illegal, disputed and illegal.

¹ This term is used here in a general sense, as an analysis that establishes, with relative certainty or approximation, the costs to benefits ratio of a given decision.
