COMPLIANCE REVISITED:

GREAT POWERS AND INTERNATIONAL LAW ON THE USE OF ARMED FORCE SINCE 2001

Master of Laws in International Law (LL.M.) Capstone Project

Submitted by ANANMAY AGARWAL

Under the advisement of Professor Ian Johnstone

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https://fletcher.tufts.edu

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TUFTS UNIVERSITY

EXECUTIVE SUMMARY

This capstone project seeks to understand whether, why and to what extent great powers comply with international law on the use of armed force (*jus ad bellum*). This question will be analyzed through the lens of realist and institutionalist theories of international relations and case studies on how the United States and Russia legally justified the use of armed force since 2001. The paper begins with an understanding of international law on the use of armed force and a literature review of the realist and liberal institutionalist theories of compliance. The paper then shifts to study the justifications offered by the United States and Russia for their military interventions abroad, along with reactions to these arguments by other actors in the international arena. The conceptual framework built upon in the literature review will then be applied to the conduct of U.S. and Russia and the justifications offered to analyze whether realism or institutionalism can better explain compliance, or lack thereof, with international law on the use of armed force. The paper weighs the analytical strengths and limits of each theory by exploring legal arguments offered by great powers and the responses of other actors in the international system. The paper concludes with an understanding that while institutionalism can better explain argumentation and why great powers want to appear compliant with international law, it is realism that has more explanatory power on the question of compliance itself.

INTRODUCTION[1]

When trying to understand why great powers use military force, it is important to emphasize the fundamental nature of warfare as a political instrument.[2] As Carl von Clausewitz writes in his seminal thesis, *On War*, "War is merely the continuation of policy by other means."[3] He defines war as an "act of force to compel our enemy to do our will"[4] and adds that limitations on the use of force, such as international law,[5] are "self-imposed" and "imperceptible."[6] For any great power, having a grand strategy is essential to achieving its political ends. This includes marshaling all elements of national power: diplomatic, informational, economic, and military. Thus, when great powers use force, it is to pursue a clearly articulated political goal. While Clausewitz regarded international law as entirely irrelevant in nineteenth century Europe when great powers went to war with each other, it is hard to answer the same question definitively in the twenty-first century, where war as an instrument has been outlawed,[7] at least on paper.

And yet, in an era of intensifying great power competition and rapidly deteriorating international norms, the question of whether international law matters is an important one. This project thus seeks to understand whether or not great powers comply with international law on the use armed

[1] The author would like to thank Professors Ian Johnstone and Daniel Drezner for their able guidance, without which completion of this project would not have been possible.
[2] This introduction draws inspiration from a wide array of literature on grand strategy and statecraft. *See* CARL VON CLAUSEWITZ, ON WAR (Michael Howard & Peter Paret eds. & trans., Princeton University Press, 1984) (1832) [hereinafter CLAUSEWITZ, ON WAR]; WILLIAM C. MARTEL, GRAND STRATEGY IN THEORY AND PRACTICE: THE NEED FOR AN EFFECTIVE AMERICAN FOREIGN POLICY (2014); CARNES LORD, THE MODERN PRINCE: WHAT LEADERS NEED TO KNOW (2003); COLIN S. GRAY, THE STRATEGY BRIDGE: THEORY FOR PRACTICE (2010).
[3] CLAUSEWITZ, ON WAR 87.
[4] *Id.* at 75.
[5] *Id.*
[6] *Id.*
[7] *See* OONA ANNE HATHAWAY & SCOTT SHAPIRO, THE INTERNATIONALISTS: HOW A RADICAL PLAN TO OUTLAW WAR REMADE THE WORLD (2017).

force. The first section of the paper will outline the concept of *jus ad bellum*,[8] or international law on the use of armed force, and then conceptualize two theories of compliance by the realist and neoliberal institutionalist schools of international relations thought. The second and third sections will examine the legal justifications for military interventions conducted by two twenty-first century great powers, namely the United States and Russia respectively, since 2001. The focus here will not only be on the substantive legal justifications offered by each power, but also on the reaction to these arguments by other actors in the international arena, or "interpretive communities."[9] The fourth section will test the explanatory power of each theory of compliance by applying the legal justifications elaborated upon in the previous section and evaluate the analytical strengths and limits of each theory. As this paper only seeks to understand compliance with international law on the use of armed force, the analysis in this section will not look at other areas of international law, where each theory of compliance would have different explanatory powers. After that, a conclusion will follow.

[8] The question of the laws governing conduct during war, known as *jus in bello*, is beyond the scope of this paper. Similarly, questions regarding historical claims and the validity of secession are also not addressed here, since the focus of this paper is on *jus ad bellum* only.

[9] IAN JOHNSTONE, *Interpretive Communities, in* THE POWER OF DELIBERATION: INTERNATIONAL LAW, POLITICS AND ORGANIZATIONS 33-54 (2011). Johnstone refers to 'interpretive communities' as the nature of interpretation by which legal claims made by states are evaluated by other states and actors in the international system. In a decentralized international system, as opposed to a vertical domestic legal regime, legal claims are evaluated by actors in the international system to those whom they are made. According to Johnstone, legal argumentation within an interpretive community, while no guarantor of compliance, does have some effect on it. States make legal claims within an interpretive community and justify their actions in those terms because it affects their reputation for compliance, where complying would result in reputational gains while a perceived failure to do so would result in reputational costs. Thus, it is important to understand not only the arguments made by the United States and Russia to justify military action, but also the reception of these arguments by other actors in the international system.

I. *JUS AD BELLUM* AND TWO THEORIES OF COMPLIANCE

International Law on the Use of Armed Force

The Charter of the United Nations reinforces the Westphalian principles of sovereign quality and non-intervention in domestic affairs. Article 2 (4) of the Charter lays down the general prohibition on the use of force, stating that states 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."[10] Further, Article 2 (7) states that "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state… but this principle shall not prejudice the application of enforcement measures under Chapter VII."[11]

There are two primary exceptions in the U.N. Charter to the general prohibition on the use of force. The first is military action sanctioned by the U.N. Security Council under Chapter VII of the Charter. The second is self-defense under Article 51, which recognizes the "inherent right of individual or collective self-defense if an armed attack occurs",[12] and is without prejudice to any other provisions of the Charter. There are two possible yet controversial interpretations of the self-defense exception, namely the doctrines of anticipatory self-defense and pre-emptive self-defense.[13] Anticipatory self-defense draws from the *Caroline* incident, which established a norm that anticipatory

[10] U.N. Charter art. 2, para. 4.
[11] U.N. Charter art. 2, para. 7.
[12] U.N. Charter art. 51.
[13] Ashley Deeks, *Taming the Doctrine of Pre-Emption, in* THE OXFORD HANDBOOK OF THE USE OF FORCE IN INTERNATIONAL LAW 662-679 (Marc Weller ed., 2015) [hereinafter Deeks, *Taming Pre-Emption*].

self-defense could be justified if a state could show a "*a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation*."[14] Those arguing for the right to anticipatory self-defense note that the right to self-defense pre-dated Article 51 of the U.N. Charter, hence the words "inherent right", while others strictly construe the right to self-defense, limiting it only in the event of an armed attack.[15] Meanwhile, proponents for pre-emptive self-defense contend that the thresholds for anticipatory self-defense are too restrictive,[16] arguing that a state may act to defend itself in the last window of opportunity against an actor that has both the intent and capacity to act.[17] These views were stated by the Bush Administration in its 2002 National Security Strategy[18] and to an extent by the Obama Administration[19] in its final days, though the Obama Administration applied a much narrower threshold for imminence in its "variety of factors" test. [20]Whether these tests of imminence are accepted is debated heavily by international legal scholars. For example, the Bush Administration's test of imminence was rejected for its broadness,[21] while it is unclear whether the Obama Administration's articulation of the same has been accepted. Even though states rarely use pre-emptive self-defense as the legal basis for military action, these arguments may serve as a deterrent or could be relied upon in the future.[22]

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[14] Letter from Daniel Webster, U.S. Secretary of State, to Lord Ashburton, British Plenipotentiary (Aug. 6, 1842), *in* JOHN BASSETT MOORE, A DIGEST OF INTERNATIONAL LAW 412 (1906).
[15] SEAN D. MURPHY, PRINCIPLES OF INTERNATIONAL LAW 582 (3d ed. 2018).
[16] Deeks, *Taming Pre-Emption* at 667.
[17] *Id.*
[18] WHITE HOUSE, THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA (Sept. 17, 2002) [hereinafter U.S. NATIONAL SECURITY STRATEGY, 2002]. The Bush Administration maintained that the United States could pre-emptively use military force against "rogue states" or terrorist groups possessing weapons of mass destruction (WMDs), and argued that the test of imminence should be adapted to modern-day capabilities of malign actors.
[19] WHITE HOUSE, REPORT ON THE LEGAL AND POLICY FRAMEWORK GUIDING THE UNITED STATES' USE OF FORCE AND RELATED NATIONAL SECURITY OPERATIONS (Dec. 2016) [hereinafter WHITE HOUSE REPORT, 2016]. The Obama Administration, in laying down its 'variety of factors' imminence test, too argued that imminence must be understood with rapidly evolving capabilities possessed by terrorist groups.
[20] The Bush Administration's understanding of imminence was the broadest. The Obama Administration's imminence test, while much narrower than that of its predecessor, was still broader than the *Caroline* test.
[21] Sean D. Murphy, *The Doctrine of Pre-emptive Self-Defense*, 50 VILL. L. REV. 698 (2005) [hereinafter Murphy, *Pre-emptive Self-Defense*].
[22] Deeks, *Taming Pre-Emption* 676-677.

A Realist Theory of Compliance

Prominently drawing on thinkers such as Thucydides, Machiavelli and Hobbes,[23] the realist tradition of international relations theory begins with the assumption of anarchy in the international arena, where states are the primary actors. Because there is no authority to enforce order,[24] the key instinct of a state is to secure its survival. As a result, states would feel the constant need to arm themselves in self-defense,[25] which does not generate conditions where relations between state would be cordial. Had there been a central authority in the international system, states could rely on it to solve disputes, but in its absence, states would focus on their primary security needs.[26] This fuels a high degree of mistrust, and states would thus be inclined to maximize their relative power in the short-term at the expense of any long-term prospects for cooperation. Many characterizations from realism misunderstand anarchy for eternal conflict.[27] Anarchy is not a synonym for disorder, but it does allow greater powers to exercise their influence over less powerful states due to the absence of any centralized supranational authority. For example, amongst the great powers, there will always be a high degree of mistrust as each seeks to defend itself in an anarchical international order. However, more powerful states might seek to restore order amongst smaller states[28] which may be neighbors or colonies, especially if the more powerful state's national interests are at stake. The state of affairs between greater and lesser powers has been lucidly summed up by Thucydides in the Melian Dialogue, "the strong do what they can and the weak suffer what they must."[29] An anarchical international order does not necessarily imply that cooperation

[23] William C. Wohlforth, *Realism, in* THE OXFORD HANDBOOK OF INTERNATIONAL RELATIONS 132 (Christian Reus-Smit & Duncan Snidal eds., 2008).
[24] *Id.* at 135.
[25] *Id.*
[26] *Id.*
[27] *Id.* at 144-145.
[28] *Id.*
[29] Thucydides, *The History of the Peloponnesian War*, quoted in Richard Ned Lebow & Robert Kelly, *Thucydides and Hegemony: Athens and the United States*, 27 REV. INT'L. STUD. 593–609 (2001).

amongst states is impossible. Although difficult, it follows that states will cooperate in the short-term to the extent that it suits their national interest, as long as it does not adversely affect their relative power.

Realists thus take a dim view of international law[30] and of international institutions,[31] maintaining that they are marginal at best and matter only to the extent that it serves the interests of powerful states that create them.[32] Furthermore, realists also argue that reliance on international law and institutions breeds complacency and weakness, which increases the risk of confrontation amongst nations.[33] International law, according to realists, is simply a reflection of the global balance of power[34] and could work only when enforced coercively. While some realists regard international law as inconsequential,[35] others see the possibility of cooperation facilitated by international law.[36] However, even in such cases, the cooperation is asymmetrical, merely reflecting the relative power of states.[37] For example, international law could facilitate cooperation between a powerful and weaker state, but only to the extent that it does not jeopardize the relative power of the powerful state.[38] Even realists hold that level of compliance with international law is generally good, as states would only enter into treaties that would require them to do little more than they would have done otherwise.[39] This understanding of compliance with

[30] John R. Bolton, *Is There Really "Law" in International Affairs?* 10 TRANSNAT'L L. & CONTEMP. PROBS. 1 (2000).
[31] Charles Krauthammer, *The Unipolar Moment*, 70 FOREIGN AFFAIRS 23 (1990).
[32] *See* Detlev F. Vagts, *Hegemonic International Law*, 95 AM. J. INT'L. L. 843 (2001).
[33] Hans J. Morgenthau, *Positivism, Functionalism, and International Law*, 34 AM. J. INT'L. L. 260 (1940); EDWARD HALLETT CARR, THE TWENTY YEARS' CRISIS, 1919-1939: AN INTRODUCTION TO THE STUDY OF INTERNATIONAL RELATIONS (1964); HENRY KISSINGER, *The End of the Illusion: Hitler and the Destruction of Versailles, in* DIPLOMACY 288-332 (1994).
[34] Josef L. Kunz, *The United Nations and the Rule of Law*, 46 AM. J. INT'L. L. 504 (1954).
[35] This belief is held predominantly by the structural realist school of thought, which holds survival as the key national interest and views all else as peripheral. *See* Richard H. Steinberg & Jonathan M. Zasloff, *Power and International Law*, 100 AM. J. INT'L. L. 64, 74 (2006) [hereinafter Steinberg & Zasloff, *Power and International Law*].
[36] Steinberg & Zasloff, *Power and International Law* at 76.
[37] *Id.*
[38] *Id.*
[39] Richard H. Steinberg, *Wanted – Dead or Alive: Realism in International Law, in* INTERDISCIPLINARY PERSPECTIVES ON INTERNATIONAL LAW AND INTERNATIONAL RELATIONS: THE STATE OF THE ART 146–172, 163 (Jeffrey L. Dunoff & Mark A. Pollack eds., 2012).

international law stems from an understanding that states would enter into international agreements only if it serves their short-term interests. However, in such a scenario, states are acting in a manner consistent with international law not because international law affects compliance, but because states are only acting consistent with their interests. Such behavior cannot be termed as "compliance", but merely pursuing interests, as realists maintain international law is "epiphenomenal" to the actions of states.[40] It thus follows that in cases where international law fundamentally conflicts with a state's core national interests, states would shun compliance, unless international law is coercively enforced.[41]

In a decentralized international system, the mechanisms for coercive enforcement are also decentralized, for international law is not enforced by a central authority but by states themselves. Even though bodies such as the International Court of Justice and the U.N. Security Council exist, the former does not have compulsory jurisdiction, while the latter functions ultimately on the basis of political considerations rather than legal ones, and has no standing army to enforce its decisions.[42] Enforcement of international law must then be carried out by states, either bilaterally or collectively.[43]

It would be simplistic to conclude that a realist theory of compliance is of noncompliance by default. While states generally act in a manner consistent with international law, they do so only to the extent that it serves their interests, thus reflecting the balance of relative power. The same however, cannot be termed "compliance" in its strictest sense, as states are only pursuing their interests. In case of

[40] *Id.* at 146.
[41] Alexander Thompson, *Coercive Enforcement of International Law*, *in* INTERDISCIPLINARY PERSPECTIVES ON INTERNATIONAL LAW AND INTERNATIONAL RELATIONS: THE STATE OF THE ART 502–523, 502 (Jeffrey L. Dunoff & Mark A. Pollack eds., 2012).
[42] *Id.* at 504.
[43] *Id.* at 505-506. Bilateral enforcement refers to one state acting alone against a violator of international law. Collective enforcement refers to multiple states acting together, which can be either within or without the structure of an international organization.

noncompliance by a weaker state, more powerful states can enforce international law coercively to induce compliance, as the United States did against Iraq after its annexation of Kuwait in 1990,[44] with authorization from the U.N. Security Council. However, in case a rule of international law would not suit the interests of a more powerful state, they would be inclined towards noncompliance, unless international law could be coercively enforced.

Neoliberal Institutionalism and Compliance

Neoliberal institutionalism primarily evolved from growing discontents with realism's apparent zero-sum approach to international politics that makes cooperation among states difficult, if not entirely impossible.[45] Unlike realists,[46] neoliberal institutionalism sees the transformative potential of institutions, which restrain state behavior and facilitate cooperation.[47] However, this understanding of institutions is rooted in the key assumptions of realism: anarchy, power, states as primary actors, and the pursuit of interests.[48] The key difference thus is the emphasis of regimes, which are defined as "principles, norms, rules and decision-making procedures around which actor expectations converge in a given issue-area."[49] This emphasis on regimes was later broadened to include institutions,[50] which are defined as "the rules of the game in a society or, more formally, are the humanly devised constrains that shape human interaction. In consequence they structure incentives

[44] *See* George H.W. Bush, U.S. President, Address Before a Joint Session of the Congress on the Persian Gulf Crisis and the Federal Budget Deficit (Sept. 11, 1990), https://www.presidency.ucsb.edu/documents/address-before-joint-session-the-congress-the-persian-gulf-crisis-and-the-federal-budget.
[45] *See* JOSEPH M. GRIECO, *Realism, Neoliberal Institutionalism, and the Problem of International Cooperation, in* COOPERATION AMONG NATIONS: EUROPE, AMERICA, AND NON-TARIFF BARRIERS TO TRADE 27-50, 27 (1990).
[46] John J. Mearsheimer, *The False Promise of International Institutions*, 19 INT'L. SECURITY 5 (1994).
[47] JOHN G. IKENBERRY, AFTER VICTORY: INSTITUTIONS, STRATEGIC RESTRAINT, AND THE BUILDING OF ORDER AFTER MAJOR WARS (2001).
[48] Arthur A. Stein, *Neoliberal Institutionalism, in* THE OXFORD HANDBOOK OF INTERNATIONAL RELATIONS 203 (Christian Reus-Smit & Duncan Snidal eds., 2008).
[49] Stephen D. Krasner, *Structural Causes and Regime Consequences: Regimes as Intervening Variables*, 36 INT'L. ORG. 185–205, 185 (1982).
[50] Stein, *supra* note 46 at 204.

in human exchange, whether political, social, or economic."[51] While realists view institutions as a mere reflection of power by the states that create them, a central claim of institutionalism is that they compel states to reassess their interests and behavior, thereby influencing international politics.[52] This focus on cooperation takes a more holistic and long-term view of a state's interests, as states are rational actors concerned about their reputation for honoring their commitments in the international system.

As institutionalists focus on long-term gains through cooperation, they take a much more favorable view of international law than realists.[53] This understanding of the international system attributes compliance with international law to four main "engines",[54] namely inducement, reciprocity, reputation, and domestic politics and institutions.[55] States can induce compliance by offering a variety of incentives, such as financial aid, trade benefits, cooperation, or through coercive measures.[56] Cooperation also depends on reciprocity: even if states are tempted to violate international law, the other party's non-compliance will result in the loss of any gains made through compliance.[57] This leads parties to be concerned about their reputation for compliance, as states would not want to enter into agreements with a state perceived to renege its legal commitments.[58] Finally, domestic institutions, such as courts, elections, and legislatures — particularly in democracies — increase accountability for political leaders, thereby leading them

[51] DOUGLASS C. NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE 3 (1990); *Id.*
[52] Stein, *supra* note 46 at 212.
[53] *See* LOUIS HENKIN, HOW NATIONS BEHAVE (2d ed. 1979).
[54] Jana von Stein, *The Engines of Compliance*, *in* INTERDISCIPLINARY PERSPECTIVES ON INTERNATIONAL LAW AND INTERNATIONAL RELATIONS: THE STATE OF THE ART 477–501 (Jeffrey L. Dunoff & Mark A. Pollack eds., 2012).
[55] *Id.*
[56] *Id.* at 479.
[57] *Id.* at 480.
[58] *Id.* at 481.

to uphold their international commitments.[59] It follows that since states are concerned about their reputations as responsible actors in the international community, they would comply with international law, and expect reciprocal compliance from other states.

Neoliberal institutionalists hold that compliance can be best explained through a calculation of interests in an anarchical international system. However, unlike realists, neoliberal institutionalists hold that this calculation of interests is long-term and depends on factors beyond raw hard power considerations. This is because states have a long-term interest in compliance with international law, and sustained compliance affects their reputation positively.[60] They argue that compliance is affected by three factors: mutual interest in reciprocal compliance by other states, the longevity of stakes (also known as the "shadow of the future"), and the number of actors in the international system.[61] The calculation of mutual interests relies on the classic prisoner's dilemma, wherein the dominant strategy of both players is to defect, i.e. not comply with international law. However, states recognize that the myopic pursuit of self-interest would be disastrous, which is why they would favor cooperation and thus comply with international law.[62] The "shadow of the future" argument holds that interests are calculated in the long-term, which is why there is less incentive for states to defect, even if defection offered gains in the short run.[63] The large number of actors in the international system makes it difficult to identify and punish defectors, known as the "sanctioning problem."[64] However, this problem is solved through the creation of international

[59] *Id.* at 483.
[60] George W. Downs & Michael A. Jones, *Reputation, Compliance, and International Law*, 31 J. LEGAL STUD. 95 (2002).
[61] Robert Axelrod and Robert A. Keohane, *Achieving Cooperation Under Anarchy: Strategies and Institutions*, 38 WORLD POL. 226 (1985).
[62] *Id.* at 231.
[63] *Id.* at 232.
[64] *Id.* at 235.

regimes, which would monitor the behavior of states, inform other actors about compliance, facilitate the development and enhancement of reputations, and can also serve as a decentralized means to enforce compliance.[65] The combination of the above factors, according to institutionalists, makes it in the best interest of states to comply with international law, even if noncompliance may be beneficial in the short run.

Another explanation of compliance that challenges the realist view is the "managerial theory."[66] It challenges the assumption that coercive enforcement, whether economic or military, is the best way to secure compliance with international law in an institutionalist international system.[67] This is because the cost of both military and economic sanctions is high, for both the sanctioning state and the targeted state.[68] The managerial model of compliance presupposes a "propensity to comply".[69] This stems from the fact that diplomats spend a considerable amount of time, effort, and resources to enter into international agreements, and would not do so if they do not expect the other side to uphold their end of the bargain.[70] The "propensity to comply" is explained further by three factors: efficiency, interest, and norms. Efficiency draws on traditional economic analysis to argue that the cost of non-compliance would be greater than compliance, thus complying reduces transaction costs.[71] The interest factor refutes the realist argument that states only comply with those rules of international law that are in their interests. Instead, it is noted that treaties are

[65] *Id.* at 237.
[66] Abram Chayes & Antonia Handler Chayes, *Managerial Theory, in* FOUNDATIONS OF INTERNATIONAL LAW AND POLITICS 173-183 (Oona A. Hathaway & Harold Hongju Koh eds., 2005) [hereinafter Chayes & Chayes, *Managerial Theory*]. For a more detailed explanation of the managerial theory, *see* Abram Chayes & Antonia Handler Chayes, *On Compliance*, 47 INT'L. ORG. 175 (1993) [hereinafter Chayes & Chayes, *On Compliance*].
[67] Chayes & Chayes, *Managerial Theory* 174.
[68] *Id.*
[69] *Id at* 175.
[70] *Id.*
[71] *Id.*

consensual, and states would enter into only those agreements that suit their interests. Finally, states that enter into treaties do so with a sense of legal obligation. The managerial theory thus dismisses the realist argument that states act only on the basis of calculated interests is contrary to how states feel compelled to act on the basis of international law.[72]

According to the managerial theory, non-compliance of international law is, in most cases,[73] not deliberate. Instead, non-compliance occurs primarily because of three reasons. The first is ambiguity in language, as treaty makers are unable to draft rules with the most precise language, or account for changes in circumstances. Such ambiguity can lead to different interpretations of certain provisions, which is why parties adopt different positions related to the effect of the obligation.[74] The second case where non-compliance arises is due to a lack of capacity to carry out certain obligations. In many cases, treaties require the establishment of robust compliance mechanisms, and doing so is a herculean task that cannot be accomplished without the right bureaucratic competence and financial resources.[75] Finally, there is also a temporal dimension, and diplomats realize that there is a considerable time lag between the conclusion of a treaty and its implementation. Thus, the lack of implementation at a given period might lead to a mistaken impression of noncompliance.[76] Instead of coercion, the managerial model holds that compliance can be better secured by ensuring transparency, establishing dispute settlement mechanisms, and capacity measures to facilitate implementation.[77]

[72] *Id.*
[73] Chayes & Chayes concede that some cases do involve deliberate violations of international law, such as Iraq's invasion of Kuwait or North Korea's withdrawal from the Non-Proliferation Treaty (NPT).
[74] Chayes & Chayes, *On Compliance* 188, 189.
[75] *Id.* at 193, 194.
[76] *Id.* at 195.
[77] Chayes & Chayes, *Managerial Theory* 178-180.

The management model has come under criticism from institutionalists themselves, who argue that it only applies to certain regulatory treaties and does not have enough explanatory power for other areas in international law.[78] Nonetheless, the default institutionalist position on international law is one of compliance, induced through institutional cooperation and long-term interests over short-term gains through noncompliance. The neoliberal intuitionalist position can thus be best summed up as a "rational choice" view of compliance: though compliance with international law may not always be in a state's best interest, they would comply nonetheless because a reputation for compliance will in the long-term provide gains through reciprocal compliance.[79] An international system that is heavily institutionalized is hence a better means to secure compliance with international law than the threat or use of coercion, and a should state choose not to comply, it will hurt their reputation, thereby ensuring reciprocal noncompliance by other states.

[78] George W. Downs, David M. Rocke & Peter N. Barsoom, *Is the Good News About Compliance Good News About Cooperation? (1996)*, *in* INTERNATIONAL LAW AND INTERNATIONAL RELATIONS: AN INTERNATIONAL ORGANIZATION READER 92–112 (Beth A. Simmons & Richard H. Steinberg eds., 2007).
[79] ANDREW T. GUZMAN, HOW INTERNATIONAL LAW WORKS: A RATIONAL CHOICE THEORY 33-41 (2007).

II. U.S. MILITARY INTERVENTIONS SINCE 2001[80]

The War in Afghanistan (2001)

Following the September 11 attacks in 2001, U.S. President George W. Bush declared in his address to the nation that the United States would "make no distinction between the terrorists who committed these attacks and those who harbor them."[81] On October 7, the United States launched an invasion of Afghanistan, codenamed Operation Enduring Freedom, in response to the attacks. In announcing the commencement of Operation Enduring Freedom, President Bush declared that the objective was to dismantle the Taliban's military capabilities and to deny the use of Afghanistan as a safe haven for terrorist activities.[82] The invasion of Afghanistan was legally justified on the basis of Article 51 of the U.N. Charter, as declared in a letter to the President of the Security Council by the U.S. Ambassador to the U.N.[83] Invoking the inherent right to self-defense, the letter argued that its military operations in Afghanistan were in response to the armed attack and also aimed at deterring future attacks against the United States.[84]

The traditional understanding of self-defense heretofore was that it could only be invoked by one state against another.[85] In the case of Afghanistan, Article 51 was invoked to justify the use of military force in another state against non-state actors. The rationale was that the then-government

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[80] This section draws from NIALL FERGUSON, COLOSSUS: THE RISE AND FALL OF THE AMERICAN EMPIRE (2004) [hereinafter FERGUSON, COLOSSUS].
[81] George W. Bush, U.S. President, Statement by the President in Address to the Nation (Sept. 11, 2001), https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010911-16.html.
[82] George W. Bush, U.S. President, Presidential Address to the Nation (Oct. 7, 2001), https://georgewbush-whitehouse.archives.gov/news/releases/2001/10/20011007-8.html.
[83] Permanent Rep. of the United States of America to the U.N., Letter dated Oct. 7, 2001 from the Permanent Rep. of the United States of America to the United Nations addressed to the President of the Security Council, U.N. Doc. S/2001/946 (Oct. 7, 2001).
[84] *Id.*
[85] VALERIE EPPS, JOHN CERONE & BRAD R. ROTH, INTERNATIONAL LAW 527 (6TH ED. 2019).

of Afghanistan was providing safe harbor to the perpetrators of the attacks, and allowing them to use Afghanistan as a base for terrorist operations. This enabled the United States to act in self-defense against a non-state actor and a state government sponsoring them. Further, the phrase "armed attack" was reinterpreted to include not only traditional methods of state-on-state warfare, but also tactics employed by terrorists against the United States on 9/11. Indeed, Article 51 does not require that self-defense can only be justified when an armed attack against a state is launched by another state, thereby implying that it covers actions by non-state actors as well.[86] This effectively stretched the interpretation of Article 51 to include armed attacks launched by non-state actors, and instead of creating a new norm in international law, it reinterpreted existing norms on self-defense.

This "stretched" interpretation of Article 51 found wide acceptance in the international community, further adding to its legitimacy. The U.N. Security Council passed Resolutions 1368 and 1373 that endorsed the United States' understanding of Article 51.[87] Resolution 1368, adopted the day following 9/11, regarded terrorism as a "threat to international peace and security" and reaffirmed the "inherent right" of self-defense.[88] On September 28, 2001, Resolution 1373 was adopted under Chapter VII of the U.N. Charter and reaffirmed Resolution 1368 and the right to self-defense.[89] While much of the text in Resolution 1373 directed states to crack down on terrorist activities, it notably declared that terrorism was contrary to the principles of the U.N. Charter[90] and decided that those participating in terrorist activities should be "brought to justice."[91] The

[86] Yoram Dinstein, *Terrorism and Afghanistan*, 85 INT'L. L. STUD. 43, 45 (2009).
[87] *Id.*
[88] S.C. Res. 1368 (Sept. 12, 2001).
[89] S.C. Res. 1373 (Sept. 28, 2001).
[90] *Id.* at ¶5.
[91] *Id.* at ¶2 (e).

language in the aforementioned resolutions thus suggest acceptance of the United States' right to respond to the 9/11 attacks in self-defense. The actions of the Security Council following the invasion of Afghanistan reflect acquiescence, if not outright acceptance, of the United States' invocation of the right to self-defense. Resolution 1378 condemned the Taliban for harboring the perpetrators and allowing Afghanistan for being used as a base for terrorists,[92] consistent with the language used by President Bush when announcing the invasion of Afghanistan.[93] Resolution 1390 further reiterated the aforementioned resolutions, and supported "efforts to root out terrorism."[94]

Acceptance of the American position goes beyond the U.N. Security Council. For the first and only time in its history, NATO invoked its collective self-defense obligations under Article V of the Washington Treaty,[95] thereby supporting its approval for any action taken by the United States in response to the September 11 attacks. The OAS also considered the attacks as an "attack on all countries of the Americas."[96] The U.N. General Assembly also adopted a resolution condemning the attacks in their immediate aftermath without a vote.[97] Critics of the American involvement in Afghanistan argue that though the condemnation of the attacks was universally unequivocal, the international community at-large called for a multilateral response, and many states did not express explicit approval for unilateral actions taken by the United States.[98] Nonetheless, the response of the international community was not one of support at the time, thereby signaling tacit acceptance,

[92] S.C. Res. 1378 (Nov. 14, 2001).
[93] Bush, *supra* note 82.
[94] S.C. Res. 1390 (Jan. 16, 2002).
[95] North Atlantic Treaty Org. [NATO], Press Release, Statement by the North Atlantic Council (Sept. 12, 2001), https://www.nato.int/docu/pr/2001/p01-124e.htm.
[96] Org. of American States [OAS], Press Release, Terrorist Attacks on United States are an Attack on All Countries of the Americas (Sept. 21, 2001), http://www.oas.org/OASpage/press2002/en/Press2001/sept01/194.htm.
[97] G.A. Res. 56/1 (Sept. 12, 2001).
[98] *See* MYRA WILLIAMSON, *The Use of Force Against Afghanistan in 2001, in* TERRORISM, WAR AND INTERNATIONAL LAW: LEGALITY OF THE USE OF FORCE AGAINST AFGHANISTAN IN 2001 185-189 (2009).

if not an outright acceptance, of the American interpretation of Article 51 that the events of September 11 constituted an armed attack, and that the United States could respond in self-defense against a non-state actor.

The case of Afghanistan shows that the United States acted in accordance with international law when justifying its use of force. The position of the United States was accepted by Security Council Resolutions and by other actors in the international community, either explicitly or implicitly. Though it was debatable whether armed force could be used against non-state actors,[99] Afghanistan essentially settled the debate in favor of the American position, and conclusively reinterpreted Article 51 to allow for the use of armed force against non-state actors in self-defense.[100] The argument of the United States to use force in Afghanistan is thus legally sound.

The Iraq War (2003)

The dynamics surrounding the end of the Cold War meant that the United Nations could, for the first time in its history, authorize enforcement action under Chapter VII of the U.N. Charter in response to Iraq's invasion of Kuwait in 1990.[101] Resolution 678, adopted in November 1990, authorized the use of "all necessary means"[102] not only to "uphold and implement"[103] Resolution 660,[104] but also "all subsequent relevant resolutions and to restore peace and security in the

[99] Kimberley Trapp, *Can Non-State Actors Mount an Armed Attack? in* THE OXFORD HANDBOOK OF THE USE OF FORCE IN INTERNATIONAL LAW 680-696 (Marc Weller ed., 2015); Christian J. Tams, *Self-Defence Against Non-State Actors: Making Sense of the 'Armed Attack' Requirement, in* SELF-DEFENCE AGAINST NON-STATE ACTORS 90-173 (Mary Ellen O'Connell, Christian J. Tams & Dire Tladi eds., 2019); YORAM DINSTEIN, WAR, AGGRESSION, AND SELF-DEFENCE (2012).
[100] Dinstein, *supra* note 86.
[101] FERGUSON, COLOSSUS 136; H.W. Bush, *supra* note 44.
[102] S.C. Res. 678 ¶2 (Nov. 28, 1990).
[103] *Id*.
[104] Resolution 660 demanded Iraq to withdraw all its forces "immediately and unconditionally" from Kuwait; S.C. Res. 660 ¶2 (Aug. 2, 1990).

area."[105] Following an impressive six-week campaign with a ground assault that lasted barely a hundred hours, a coalition led by the United States achieved the objective of restoring Kuwait's legitimate government and ensuring Iraq's withdrawal,[106] with explicit authorization from the Security Council. Resolution 687 implemented a ceasefire between the American forces and Iraq,[107] and imposed wide-ranging sanctions aimed at halting Iraq's weapons of mass destruction (WMD) programs.[108] What Resolution 687 did not do, however, is explicitly terminate the authorization to use force granted in Resolution 678, which provides helpful context to the debates surrounding the legality of the 2003 invasion of Iraq. At the heart of the issue is whether a second Security Council resolution authorizing the use of force was required for the invasion of Iraq to be legal under international law.

When U.S. President George W. Bush announced the commencement of Operation Iraqi Freedom in March 2003, he stated that the goal was mainly to "disarm Iraq"[109] and "undermine Saddam Hussein's ability to wage war."[110] From a domestic political standpoint, the Bush Administration argued that Iraq possessed WMDs that threatened U.S. security interests and alleged links between Saddam Hussein's governments and the perpetrators of the 9/11 attacks. The domestic justifications for military operations in Iraq suggest a doctrine of pre-emptive self-defense, as reflected in the 2002 National Security Strategy.[111] As noted above, the doctrine of pre-emptive self-defense argues that states should be allowed to defend themselves from actors that have both

[105] Res. 678, *supra* note 102.
[106] FERGUSON, COLOSSUS 135.
[107] S.C. Res. 687 ¶1 (Apr. 8, 1991).
[108] *Id.* at ¶¶24-27.
[109] George W. Bush, U.S. President, President Bush Addresses the Nation (Mar. 19, 2003), https://georgewbush-whitehouse.archives.gov/news/releases/2003/03/20030319-17.html.
[110] *Id.*
[111] U.S. NATIONAL SECURITY STRATEGY, 2002 13-16; FERGUSON, COLOSSUS 152.

the capacity and the intent to wage warfare against the state before an attack has occurred.[112] However, from an international standpoint, the doctrine of pre-emptive self-defense was never invoked to legally justify the 2003 invasion of Iraq.

The justification under international law was that of continuing authorization to use force by multiple Security Council resolutions, in response to Iraq's non-compliance with previous resolutions passed by the Security Council.[113] In November 2002, the Security Council adopted Resolution 1441, which declared that Iraq was in "material breach" of its obligations, including those under Resolution 687.[114] It also recalled all previous resolutions on Iraq, including Resolution 678,[115] which authorized the use of force by the U.S.-led Coalition in 1991. Since Iraq was no longer complying with its disarmament obligations, the Bush Administration maintained that the original authorization to use force against Iraq under Resolution 678 had been revived. Thus, no subsequent reauthorization to use force was needed from the Security Council.[116]

Resolution 1441 declared Iraq in "material breach" of its obligations and also recalled Resolution 678, which signals that the authorization to use force was only suspended and not terminated. There was no clear indication to terminate the Resolution 678 authorization to use force in Resolution 687 when a ceasefire was implemented between Iraqi and Coalition forces. Though nuclear weapons were not found in Iraq, contrary to the assertions of the British and American

[112] Deeks, *Taming Pre-Emption* at 667.
[113] Raul A. Pedrozo, *Legal Basis for Military Operations in Iraq* 86 INT'L. L. STUD. 45 (2010); Nicholas Rostow, *International Law and the 2003 Campaign Against Iraq* 80 INT'L. L. STUD. 21 (2006).
[114] S.C. Res. 1441 (Nov. 8, 2002).
[115] *Id.*
[116] Authorization for Use of Military Force Against Iraq Resolution of 2002, Pub. L. No. 107-243, 116 Stat. 1498 (2002); Jay S. Bybee, Asst. Att'y Gen., Authority of the President under Domestic and International Law to Use Military Force Against Iraq (Oct. 23, 2002), U.S. DEP'T. OF JUSTICE 17-22.

governments, the Security Council was clear in its determination that Iraq was in violation of its obligations under multiple resolutions. In 1998, when the United States launched airstrikes against Iraqi military installations as part of Operation Desert Fox, the same interpretation of the effects of Resolutions 678 and 687 was put forward, and the international response was begrudgingly muted, indicating acquiescence to this interpretation. The U.S.-led "coalition of the willing" was backed by at least[117] thirty countries. Finally, the ceasefire effected by Resolution 687 was not between the United Nations and Iraq, but between Iraq and the Coalition forces. Once the conditions of the ceasefire were breached, as determined by Resolution 1441, the Coalition forces were free to resume military operations against Iraq. All of the above are compelling reasons to argue that the use of force by the United States against Iraq in 2003 was legal. In a letter published by the *Wall Street Journal*, the leaders of Great Britain, Spain, Italy, Portugal, Denmark, Poland, Hungary, and the Czech Republic stated their frustrations with the Security Council's inaction on Iraq and supported the United States' position on Iraq.[118]

However, the response of the rest of the international community begged to differ. When Resolution 1441 was adopted unanimously by the Security Council in November 2002, all members of the Council agreed that Iraq was in "material breach" of its obligations. However, statements by France, Mexico, Ireland, Russia, Bulgaria, Syria, Colombia, Cameroon, Guinea, Mauritius, and China all indicated an understanding that the resolution was not an authorization to use force, but rather, sent a final message to Iraq, and that any use of force against Iraq would

[117] Neil King Jr. & David S. Cloud, *Thirty Nations Join U.S. in Coalition Against Iraq*, WALL ST. J. (Mar 19, 2003), https://www.wsj.com/articles/SB1047993002720756040.
[118] Marc Champion, *Eight European Leaders Voice Their Support for U.S. on Iraq*, WALL ST. J. (Jan. 30, 2003), https://www.wsj.com/articles/SB1043875470158445104.

require authorization from the Security Council.[119] These sentiments were forcefully echoed in early March 2003, when the invasion of Iraq seemed imminent, by Malaysia (speaking on behalf of the Non-Aligned Movement), South Africa, the League of Arab States, Algeria, Egypt, India, Libya, Iran, Canada, Switzerland, Turkey, the European Union, Germany, Norway, Brazil, New Zealand, Cuba, Iceland, Laos, Indonesia, Vietnam, Lebanon, and Belarus, along with the aforementioned countries.[120] The countries in opposition called for further diplomatic efforts to bring into compliance, use of force only as a last resort, and shunned any unilateral use of force unless explicitly authorized by the Security Council. Following the commencement of military operations, condemnation of the war was widespread in the international community. Later in 2004,[121] then-Secretary General Kofi Annan called the war "illegal."[122] The general response to the British and American positions on the Iraq War was that it misrepresented the will of the international community, that Resolution 678 was aimed only at driving Iraq out of Kuwait, that Resolution 687 fully terminated the authorization to use force, and that the use of force to enforce Resolution 1441 could only be authorized by the Security Council. The same view has also been held by a majority of international lawyers,[123] and the Chilcot Report in 2016 offered a devastating critique of the British government's rationale to go to war in 2003.[124]

Resolution 1441 was kept deliberately ambiguous, as a result of which it could support the legal positions of the United States and United Kingdom on one hand, and France and Russia on the

[119] U.N. SCOR, 57th Sess., 4644th mtg., U.N. Doc. S/PV.4644 (Nov. 8, 2002).
[120] U.N. SCOR, 58th Sess., 4714th mtg., U.N. Doc. S/PV.4714 (Mar. 7, 2003).
[121] U.N. SCOR, 58th Sess., 4726th mtg., U.N. Doc. S/PV.4726 (Mar. 26, 2003).
[122] Patrick E. Tyler, *Annan Says Iraq War was "Illegal"*, N.Y. TIMES (Sept. 16, 2004), https://www.nytimes.com/2004/09/16/international/annan-says-iraq-war-was-illegal.html.
[123] *See for e.g.* Sean D. Murphy, *Assessing the Legality of Invading Iraq*, 92 GEO. L. J. 173 (2004); Thomas M. Franck, *Iraq and the Law of Armed Conflict*, 80 INT'L. L. STUD.15 (2006).
[124] Henry Mance & James Blitz, *Chilcot report: the key conclusions*, FINANCIAL TIMES (Jul. 6, 2016), https://www.ft.com/content/da41beee-4360-11e6-9b66-0712b3873ae1.

other.[125] The weight of public opinion and the response of the international community indicates a rejection of the legal arguments put forth by the United States for its invasion. However, a closer reading of the resolutions in question suggests otherwise. Had the international community intended to fully terminate the original authorization to use force, it would have done so explicitly in 1991 with the adoption of Resolution 687. Resolution 1441 gave Iraq one final opportunity to come into compliance with its disarmament obligations, which it failed to do so. Though it did not explicitly authorize the use of force, it also did not state that the Security Council should "decide" on a future course of action after Iraq's failure to comply.[126] This is sufficient evidence to support the position that no further authorization to use force was required by the Security Council. International legal scholars will continue to differ on the legality of the Iraq War, given the response of the international community. However, the legal arguments put forth by the United States in favor of using military force against Iraq on the basis of continuing Security Council resolutions are compelling and sound.

The "War on Terror" (2001 Onwards)

In his address to a joint session of Congress following the 2001 September 11 attacks, U.S. President George W. Bush declared a "war on terror", aimed at stopping not only Al-Qaeda but "every terrorist group of global reach."[127] The military campaigns in Afghanistan and Iraq, as detailed above, morphed into a larger "war on terrorism."

[125] Michael Byers, *Agreeing to Disagree: Security Council Resolution 1441 and International Ambiguity*, 10 GLOBAL GOVERNANCE 165 (2004).
[126] *Supra* note 113.
[127] George W. Bush, U.S. President, President Declares "Freedom at War with Fear" (Sept. 20, 2001), https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010920-8.html.

The primary justifications for the war on terror have been primarily on the grounds of self-defense. As elaborated earlier, the Bush Administration conducted its military operations against the Taliban on the basis of Article 51,[128] and articulated a doctrine of pre-emptive self-defense in the 2002 National Security Strategy as the legal basis for the larger war on terror.[129] It states that the United States must stop "rogue states and their terrorist clients"[130] before they are able to threaten or use WMDs against the United States and its allies.[131] The 2002 National Security Strategy rationalizes the doctrine of pre-emptive self-defense by interpreting the Article 51 requirement of an "armed attack" in light of changing technological capabilities possessed by rogue actors, meaning that the United States could launch a pre-emptive strike against a target in the last window of opportunity if it could be established that the target had both the capacity and intent to act.[132] While some scholars argue that this doctrine is consistent with state practice[133] and backed by sound legal rationale if the high threshold for imminence can be proven,[134] others reject this test on grounds of its broadness, stating that this is a doctrine not of pre-emption but of prevention, and thus having no basis under international law.[135] A U.N. High-Level Panel Report in 2004 recognized the long-standing right to self-defense against threats that are imminent, but rejected the notion that states could act unilaterally when a threat is merely present.[136]

[128] Letter to the President of the S.C., *supra* note 83.
[129] U.S. NATIONAL SECURITY STRATEGY, 2002 13-16.
[130] *Id.* at 14
[131] *Id.*
[132] Deeks, *Taming Pre-Emption* at 667.
[133] *Id.* at 670.
[134] Christopher Greenwood, *International Law and the Pre-emptive Use of Force: Afghanistan, Al-Qaida, and Iraq* 4 SAN DIEGO INT'L. L. J. 7 (2003).
[135] *See* Murphy, *Pre-emptive Self-Defense*; W. Michael Reisman & Andrea Armstrong, *The Past and Future of the Claim of Pre-emptive Self-Defense* 100 AM. J. INT'L. L. 525 (2006).
[136] Rep. of the High-Level Panel on Threats, Challenges and Change, A More Secure World: Our Shared Responsibility, U.N. Doc. A/59/565 (Dec. 2, 2004).

Later, the Obama Administration laid down its own standard of imminence to justify military operations against terrorist groups overseas, which construes imminence more narrowly than the Bush Administration did, though it is still broader than the *Caroline* standard. In 2012, then-Attorney General Eric Holder stated that imminence must be understood in light of "the relevant window of opportunity to act, the possible harm that missing the window would cause to civilians, and the likelihood of heading off future disastrous attacks against the United States."[137] In its waning days, the Obama Administration further clarified its position on the use of force against non-state actors, stating that it could conduct strikes in host states that are "unable or unwilling" to deal with the threat, under Article 51 of the U.N. Charter.[138] It laid down the "variety of factors" test, which considers the "nature and immediacy of the threat, the probability of an attack, whether the anticipated attack is part of a concerted pattern of continuing armed activity, the likely scale of the attack and the injury, loss or damage likely to result therefrom in the absence of mitigating action, and the likelihood that there will be other opportunities… expected to cost less collateral injury, loss, or damage."[139] The administration maintained that its "variety of factors" test of imminence is consistent with the right to self-defense in international law, but noted that the "unable or unwilling" standard does not give states the license to "wage war globally" or abrogate the sovereignty of other states.[140] It states that the "unable" requirement is satisfied if the host state has lost effective control of the territory where the terrorist group is operating, while the "unwilling" prong is met if the host state is "colluding with or harboring a terrorist organization… and refuses to address the threat posed by the group."[141]

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[137] Eric Holder, Att'y Gen., Attorney General Eric Holder Speaks at Northwestern University School of Law (Mar. 5, 2012), https://www.justice.gov/opa/speech/attorney-general-eric-holder-speaks-northwestern-university-school-law.
[138] WHITE HOUSE REPORT, 2016 10.
[139] *Id.* at 9.
[140] *Id.*
[141] *Id.*

Scholars are conflicted on whether the Obama Administration's standard of imminence has been accepted as law. Some argue yes, noting that there is enough explicit endorsement, implicit endorsement, or acquiescence to this standard.[142] Others, however, argue that there is not enough consistent state practice signaling acceptance of this interpretation as law,[143] and that it goes beyond the accepted understanding of Article 51.[144] The framework provided by the Obama Administration is narrower than that of its predecessor. However, it still lays down a threshold for imminence that is broader than the *Caroline* standard, and recognizes imminence in light of evolving technological capabilities possessed by terrorist groups. While disagreements will continue over how high the threshold for imminence must be before launching a pre-emptive strike, the right to respond to an imminent armed attack in itself is accepted in international law.

[142] Elena Chachko & Ashley Deeks, *Which States Support the 'Unwilling and Unable' Test?* LAWFARE (Oct. 10, 2016), https://www.lawfareblog.com/which-states-support-unwilling-and-unable-test; Ashley Deeks, *"Unwilling or Unable: Toward a Normative Framework for Extraterritorial Self-Defense*, 52 VA. J. INT'L. L. 483 (2012).
[143] Jutta Burnnée & Stephen Toope, *Norm Robustness and Contestation in International Law: Self-Defense Against Non-State Actors*, 4 J. GLOBAL SEC. STUD. 73 (2019).
[144] Olivier Corten, *The 'Unwilling or Unable' Test: Has it Been, and Could it be, Accepted?* 29 LEIDEN J. INT'L. L. 777 (2016).

III. RUSSIAN MILITARY INTERVENTIONS SINCE 2001[145]

The Invasion of Georgia (2008)

After a diplomatic crisis relating to separatist movements[146] in Georgia, Russia invaded the country in August 2008. Russia had earlier sent peacekeepers in the separatist regions of South Ossetia and Abkhazia under the guise of protecting its citizens. Russia alleged that Georgian troops on August 7 launched a surprise offensive in South Ossetia, and in the process, inflicted mass civilian casualties, many of them Russian citizens and peacekeepers.[147] Russia then alleged that Georgia committed genocide against Russian nationals and sent troops to conduct a "humanitarian intervention" for protecting its nationals in Georgia.[148] While the Russian version of events was part of a concerted disinformation campaign,[149] the foundations for Russia's war in Georgia were being laid since the early 2000s,[150] and early warning signs of a looming invasion were ignored by the West.[151] While it is not contested that the first shot was fired by the Georgians, as was part of Russia's strategy, Russian troops that were not part of the peacekeeping force were already on Georgian soil, in direct violation of Georgian sovereignty.[152]

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[145] This section draws on MARCEL H. VAN HERPEN, PUTIN'S WARS: THE RISE OF RUSSIA'S NEW IMPERIALISM (2d ed. 2015) [hereinafter VAN HERPEN, PUTIN'S WARS].
[146] The two "breakaway provinces" of South Ossetia and Abkhazia are officially a part of Georgia, but were recognized by Russia as independent republics, thereby causing a diplomatic crisis that culminated into the 2008 invasion.
[147] VAN HERPEN, PUTIN'S WARS 205, 206.
[148] *Id.*
[149] *Id.*
[150] *Id.*
[151] *Id.* at 210-213.
[152] *Id.* at 214.

Russia termed its military operations in Georgia a "peace enforcement" mission.[153] In a letter to the Security Council, the Russian Ambassador blamed Georgia for the deaths of Russian nationals, and declared that Russia had invoked its Article 51 right to self-defense.[154] Notably, Russia did not term any aspects of its campaign a "military operation", instead, it relied primarily on humanitarian arguments and self-defense to protect its nationals in Georgia.[155] Russia blamed the aggression on Georgia, tying the definition of "aggression" in General Assembly Resolution 3314[156] to its claims of self-defense.[157] However, the claim of self-defense falls flat since Russian territory was not under attack by Georgian forces. There is also no valid claim of collective self-defense, as South Ossetia was sovereign Georgian territory and they did not have the capacity to invite Russian military intervention. Even if the Russian version of the sequence of events were accepted, the actions of Georgian forces still cannot be construed as an "armed attack" in the sense of Article 51.[158] A stronger argument is that Russia acted in defense of its peacekeeping forces and its citizens. However, the Russian response was disproportionate, given its extension into undisputed Georgian sovereign territory.[159] Finally, Russia's claims of a "peacekeeping mission" also do not hold up, since the on-ground operations resembled intense combat operations.[160] Russia primarily relied on its mandate under the Sochi Agreement to send peacekeepers in the region, however, the agreement did not include any mandate for enforcement action.[161]

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[153] Reuters Staff, *Russia Runs Peace Enforcement in S. Ossetia — Medvedev*, REUTERS (Aug. 9, 2008), https://www.reuters.com/article/idUSL9268068.
[154] Permanent Rep. of the Russian Federation to the U.N., Letter dated Aug. 11, 2008 from Permanent Rep. of the Russian Federation to the U.N. addressed to the President of the Security Council, U.N. Doc. S/2008/545.
[155] Roy Allison, *The Russian Case for Military Intervention in Georgia: International Law, Norms and Political Calculation*, 18 EUR. SEC. 173, 174-175 (2009).
[156] G.A. Res. 3314, art. 1 (Dec. 14, 1974). This resolution defines "aggression" as "the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any manner inconsistent with the Charter of the United Nations…".
[157] Allison, *supra* note 155 at 176.
[158] *Id.* at 178.
[159] *Id.*
[160] *Id.* at 180, 181.
[161] *Id.* at 181.

The initial response of the international community called for de-escalation of the conflict through diplomatic means.[162] Instantaneously, the United Kingdom, Croatia, South Africa, the United States, Panama, and the OSCE condemned the use of force and did not accept humanitarian intervention as a pretext for the Russian invasion.[163] As Russian military operations intensified in the region, opposition to the Russian legal arguments grew, primarily from the United States, United Kingdom, Croatia, Panama, and Belgium.[164] Later, France, Italy, the E.U., and Costa Rica also condemned Russian aggression.[165] In all of the meetings held by the Security Council in August 2008, all members called on the non-use of force, even if they did not condemn Russia forcefully. An independent fact-finding mission on Georgia, run jointly by the OSCE and Russia, released the Tagliavini Report in 2009.[166] The report found the Georgian assault on Russian forces in Ossetia unjustified, and regarded Russia's initial response to protect its peacekeepers as legal.[167] It noted Russia's right to protect its peacekeepers through proportionate means.[168] However, it did not accept Russia's subsequent military response as either proportionate or legal, given the scale of deployments, the disproportionate use of force, and incursions into sovereign Georgian territory.[169] Thus, Russia's justifications for intervention in Georgia do not hold up under scrutiny, and the operation is illegal under international law.

[162] U.N. SCOR, 63d Sess., 5951st mtg., U.N. Doc. S/PV.5951 (Aug. 8, 2008).
[163] U.N. SCOR, 63d Sess., 5952d mtg., U.N. Doc. S/PV.5952 (Aug. 8, 2008).
[164] U.N. SCOR, 63d Sess., 5953d mtg., U.N. Doc. S/PV.5953 (Aug. 10, 2008).
[165] U.N. SCOR, 63d Sess., 5969th mtg., U.N. Doc. S/PV.5969 (Aug. 28, 2008).
[166] Eur. Council Rep., Independent International Fact-Finding Mission on the Conflict in Georgia (Heidi Tagliavini ed., 2009).
[167] Alexander Lott, *The Tagliavini Report Revisited: Jus ad Bellum and the Legality of Russian Intervention in Georgia*, 28 MERKOURIOS-UTRECHT J. INT'L. & EUR. L. 4, 6 (2012).
[168] *Id.*
[169] *Id.*

The Annexation of Crimea (2014)

Russian hostility towards Ukrainian sovereignty dates back at least to the late 2000s, when many figures in the Russian establishment decried Ukraine as a failed state and espoused long-held views that the independence of Ukraine was historically ill-informed and threatened Russian security.[170] In 2013, then-President Viktor Yanukovych considered pursuing E.U. membership, much to the Kremlin's dismay, and later refused to sign an agreement with the E.U. after threats made by Russia.[171] Later, in February 2014, pro-democracy protests forced the resignation of Yanukovych and an interim government was installed.[172] On February 27, uniformed militias occupied government buildings in Crimea and initiated a referendum, which Russia used as a pretext for annexing Crimea.[173] Later, this war would spread to other parts of Eastern Ukraine.

In a March 2014 address to the Federal Assembly of the Russian Federation shortly after the invasion, Russian President Vladimir Putin stated that Russian actions were consistent with international law.[174] He stated that Crimea was a part of Russia due to the referendum, that Russia acted to protect its nationals in Crimea, that Russia was enabling Crimea to exercise its right to self-determination, and that the 1999 NATO military intervention in Kosovo set the precedent for Russia's actions.[175] In Putin's address, Article 51 was not invoked as a justification for Russian military operations.

[170] VAN HERPEN, PUTIN'S WARS 239-242.
[171] *Id.* at 243.
[172] *Id.*
[173] *Id.*
[174] Vladimir Putin, President of the Russian Federation, Address by President of the Russian Federation (Mar. 18, 2014), http://en.kremlin.ru/events/president/news/20603.
[175] *Id.*; Robert J. Delahunty, *The Crimean Crisis*, 9 U. ST. THOMAS J. L. & PUB. POL'Y 125, 152 (2014) [hereinafter Delahunty, *The Crimean Crisis*].

Russia's actions were in direct contravention of international law on the use of armed force.[176] With no Security Council resolution or Article 51 standing, the actions of Russian forces clearly violated Article 2 (4) of the U.N. Charter and constituted an act of aggression, as defined in General Assembly Resolution 3314.[177] Russia did not suffer an "armed attack" within the meaning of Article 51 on its territory which could have been invoked as the legal basis for self-defense. Indeed, Russia in the Budapest Memorandum of 1994 recognized the "existing borders" of Ukraine,[178] reaffirming Crimea as a part of Ukraine. Furthermore, Russian troops were already present in Crimea before the referendum took place on March 16, 2014.[179] The claims of defending Russian nationals and self-determination also do not hold up. While General Assembly Resolution 3314 hints at allowing the use of force to enable people forcibly denied the right to self-determination, language in the resolution strongly suggests that it could only be done if sanctioned by the Security Council under Chapter VII of the Charter.[180] Further, there was no imminent threat to Russian nationals from Ukrainian forces.[181] Finally, while Putin derided the legality of the 1999 NATO intervention in Kosovo, he also claimed that it set a "precedent."[182] The NATO intervention of Kosovo was implicitly authorized by the Security Council through Resolution 1244,[183] after it was conducted. While the legality of this authorization is indeed questionable, it cannot set a precedent if one regards it as illegal.

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[176] Delahunty, *The Crimean Crisis*; Christian Marxsen, *The Crimea Crisis: An International Law Perspective*, 74 HEIDELB. J. INT'L. L. 367 (2014); Oleksandr Merezhko, *Crimea's Annexation by Russia — Contradictions of the New Russian Doctrine of International Law*, 75 HEIDELB. J. INT'L. L. 167 (2014); Robin Geiß, *Russia's Annexation of Crimea: The Mills of International Law do Grind Slowly but They do Grind*, 91 INT'L. L. STUD. 425 (2015).
[177] G.A. Res. 3314, *supra* note 156, arts. 1 & 3.
[178] Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons art. 1, U.S.-U.K.-Rus.-Ukr., Dec. 5, 1994, 3007 U.N.T.S. 167.
[179] Alan Cullison, Paul Sonne & Gregory L. White, *Russia Moves to Deploy Troops in Ukraine*, WALL ST. J. (Mar. 2, 2014), https://www.wsj.com/articles/SB10001424052702303801304579412380376851854.
[180] G.A. Res. 3314, *supra* note 156, art. 7.
[181] Delahunty, *The Crimean Crisis* 162-164.
[182] Putin, *supra* note 174.
[183] S.C. Res. 1244 (Jun. 10, 1999).

The response of the international community was harshly critical and rejected Russia's arguments justifying its annexation of Crimea. On March 15, 2014, the United States proposed a resolution in the Security Council condemning the secession of Crimea and regarding it as invalid. Thirteen countries supported the resolution and China abstained, however, it was vetoed by Russia.[184] A similar resolution was proposed by Ukraine in the General Assembly,[185] which passed with 100 votes in favor, 11 votes against, and 58 abstentions.[186]

Both an analysis of international law on the use of armed force, and the overwhelming response of the international community show that Russia's legal arguments advanced to annex Crimea are invalid.

The Russian Invasion of Ukraine (2022 onwards)

On February 24, 2022, Russia launched a full-scale invasion of Ukraine[187] that at the time of writing is ongoing. When announcing the invasion, President Putin termed it a "special military operation" that aimed to "demilitarize and denazify"[188] Ukraine and more specifically, to protect its civilians and counter alleged NATO expansion.[189] The now-infamous address alleged that the

[184] Joe Lauria, *Russia Vetoes U.N. Resolution on Crimea*, WALL. ST. J. (Mar. 15, 2014), https://www.wsj.com/articles/SB10001424052702304185104579441170801596730.
[185] G.A. Res. 68/262 (Mar. 27, 2014).
[186] Somini Sengupta, *Vote by U.N. General Assembly Isolates Russia*, N.Y. TIMES (Mar. 27, 2014), https://www.nytimes.com/2014/03/28/world/europe/General-Assembly-Vote-on-Crimea.html.
[187] Yaroslav Trofimov, Alan Cullison, Brett Forrest & Ann M. Simmons, *Russia Begins Military Operation in Ukraine*, WALL ST. J. (Feb. 24, 2022), https://www.wsj.com/articles/ukraine-shifts-to-war-footing-tells-citizens-to-leave-russia-11645616181.
[188] *Id.*
[189] Ann M. Simmons, *Putin Announces Special Military Operation in Eastern Ukraine*, WALL ST. J. (Feb. 23, 2022), https://www.wsj.com/livecoverage/russia-ukraine-latest-news/card/putin-announces-special-military-operation-in-eastern-ukraine-BBbiFSHMKssPMTur01Vh.

West aimed at using Ukraine as a launchpad for attacks on Russia, and his actions were a pre-emptive strike to counter supposed Western aggression.[190] Furthermore, Russia recognized the separatist-controlled regions of Donetsk and Luhansk as sovereign states, and used their breakaway status to justify its invasion of Ukraine.[191]

The legal status of Russia's 2022 invasion of Ukraine is the same as its invasion of Ukraine in 2014: a clear act of aggression and a violation of Article 2 (4) of the U.N. Charter.[192] Russia's claims of self-defense in Ukraine are vague and do not specifically address an "armed attack" that has occurred on Russian soil, in response to which Article 51 could be feasibly invoked. Russia also did not present any evidence of an "imminent threat" of an armed attack, under which the doctrine of pre-emptive self-defense could be justifiable. Furthermore, the secession of separatist-controlled regions in Eastern Ukraine was also unlawful,[193] as they did not meet the criteria for statehood, and there is a positive obligation not to recognize a seceding state in such a scenario.[194] Thus, Russia could not act on the basis of collective self-defense on their behalf. Putin also argued

[190] Max Fisher, *Putin's Case for War, Annotated*, N.Y. TIMES (Feb. 23, 2022), https://www.nytimes.com/2022/02/24/world/europe/putin-ukraine-speech.html.
[191] Matthew Luxmoore, *Putin Says Moscow Recognizes Entirety of Breakaway Ukrainian Territories*, WALL ST. J. (Feb. 22, 2022), https://www.wsj.com/livecoverage/russia-ukraine-latest-news/card/putin-says-moscow-recognizes-entirety-of-breakaway-ukrainian-territories-rbrj0xNzxFkVQ04kNuaL.
[192] International legal experts all agree that Russia's invasion of Ukraine is brazenly unlawful. *See* Oona A. Hathaway, *International Law Goes to War in Ukraine*, FOREIGN AFFAIRS (Mar. 15, 2022), https://www-foreignaffairs-com.ezproxy.library.tufts.edu/articles/ukraine/2022-03-15/international-law-goes-war-ukraine; Elizabeth Wilmshurst, *Ukraine: Debunking Russia's Legal Justifications*, CHATHAM HOUSE (Feb. 24, 2022), https://www.chathamhouse.org/2022/02/ukraine-debunking-russias-legal-justifications; Anthony Dworkin, *International Law and the Invasion of Ukraine*, EUR. COUNCIL FOREIGN RELATIONS (Feb. 25, 2022), https://ecfr.eu/article/international-law-and-the-invasion-of-ukraine/; Ingrid Wuerth, *International Law and the Russian Invasion of Ukraine*, LAWFARE (Feb. 25, 2022), https://www.lawfareblog.com/international-law-and-russian-invasion-ukraine; Hurst Hannum, *International Law Says Putin's War Against Ukraine is Illegal. Does That Matter?* THE CONVERSATION (Feb. 25, 2022), https://theconversation.com/international-law-says-putins-war-against-ukraine-is-illegal-does-that-matter-177438.
[193] Marc Weller, *Russia's Recognition of the 'Separatist Republics' of Ukraine was Manifestly Unlawful*, EJIL: TALK! (Mar. 9, 2022), https://www.ejiltalk.org/russias-recognition-of-the-separatist-republics-in-ukraine-was-manifestly-unlawful/.
[194] *Id.*; S.C. Res. 787 (Nov. 16, 1992).

that Russian military operations aimed at preventing a "genocide" against Russian nationals in Ukraine, yet, there is no evidence[195] to support these claims. Even if there were evidence, for argument's sake, to support Russia's claims, humanitarian intervention would be illegal without Security Council authorization. There is no norm in international law that allows for humanitarian intervention, whether the responsibility to protect or acting to prevent a genocide, without the approval of the Security Council.[196]

International rejection of Russia's invasion of Ukraine was swift and overwhelming. Immediately, the United States proposed a resolution before the Security Council condemning the invasion and calling for Russia's withdrawal. [197] It gained 11 votes in favor and 3 abstentions,[198] but was vetoed by Russia.[199] Later, a General Assembly resolution sponsored by 96 countries deplored Russia's invasion of Ukraine and called for its withdrawal.[200] It gained 141 votes in favor, 5 votes against, and 35 abstentions.[201]

Russia's ongoing war in Ukraine is brazenly illegal, and the actions of the international community reflect that understanding.

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[195] *See* U.S. STATE DEP'T., 2020 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: UKRAINE (2020), https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/ukraine/.
[196] Nigel S. Rodley, *Humanitarian Intervention*, *in* THE OXFORD HANDBOOK OF THE USE OF FORCE IN INTERNATIONAL LAW 776-796 (Marc Weller ed., 2015).
[197] Farnaz Fassihi, *Russia Vetoes a U.N. Security Council Resolution Calling it to Withdraw from Ukraine*, N.Y. TIMES (Feb. 25, 2022), https://www.nytimes.com/2022/02/25/world/europe/united-nations-russia-withdraw-ukraine.html.
[198] China, India, and the United Arab Emirates abstained on this resolution.
[199] Fassihi, *supra* note 197.
[200] G.A. Res. ES-11/1 (Mar. 2, 2022).
[201] William Mauldin, *Nations Rebuke Russia's War in U.N. Vote*, WALL ST. J. (Mar. 2, 2022), https://www.wsj.com/livecoverage/russia-ukraine-latest-news-2022-03-02/card/nations-rebuke-russia-s-ukraine-war-in-un-vote-rMYApy6Wme5R8PabImgn.

IV. EXPLANATORY POWER OF THE THEORIES OF COMPLIANCE

Realism

As stated in Part I of this paper, realists view security as the primary interest of a nation-state and hold that states act in an anarchical international system to secure their survival. Since there is no central authority to coercively enforce international order, states take a grim view of international law and institutions, arguing that they are a mere reflection of the will of powerful states and only matter to the extent that they serve their purposes. While most realists agree that international law can facilitate cooperation between states, this cooperation is possible only as long as it does not jeopardize the relative power of the more powerful state. States will comply with international law as long as it serves their interests. However, in case a norm of international law conflicts with a state's key security interests, the state would be disinclined to comply with international law.

In the case of the United States, Afghanistan was a clear case of compliance with international law on the use of armed force. While the author found the United States' legal justifications for the use of force in Iraq and the larger war on terror compelling, other international lawyers and certain members of the international community disagreed. In the case of Russia, its interventions in Georgia, Ukraine in 2014, and later Ukraine in 2022 were clear cases of non-compliance with international law, as reflected both in analyses by international lawyers and the reactions of the international community.

As far as Russia's actions are concerned, realism has high explanatory power. While Russia made strong attempts to justify its actions under international law in Georgia and during both

interventions in Ukraine, these attempts could best be described as a mere formality that do not address the question of compliance. While the Security Council in theory can coercively enforce international law in the case of violations, as it has done in the past, the model of coercive enforcement cannot work in cases where a great power like Russia can veto any decision proposed in the Security Council that threatens its interests. The Security Council is the ultimate authority to enforce international law, but when a violator of international law itself can stop it from enforcing its rules, then it does nothing but reflect the global balance of power. As international law on the use of armed force did not serve Russia's security interests, it decided to ignore international law and use armed force in its contravention anyway. This is perfectly consistent with realist views on international law.

Realism can also explain the actions of the United States in its military interventions. Indeed, the United States complied with international law when launching military operations in Afghanistan, and did so on the basis of sound legal justification that was accepted by the international community. However, the fact that these justifications were accepted without much serious opposition from other states that were keen on multilateralism indicates that the United States as a great power can use international law and institutions to serve its purposes. An existing norm on the right to self-defense was reinterpreted as the United States understood it. When the United States decided to invade Iraq, it did so without explicit Security Council authorization, despite other member states claiming that an invasion would be justifiable only if explicit Security Council authorization were sought. Though the United States found a strong legal basis for invading Iraq due to implicit authorization for the use of force by prior Security Council resolutions, the Bush Administration was ready to invade Iraq even if the Security Council vetoed a resolution

authorizing the use of force.[202] France and Russia were determined to veto any resolution authorizing the use of force, [203] as doing so was in their national interests. The willingness of the United States to invade Iraq even without a Security Council resolution authorizing the use of force demonstrates that international law is marginal to great powers when it conflicts with key security interests. For the war on terror, both the Bush and Obama administrations laid down their own tests of imminence. Though the test used by the Obama Administration was much narrower than that of its predecessor, it was grounded in the understanding of pre-emptive self-defense. Here, the norm of self-defense was again applied and reinterpreted, which both presidential administrations relied on to guide their actions. Though the norm only applies when a high threshold of imminence can be proven, both administrations continued to pursue their security interests by targeting terrorist groups in foreign states, without much clarity on the acceptance of their arguments.

Ultimately, both the United States and Russia sought to explain their actions in legal terms. However, such talk is "cheap",[204] as it does not affect compliance. By engaging in legal argumentation, states are only clarifying their positions to international and domestic audiences, but it would not have no bearing on their actions themselves, which are driven by security interests. Thus, when it comes to understanding the degree of compliance with international law on the use of armed force by great powers, realism has high explanatory power.

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[202] *See* Michael J. Glennon, *Why the Security Council Failed*, FOREIGN AFFAIRS (May/June 2003), https://www-foreignaffairs-com.ezproxy.library.tufts.edu/articles/iraq/2003-05-01/why-security-council-failed.
[203] John Tagliabue, *France and Russia Ready to Use Veto Against Iraq War*, N.Y. TIMES (Mar. 6, 2003), https://www.nytimes.com/2003/03/06/international/europe/france-and-russia-ready-to-use-veto-against-iraq-war.html.
[204] JACK L. GOLDSMITH & ERIC A. POSNER, THE LIMITS OF INTERNATIONAL LAW 174 (2005).

Neoliberal Institutionalism

Part-I of this paper also outlined a theory of compliance with international law grounded in neoliberal institutionalism. Unlike realists, neoliberal institutionalists see the transformative power of institutions in the international system. Though neoliberal institutionalism borrows its key assumptions of anarchy and a state-centric international system from realism, they argue that institutions constrain the behavior of states and compel them to reassess their long-term interests, which are dependent on cooperation, rather than mistrust. As a result, states would comply with international law. They do so not because of a fear of coercive enforcement in the case of non-compliance, but because compliance is in their long-term interests. In a highly institutionalized system, states develop a propensity to comply with international law, which further becomes internalized and thus affects their reputations.

Both the United States and Russia felt compelled to justify their military interventions not just in terms of national interests, but under rules of international law. They did so primarily because they saw their interests and identities embedded in an institutionalist system. For instance, the intervention in Afghanistan was legal, and the legal arguments advanced by the United States reinterpreted the norm of self-defense consistent with U.S. interests. International lawyers decried the invasion of Iraq as illegal, but the United States came up with a justification that was rooted not in national interests, but in securing Iraq's compliance with previous Security Council resolutions. Though the unilateral use of force hurt the legitimacy of the Security Council for maintaining international peace and security, it was still within U.S. interests to preserve the U.N. Security Council's authority, which it relied on to serve its interests in cases of combating terrorism and non-proliferation. The Iraq War ultimately did not tear down an institution that serves

American interests, as America's identity as the leader of a rules-based international order is embedded in this framework.[205] One need to only look at Putin's speeches for Russia's invocation of international law as an authority to use force, shunning the use of the phrase "armed intervention", and its derision of the United States' unilateral interventions.[206] Particularly after the invasion of Georgia, Russia employed its legal arguments with a sense of adapting to an institutionalist international order, where it can shape international norms to serve its own interests.[207]

Neoliberal institutionalism has a high degree of explanatory power when it comes to how and why states justify their actions under international law. After all, this affords them authority, encourages the accountability of other actors in the international system, builds their respect as responsible actors, and increases their ability to influence transnational politics in the framework of international institutions.[208] However, neoliberal institutionalism does not have as much explanatory power on the question of compliance *per se*, as it would for the processes of legal argumentation. Consider for example, the "shadow of the future" and the management model of compliance.

Military interventions conducted by both the United States and Russia were driven by short-term calculations of security interests. For the United States, the threats were terrorism on foreign soil and alleged WMDs in the hand of a rogue state. For Russia, the perceived threats arose from NATO

[205] Ian Johnstone, *US-UN Relations After Iraq: End of the World (Order) as We Know It?* 15 EUR. J. INT'L. L. 813, 836-838 (2004).
[206] Putin, *supra* note 174; Fisher, *supra* note 190.
[207] Nicolai N. Petro, *Legal Case for Russian Intervention in Georgia*, 32 FORDHAM INT'L. L. J. 1524 (2008).
[208] Monica Hakimi, *Arguing About the Jus ad Bellum, in* TALKING INTERNATIONAL LAW: LEGAL ARGUMENTATION OUTSIDE THE COURTROOM (Ian Johnstone & Steven R. Ratner eds., 2021).

expansion and Ukrainian sovereignty. Though there was a long-term element to these security interests, both powers acted unilaterally and without much regard for reciprocal compliance from other powers. The United States after the invasion of Iraq, and Russia after both its invasions of Ukraine, suffered reputational costs in the eyes of the international community for compliance. However, these reputational costs did not deter either of the powers from pursuing their security interests. The invasion of Iraq led to widespread political discontent with the Republican Party in the United States and resulted in a major defeat for the Republican Party in the 2006 midterm elections and the 2008 presidential election. In the United Kingdom, it ended the political career of Prime Minister Tony Blair, who staunchly advocated for the Iraq War. Russia after its invasion of Ukraine saw widespread sanctions imposed on it from the West and was suspended from the U.N. Human Rights Council by an overwhelming vote.[209] Despite these reputational costs, both the United States and Russia acted in pursuit of their security interests.

Both the United States and Russia understand the framework governing international law on the use of force all too well. However, when noncompliance occurred, it was not because they lacked understanding of the rules or the lack of capacity to implement them, as the management model would hold. It was because these norms directly conflicted with their key security interests. Though both the United States and Russia felt the need to justify their interventions in legal terms, international norms and institutions did not force them to reassess their national interests and take a position of compliance with international law. When international law on the use of armed force conflicted with national interests, it was these interests that prevailed, not institutional norms.

[209] Farnaz Fassihi & Nick Cumming-Bruce, *U.N. Votes to Suspend Russia From Human Rights Council*, N.Y. Times (Apr. 7, 2022), https://www.nytimes.com/2022/04/07/world/europe/un-human-rights-council-russia.html.

Thus, neoliberal institutionalism can explain why states want to appear compliant with international law. However, it does not hold much explanatory power on the issue of compliance with international law on the use of armed force.

V. CONCLUSION

This project sought to understand whether, why, and to what extent great powers comply with international law on the use of armed force through the lens of realist and neoliberal institutionalist theories of compliance. To be sure, this project only addressed great powers and *jus ad bellum*, and other areas of international law merit their own theories of compliance. To explore this question, the paper looked at military interventions conducted by two great powers, namely the United States and Russia, in the twenty-first century. Both the United States and Russia mobilized the language of international law and sent it to battle, sometimes successfully, and at other times, less so. In some cases, such as the U.S. intervention in Afghanistan, compliance with international law on the use of armed force was clear. In other cases, such as the intervention in Iraq and the broader war on terror, the author found that the legal justifications provided by the United States were convincing, but other actors in the international system disagreed, thus leaving the question open to interpretation. In the remaining cases, wherein Russia invaded Georgia and Ukraine, the legal justifications were outright unconvincing and even farcical, particularly during the 2022 invasion of Ukraine.

Neoliberal institutionalism had a high degree of explanatory power on why states engage in legal argumentation and wish to appear compliant with international law. Neoliberal institutionalists maintain that compliance, or lack thereof, affects the reputations of states, which is why it is in their interest to comply with international law. However, as seen by the actions of the United States and Russia above, this process of legal argumentation did not affect compliance, nor were these actions driven by reputational concerns. Rather, the United States and Russia both pursued their

key security interests, as explained by realism. The strong did what they could, at the expense of the weak. Russia flagrantly violated international law in each of its military interventions discussed above, and when the United States acted consistently with international law, it did so not because it wanted to, but because doing so overlapped with its security interests. The widespread acceptance of the U.S. legal position on self-defense, for example, merely reflected the relative balance of power globally. International law was epiphenomenal to the security interests of both Russia and the United States. While states will continue to employ legal language to justify military action in the future, it is security interests, and not institutions, that have the power to answer the question of compliance itself on the use of armed force under international law. This is why this project concludes that realism best answers the question of compliance itself.

As Clausewitz noted, war is an instrument to pursue a larger policy goal articulated by a state. Whether the use of warfare was efficacious in any of the above scenarios to achieve those articulated goals is another question that has been explored independently.[210] Nonetheless, the fundamental nature of the international system will compel great powers to pursue their security interests, and when such interests would conflict with international law, pursue them regardless. Warfare will remain a means to achieve those. Great powers will do what they must in an anarchical international system, even at the expense of less powerful states.

[210] *See* WILLIAM C. MARTEL, VICTORY IN WAR: FOUNDATIONS OF MODERN STRATEGY (2011).

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