This Article analyzes state communications to the United Nations Security Council during episodes of serious interstate conflict. In Part I, I explain the basis in the U.N. Charter for state communications about their uses of force. I then advance three hypotheses regarding state practice during and after the Cold War. I hypothesize that overall state communications should have increased after the Cold War; that states should be advancing more diverse legal justifications for their uses of force; and that states should be focusing more on the jus in bello than during the Cold War. An analysis of several hundred state communications drawn from a fifty-year period provides only limited support for these hypotheses. Patterns in state justifications to the Security Council have not changed markedly, and states remain overwhelmingly focused on self-defense as a legal justification.

INTRODUCTION .......................................................... 342
I. THE SECURITY COUNCIL AND STATE JUSTIFICATION........344
II. IDENTIFYING CONFLICTS AND CODING COMMUNICATIONS ....350

INTRODUCTION

In June 2014, U.S. commandos operating in Libya seized Ahmed Abu Khatallah, who was believed to have helped orchestrate the deadly 2012 attack on the U.S. consulate in Benghazi. The U.S. commandos reportedly forced Khatallah into a vehicle and then spirited him to a U.S. warship waiting off the coast of Libya. As news of the raid circulated, the U.S. Mission to the United Nations delivered a letter to the President of the U.N. Security Council. The operation, the U.S. ambassador argued, was an exercise of the United States’ inherent right to self-defense, safeguarded by Article 51 of the U.N. Charter.

The U.S. letter was notable for the arguments that it made about Khatallah and his organization, but it was also an example of a broader phenomenon: states regularly send communications to the Security Council that explain and justify their uses of force. These

communications are “a surprisingly complex and politically sensitive area of the Security Council’s practice.” Yet communications to the Council have received very limited scholarly attention, even amidst a renewed interest in Council activity and practice. In this Article, I seek to narrow that gap by exploring when and how states involved in serious interstate conflicts communicate with the Council. In so doing, I seek to shed light both on the relevance of the Council for states involved in interstate conflict and on the types of arguments that states make to the Council regarding their actions. I advance several hypotheses regarding how state justifications for the use of force may have changed over time and then test those hypotheses against data derived from hundreds of state communications over the last forty years.

The Article proceeds in five Parts. In Part I, I outline the system of state communications to the Council. Additionally, I explain why communications from states involved in these conflicts are a useful prism through which to evaluate the states’ rationales for the use of force. I also contend that Council communications can help assess the importance of the Council to states engaged in conflict. In Part II, I explain how I have selected a set of conflicts to examine, the communications related to those conflicts I analyzed, and the methods of analysis I used. In Part III, in order to consider patterns in the submissions of communications between 1966 and 2013, I draw on the analysis and coding of more than 400 communications sent during thirty-two episodes of serious conflict between states. The data indicate that states generally have found it important to justify their actions to the Council. However, the frequency of communication has remained mostly constant, notwithstanding dramatic and sustained increases in overall Council activity. I explore the possibility that the Council’s role in conflict between states remains subject to powerful constraints that often do not apply to purely internal conflict.

I consider the substance of state communications in Part IV. I present evidence showing that self-defense remains the dominant rationale for state uses of force. Additionally, I show that states rarely have relied on key alternative justifications, including humanitarian intervention, even in the post-Cold War era. I also present data about how often states file the formal Article 51 notifications when they engage in self-defense, which the U.N. Charter requires states to file. I consider possible explanations for the relative scarcity of these dec-

larations. Finally, I discuss patterns of state references to *jus in bello* concerns—including civilian casualties—in state communications to the Council.

I. THE SECURITY COUNCIL AND STATE JUSTIFICATION

The Security Council was designed to be the focal point of the international community’s efforts to restrain violence between states. Recently, Council activity largely has shifted toward managing instability and violence within national borders. However, the Charter’s framers and early commentators focused on the Security Council’s role in addressing conflict between states. The Charter’s central provision regulating the use of force, Article 2(4), is framed in terms of state military action against other states. It proscribes “the threat or use of force against the territorial integrity or political independence of any state.” There are only two exceptions to that proscription: first, self-defense, and second, uses of force authorized by the Security Council. With its broad powers under Chapter VII, the Council has ample means to address conflict between states, including through the use of force. The Charter provides for an activist Council that will employ military forces placed at its disposal by the broader U.N. membership (henceforth, the “Charter system”). These enforcement powers generally have been interpreted to encompass the power to authorize, and thereby make legal, the use of force by individual states or coalitions of states. Throughout most of

---


7. U.N. Charter art. 43.

the Cold War, the Charter system functioned only in unusual circumstances. 9 Even in the Council’s more active post-Cold War phase, the Charter system has been applied episodically and incompletely. 10 Yet the Council’s place in the international legal system has remained largely unchallenged and its formal authority remains.

In part because of its broad Chapter VII powers, the Council has served another, less dramatic function: a recipient of state arguments about their uses of force. The Charter contemplates regular communication between states involved in disputes and the Council. Article 35 provides that both member and non-member states may “bring to the attention” of the Council disputes in which they are involved. 11 Other provisions appear to require that states communicate with the Council. Among them, Article 37 provides that states “shall refer” to the Council disputes that have not been successfully resolved, although the method of referral is not made clear. 12 Article 51, which recognizes that all states may use force in self-defense, provides that “[m]easures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council.” 13 Together, these provisions have encouraged a substantial volume of state communications about disputes in which the states are involved.

Some states have opted against corresponding with the Council itself but instead have directed communications to the U.N. Secretary-General, who has often served as a conduit between the Council and states engaged in conflict. The Council’s own rules provide that

---


10. Two key elements of the Charter system—the Article 43 agreements and the Military Staff Committee—remain essentially dormant. No state has yet signed an Article 43 agreement, by which states can pledge forces or facilities in advance for the use of the Security Council. For an argument that these agreements should be implemented, see generally James E. Rossman, Article 43: Arming the United Nations Security Council, 27 N.Y.U. J. INT’L L. & POL. 227 (1994). For its part, the Military Staff Committee continues to meet regularly but plays little role in the planning or supervision of U.N. military operations. See generally Eric Grove, UN Armed Forces and the Military Staff Committee: A Look Back, 17 INT’L SEC. 172 (1993).


he or she “shall immediately bring to the attention of all representatives on the Security Council all communications from States, organs of the United Nations, or the Secretary-General concerning any matter for the consideration of the Security Council in accordance with the provisions of the Charter.” In certain cases, particularly involving communications from individuals whose official status is unclear, the Secretary-General, in consultation with the Council President, has declined to circulate communications. But U.N. officials routinely circulate communications from state officials when the communications include requests that the documents be included in the Council record.

The Council’s particular responsibilities appear to have encouraged states to regularly provide the Council with information regarding ongoing conflict. Written communications are not the only way to provide information to the Council. In some situations, states involved in ongoing conflicts have participated directly during Council meetings. The Charter and Council procedures encourage participation by states (even those without Council seats) in meetings related to disputes in which the states are involved. But direct participation has not always been an option for states, particularly when the Council has failed to place a conflict on its agenda or has chosen not to hold formal sessions related to it. By contrast, any state may send communications to the Council at any time, and those communications are circulated to its members and become part of the formal Council record.

The ability of all states involved in conflict to communicate with the Council means that these communications can serve as a useful mechanism for examining state justifications for the use of force. This judgment does not require an assumption that communications reflect the considered legal opinion of the communicating state. State justifications may be little more than rhetoric—and in

16. Id. at 439.
17. For example, the Ukrainian representative has regularly been invited to participate in Council meetings regarding the fighting in the eastern part of that country. See, e.g., U.N. SCOR, 69th Sess., 7219th mtg., U.N. Doc. S/PV.7219 (July 18, 2014).
18. U.N. Charter art. 32; See also Sievers & Daws, supra note 3, at 244–45.
some cases rhetoric directed at a domestic audience as well as an international one. Yet formulating justification for the Council (or even selectively conveying outside justifications to the Council) requires a state to make choices about which arguments to advance and, very likely, to consider which arguments will resonate best with Council members.20

Second, communication patterns are relevant for understanding the Council’s place in the international system and, specifically, the Council’s importance to states involved in conflicts. Frequent and substantive communication to the Council suggests that states view the institution as important and worthy of their attention. Infrequent or perfunctory communication would suggest the opposite. Moreover, states may in their communications express views regarding Council action or inaction that shed light on the perceptions of the body. This Article seeks to evaluate how states address the Council in their communications, including by assessing whether they are critical of the Council’s role.

This Article considers communications from states involved in conflict over a fifty-year period. This broad time range permits analysis of changing patterns in state communication. I place particular emphasis on the end of the Cold War as a potential inflection point. By almost any measure, Council activity increased dramatically in the years following the end of the Cold War. The Council met more frequently, passed more resolutions, and authorized different types of activity.21 This elevated pace of Council activity has continued despite recent tensions between several permanent members of the Council, over issues including Palestine, Ukraine, North Korea, and Syria.22 In 2014, the Council met 430 times, the highest total

20. Ian Johnstone has theorized Security Council deliberations as an exercise in “justificatory discourse” that occurs within an “interpretive community,” within which certain shared understandings about law and norms exist. He analyzed legal argumentation surrounding the Kosovo conflict and concluded, “The way the debates themselves were conducted demonstrates that the law is not infinitely manipulable, and that invocation of the law serves a purpose and has consequences.” Ian Johnstone, Security Council Deliberations: The Power of the Better Argument, 14 EUR. J. INT’L L. 437, 478 (2003).


since 2006. \(^{23}\) At the end of 2014, the United Nations deployed almost 130,000 U.N. peacekeepers, authorized by the Council, to conflict and post-conflict zones around the world, the highest total since the Council began operating. \(^ {24}\)

Three hypotheses inform and structure this analysis. One focuses on the frequency of communications, and two address the substance of these communications. Given the dramatic and sustained increase in Council activity in the last twenty-five years, it is reasonable to expect that the Council should be more important to states involved in conflict, and that the Council’s increased relevance would be reflected in communication patterns. The reasons for this expectation are straightforward: a more activist Council will be involved in more disputes and can address the disputes with a broader range of instruments. Given the Council’s increased involvement, states in conflict will have a greater incentive than in the past to encourage and shape any Council response or, depending on the state’s political calculations, attempt to forestall Council action. As such, states are more likely to communicate with the Council than during the past.

**Hypothesis 1:** In the post-Cold War period, states involved in conflict will communicate more frequently with the Council.

There is evidence that the post-Cold War era has altered and expanded the contours of the longstanding debate about when states may legally use force. Because of its new political flexibility, Council authorization for the use of force has become much more common. \(^ {25}\) In turn, this new Council practice has generated questions about the scope, duration, and implementation of these authorizations. \(^ {26}\) Debate about whether intervention should be used to promote or restore democracy has taken on new salience. \(^ {27}\) Potential

---


25. See generally Matheson, supra note 21.

26. The question of whether Western states exceeded the Council’s authorization to use force in Libya is a recent example of the kinds of questions that can arise. For a discussion, see generally Mehrdad Payandeh, The United Nations, Military Intervention, and Regime Change in Libya, 52 Va. J. Int’l L. 355 (2012).

27. See Michael Byers & Simon Chesterman, “You the People”: Pro-Democratic Intervention in International Law, in DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW 259 (Gregory H. Fox & Brad R. Roth eds., 2000). See generally Jeremy I. Levitt, Pro-
humanitarian bases for the use of force have received even more attention. NATO’s 1999 intervention in Kosovo “galvanized legal debate on the doctrine of humanitarian intervention.” The development of the “responsibility to protect” doctrine has continued that debate in only slightly modified form. More recently, state efforts to combat violent non-state actors have prompted consideration of whether and how those efforts comport with the existing framework on the use of force. These developments combine to produce a second hypothesis.

**Hypothesis 2:** States in the post-Cold War period will employ a more diverse array of jus ad bellum justifications.

International attention to the conduct of hostilities and, in particular, protection of civilians has increased dramatically in the post-Cold War period. States have used innovations in the realm of international criminal law, culminating in the creation of the International Criminal Court, to address abuses during conflict. These judicial instruments have all focused primarily on crimes against civilian populations. The Security Council itself has directly addressed the protection of civilians during conflict and includes provisions on the protection of civilians in the mandates of U.N. peacekeeping forces it

---


32. For an analysis of the case law of these courts, see generally ANTONIO CASSESE, GUIDO ACQUAVIVA, MARY FAN & ALEX WHITING, INTERNATIONAL CRIMINAL LAW: CASES AND COMMENTARY (2011).
Given this heightened international attention, states are likely to place more emphasis on *jus in bello* concerns now than they did in the past.

**Hypothesis 3:** States will reference *jus in bello* concerns more frequently in state communications in the post-Cold War period.

## II. Identifying Conflicts and Coding Communications

For this Article, I consider communications to the Security Council from states using force when opposing state forces are present, either across their borders or on their own territories. These situations include both direct interstate conflict and internal conflict with substantial involvement by outside states. In selecting the conflicts to examine and the communications to analyze, I made certain choices and background assumptions, which I discuss below.

### A. Selecting the Conflicts

I identified cases of serious interstate conflict using the Armed Conflict Dataset, part of a broader Uppsala Conflict Data Program (UCDP) undertaken by Uppsala University and the Peace Research Institute Oslo (PRIO)\(^3\). PRIO defines armed conflict as “a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least twenty-five battle-related deaths.”\(^4\) UCDP/PRIO sorts conflicts into several categories. Internal conflict is defined as conflict between state and non-state actors on its territory and without the involvement of other states.\(^5\)

---


34. Uppsala Universitet, Dep’t of Peace and Conflict Research, *Uppsala Conflict Data Program*, http://www.pcr.uu.se/research/UCDP.


36. PEACE RESEARCH INST. OSLO, UCDP/PRIO ARMED CONFLICT DATASET CODEBOOK
excluded from the analysis those conflicts categorized as internal and that did not involve outside actors in order to maintain a focus on situations in which states use force outside their borders or engage with other state forces.37

I considered the remaining three categories of conflicts—interstate, internationalized internal, and extrasystemic.

An interstate armed conflict is defined as a conflict between two or more states.38 The UCDP/PRIO dataset includes forty-six interstate conflicts from 1946–2013. I narrowed the analysis temporally to include only those conflict episodes occurring between 1966 and 2013, inclusive. There are several advantages to applying this temporal limitation. First, it limits consideration to the period when the Security Council was at its present size and structure.39 Second, restricting my analysis to conflicts that occurred after 1965 enabled me to examine the twenty-five year period before the end of the Cold War and the twenty-five year period after the Cold War (the “before-and-after” consideration). I further limited cases to high-intensity conflicts reaching 1,000 battle-related deaths (BRD) within a conflict year, UCDP/PRIO’s threshold for a “war.”40 These parameters produced a set of fourteen high-intensity conflicts, within which there were sixteen distinct conflict episodes.

Because a large number of conflicts between states involve an element of internal conflict, I also included the category of internationalized internal conflicts. However, to ensure that the focus remains on instances of violent conflict between states, I considered only a portion of this category. UCDP/PRIO’s coding rules provide that an internationalized internal armed conflict “occurs between the government of a state and one or more internal opposition group(s) with intervention from other states (secondary parties) on one or both

37. See id.
38. Id.
39. An amendment to the U.N. Charter approved in 1965 expanded the Council from eleven to fifteen members. This change altered dynamics on the Council considerably by weakening Western control of the body’s agenda, and the United States resorted to use of the veto power for the first time in 1971. See Bosco, supra note 9, at 102–03. For a quantitative exploration of how the amendments altered voting power for the individual nonpermanent members, see generally Robert S. Junn & Tong-Whan Park, Calculus of Voting Power in the U.N. Security Council, 58 Soc. Sci. Q. 104 (1977).
40. When there were multiple conflict episodes involving the same parties, conflicts reaching a threshold of 1,000 cumulative BRD after the initial onset of violence were included.
The dataset includes fifty internal conflicts from 1946–2013 during which another state intervened. I selected only those conflict episodes that were internationalized for at least one year and in which the intervening state was supporting the oppositional non-state actor. Using this selection criteria, I limited conflicts to those in which a state was effectively fighting another state, although the criteria limits also did lead to the exclusion of certain conflicts generally thought of as examples of interstate war. For example, UCDP/PRIO codes the 1968 Soviet intervention in Czechoslovakia and the Soviet invasion of Afghanistan as examples of one state assisting the government of another state. Accordingly, I excluded these instances from this analysis. As with interstate conflicts, I included only the conflicts coded as “war” or reaching a cumulative 1,000 BRD over the length of the conflict episode. In all, I identified thirteen distinct cases of serious internationalized internal conflict involving a violent interstate dimension.

Extrasystemic conflict involves the use of a state’s armed forces against a non-state actor beyond the state’s borders. None of the conflicts so designated passed the BRD threshold employed here.42

Table 1. List of Conflicts Considered

<table>
<thead>
<tr>
<th>Conflict</th>
<th>Type</th>
<th>State Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>1967 Middle East1</td>
<td>Interstate</td>
<td>Israel, Jordan, United Arab Republic</td>
</tr>
<tr>
<td>1969 Honduras-El Salvador</td>
<td>Interstate</td>
<td>Honduras, El Salvador</td>
</tr>
<tr>
<td>1970 Cambodia2</td>
<td>Internationalized</td>
<td>Cambodia, North Vietnam, United States</td>
</tr>
<tr>
<td>1971 Bangladesh</td>
<td>Internationalized</td>
<td>Pakistan, India</td>
</tr>
<tr>
<td>1973 Middle East (Yom Kippur)</td>
<td>Interstate</td>
<td>Israel, Jordan, Syria, United Arab Republic</td>
</tr>
<tr>
<td>1974 Turkey-Cyprus</td>
<td>Internationalized</td>
<td>Cyprus, Turkey</td>
</tr>
</tbody>
</table>

41. UCDP/PRIO Armed Conflict Dataset Codebook, supra note 36.
42. Extrasystemic conflicts were almost exclusively colonial in nature. UCDP/PRIO stopped coding conflicts with this designation in 1974.
<table>
<thead>
<tr>
<th>Conflict</th>
<th>Type</th>
<th>State Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>1975 Angola</td>
<td>Internationalized, internal</td>
<td>Angola, Cuba, South Africa</td>
</tr>
<tr>
<td>1977 Ethiopia-Somalia</td>
<td>Interstate</td>
<td>Ethiopia, Somalia</td>
</tr>
<tr>
<td>1978 Cambodia-Vietnam</td>
<td>Interstate</td>
<td>Cambodia, Vietnam</td>
</tr>
<tr>
<td>1979 Libya-Uganda</td>
<td>Internationalized, internal</td>
<td>Libya, Uganda</td>
</tr>
<tr>
<td>1980 Iran-Iraq</td>
<td>Interstate</td>
<td>Iran, Iraq</td>
</tr>
<tr>
<td>1980 Angola</td>
<td>Internationalized, internal</td>
<td>Angola, Cuba</td>
</tr>
<tr>
<td>1982 Falklands</td>
<td>Interstate</td>
<td>Argentina, United Kingdom</td>
</tr>
<tr>
<td>1982 Lebanon</td>
<td>Interstate</td>
<td>Israel, Lebanon</td>
</tr>
<tr>
<td>1986 Chad</td>
<td>Interstate</td>
<td>Chad, Libya</td>
</tr>
<tr>
<td>1987 Chad</td>
<td>Interstate</td>
<td>Chad, Libya</td>
</tr>
<tr>
<td>1990 Iraq-Kuwait</td>
<td>Interstate</td>
<td>Iraq, Kuwait</td>
</tr>
<tr>
<td>1991 Gulf War</td>
<td>Interstate</td>
<td>Multiple, including Australia, Iraq, Kuwait, Saudi Arabia, United Kingdom, United States</td>
</tr>
<tr>
<td>1992 Armenia-Azerbaijan</td>
<td>Interstate</td>
<td>Armenia, Azerbaijan</td>
</tr>
<tr>
<td>1992 Bosnia-Serbia</td>
<td>Internationalized, internal</td>
<td>Bosnia, Serbia</td>
</tr>
<tr>
<td>1992 Bosnia-Croatia</td>
<td>Internationalized, internal</td>
<td>Bosnia, Croatia</td>
</tr>
<tr>
<td>1996 Zaire</td>
<td>Internationalized, internal</td>
<td>Rwanda, Uganda, Zaire</td>
</tr>
<tr>
<td>1997 Congo-Brazzaville</td>
<td>Internationalized, internal</td>
<td>Angola, Congo</td>
</tr>
<tr>
<td>1998 Ethiopia-Eritrea</td>
<td>Interstate</td>
<td>Ethiopia, Eritrea</td>
</tr>
<tr>
<td>1998 Democratic Republic of Congo (DRC)</td>
<td>Internationalized, internal</td>
<td>DRC, Rwanda, Uganda</td>
</tr>
<tr>
<td>Conflict</td>
<td>Type</td>
<td>State Parties</td>
</tr>
<tr>
<td>---------------</td>
<td>------------------</td>
<td>-------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1999 Kosovo</td>
<td>Internationalized internal</td>
<td>Multiple, including Federal Republic of Yugoslavia, France, Germany, United Kingdom, United States</td>
</tr>
<tr>
<td>1999 Kargil conflict(^1)</td>
<td>Interstate</td>
<td>India, Pakistan</td>
</tr>
<tr>
<td>2001 Afghanistan(^2)</td>
<td>Interstate</td>
<td>Multiple, including Afghanistan, United Kingdom, United States</td>
</tr>
<tr>
<td>2003 Iraq</td>
<td>Interstate</td>
<td>Multiple, including Australia, Iraq, United Kingdom, United States</td>
</tr>
<tr>
<td>2008 Georgia</td>
<td>Interstate</td>
<td>Georgia, Russian Federation</td>
</tr>
<tr>
<td>2012 DRC</td>
<td>Internationalized internal</td>
<td>DRC, Rwanda</td>
</tr>
</tbody>
</table>

\(^1\)This episode of escalated interstate conflict lasted just a few days. I examined only communications sent one month prior to the conflict onset through the last day of active conflict. A similar approach was employed for the brief 1973 Middle East conflict and the 2008 war in Georgia.

\(^2\)In the UCDP database this is an unbroken internal conflict since 1967, though only coded as “internationalized” beginning in 1970. As the UCDP does not give a date within that year the conflict was “internationalized,” I gathered letters around the date of the U.S. invasion (April 30, 1970).

\(^3\)I coded a flurry of letters to the Council from January 23–February 23, 1975. UCDP identifies November 11, 1975, as the date that the war reaches twenty-five BRD but there were no letters around that date.

\(^4\)The UCDP database does not precisely identify the conflict onset date. In these cases, the default UCDP coding is to set the onset date as the last day of the prior year (December 30, 1978). The UCDP encyclopedia and COW datasets, however, both cite February 17, 1979—the date of the People's Republic of China invasion of Vietnam—as the conflict onset. Therefore, letters were gathered around this date.

\(^5\)As with the 1970 Cambodia conflict episode, the UCDP database does not provide a date for when this conflict became “internationalized.” The UCDP encyclopedia, however, explains that South African support for rebels returned “beginning in June” of 1980. I accordingly gathered letters from May–June 1980.

\(^6\)I gathered communications around the actual conflict onset (April 2, 1982) rather than the date that battle related deaths (BRDs) reached twenty-five (May 2, 1982).

\(^7\)As with the Cambodian and Angolan cases, the UCDP database identifies this as an unbroken internal conflict beginning in 1949, which became internationalized again in 1982. I gathered letters around the Israeli invasion on June 6, 1982.

\(^8\)The UCDP dataset was not confident in its onset coding as December 1986. The UCDP encyclopedia, however, notes that Chad launched attacks against “Libyan-supported rebel-held territory” within its borders. I gathered communications for two months around De-
While the UCDP database identifies December 30, 1991, as the conflict onset date, the database also notes that the conflict does not reach “war” intensity until 1992. Azerbaijan sent its first letter to the Council in May 1992. Secondary sources concur that May 1992 is when the kinetic interstate dimensions of the conflict escalated. With substantive reason, and to be as inclusive as possible, I gathered letters for May and June 1992. For this conflict episode, I gathered communications around Angola’s October 1997 invasion.

This was an episode of escalating violence within a much longer unbroken conflict. I gathered letters around a period of escalating violence in August 1998.

I pulled letters around the acknowledged start of the Kargil War in May 1999.

The database codes the country as involved in internal conflict since 1975. Third-party states at times fight in support of the Afghan government but this does not meet my criteria for interstate conflict of interest. The database codes the conflict as “internationalized” in 2001—similar to the Cambodia, Congo-Brazzaville, and other cases. I gathered letters around an acknowledged internationalization of the conflict, the October invasion by U.S.-led forces.

The UCDP database is “uncertain” in its coding of the conflict episode’s onset date. It does, however, refer to an escalation of fighting in November 2012, which saw an increase in letters sent to the Council.

B. Communications Considered

For each of the conflicts, I analyzed communications sent from the involved states either to the President of the Security Council or to the Security Council as a whole. I also included correspondence from the relevant states to the U.N. Secretary-General when the communicating state requested that the document be circulated to the Security Council. I excluded communications from states other than those directly involved in a given conflict and communications from regional and international organization officials.

Taken together, these limitations ensured that I included only communications that states directed toward or explicitly asked to be shared with the Council. However, I did not make a distinction between communications written exclusively for the Council’s consideration and broader statements then circulated to the Council. If a government chose to circulate to the Council a prime minister’s speech, for example, I analyzed the text of that speech in the same way as any other communication. Temporally, I gathered commu-

---

Communications for the month before and the month after the onset of the conflict. This parameter allowed reasonable limitations on the number of communications to be considered and was based on the assumption that key state arguments about the conflict would likely be adduced during this initial phase (and in some conflicts, this two-month period encompassed the entire conflict).  

C. Coding Categories

Communications to the Security Council take a variety of forms. In some cases, states forward to the Security Council statements made in other contexts and fora by senior government officials. More often, states address letters specifically to the Council. Communications to the Council vary widely in length, detail, and tone. State communications rarely rely on formal legal argumentation or cite legal precedent. They often advance multiple rationales

44. As noted in the case table, departures from this practice generally came in three main types. Recall that the phenomenon of interest is state communications to the UNSC surrounding episodes of interstate, war-intensity conflict. In several cases, these episodes were situated within much longer cases of internal (e.g., 1970 Cambodia, 1982 Lebanon) and/or less-intense conflict (e.g., 1999 Kargil conflict). In these cases, I used the UCDP database as a starting point for the year in which the longer conflict becomes internationalized and/or reaches war intensity. I then turned to secondary sources (beginning with the UCDP encyclopedia) to search for a more precise internationalization and/or escalation date around which to pull two months of communications. In a second sub-set of cases, the UCDP database was itself unclear as to the precise onset of the conflict (e.g., 1979 China-Vietnam, 2012 DRC). In these cases, I again turned to secondary sources and looked to patterns of communications in letters to the Council, looking for any uptick in letters sent. Finally, in three cases (e.g. 1967 and 1973 Middle East conflicts, 2008 Georgia) the episode of conflict itself is shorter than the standard two-month period. As this Article seeks to understand state communications with the UNSC in the lead up to and initial instigation of active armed conflict, I stop analyzing communications sent after the last day of active conflict. In all cases, every attempt is made to be as inclusive as possible in terms of the number of communications that I analyzed.


and arguments in sometimes ambiguous or rhetorical language. Resort to outright invective has not been uncommon.\(^{47}\) The colorful language of many letters reflects the fact that communications to the Council have normally been exercises in political persuasion and rhetoric, not legal argumentation. For that reason, I often needed to use a degree of interpretation to identify the type of legal justification, if any, that a particular communication advanced. I describe below the interpretive methods employed. With few limited exceptions, I endeavored to treat each communication on its own terms and without reference to previous or subsequent communications. I coded each communication along several different lines.

1. \textit{Jus ad Bellum}

I first considered whether the communication included \textit{jus ad bellum} arguments—those related to the justification for the state’s use of force. I did not require that a state make a formal legal argument; implicit as well as explicit arguments were coded. The set of \textit{jus ad bellum} rationales I coded included the two traditional legal ba-

---

ses for state use of force: self-defense and U.N. authorization. I also designated codes for several less-developed rationales that certain states and commentators have advanced, which are explained below. When communications included multiple arguments, I assigned multiple designations and I did not attempt to determine which argument was predominant within a given communication. Some communications did not include any jus ad bellum arguments and were coded accordingly. The jus ad bellum justifications coded were as follows:

**Self-Defense:** The U.N. Charter and customary international law make self-defense the clearest rationale for a state’s use of force. Commentators have often assumed that states resort to this justification more than any other. “[W]hen inter-State force is employed, both parties usually invoke the right of self-defense.”

That being said, states do not always explicitly say that they are acting in self-defense even when that is the implication of their arguments. In this analysis, I used several methods to determine when states were invoking self-defense.

Communications that referenced aggression, invasion, occupation, incursions, or violations of sovereignty by another state received the self-defense designation.49

Communications referencing ceasefire violations also received the self-defense designation, assuming that the conflict had already been placed in the self-defense framework through previous...
communications.50

Within the category of self-defense, communications that explicitly referenced Article 51 of the Charter received special designation. Notably, many states that rely on self-defense as a principal argument in their communications do not submit formal Article 51 notifications to the Council. Identifying the formal notifications that do occur allows consideration of when and under what circumstances states utilize this provision.

**U.N. Authorization:** On the traditional understanding of the Charter system, Security Council authorization is the main alternative to the legal use of force.51 Communications that framed the use of force in the context of existing U.N. authorization received this designation.52 I did not include in this category communications that cited the violation of U.N. resolutions as an additional means of justifying the use of force when these communications did not actually claim that those resolutions authorized force.53

**Humanitarian Intervention:** Periodically, states and commentators have advanced the argument that large-scale human rights violations on the territory of a state (either perpetrated by the state or

50. This was the one exception I made to the practice of attempting to interpret each communication on its own merits. See supra Part II.C.

51. See, e.g., SEAN MURPHY, PRINCIPLES OF INTERNATIONAL LAW 507 (2d ed. 2012); PETER MALANCZUK, AKEHURST’S MODERN INTRODUCTION TO INTERNATIONAL LAW 387–89 (7th revised ed. 1997).


53. Several countries that participated in the 1999 military campaign against Serbia cited that country’s violation of Security Council resolutions without claiming explicitly that the Council had authorized force.
that the state is unable to prevent) can serve as a basis for intervention by other states. These arguments have been made with particular frequency after the Cold War, but they have a long pedigree. Communications that discussed the human rights situation or atrocities committed on the territory of an opposing state received this designation. However, references to alleged violations by an opposing state on the complaining state’s territory did not receive the humanitarian intervention designation (these were usually coded under the *jus in bello* category, discussed below). Reference to abuses against one state’s nationals residing in another state posed a coding question. Defense of citizens abroad has often been considered as one element of a state’s right to self-defense. In these communications, it was often not clear whether the alleged victims were citizens or were simply ethnically and nationally related. For this reason, these communications were coded as references to humanitarian intervention rather than as self-defense.


57. See generally Ronzitti, *supra* note 55.
Intervention by Invitation: It is widely accepted that a state may provide military assistance, including combat forces, to assist another state either to defend itself against external attack or to confront internal security challenges. As discussed above, the coding system employed here excluded many such situations from this analysis. Yet the communications that referenced an invitation from some governmental authority in the relevant state to another state—even if not a widely recognized government—received a designation of “intervention by invitation.”

Response to Terrorism: The question of how states may respond to threats from violent non-state actors has been considered extensively in the legal literature. Most commentators have argued that the use of force against these actors must fit within the existing categories of self-defense or U.N. authorization. However, others have suggested that state responses to international terrorism cannot fit in existing categories and must therefore be seen as relying upon some alternative basis for military force. Without taking a position on the


59. See supra Part II.A.


61. See generally DINSTEIN, supra note 48.

viability of this approach, I code communications that cite a threat from non-state militant groups as a rationale for the use of force. Use of the word “terror” or “terrorism” was not enough on its own; to receive this coding, it was essential that the concept of terrorism be connected to a non-state group. To receive this coding, it was essential that the concept of terrorism be connected to a non-state group. Those communications that described tactics by another state’s armed forces as terrorist in nature, for example, did not receive this designation.

Pro-Democratic Intervention: The notion that states may use force to restore or institute democratic government has received periodic attention and some support among states and legal scholars. Communications that emphasized the need to create or defend democratic institutions in the opposing state or states received this designation.

Denial of Involvement: In certain contexts, states generally acknowledged to be parties to a given conflict have denied that their forces are involved. It was beyond the scope of this Article to in-

---


64. During the Iraqi invasion, Kuwait complained to the Council of the “terrorizing” of civilians. Permanent Rep. of Kuwait to the U.N., Letter dated Aug. 6, 1990 from the Permanent Rep. of Kuwait to the United Nations addressed to the Secretary-General, U.N. Doc. S/21450 (Aug. 6, 1990). This communication was not designated as relying on terrorism because it referred to the conduct of Iraqi troops. By contrast, South Africa’s communication to the Council regarding action against what it described as non-state terror groups operating in Angola was designated as relying on terrorism. See Permanent Rep. of South Africa to the U.N., Letter dated June 27, 1980 from the Permanent Rep. of South Africa to the United Nations addressed to the President of the Security Council, U.N. Doc. S/14028 (June 27, 1980).


dependently adjudicate the validity of these claims. Therefore, in the
category of denial of involvement, I relied in all cases on the
UCDP/PRIO coding of involved state parties. When UCDP/PRIO
codes a state as a party to a conflict, but that state denies its involve-
ment to the Security Council, that communication received the denial
of involvement designation.

2. Jus in Bello

International law has long considered the rules governing the
conduct of hostilities—the *jus in bello*—to be distinct from the legal
justification for involvement in the conflict. The modern bodies of
law that address conduct during conflicts include the law of armed
conflict, occupation law, and aspects of international human rights
law.68 In order to assess patterns in state references to the *jus in bel-
lo*, I coded communications according to whether they referenced
concerns about the conduct of fighting. The following guidelines
structured my coding of a communication’s *jus in bello* content:

1. The coding scheme is binary; I designated communications as
   either containing *jus in bello* references or not. No attempt
   was made to distinguish between different types of *jus in bel-
   lo* concerns or to assess the centrality of those concerns to the
   communication.

2. Any reference to the law of armed conflict, civilian deaths,
   indiscriminate targeting, destruction of non-military equip-
   ment, use of prohibited weapons, or mistreatment of prisoners

---

68. See *Jeffrey L. Dunoff, Steven R. Ratner & David Wippman, International
received a positive *jus in bello* designation.

3. Unless accompanied by some of the aforementioned elements, mere evidence presented of military deaths and damage to government property did not amount to a designation of *jus in bello* communications. Of these communications, only those that also referenced civilian deaths or other alleged violations of the law of armed conflict received *jus in bello* designations.

4. Most communications receiving this designation featured accusations of violations by other states or armed groups. However, communications that referenced steps by the communicating state to respect humanitarian law and protect civilians were also included.

5. Because states rarely segregated their communications thematically, most communications that received a *jus in bello* designation also received one of several *jus ad bellum* designations. For example, a state might in one communication both describe its involvement in a conflict as an exercise of self-defense while also alleging specific abuses by the other state’s armed forces in the course of fighting.

---

69. For example, Cambodia in the early 1970s provided regular and detailed accounts to the Council of raids by North Vietnamese forces on their territory, including the number of military personnel killed in clashes. See, e.g., Charge d’affaires a.i. of Cambodia to the U.N., Letter dated Apr. 13, 1970 from the Charge d’affaires a.i. of Cambodia to the United Nations addressed to the President of the Security Council, U.N. Doc. S/9750 (Apr. 13, 1970) (describing loss of military personnel and equipment).

70. Cambodia described civilian casualties as well as military losses in some of its communications. See, e.g., Charge d’affaires a.i. of Cambodia to the U.N., Letter dated Apr. 8, 1970 from the Charge d’affaires a.i. of Cambodia to the United Nations addressed to the President of the Security Council, U.N. Doc. S/9743 (Apr. 8, 1970).


3. Posture Toward the Council

I assessed each communication in terms of the posture of the communicating state toward the Council. I employed three categories to assess this dimension:

1. Communications were coded according to whether the state was reacting to or referencing some specific Council action. Common examples in this category included communications from states indicating that they would comply with the terms of a Council resolution, referencing their obligations under a resolution, or complaining that another state was not complying with its obligations.73

2. Communications that sought some additional Council action received a different designation. Requests for Council meetings were most common in this category, but some communications also sought specific Council action in the form of resolutions, arms embargoes, and military measures.74

3. Communications that included criticism of the Council or its members in the performance of their Council functions received their own designation. The U.N. Charter requires states to comply with Council decisions, but a handful of states have explicitly rejected resolutions.75 Others have criticized the Council for inaction. Given the continuing debate about the Council’s legitimacy, open indications of state dissatisfaction with the Council are noteworthy and received a special designation.76

---

73. See infra Chart 6.
74. Id.
75. Id.
III. FREQUENCY OF STATE COMMUNICATIONS

Hypothesis 1 predicted that states involved in conflict would communicate more frequently with the Council during the post-Cold War period, as the Council’s activities increased. Below, I test that hypothesis against the data gathered.

In almost all conflicts examined, at least one of the parties to the conflict communicated with the Council during the period analyzed. In most cases, all parties to the conflict communicated at least once with the Council. The only conflict examined for which there were no communications at all was the Ethiopia-Somalia conflict of 1977, which centered on the disputed Ogaden region. Since the end of the Cold War, every conflict examined produced some communications to the Council. The 1990–1991 Gulf War yielded the most communications, while the 1999 Kosovo conflict also produced more than thirty communications from several different states.

Parties to conflicts often have exchanged detailed accusations and counter-accusations through their communications to the Council. The brief India-Pakistan Kargil conflict in 1999 is one of the few conflicts in which a party declined to communicate with the

77. For a discussion of the political dynamics around that conflict, see generally Gebru Tareke, The Ethiopia-Somalia War of 1977 Revisited, 33 INT’L J. AFR. HIST. STUD. 635 (2000).

Council even after its adversary did so.\textsuperscript{79} During the fighting that erupted in 1999, Pakistan communicated several times with the Council, providing information on alleged Indian incursions, warning of the possibility of escalation, and citing its Article 51 right to respond.\textsuperscript{80} India chose not to respond, a choice that likely reflects India’s strong aversion to involving the Council or other multilateral institutions in the dispute.\textsuperscript{81}

In general, permanent Council members have communicated more sparingly than other states. During the period examined, the United States sent just one communication to the Council regarding its military involvement in Cambodia.\textsuperscript{82} The United States, the United Kingdom, and France did not offer any formal communications during the 1999 Kosovo conflict. The United States and the United Kingdom filed only limited communications during the 2003 Iraq War. Russia also communicated much less frequently than Georgia did during the 2008 conflict in that country.\textsuperscript{83} There are several likely explanations for the general terseness of the Council’s permanent members. First, their seats give them ready access to other Council members and therefore reduce the importance of communications as

\textsuperscript{79} Other cases of non-responsiveness have involved non-U.N. members. During the Cambodia conflict in 1970, for example, North Vietnam was not a U.N. member state.


\textsuperscript{81} See S. Paul Kapur, India and Pakistan’s Unstable Peace: Why Nuclear South Asia Is Not Like Cold War Europe, 30 INT’L SECURITY 127, 143 n.55 (2005) (“While the Pakistani government has consistently sought to attract international mediation of the Kashmir conflict, Indian leaders have rejected any third-party involvement . . . .”).


a means of generating awareness and support with the Council’s broader membership. As holders of the veto power, moreover, permanent members need not fear substantive Council action adverse to their interests. Most states must persuade the Council to see their perspectives, including through communications to its members. On the other hand, permanent members can directly insist that their views be taken into account—through the veto if necessary.

Overall, the volume of communication with the Council does not appear to have changed appreciably over time. During the Cold War, state parties sent, on average, twelve communications per conflict. Average communications per conflict increased to 15.4 letters in the post-Cold War period, but removing the Gulf War conflict due to its being an outlier (and the corresponding seventy-three letters) drops the post-Cold War average rate of communication to 10.9 letters per conflict.

Chart 1. Number of Communications and State Parties, by Conflict

The post-Cold War period involved several uses of force by coalitions of states, including the Gulf War, the NATO intervention in Kosovo, and the 2003 Iraq War. In those cases, a large number of states sent communications to the Council explaining their actions. When the number of states party to a conflict is taken into account, the significance of the distinction between the Cold War and the post-Cold War fades. As a rough metric, I divide the number of
communications sent to the Council by the number of state parties. Depicted in Chart 2, the 1974 Turkey-Cyprus, the 1982 Argentina-United Kingdom, the 1990 Iraq-Kuwait, and the 1998 Ethiopia-Eritrea conflicts appear as relative outliers, with significantly more communications per number of state actors. This suggests that more traditional interstate conflicts produce more communications to the Council, irrespective of when the conflict took place or which states were involved in the conflict.

Chart 2. Number of Communications Divided by State Parties, by Conflict

The evidence therefore does not support Hypothesis 1, which predicted that states involved in conflict would communicate more frequently in the post-Cold War period, as Council activity intensified. One possible explanation for this pattern merits consideration. Though the Council has increased its activity since the Cold War, this increased activism may not extend to conflicts between states—or to the interstate dimensions of internal conflicts. Even as the role of the Council has increased *within* states—in conflicts such as those in the DRC, Kosovo, and Bosnia—the Council may not be much more engaged in interstate conflicts than it was in the past.

A brief survey of Council activity in major post-Cold War interstate conflicts provides some support for this explanation. In several post-1991 interstate conflicts, the Council played a limited role. The Council did not take any substantive action, pass any resolutions, or issue any statements regarding the Kargil War between India and Pakistan. Similarly, the Council was mute in 1992 during the intense phase of the Armenia-Azerbaijan conflict. The veto power effectively sidelined the Council during the critical phases of the 1999 Kosovo conflict, the 2003 Iraq War, and the 2008 Georgia War. Throughout all of these situations, the permanent members of the Council had
differences in opinion over whether and how to respond to the con-
flicts. As a result, the Council went inactive during the conflicts.

In certain conflicts where the Council has been intensively
involved (such as the several rounds of conflict in the DRC), Council
action has been limited toward outside states generally acknowledged
to be involved. Often, the Council has produced only broad state-
ments encouraging regional cooperation. The Council has shied
away from taking coercive measures against involved states. To the
frustration of the Congolese government, for example, the Council
was reluctant to criticize Rwanda and Uganda for their apparent in-
volvement in different phases of the conflict and took few measures
against them. Of course, there are also examples of more assertive
Council behavior. The Council was particularly active regarding the
1998–2000 Ethiopia-Eritrea conflict, imposing an arms embargo and
dispatching a monitoring mission to the region. Yet the overall pat-
terns of communications suggest that the Council may not be playing
a more consequential role in conflicts between states than it did in the
past, which may help explain the broadly constant pattern of state
communications.

IV. SUBSTANCE OF STATE COMMUNICATIONS

A. Jus ad Bellum Justifications

Hypothesis 2 was that states would employ a more diverse ar-
ray of jus ad bellum justifications in the post-Cold War period as dis-
cussion about alternative bases for the use of force increased. Below,
I consider whether the evidence supports that hypothesis.

Both during and after the Cold War, communications confirm

84. See, e.g., S.C. Res. 1804 (Mar. 13, 2008) (calling upon Rwanda and the DRC to
cooperate more closely).

85. The Council recently became modestly more assertive regarding the role of
outsiders in eastern Congo. A 2012 resolution expressed concern about outside involvement
and insisted that other states cease support for non-state actors in Congo. See S.C. Res.
2076, ¶ 4 (Nov. 20, 2012) (demanding “that any and all outside support to the M23 cease
immediately”).

86. For a summary of Council activity with respect to the Ethiopia-Eritrea conflict, see
Update Report No. 5 on Ethiopia/Eritrea, SEC. COUNCIL REP. (July 31, 2008),
http://www.securitycouncilreport.org/update-report/lookup-c-gjKWLeMTIsG-b-
4386219.php. The relative political isolation of Eritrea may have facilitated a more active
Council role.
that self-defense was the dominant rationale for states justifying their uses of force. Overall, states relied on alternative justifications in less than twenty percent of their communications. The supremacy of the self-defense paradigm is not surprising. Absent U.N. authorization for the use of force, self-defense offers the simplest and most established legal route for states seeking legitimacy for their actions.\footnote{See supra note 48 and accompanying text.}

In complex conflicts with murky origins, self-defense can be a colorable argument for most states. The principal alternative—arguing that U.N. authorization for the use of force exists—is much less subject to interpretation. Moreover, the Charter explicitly asks states to communicate with the Council when engaged in self-defense.\footnote{U.N. Charter art. 51 (“Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council.”).} In their communications, states may therefore be speaking to the Council in the language the Charter suggests. Even considering all these factors, states’ almost-instinctual resort to self-defense as a justification suggests the enduring power of the U.N. Charter’s proscription on the use of force for reasons other than self-defense.

Even during the Cold War, however, states occasionally offered justifications other than self-defense. The Indian government’s argument to the Council during the Bangladesh crisis of 1971 was a rare example of a state advancing a humanitarian rationale for intervention without also relying on self-defense. The Turkish government leaned on humanitarian arguments during the 1974 Turkey-Cyprus conflict, when it repeatedly highlighted the danger facing Turkish Cypriots.\footnote{See Permanent Rep. of Turkey to the U.N., Letter dated July 29, 1974 from the Permanent Rep. of Turkey to the United Nations addressed to the Secretary-General, U.N. Doc. S/11394 (July 29, 1974).} Both Honduras and El Salvador emphasized the mistreatment of their nationals in the other country.\footnote{See Chargé d’Affaires a.i. of Honduras to the U.N., Letter dated July 4, 1969 from the Chargé d’Affaires a.i. of Honduras to the United Nations addressed to the Secretary-General, U.N. Doc. S/9318 (July 7, 1969); Permanent Rep. of El Salvador to the U.N., Letter dated July 15, 1969 from the Permanent Rep. of El Salvador to the United Nations addressed to the President of the Security Council, U.N. Doc. S/9330 (July 15, 1969).} In some contexts, reliance on self-defense changed to another rationale in the course of a conflict. During the 1979 conflict with Cambodia, for example, Vietnam initially argued that it was defending itself against an aggressive China, whose Cambodia policy was only one element of a broader policy of aggression.\footnote{See Permanent Rep. of Viet Nam to the U.N., Letter dated Nov. 30, 1978 from the Permanent Rep. of Viet Nam to the United Nations addressed to the President of the Security Council, U.N. Doc. S/11394 (July 29, 1974).} As the conflict progressed, and
as the Khmer Rouge’s grip on power loosened, Vietnam contended that the conflict had become a purely internal struggle between a new Cambodian regime and the remnants of the old regime. The Vietnamese government began circulating to the Council statements by the new regime. These communications framed the conflict as one between the new regime and its opponents, with Vietnam no longer involved.92

The data offer some support for the hypothesis that alternative justifications have become more common in the post-Cold War period. During the Cold War, only 14.8 percent of communications referenced any justification other than self-defense. The majority of communications (63.4 percent) during this period relied exclusively on self-defense. After the Cold War, only slightly more than half of communications (51.6 percent) relied on self-defense alone. States broadened their justifications, although often still in combination with self-defense. Alternative justifications appeared in 24.7 percent of communications during the post-Cold War period.

**Chart 3. Jus Ad Bellum Rationales**93

---


93. Communications with no explicit or implicit *jus ad bellum* rationale were excluded from this tabulation.
Perhaps the most dramatic change following the Cold War is the use of a U.N.-authorization rationale for intervention. Council authorization was a dominant argument during the Gulf War, referenced twenty-eight times by states participating in the coalition. This justification also appears in communications during the 1999 Kosovo conflict and the 2003 Iraq War. References to permission from the host state also increase in the post-Cold War period. Like U.N. authorization, much of this increase can be attributed to the Gulf War. The Coalition cites permission from Kuwait eight times in the communications analyzed for the conflict. Additionally, permission from the host state is referenced in the post-Cold War period, in the 1998 DRC conflict and in the 2003 Iraq War.

A disaggregated analysis of the types of alternative justifications proffered indicates that state rationales have shifted less markedly—and certainly less ambitiously—than the overall data suggest. A significant amount of the change can be attributed to the 1991 Gulf War, during which multiple coalition states relied on U.N. authorization in their communications. States continued to rely on these same resolutions in the years that followed. This increased reliance on U.N. authorization is important and notable in its own right, but it does not challenge or expand the U.N. Charter framework for the use of force.

Another type of argument—denial of state involvement in a given conflict—also appeared more frequently in communications and accounts throughout the period of increased communications. It was referenced in just three Cold War communications, but in fifteen post-Cold War communications. In the Armenia-Azerbaijan conflicts, the Bosnian War, and the several rounds of conflict in the DRC, certain state parties insisted to the Council that their forces were not involved in the conflict. Again, this trend is notable but should not be viewed as a diversification in jus ad bellum arguments. Indeed, states insisting that they are not involved in conflicts implicitly vindicate traditional jus ad bellum rationales. Rather than advancing a new rationale for cross-border military activity that does not easily fit the Charter model, a number of states have simply decided to deny their involvement all together.

As demonstrated above, neither “reliance on UN authorization” nor “denial of involvement” pushes against the established legal framework governing the use of force. And if these categories are

94. The most controversial reliance on those original U.N. authorizations came in 2003, when the United States and United Kingdom argued that the authorizations provided a legal basis for the invasion of Iraq.
put to the side, self-defense appears as dominant as ever. Surprisingly, communications relying on humanitarian and pro-democratic rationales were not significantly more common in the post-Cold War period than they were previously. Less than 7 percent of Cold War communications included humanitarian rationales. In the post-Cold War, that increased only slightly to 7.9 percent. In neither period did states rely on the need to create or defend democratic institutions in other states to justify their uses of force.

**Chart 4. Alternative Justifications for Use of Force**

![Chart 4. Alternative Justifications for Use of Force](image)

**B. Article 51 Declarations**

Given the predominance of the self-defense narrative in both the Cold War and post-Cold War periods, the infrequency of formal Article 51 notifications is striking. Of the thirty-two conflict episodes examined, only eleven featured formal notifications by at least one party. More than one party invoked the provision in only one conflict episode. On a conflict-by-conflict basis, Article 51 notifications were slightly more common in the post-Cold War: they were made in six of eighteen Cold War conflicts, but in five of fourteen post-Cold War episodes.

Notably, Article 51 was not referenced in communications over conflicts including the 1973 Middle East War, the 1974 conflict over Cyprus, and the 1998 Ethiopia-Eritrea conflict. In all of these conflicts, parties repeatedly cited self-defense as a justification but
chose not to reference Article 51. In certain cases, state reluctance to employ Article 51 was made explicit in communications. For example, during the Bosnian conflict, the Bosnian government routinely decried aggression by Serbia and Montenegro but did not reference Article 51 until several months after the conflict began. When Bosnia first did so, it was with expressed reluctance and in a manner designed to urge the Council to action.\footnote{See Permanent Rep. of Bosnia and Herzegovina to the U.N., Letter dated May 30, 1993 from the Permanent Rep. of Bosnia and Herzegovina to the United Nations addressed to the President of the Security Council, U.N. Doc. S/25872, annex (June 1, 1993) (“If the Security Council fails to take such ‘necessary measures,’ the Republic of Bosnia and Herzegovina emphasizes a call to all Member States of the United Nations to come to its assistance under Article 51 of the United Nations Charter.”).} On the other hand, the 1982 U.K.-Argentina conflict over the Falkland Islands stands as a notable exception; it produced more than a dozen explicit references to Article 51. Both parties formally reported their activities to the Council and repeatedly cited Article 51 to justify their military activities.\footnote{See, e.g., Permanent Rep. of Argentina to the U.N., Letter dated Apr. 9, 1982 from the Permanent Rep. of Argentina to the United Nations addressed to the President of the Security Council, U.N. Doc. S/14961 (Apr. 9, 1982) (invoking Article 51 for the first time); Chargé d’Affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the U.N., Letter dated Apr. 9, 1982 from the Chargé d’Affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Ireland to the United Nations addressed to the President of the Security Council, U.N. Doc. S/14963 (Apr. 10, 1982) (invoking Article 51 for the first time).}

\textbf{Chart 5. Article 51 Communications}

\begin{center}
\includegraphics[width=0.5\textwidth]{chart5.png}
\end{center}
Given the frequent resort to self-defense as a justification, the relative rarity of Article 51 references merits analysis. In the Nicaragua case, the International Court of Justice (ICJ) considered whether an Article 51 declaration is required for a state to advance a self-defense claim. There, the United States did not make an Article 51 declaration regarding its military activities against the Nicaraguan regime. Still, the United States claimed that its efforts against the Nicaraguan government were an exercise in collective self-defense. The ICJ majority concluded that a declaration was indicative although not dispositive of a self-defense claim.97 The Council itself has never required states to file these declarations or suggested that doing so materially affects a state’s claims. One commentator has summarized existing practice this way:

[C]ustomary practice generally supports the view that . . . failure to report does not automatically bar the invocation of self-defence . . . . [T]here do not appear to be any statements in the practice of the Security Council whereby States have claimed that the actions undertaken were unlawful merely because of the absence of a report, and that, conversely, States have sometimes supported the legality of unilateral interventions that were not reported to the Council.98

Given this permissiveness regarding declarations, states may see little benefit to filing formal Article 51 notifications. States also may perceive potential downsides to doing so. For example, the Bosnian communications suggest that a state could perceive a declaration as an escalatory step. As Bosnian diplomats made clear, a formal Article 51 declaration implicitly invites other states to come to the attacked state’s defense99—an implication that could antagonize Council members intent on avoiding an escalation of the conflict.

A formal notification also could prompt an undesirable rebuttal from the Council. The language of Article 51 provides that the Council may effectively revoke a state’s self-defense privileges. Implicit in the provision “is the notion that the reporting of measures

97. Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. Rep. 14, 105, ¶ 200 (June 27) (noting “the absence of a report may be one of the factors indicating whether the State in question was itself convinced that it was acting in self-defence”). The dissenting opinion of Judge Schwebel in that case argued that the reporting requirement was procedural in nature and that failure to report could not undermine the substantive right of self-defense. Id. at 374–76 (Schwebel, J., dissenting).
99. See supra note 95.
would normally be a prelude to action of some sort by the Security Council that would bring to an end the need for the State . . . to continue to exercise its right of self-defence.” The possibility, albeit remote, that reference to Article 51 might trigger the Council to issue a statement declaring that right extinguished may encourage states to make their self-defense arguments in more general terms. Whatever the calculation of states regarding their use of Article 51, the evidence considered here does not suggest a notable change over time in the use of the provision.

C. Jus in Bello

Hypothesis 3 was that states would reference jus in bello considerations more in the post-Cold War period, as attention to international humanitarian law and international criminal justice increased. I evaluate below whether the evidence supports that hypothesis.

Throughout the period examined, states have brought to the Council’s attention alleged violations of the law of armed conflict. Parties failed to mention jus in bello considerations in only three of the conflicts examined: the Libya-Chad conflict of 1979, the Falklands conflict of 1982, and the India-Pakistan Kargil conflict of 1999. Aside from those conflicts, the suffering of civilians has been a persistent focus of communications referencing in bello concerns.  

---


periodically, states have informed the Council about other elements of
the *jus in bello*, including mistreatment of prisoners of war or the use
of prohibited weapons. However, concerns over the mistreatment
of prisoners and the use of prohibited weapons have been much less
frequent than references to civilian casualties. This emphasis on ci-
vilians likely reflects both the reality of combat and a judgment that
civilian casualties will generate more international outrage than vi-o-
lations of *jus in bello*.

Overall, state reference to all forms of *jus in bello* considera-
tions has become only slightly more common in the last twenty-five
years. During the Cold War, forty-two percent of communications
referenced *in bello* concerns. After 1990, slightly more than fifty
percent did so. This increase offers limited support for the hypoth-
esis that states would emphasize *jus in bello* considerations more in
the post-Cold War era.

Permanent Rep. of Cambodia to the U.N., Letter dated Apr. 27, 1970 from the Permanent
Rep. of Cambodia to the United Nations addressed to the President of the Security Council,
repeated violations against civilian lives and property during the Iraqi invasion of 1990. See,
*e.g.*, Permanent Rep. of Kuwait to the U.N., Letter dated Sept. 8, 1990 from the Permanent
from the Permanent Rep. of Kuwait to the United Nations addressed to the Secretary-
countries, Azerbaijan forwarded to the Council a long document outlining alleged Armenian
abuses against civilian populations. See Permanent Rep. of Azerbaijan to the U.N., Identical
letters dated June 11, 1992 from the Permanent Rep. of Azerbaijan to the U.N. addressed
respectively to Secretary-General and the President of the Security Council, U.N. Doc.
S/24103 (June 16, 1992).

103. Both sides during the 1967 and 1973 Middle East conflicts alleged mistreatment of
soldiers taken captive by adversary states. See, *e.g.*, Permanent Rep. of Israel to the U.N.,
addressed to the Secretary-General, U.N. Doc. S/11060 (Oct. 29, 1973); Deputy Minister for
Minister for Foreign Affairs of the Syrian Arab Republic addressed to the Secretary-General,

104. These totals were percentages of all communications considered in this study,
including those that referenced *jus in bello* factors.
D. Posture Toward the Council

Chart 6. Posture Toward Security Council

Most communications to Council members aim to inform the Council, rather than seek particular action by the body. Relatively few communications to the Council have responded directly to Council action or requested Council meetings or specific action. In all, about a third of communications directly considered, responded to, or sought additional Council action. In the post-Cold War period, communications began to reference Council activity or seek Council action more frequently. During the Cold War, 25.5 percent of communications referenced or sought Council action; in the post-Cold War period, that portion increased to 35.6 percent of communications. This increase makes sense given how much more frequent Council meetings and consultations have become in the post-Cold War period; states involved in conflict have a greater incentive to influence the Council’s much more frequent deliberations.

A small number of communications both during the Cold War period and afterward expressed direct resistance to Council action or criticism of the Council.105 Though these occasional expressions of

105. Notable examples include Kuwait’s rejection of a Security Council ceasefire resolution during the 1967 Middle East conflict for failing to adequately defend the right of Palestinians. “I am sorry to inform you,” Kuwait’s foreign affairs minister cabled the Secretary General, “that [the] Government of Kuwait will not observe nor adhere to these resolutions which do not condemn the Israeli aggressors.” Minister of Foreign Affairs of Kuwait, Cable dated June 8, 1967 from the Minister of Foreign Affairs of Kuwait to the
frustration with the Council are notable, the data do not produce discernible patterns regarding the frequency of these expressions. The rarity of such frontal assaults on the Council suggests that few states view them as an effective means of securing a better outcome.

CONCLUSION

This Article advanced three hypotheses regarding state communications. First, that state communications would become more frequent and more substantive in the post-Cold War period. Second, that state *jus ad bellum* justifications would become more diverse, in particular given the post-Cold War attention to humanitarian concerns, democratic governance, and the threat of violent non-state actors. Finally, in the light of major advances in international criminal law, it was anticipated that communications would reflect greater emphasis on *jus in bello* considerations.

The evidence presented here offers very limited support for

these hypotheses. States have referenced the Council and its work more often in their post-Cold War communications, but states have not communicated more frequently during this period. States’ *jus ad bellum* justifications have relied more on U.N. authorization than in the past (mostly in the Iraq context), and, over time, states have more often denied involvement in complex internal conflicts. But there is no evidence that more ambitious *ad bellum* justifications have increased significantly. *Jus in bello* concerns have always been a feature of state communications and they have become only slightly more common in the post-Cold War period. The broad picture of state communications that emerges is more one of stasis than of change, both in terms of frequency and substance.

These findings have several potential implications. For the Security Council, the evidence that states in conflict pay little more heed to the Council than in the past raises the question of whether the expanded political flexibility of the post-Cold War period has actually changed the Council’s ability to deal with conflicts that pit states against each other. It is important to consider that the sharp increase in overall Council activity may be primarily a function of its activities related to internal conflict. Given the limited evidence presented here, this conclusion can only be tentative, but it suggests a potentially fruitful avenue for future research.

The continued preeminence of self-defense—and the failure thus far of states to regularly advance competing justifications—can be viewed in several ways. Placed in the most positive light, the continued use of the self-defense justification emphasizes the enduring power of the U.N. Charter’s basic prohibition on the use of force. The evidence suggests that states do not believe that broad exceptions to that prohibition are viable as justifications; the often-energetic debate among commentators about alternative justifications has not taken hold with states themselves.

A darker interpretation is possible as well. In the years since the Charter system came into effect, states have proven adept at advancing audaciously broad interpretations of self-defense. The Security Council almost always has avoided rebutting those self-defense claims directly and has shied away from identifying states that initiate interstate conflict as aggressors. In this indulgent atmosphere, states may see little benefit in straying far from the familiar—and very accommodating—ground of self-defense.