

2.2 Political negotiation, persuasion and the use of force

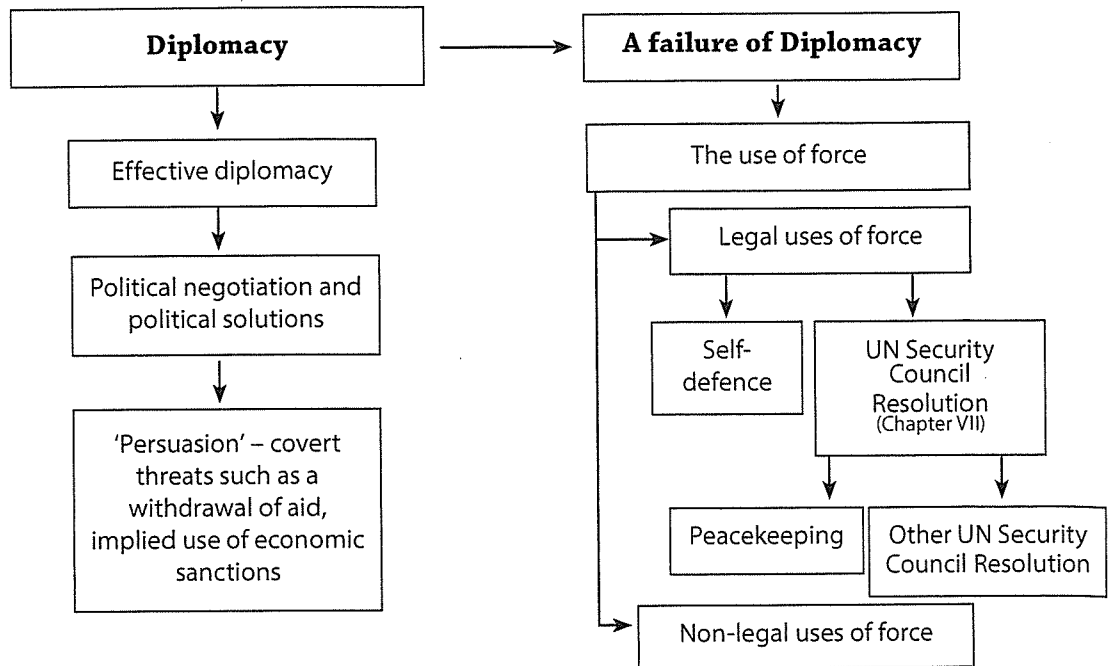


Figure 9 Diplomacy and the use of force

Diplomacy: refers to government-to-government negotiations which may be conducted by ministers, government officials such as ambassadors and embassy staff, as well as high level public officials. Diplomacy is formal and institutionalised by representation by ambassadors acting through permanent embassies (or ‘missions or ‘foreign missions’’). An **ambassador** represents their government’s interests within the jurisdiction of another nation State.

Political negotiation

Diplomacy and diplomatic relations characterise a large proportion of the government-to-government negotiation. Political negotiation will involve attempting to resolve conflict through communication, which may involve mediation and conciliation, before it escalates to the point of armed conflict (‘war’).

Persuasion

This refers to actions designed by one government to convince other government(s) to uphold international laws and agreements. Such actions may include threats, overt or covert, of economic, sporting or other sanctions such as a withdrawal of foreign aid. Persuasion may be initiated at a government-to-government level with direct negotiation or at a lower diplomatic level.

World In Order 14 World Politics and Diplomacy

Traditional diplomacy was bilateral and secretive. Procedural rules in negotiation were called diplomatic protocols and whilst they helped to smooth international relations, did not prevent the outbreak of WWI. New diplomacy is much more open and accountable. It includes not only the nation States involved but the international community through regional intergovernmental groups and NGOs as well. The avoidance of war (armed conflict) is the new priority. Thus diplomats now have far less autonomy than they used to have.

Conflict

Cooperation

Diplomacy encouraging communication, mediation

Armed conflict (War)

Peace

Adapted from B. White, *Diplomacy*, in *The globalisation of World Politics*, 2001, OUP, 2nd Edition, p 318–329

When diplomacy fails: Force

The UN Charter prohibits the use of force by one State upon another except in circumstances of self-defence. Thus nation States do not have an international legal right to attack other nation States. As an ideal this sounds noble, but it also restricts the use of force by third party States to assist/intervene in a conflict. Thus when a government is violently oppressing a minority group or arming violent militia groups (as happened in the Darfur region of Sudan throughout August and September 2004) the UN is very limited in its ability to intervene and protect the oppressed.

World In Wonder 9 What is force...?

"You can do a lot with diplomacy, but with diplomacy backed up by force you can get a lot more done."

Kofi Annan

The threat of use of force is a part of the UN's diplomacy. In Chapter VII, Article 39 of the UN Charter it states that the existence of any threat to peace...shall enable the Security Council to make recommendations, or decide what measures shall be taken, in order to maintain or restore international peace and security. Customary international law before the 20th Century did not prohibit the use of force. The first restriction on the use of force was articulated in 1928 in the General Treaty on the Renunciation of War. This Treaty was replaced by Article 2(4) of the UN Charter which states:

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

This covers all uses of force and threats of force. But what is force? It clearly includes military might. Does it also include economic force (ie economic sanctions and trade embargoes) and other forms of political pressure? How much coercion? How much of a threat of force is coercion?

Sources: J. Craig Barker, *International law and international relations*, Continuum Publishers, 2000; and B. Clarke, *International Law*, Lawbook Co, 2003

World in Wonder 10 Pre-emptive strikes and self-defence

The use of force for self-defence has been considered as lawful under customary international law for many years. But when can self-defence be applied? Must it always be after an attack has occurred or can it be pre-emptive (that is, can force be applied by a nation that has NOT yet been actually attacked)? Key considerations are:

- Whether an armed attack has occurred
- A response proportional to threats applied
- Whether the response would be a retribution rather than an act of self-defence

Pre-emptive strikes have been used by States in the past who claim them as legitimate forms of self-defence: Israel's use of force in the 6 Day War of 1967, USA's invasion of Iraq in 2003 are examples. The UN soldiers ('Blue Helmets') may use force in specific conditions during peacekeeping operations (PKOs).

Adapted from B. Clarke, *International Law*, Lawbook Co, Australia, 2003

Legal uses of force

Legal uses of force include:

- Self-defence
- UN peace enforcing and peacekeeping operations (PKOs)
- UN Security Council authority, including the authority to combat terrorism

As was discussed earlier, force can only be used in self-defence not in reprisal or revenge. This right is recognised in the UN Charter. Self-defence may or may not mean that a nation may justify the use of force pre-emptively. Thus, self-defence may be applied if a threat is real enough (for example, the amassing of troops along the border with a neighbouring State, coupled with verbal threats against that state). UN peacekeepers may also legally use force in the maintenance and enforcement of peace. Furthermore, the UN Charter – Chapter VII – also allows the use of force if the Security Council authorises it.

Sometimes it can be quite difficult to assess whether a nation is using actual force or is threatening through intimidatory behaviour such as performing military exercises close to a neighbouring country. The following types of activities can be deemed to be highly provocative to nearby nations:

- The placing of troops along a border
- The scientific practice of launching missiles and testing their range and power. This is especially intimidating if the missiles have a range capable of hitting nations geographically distant and against which verbal threats have been made. For example, Iran will test high powered rockets which are capable of reaching Israel after the President of Iran, Mr. Ahmadinejad has strongly condemned the existence of the nation of Israel. North Korea also uses this tactic (see below).
- The development or purchase of very powerful weaponry. This can include the development of nuclear capacity (India, Pakistan and Iran) or the purchase of very advanced weaponry.

The relationship between North and South Korea is instructive in regards to the threat and use of force. The North, called the Democratic People's Republic of Korea (DPRK) is communist whilst the South which is democratic is called the Republic of Korea (ROK).

Case Study North and South Korea: A history of violence

North and South Korea engaged in war in the years 1950–53. In 1953 an armistice was signed. An armistice is a mutual agreement to halt fighting between the parties. Having not signed a treaty, the two nations (communist North and democratic South) are still technically at war. During the war hundreds of thousands of people died and since it ended in 1953 there has been a history of tension, violent skirmishes and aggression between the nations. For example:

- In January 1968, a team of North Korean commandos crossed the demilitarised zone (DMZ) – one of the world's most heavily militarised areas – in an attempt to kill Park Chung-hee, the South Korean president. The 31 commandos, disguised as South Korean soldiers, were stopped 800 metres from the Blue House, the official presidential residence, by a police contingent. The North Koreans gave themselves away with their nervous replies, then shooting broke out. Only two of the 31 commandos escaped; the rest were tracked down and killed. In response, Seoul reportedly organised its own assassination squad, Unit 684, which was disbanded in 1971.
- In another incident, in 1968, 130 commandos from the North landed on the north-east shore of the South, allegedly to wage a guerrilla war against Seoul. A total of 110 to 113 were killed, seven were captured, and 13 escaped.
- A second attempt was made to assassinate Park in 1974 as he delivered a speech in the national theatre during a ceremony to celebrate the end of Japanese colonial rule. A suspected North Korean agent fired a gun at Park from the front row. The bullets missed him, but his wife, Yuk Young-soo, was hit and died later in the day. Park continued his speech as his dying wife was carried from the stage.
- North Korea tried to decapitate the Seoul government once again in 1983, when President Chun Doo-hwan was on an official visit to Rangoon, Burma. He escaped, but 21 people were killed when a bomb exploded as presidential staff gathered for a wreath-laying to commemorate Aung San, one of the leaders of Burma's struggle for independence from Britain who was assassinated in 1947. He was the father of Aung San Suu Kyi. Among the dead in the 1983 bombing were the Korean foreign minister, Lee Bum Suk, and several other cabinet members. Chun was spared because his car had been delayed in traffic and was minutes from arriving at the memorial. In the aftermath, Burma suspended diplomatic relations with North Korea. China reprimanded Pyongyang in the State media and Chinese officials refused to meet or talk to North Korean officials for months afterward.
- In the 1990s and 2000s, numerous minor clashes on land and sea took place. In June 2002, naval clashes led to the deaths of four South Korean sailors and the sinking of a North Korean ship.
- In March 2010 a North Korean submarine was allegedly involved in the sinking of a South Korean warship.
- August every year – annual joint war games with South Korea and USA take place.

Source: Mark Tran, <http://www.guardian.co.uk/world/2010/may/20/korea-assassination-attempts-clashes-standoffs>; accessed on 25.08.2010

Non-legal uses of force

Non-legal uses of force between nation States include:

- Actions taken in revenge
- Actions taken outside of the forum of the UN
- Pre-emptive actions taken when there is no real threat

World in Order 15 A special case – Humanitarian Intervention

There is an emerging right in international law: the right of humanitarian intervention. At present if the UN Security Council passes a UN Resolution in favour of such intervention then it is allowed. But the emerging right relates to whether single nations and groups can intervene outside of the forum of the UN. The 2003 US led invasion in Iraq was justified by the USA on humanitarian grounds following a failure to find Weapons of Mass Destruction (WMD). It has since emerged that there were no WMDs.

In 1979 Tanzania invaded Uganda and overthrew Idi Amin, a dictator who engaged in brutal practices including cannibalism and mass murder. The world did not condemn the actions of Tanzania because it stopped serious human rights violations from occurring.

The Principle of the Responsibility to Protect (R2P) has emerged from this emerging body of law relating to human rights protections.

Adapted from: B. Clarke, International Law, Lawbook Co, Australia, 2003, pp163–164

Review Activities – Political negotiation, persuasion and the use of force

1. Define the terms diplomacy, political negotiation and persuasion.
2. What is force?
3. Outline how a nation may intimidate another nation without actually using force.
4. State the THREE (3) circumstances in which force can be used legally.
5. With reference to examples, distinguish between legal and non-legal uses of force.
6. Briefly describe the relationship between North and South Korea.
7. Research and explain the role of the Ulchi war games conducted by USA and South Korea annually.
8. Why might China be concerned with USA's involvement in war games off its coastline?
9. List 3 (THREE) non-legal uses of force.
10. Explain why humanitarian intervention may be a justification for breaching state sovereignty.

Chapter Summary – Responses to World Order

- There are different responses to world order. Central to the responses is needing to manage issues of State sovereignty arising from the principle of the nation State.
- The implications of State sovereignty are that a nation is its own highest legal authority, all nations are equal under the law, all nations have a right to govern and manage their own domestic affairs, no country may invade or pierce the territorial integrity of another nation and no nation may impose its values or laws upon another.
- A State is defined under the *Montevideo Convention* 1934 and is central to an understanding of the equality between states and the threshold for self determination to successfully lead to statehood.
- The UN recognises the sovereignty and sovereign equality of all of its 193 members.
- State sovereignty can assist in the implementation of world order but can also act as an impediment to it.
- There are very specific circumstances under international law when the question of sovereignty may be challenged. If there are extremely grave breaches of human rights, as evidenced by genocide, then the international community may be prepared to set aside sovereignty in order to protect people from harm.
- The United Nations (UN) has three main decision-making bodies: the General Assembly (193 members each with one vote), the Security Council (5 permanent members and 10 non-permanent members. The permanent members have veto powers) and the ICJ (the judicial arm).
- The main administrative bodies of the UN are the Economic and Social Council (ECOSOC) and the Secretariat.
- Other significant UN bodies include UNDP, UNEP, UNICEF, IMF, UNHCR and the UNHRC.
- The UN, through Chapter VII Resolutions under the UN Charter, allows the Security Council to intervene in states when there are threats to the peace, breaches of the peace or acts of aggression. Peacekeeping operations (PKOs) are a form of intervention that can be authorised by the UN Security Council.
- Nations create international instruments such as statements, declarations and treaties.
- Non-binding statements and declarations are 'soft law' whereas treaties which can be ratified by the nation state are 'hard law'.
- International customary law is a very strong law as it is based on consensus and the idea that nations abide by the law because they believe that the practices are appropriate and, further, accept that breaches should attract a sanction. The Geneva Conventions and international maritime law are examples of customary international law.
- State sovereignty can be an impediment to international instruments as nation states can opt not to follow international treaties and declarations.

- There are SIX (6) international courts: the UN court – the International Court of Justice (ICJ), the independent International Criminal Court, ICC and FOUR (4) regional courts: the European Court of Justice, the European Court of Human Rights, the Inter-American Court and the African Court of Human and Peoples' Rights.
- 66 out of 193 UN member nations accept the compulsory jurisdiction of the ICJ.
- 121 nations have ratified the Rome Statute and therefore accept the jurisdiction of the ICC – however the USA, Israel, Russia and China are notable exceptions.
- Apart from permanent courts there are non-permanent international tribunals, called ad hoc tribunals. These tribunals are constituted for the special purpose of hearing issues arising from regional disputes. Such issues include genocide, war crimes and crimes against humanity. Examples of the ad hoc tribunals include the International Criminal Tribunal of Yugoslavia (ICTY), the International Criminal Tribunal of Rwanda (ICTR) and the Extraordinary Chambers in the Courts of Cambodia (ECCC).
- Intergovernmental organisations (IGOs) are alliances of nations that align on the basis of common political, military, and/or economic interest. Examples include the North Atlantic Treaty Organisation (NATO), the European Union (EU), the Organisation of American States (OAS), the African Union (AU), the Council of Europe (COE) and the Organisation for Security and Co-operation in Europe (OSCE).
- Non-government organisations (NGOs) are specialist interest-based groups that are independent of government and seek to raise awareness of, and redress, particular issues. Examples include Human Rights Watch, Amnesty International, Medecins Sans Frontieres (MSF) and Reporters Without Borders (RSF).
- Australia's federal government represents Australia at the UN and has a moral obligation to ratify the agreements it signs. However, the Australian Constitution and political pressures can act against this moral obligation. Thus, there can be inconsistency between the expectations the international community has of Australia and its behaviour.
- The media has TWO (2) primary roles with respect to world order: (1) informing the public about world order issues such as conflicts and human rights issues, and (2) investigating and raising awareness about human rights issues and world order matters.
- Diplomacy, or government-to-government negotiations involves a combination of dialogue and communication, political negotiation and persuasion. Many world order issues and conflicts can be resolved through effective diplomacy.
- Force can be used in solving disputes, however it can only be used legally: in self-defence or if proper authority is given by the UN Security Council. Non-legal uses of force include acts taken in revenge, acts not authorised by the UN and pre-emptive actions where there is no real threat.

Chapter Review Activities – Responses to World Order

1. Outline the importance of defining a State and articulating the need for State sovereignty.
2. Detail the role and importance of the UN.
3. Distinguish between declarations and treaties under international law.
4. With reference to an international declaration, examine the importance of these statements.
5. With reference to the Geneva Conventions detail the importance of treaty law.
6. Discuss the importance of the ICJ.
7. Explain the role and importance of the ICC.
8. Assess the importance of regional courts for the solving of regional problems and issues between the individual and the nation State.
9. Identify and summarise the activities of TWO (2) IGOs.
10. Assess the importance of NATO to global peace and security.
11. Identify and summarise the activities of TWO (2) NGOs.
12. Suggest how Australia's behaviour is exemplary of how State sovereignty can assist and also hinder world order.
13. Assess the role of the media in assisting to uphold world order agreements and commitments.
14. Assess the role of diplomacy and the use of force in international relations.

Thinking Activity 1

Discuss whether the United Nations is the best forum for the creation of world order agreements or whether increasing the importance of IGOs would be a preferable option. In your answer discuss the limitations of the UN, including a reference to the Security Council and the permanent members with their veto powers.

Thinking Activity 2

Argue the case for a weakening of the principle of sovereignty in a range of situations and justify whether this would advance the cause of universal human rights protections or not. Justify your response with reference to the actions of particular nation States.