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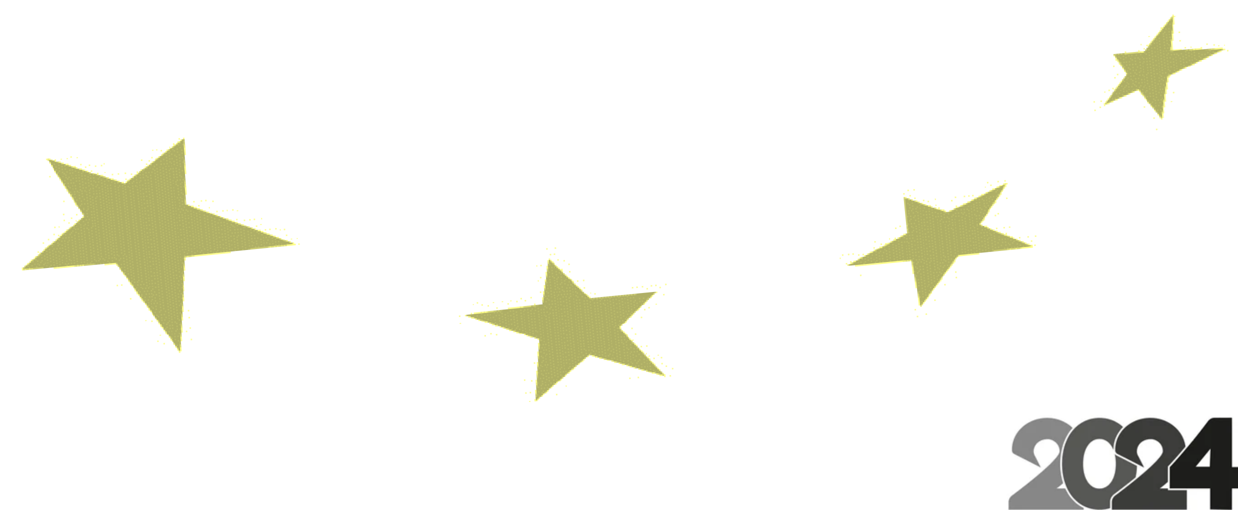

EU Law Journal

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in cooperation with
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Janko Jesenský Faculty of Law
Richterova 1171
925 21 Sládkovičovo, Slovak republic
Email: info@eulawjournal.eu

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Andreas Schultz & Dirk Buttler
Danubius University

Abstract

On July 22, 2010, the International Court of Justice (ICJ) presented its expert opinion on the independence of Kosovo and strictly adhered to the expert opinion question that had been posed to it by the UN General Assembly. In October 2008, the General Assembly, in its resolution 63/3, asked the ICJ for an opinion on the question: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?". The ICJ has answered exactly this question with feeble words. It's not difficult to agree with his conclusions, because the ICJ hardly says anything new in substance.

Key words

ICJ, Kosovo, Right of self-determination, UN

1. Introduction

The expert opinion question question was preceded by the unilateral declaration of independence by the southern Serbian province of Kosovo on February 17, 2008. The region, inhabited by a majority of Albanians, has been under United Nations administration since the end of the Kosovo War in 1999 under UN Security Council Resolution S/RES/1244 (1999). The resolution established a system of shared sovereignty between the UN and Yugoslavia/Serbia. Yugoslavia retained control over the borders of its national territory, but otherwise had to withdraw all armed forces and paramilitaries from Kosovo and implement an "effective international civil and security presences, acting under Chapter VII of the [United Nations] Charter […]".

With regard to the final status of Kosovo under international law, the resolution was status-neutral and deliberately kept open. In particular, no referendum on the future status was planned. The international administration should initiate a process of reconciliation and stabilization, which should at the same time take into account the principles of sovereignty and territorial integrity of Yugoslavia. An Assembly of Kosovo (Kuvendi i Kosovës/Assembly of Kosovo) was set up to exercise self-government under international supervision. Subsequently, the parties involved - Serbs and Kosovo Albanians - were unable to agree on a solution to the outstanding status question. A proposal to resolve the conflict was finally put forward in the spring of 2007 by the Ahtisaari Plan, which effectively proposed independence for Kosovo and gave the region with a high degree of subjectivity under international law and under international supervision. However, Serbia, which had succeeded Yugoslavia under international law, rejected the proposal.

Elections to the Assembly of Kosovo were held in November 2007, conducted by the UN administration under the existing UN mandate. The possible independence of Kosovo was also an important issue in the election campaign. However, voter turnout was less than 45%. After the final failure of the status negotiations with Serbia became apparent, the members of the assembly, with the exception of the Serbian representatives, declared Kosovo's independence from the Serbian mother state on February 17, 2008. In connection with the declaration of independence, important dogmatic questions of international law arise, namely the scope of state sovereignty, the right of self-determination of peoples, the legitimacy of the Assembly of Kosovo and the scope of the resolutions of the UN Security Council. The status of Kosovo under international law is still controversial today.[1]

Against this background, the ICJ had to decide on the expert opinion question submitted to it. In its report, the ICJ first explains in detail the problems on which it will not comment. According to the ICJ, the opinion question was formulated precisely and narrowly; it related solely to the legal admissibility of the Declaration of Independence as such. It therefore does not cover the question of what legal consequences this declaration has, in particular not whether Kosovo is a state and how the recognition of Kosovo as a state should be assessed under international law. The Court "does not consider that it is necessary to address such issues as whether or not the declaration has led to the creation of a State or the status of the acts of recognition in order to answer the question put by the General Assembly" (ICJ opinion, Point 51). The ICJ also refuses to answer at another crucial point. During the proceedings, the states involved partly raised the question of the Kosovar people's right to self-determination and a possible right to secession. The Court, however, makes it clear that in the present case

[1] HENRIKSEN, A. (2019): International Law, Second Edition, Oxford University Press, Oxford.

it is irrelevant whether the Kosovo Albanians had a right to their own state. He states that “it is entirely possible for a particular act – such as a unilateral declaration of independence – not to be in violation of international law without necessarily constituting the exercise of a right conferred by it. “The Court has been asked for an opinion on the first point, not the second” (ICJ opinion, Point 56).

2. The Court's considerations

After this interpretation of the expert opinion question, the ICJ first examines the compatibility of the Declaration of Independence with general international law. The ICJ comes to the conclusion that there is no prohibition under international law that prohibits the making of declarations of independence. The declaration of independence by a local independence movement does not violate the requirement of mutual respect for territorial integrity, as this only applies between states.[2]

The ICJ then turns to the question of whether the declaration violated the special legal regime established for Kosovo by UN Security Council Resolution 1244 (1999). The UN presence in Kosovo is based on this resolution, even though many of its tasks have been transferred to the European EULEX mission. Of central importance for the legal assessment is the observation that the resolution was not intended to bring about a final settlement of the Kosovo question; rather, the resolution leaves open the final status of Kosovo under international law and therefore does not prohibit a declaration of independence. The declaration of independence is aimed at a final determination of the status of Kosovo. Although the ICJ recognizes that the resolution prohibits the self-governing bodies of Kosovo from deciding unilaterally on state independence for Kosovo, in its opinion the declarants did not act as bodies of the Kosovo transitional administration, but as representatives of the Kosovo people. For this reason, there was no obligation on the part of the UN special envoy in Kosovo to legally assess the declaration of independence and, if necessary, to cancel it.

3. The Court's assessment

The ICJ has thus answered the question submitted without going into the actual problems of the Kosovo question. The applicants themselves created the opportunity for this by formulating the expert opinion question without addressing the actual problem. Strictly following the principle of “ne ultra petita”, the ICJ was able to retreat to the position that the General Assembly had not submitted anything more to it for decision. As a footnote, it should be noted that the ICJ here follows the German statement to the ICJ from April 2009 on many points. However, what primarily interested the applicants and numerous observers of the process was the question of whether Kosovo became an independent state through the declaration of independence and whether the recognition of this state and the establishment of diplomatic relations with it were in accordance with international law.

It would have been extremely interesting in terms of international law if the ICJ had taken a position on the legal and factual conditions under which Kosovo can or could become a fully-fledged state in the sense of the three-element theory.[3] The question of how to react to such a declaration must be strictly distinguished from the question of the declaration of independence as such. The legal harmlessness of the Declaration of Independence does not mean that the recognition of independence by other states is in accordance with international law; on the contrary, too quick recognition regularly represents a legal violation. The Declaration of Independence itself does not lead to the creation of a state. Admittedly, recognition can have an indicative effect. For the founding of a state, however, it is crucial whether the entity in question has the three classic state elements: territory, people and effective state power.[4] Problematic in this context are Kosovo's high dependence on aid from the international community, which affects its effective independence, and the extremely low voter turnout in the elections to the Kosovo Assembly in autumn 2007. With regard to voter turnout, one can ask whether the assembly had the necessary legitimacy to issue a declaration of independence as an act of significant self-determination under international law. In the similar case of the independence referendum in Montenegro in 2006, the EU demanded that with a voter turnout of at least 50%, at least 55% of the votes cast must be in favor of independence.

This quorum was not achieved in Kosovo. Of course, the quotas specified by the EU do not represent binding customary international law, but at best provide indications of the degree of feedback from the authors of the declaration of independence to the Kosovar population as a subject of self-determination. Thirdly, a statement on the fundamental relationship between the right to self-determination on the one hand and the scope of the UN Security Council resolutions on the other would have been of great interest. We can asks, for example, whether extending the period of validity of Resolution 1244 (1999) would not contradict the jus cogens character of the peoples' right to self-determination. Here, too, the ICJ is clearly

[2] ČEPELKA, Č., ŠTURMA, P. (2008): Mezinárodní právo veřejné, 2. vydání, C.H.Beck, Praha.

[3] SEIDL - HOHENVELDEM, I. (2006): Mezinárodní právo veřejné, 3. vydání, ASPI, Praha.

[4] MRÁZ, S. - POREDOŠ, F. - VRŠANSKÝ, P. (2003): Medzinárodné verejné právo, VO PF UK, Bratislava.

showing reticence. However, the ICJ silence is only consistent because, in order to answer the question of the report, it was not important to determine at what point the right of self-determination of the Kosovar population could potentially conflict with the application of Resolution 1244 (1999) and how such a priority of the right to self-determination could be dogmatically derived.

Instead of addressing the difficult areas of international law dogma that were indicated, the question itself only referred to an upstream problem, namely the formalistic question of the admissibility of the unilateral declaration of independence. The ICJ would certainly have been free to isolate the actually interesting problems mentioned from this question. This would have been in line with his practice in previous expert reports. In the present case, however, the Court was particularly cautious and its narrow interpretation of the question ultimately suits those members who had advocated rejecting the submission of an expert opinion entirely. According to Article 65 paragraph 1 of the ICJ Statute, the Court is not obliged to issue an opinion ("may"/"peut"). In cases of highly political disputes, the ICJ has the opportunity to completely refuse to answer a question from an expert opinion. Even though the Court has never rejected the submission of an expert opinion in its previous practice and also emphasizes in the present decision that a rejection is usually only considered if there are "compelling reasons" for this, it still has a wide scope for decision-making. No other than the Court itself can say when the ICJ considers a reason to be compelling ("compelling"); its prerogative assessment cannot be further verified. In the present case, five judges advocated using the option of rejection. Four of them each set out their reasons for this in separate statements on the expert opinion decision. In it they point out the political dimension of the opinion question, which arises from the fact that, in addition to the ICJ as the UN's main judicial body,[5] the Security Council is still concerned with the Kosovo question. It is very questionable whether a broad interpretation of the expert opinion question would have been acceptable to a majority within the panel of judges. The formalization and narrowing of the report question was probably a necessary compromise within the college in the political area of tension highlighted. However, it is welcome that the ICJ has repeatedly and clearly acknowledged that the General Assembly was allowed to request the report in parallel with the work of the Security Council on the Kosovo question (ICJ opintion, Point 24).

The ICJ essentially provides nothing new on the question, which it narrowly understands in the way described. This is not surprising, since the answer to this question has hardly been controversial in international law. Even before Kosovo's declaration of independence, it was clear under international law that a declaration of independence as such, apart from individual historical exceptions, could not be contrary to international law. The ICJ's finding boils down to the following: Anyone can make a declaration of independence at any time and any place; international law is initially not interested in this. The only peculiarity of the case lies in the provisional settlement of the status of Kosovo by Resolution 1244 (1999). Only in this respect does the report contain anything really interesting about the status of Kosovo:

First, the ICJ has determined that the resolution does not preclude Kosovo's independence. This statement must be agreed against the background of the explicit open status of the resolution. This does not stand in the way of the fact that the resolution underlines the principles of sovereignty and territorial integrity of Serbia, because according to its wording, both principles should only be sufficiently taken into account when resolving the Kosovo question, but do not have mandatory priority.

Second, Resolution 1244 (1999) continues to apply to Kosovo today and has not been eliminated by the Declaration of Independence - the authors of the Declaration of Independence also recognize this by expressly stating that the Declaration is "in full accordance with the recommendations of UN Special Envoy Martti Ahtisaari and his Comprehensive Proposal for the Kosovo Status Settlement." Kosovo is therefore, if at all, not a fully sovereign state. Although the resolution only intended to create a transitional order, it can only be repealed in the future by the UN Security Council - regardless of the question of how Kosovo currently qualifies under international law. The attempt to force a final solution to the conflict through the unilateral declaration of independence ultimately failed. This will remain a permanent obstacle to effective state independence for Kosovo, as Resolution 1244 (1999) is automatically extended, so that cessation of the UNMIK/EULEX mission would require Russia's consent in the Security Council. However, even after the judge's ruling, such a situation is unlikely. Accordingly, the Organization for Security and Co-operation in Europe (OSCE), which also has a mission in Kosovo, stated immediately after the report was submitted that it had taken note of the report but wanted to continue its mission in Kosovo as before.

4. Conclusion

By not addressing all the other problems that many observers had hoped would be clarified, the ICJ ultimately not only avoids a concrete answer to the status of Kosovo under international law, but also does not allow any conclusions to be drawn for similar conflict situations, be it in Abkhazia, Northern Cyprus or Transnistria. In this way, the ICJ avoids the risk that Kosovo will become a precedent for secessionist movements sanctioned by the highest court. International law experts and political observers, it

[5] THIRLWAY, H. (2016): The International Court of Justice, Oxford University Press, Oxford.

may seem, are disappointed and concerned, seeing the curtain closed and all questions open. The ICJ hints, raises problems, points to follow-up questions, but it hardly gives any real answers. Perhaps one of the strengths of the decision lies in its restraint.

5. Literature summary

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National competition authority may determine violation of the GDPR

Rastislav Funta & Michal Ďuriš
Danubius University

Abstract

The German Federal Cartel Office has received approval from the European Court of Justice (ECJ) to ban data linking between Facebook (now Meta), WhatsApp and Instagram. According to the ECJ ruling of July 4, 2023 (C-252/21), competition authorities may also take data protection measures into account, provided they do not contradict the decisions of the data protection authority. According to the ruling, personalized advertising does not justify extensive data processing. Despite Meta's arguments that users provide their data voluntarily and the extensive processing of this data is necessary to finance its services through personalized advertising, the ECJ confirmed the German Federal Cartel Office's actions. The ECJ ruled that national competition authorities may take data protection into account and identify violations of the General Data Protection Regulation (GDPR).

Key words

ECJ, GDPR, National competition authority

1. Introduction: Meta loses before the ECJ – National Competition Authority can determine a violation of the GDPR

In its ruling of July 4, 2023 (Case C-252/21), the European Court of Justice (ECJ) determined that a national competition authority can rely on the General Data Protection Regulation (GDPR) in its review.[1] However, this is only permissible to justify the abuse of a dominant market position and to adopt relevant measures. In the judgment, the ECJ also set out rules on how the competition authority must cooperate with the data protection supervisory authority in this review. In addition, the ECJ has taken a position on whether data processing by Facebook also involves particularly sensitive data and whether all data collected can be justified under the requirements of the GDPR. Most recently, the ECJ specified whether and to what extent effective consent from users is possible when taking Facebook's dominant market position into account.

2. Key facts of the case

The judgment has its origins in a legal dispute between the German Federal Cartel Office on the one hand and Meta Platforms Inc. (formerly Facebook Inc.), Meta Platforms Ireland Ltd (Meta – formerly Facebook Ireland Ltd) and Facebook Deutschland GmbH on the other.

Meta is the operator of the social network Facebook. The Meta Group also includes other online services such as WhatsApp, Oculus and Instagram.

The main basis of Facebook's business model is financing through advertising. The advertising displayed to each user is individualized based on their interests, life situation and consumer behavior. For this purpose, on the one hand, the data that a user provides when registering and, on the other hand, other user and device-related data are collected inside and outside of Facebook and the other online services provided by the Meta Group and linked to the respective user profile. For this data processing, Facebook relies on the user agreement concluded between the user and Facebook when registering, whereby the user must agree to the general terms of use and thus also the guidelines for the use of data and cookies for registration. According to this, Meta collects user and device-related data about the user's activity inside and outside of Facebook and assigns it to the respective user profile. Data about activities outside of Facebook itself, so-called off-Facebook data, is, on the one hand, data about access to third-party websites, as well as, on the other hand, data about the use of the Meta Group's other services.

The German Federal Cartel Office prohibited the company from making the use of Facebook by users living in Germany dependent on the processing of off-Facebook data and from processing it without consent. It also obliged the companies to adapt the terms of use so that it was clear that the data in question would not be collected and linked to their user account without the user's consent. As justification, the German Federal Cartel Office stated that the previous processing practice represented an abusive exploitation of the company's dominant position on the market for social networks for private users.[2] The general terms of use are also abusive as a result of the

[1] HUDECOVÁ, I. – CYPRICHOVÁ, A. – MAKATURA, I. a kol. (2018): Nariadenie o ochrane fyzických osôb pri spracúvaní osobných údajov – Veľký komentár. Eurokódex, Bratislava.

[2] SVANTESSON, D. J. (2015): The (Uncertain) Future of Online Data Privacy. In: Masaryk University Journal of Law and Technology, Issue 2.

dominant position because the use of the off-Facebook data is not in accordance with the GDPR and is not justified under Article 6 Paragraph 1 and Article 9 Paragraph 2 of the GDPR. The Düsseldorf Higher Regional Court referred the issue to the ECJ by way of a preliminary ruling procedure[3] with the following questions: „(1)(a) Is it compatible with Article 51 et seq. of the GDPR if a national competition authority – such as the Federal Cartel Office – which is not a supervisory authority within the meaning of Article 51 et seq. of the GDPR, of a Member State in which an undertaking established outside the European Union has an establishment that provides the main establishment of that undertaking – which is located in another Member State and has sole responsibility for processing personal data for the entire territory of the European Union – with advertising, communication and public relations support, finds, for the purposes of monitoring abuses of competition law, that the main establishment's contractual terms relating to data processing and their implementation breach the GDPR and issues an order to end that breach? (b) If so: is that compatible with Article 4(3) TEU if, at the same time, the lead supervisory authority in the Member State in which the main establishment, within the meaning of Article 56(1) of the GDPR, is located is investigating the undertaking's contractual terms relating to data processing? If the answer to Question 1 is yes: (2)(a) If an internet user merely visits websites or apps to which the criteria of Article 9(1) of the GDPR relate, such as flirting apps, gay dating sites, political party websites or health-related websites, or also enters information into them, for example when registering or when placing orders, and another undertaking, such as Facebook Ireland, uses interfaces integrated into those websites and apps, such as 'Facebook Business Tools', or cookies or similar storage technologies placed on the internet user's computer or mobile device, to collect data about those visits to the websites and apps and the information entered by the user, and links those data with the data from the user's [Facebook] account and uses them, does this collection and/or linking and/or use involve the processing of sensitive [personal] data for the purpose of that provision? (b) If so: does visiting those websites or apps and/or entering information and/or clicking or tapping on the buttons integrated into them by a provider such as Facebook Ireland (social plugins such as 'Like', 'Share' or 'Facebook Login' or 'Account Kit') constitute manifestly making the data about the visits themselves and/or the information entered by the user public within the meaning of Article 9(2)(e) of the GDPR? (3) Can an undertaking, such as Facebook Ireland, which operates a digital social network funded by advertising and offers personalised content and advertising, network security, product improvement and continuous, seamless use of all of its group products in its terms of service, justify collecting data for these purposes from other group services and third-party websites and apps via integrated interfaces such as Facebook Business Tools, or via cookies or similar storage technologies placed on the internet user's computer or mobile device, linking those data with the user's [Facebook] account and using them, on the ground of necessity for the performance of the contract under Article 6(1)(b) of the GDPR or on the ground of the pursuit of legitimate interests under Article 6(1)(f) of the GDPR? (4) In those circumstances, can – the fact of users being underage, vis-à-vis the personalisation of content and advertising, product improvement, network security and non-marketing communications with the user; – the provision of measurements, analytics and other business services to enable advertisers, developers and other partners to evaluate and improve their services; – the provision of marketing communications to the user to enable the undertaking to improve its products and engage in direct marketing; – research and innovation [in the public interest], to further the state of the art or the academic understanding of important social issues and to affect society and the world in a positive way; – the sharing of information with law enforcement agencies and responding to legal requests in order to prevent, detect and prosecute criminal offences, unlawful use, breaches of the terms of service and policies and other harmful behaviour; also constitute legitimate interests within the meaning of Article 6(1)(f) of the GDPR if, for those purposes, the undertaking links data from other group services and from third-party websites and apps with the user's [Facebook] account via integrated interfaces such as Facebook Business Tools or via cookies or similar storage technologies placed on the internet user's computer or mobile device and uses those data? (5) In those circumstances, can collecting data from other group services and from third-party websites and apps via integrated interfaces such as Facebook Business Tools, or via cookies or similar storage technologies placed on the internet user's computer or mobile device, linking those data with the user's [Facebook] account and using them, or using data already collected and linked by other lawful means, also be justified under Article 6(1)(c), (d) and (e) of the GDPR in individual cases, for example to respond to a legitimate request for certain data (point (c)), to combat harmful behaviour and promote security (point (d)), to [conduct] research [in the public interest] and to promote safety, integrity and security (point (e))? (6) Can consent within the meaning of Article 6(1)(a) and Article 9(2)(a) of the GDPR be given effectively and, in accordance with Article 4(11) of the GDPR in particular, freely, to a dominant undertaking such as Facebook Ireland? If the answer to Question 1 is no: (7)(a) Can the national competition authority of a Member State, such as the Federal Cartel Office, which is not a supervisory authority within the meaning of Article 51 et seq. of the GDPR and which examines a breach by a dominant undertaking of the competition-law prohibition on abuse that is not a

[3] SVOBODA, P. (2011): Úvod do evropského práva. 4. vydání, C.H.Beck, Praha.

breach of the GDPR by that undertaking's data processing terms and their implementation, determine, when assessing the balance of interests, whether those data processing terms and their implementation comply with the GDPR? (b) If so: in the light of Article 4(3) TEU, does that also apply if the competent lead supervisory authority in accordance with Article 56(1) of the GDPR is investigating the undertaking's data processing terms at the same time? If the answer to Question 7 is yes, Questions 3 to 5 must be answered in relation to data from the use of the group's Instagram service."

3. Decision of the ECJ: The responsibility of the data protection supervisory authority remains

The ECJ stated that both Article 51 GDPR and Article 4 Paragraph 3 TEU should be understood in such a way that the competition authority of a member state can, when examining the abuse of a dominant market position,[4] take the circumstance into account in the assessment: that a company's terms of use relating to the processing of personal data violate the GDPR. However, this only applies to the extent that this is necessary to prove the abuse of a dominant market position.

In the event that the competition authority makes such findings, the ECJ is of the opinion that it will not replace the supervisory authorities responsible under the GDPR. The examination of conformity with the requirements of the GDPR is carried out solely for the purpose of determining the abuse of a dominant position and taking measures under competition law to eliminate this situation.

In principle, according to Article 55 (1) GDPR, the responsible supervisory authority is responsible for fulfilling the tasks assigned by the GDPR in the territory of the respective member state. The competition authority must therefore coordinate closely with the responsible supervisory authority.[5]

Furthermore, the Düsseldorf Higher Regional Court wanted to know whether Article 9 (1) GDPR should be interpreted to the sense that there is processing of special categories of personal data within the meaning of the GDPR, which is fundamentally prohibited under Article 9 (2) GDPR if a user websites or apps that are related to the categories mentioned in Article 9 (1) GDPR and, if necessary, enters data there and Facebook processes this in such a way that the data resulting from it are collected and linked to the respective user account. Special categories of personal data in this sense include: those that may reveal racial or ethnic origin, political opinions, religious beliefs or sexual orientation.

If this was the case, the referring court wanted to know whether Article 9 (2) lit. e) of the GDPR should be understood to mean that a user who accesses such third-party websites or apps enters data on these websites or apps or identified himself there using his Facebook login data, has obviously made this data public within the meaning of Art. 9 (2) lit. e) GDPR.

In this regard, the ECJ stated that special categories of personal data are processed if Facebook collects data in the above-mentioned manner that relates to one of the special categories from Art. 9 (1) GDPR. This is fundamentally inadmissible, subject to the exceptions provided for in Article 9 (2) GDPR. The national court must examine whether the data collected actually enables the disclosure of such information.[6]

With regard to the question of whether this processing of sensitive data could be admissible in exceptional cases under Article 9 (2) lit. e) GDPR, the ECJ has made it clear that the mere fact that a website is accessed provides such information can reveal, does not represent an obvious public disclosure within the meaning of the standard. This also applies if a user enters data or presses buttons there, unless he has previously expressly expressed that he wants to make this data publicly accessible. In this respect, however, the user must make an individual decision with full knowledge of the facts. In this respect, too, the national court must examine whether the users concerned have such an option.

4. Other legal bases

Based on this, the Düsseldorf Higher Regional Court also asked the question whether and under what conditions if other off-Facebook data were collected by Facebook, there could be justification in accordance with Article 6 (1) Letters b) lit. f) GDPR, because the processing is necessary for the performance of a contract or to safeguard the legitimate interests of the controller or a third party.

4.1. Performance of the contract

In this respect, the ECJ initially stated that the processing of personal data for the fulfillment of a contract is necessary within the meaning of Article 6 (1) lit. b) GDPR if it is objectively essential to achieve a purpose, the necessary element the contractual service intended for the data subject. The main subject matter of the contract cannot be fulfilled without the relevant processing. The fact that the processing is mentioned in the contract or is useful for the fulfillment is in itself irrelevant. What is more

[4] KARAS, V. - KRÁLIK, A. (2012): Právo Európskej únie. 1. vydanie, C.H.Beck, Bratislava.

[5] VALENTOVÁ, T. – BIRNSTEIN, M. – GOLAIS, J. (2018): GDPR / Všeobecné nariadenie o ochrane osobných údajov. Zákon o ochrane osobných údajov. Praktický komentár. Wolters Kluwer, Bratislava.

[6] MESARČÍK, M. (2018): Základné zásady spracúvania osobných údajov. In: Všeobecné nariadenie o ochrane osobných údajov. 1. vydanie, C.H.Beck, Praha.

important is that the processing of personal data is essential for the proper fulfillment of the contract and that there are no viable alternatives. As far as the personalization of the content is concerned, according to the ECJ's reasoning, this is helpful for the user because it enables the display of content that corresponds to his or her interests. However, this personalization is not necessary to offer a user the basic services of a social network. Such services could also be provided in their essential functional scope without any personalization. In this respect, this is not objectively essential in order to achieve a purpose that is a necessary part of the services.[7] Furthermore, the consistent and seamless use of the entire Meta product portfolio is not a consideration that can be justified under Article 6 (1) lit. b) GDPR. There is no obligation to register for the various services offered by the Meta Group in order to be able to set up a user account on Facebook. Rather, the products could be used independently. According to the ECJ, subject to review by the referring court, such processing of off-Facebook data is not necessary to enable the provision of Facebook's services.

4.2. Legitimate interests

In order to safeguard the legitimate interests of the controller or a third party within the meaning of Article 6 (1) lit. f) GDPR, processing is necessary according to the ECJ if three cumulative conditions are met. A legitimate interest in data processing must first be perceived, which must also be communicated to the users. Furthermore, the processing of the data must be necessary to achieve this interest and must take place within the limits of what is strictly necessary to achieve the interest. Finally, a balancing of the opposing interests, taking into account all relevant circumstances, must show that the interests, fundamental rights and freedoms[8] of the users do not outweigh the legitimate interests of the person responsible or a third party.[9]

4.3. Consent

Most recently, the Düsseldorf Higher Regional Court asked whether Article 6 (1) lit. a) and Article 9 (2) lit. a) of the GDPR should be understood as meaning that consent given by a Facebook user is deemed to be effective consent can be considered under the conditions of Art. 4 No. 11 GDPR. In particular, the question must be asked whether this consent can meet the voluntary criterion if the operator of the social network occupies a dominant position on the market.

According to the ECJ, a dominant market position does not fundamentally exclude the possibility of effective consent being given. However, it must be taken into account that this circumstance can affect the user's freedom of choice, as the user may not be able to refuse his consent without suffering disadvantages.[10] This imbalance also brings with it the risk of unilaterally imposing conditions for use that are not absolutely necessary. The user must have the freedom to refuse consent to certain data processing that is not essential for the fulfillment of the contract, without having to completely forgo using the social network. This means that an equivalent alternative that does not require such data processing must be offered, possibly for a reasonable fee. In order to make the extent of data processing clear to the user, it is necessary for effective consent to be given for data from the use of the social network itself on the one hand, as well as for off-Facebook data on the other.

5. Conclusion remarks

With the decision, the ECJ has strengthened the position of the German Federal Cartel Office as the acting competition authority vis-à-vis companies like Meta. The German Federal Cartel Office was allowed to base its decision on the requirements of the GDPR in order to justify that Meta was abusing its dominant market position. In order not to jeopardize the coherence of data protection law and the competence of the data protection supervisory authority, the competition authority should not be allowed to replace the supervisory authority. The competition authority should therefore only examine violations of the GDPR in order to determine the abuse of a dominant position in the market and to take appropriate measures. The competition authority should coordinate with the supervisory authority and work loyally with it. It may not deviate from a decision by the supervisory authority if this conduct, or a similar one, has already been the subject of a decision by the competent authority. With a view to a possible justification of the data processing in question under the requirements of the GDPR, the ECJ has not made any final decisions for the individual case, but has developed guidelines that are of practical relevance for all companies, not just the very large ones like Meta.

As expected, the ECJ ruled entirely in favor of the users. In addition to the competition law issues, there is also room for data protection arguments without questioning the responsibility of the data protection supervisory authorities.

The judgment is particularly interesting with regard to the assessment of the assumed voluntary nature of consent. The dominant market position of the platform

[7] KENNEDY, G. E. – PRABHU, L. S. P. (2017): Data Privacy Law: A Practical Guide. GK, New York.

[8] SVÁK, J. (2000): Zásady a tendencie v ochrane práva na súkromie. In: Justičná revue, č. 11. ROTENBERG, M. - SCOTT, J. - HORWITZ, J. (2015): Privacy in the modern age: The search for solutions. The New Press, New York.

[9] MATES, P. (2012): Právo na informace a ochrana osobních údajů. In: Jurisprudence, č. 1.

[10] GREGUŠOVÁ, D. - DULAK, A. - CHLIPALA, M. - SUSKO, B. (2005): Právo informačných a komunikačných technológií. Vydavateľské oddelenie STU, Bratislava.

also plays an important role in ensuring that users make a conscious decision. The wider the reach of a social network, the greater the psychological pressure on users to use the service “at any cost”.

All large social networks, which are in such an exposed position due to their number of members to be able to dictate the conditions for their use, achieve a similar effect. The social pressure to use precisely this channel for the greatest possible attention leads to an irresolvable power asymmetry between platform operators and users.

Not least because of this predicament of the users, the requirements for legal consent must be even higher. However, whether one can ever assume that this is voluntary under this premise remains an open question. Specific design options and requirements for such a voluntary decision are unclear. Ultimately, this is probably only conceivable via an alternative paid version.

Taking into account the ECJ's comments, the Düsseldorf Higher Regional Court must now decide the legal dispute. Even before the ECJ decision was published, the German Federal Cartel Office had informed that Meta and the Federal Cartel Office were in discussions about the implementation of the decision of February 2019. According to the German Federal Cartel Office, with the introduction of the account overview, Meta has already created “essential prerequisites” for this.

With this important ruling, the ECJ strengthens the position of the antitrust authorities vis-à-vis the digital economy, in which data is a crucial competitive factor. It makes clear that access to personal data and the possibility of their processing have become an important parameter of competition between companies in the digital economy. In particular, it shows that there are synergies between antitrust law and data protection law, which will lead to more frequent cooperation between the competition authority and the supervisory authority in the future.

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Legality of military counterterrorism in Afghanistan

Alexander Klein & Andreas Schultz
Danubius University

Abstract

In fact, one consequence of September 11, 2001 was that the world almost without exception sided with the USA, expressed compassion, sympathy and solidarity and offered help in the fight against international terrorism. At the same time, the USA seemed to discover multilateralism as a foreign policy principle and managed to gather a remarkable international coalition around itself. The aim of this article is to make an objective assessment of the events that followed September 11, 2001 and the possible effects on the UN system. As far as possible, international law and political aspects, which are usually treated separately in the relevant literature, should be brought together. The article shows that the military strikes against Al Qaeda and the Taliban are by no means on such secure ground under international law. Nevertheless, the international community's reactions to this were extremely uncritical and benevolent.

Key words

Afghanistan, Military counterterrorism, September 11, 2001

1. Introduction: Prohibition of violence and the right to self-defense in the United Nations Charter

One of the central achievements of the United Nations is the anchoring of the general prohibition of violence in its statutes. Today it is one of the fundamental rules of modern international law. Unlike the League of Nations Statute or the Briand Kellogg Pact, Article 2 No. 4 of the UN Charter prohibits any use or threat of armed force between member states.[1]

This also includes armed violence "short of war" or so-called "low intensity conflicts" as well as the threat of violence alone. Furthermore, the prohibition of force applies not only between UN member states, but between all states, since it is predominantly attributed jus cogens quality in literature and state practice, i.e. it is a compelling norm from which the subjects of international law are independent because of its fundamental importance .

There are only two exceptions to this comprehensive prohibition of force: individual or collective self-defense under Article 51 of the Charter, and collective coercion by the United Nations under Chapter VII of the Charter. The latter are measures that the Security Council can decide on in the event of a threat or breach of the peace or an act of aggression. However, since the system of collective security envisaged has not achieved the practical significance hoped for due to difficulties in implementation, which will not be discussed in detail here, it has remained primarily an exercise of force by individual states even after 1945. The right to self-defense offers the only fundamentally undisputed legal means of doing so; As a consequence, today the right to individual or collective self-defense is exercised in almost every use of military force. States tend to invoke the right to self-defense enshrined in the Charter.

Consequently, the right to self-defense has become a field in which there are fundamental differences of opinion both between states and between international law experts. The scope of the right to self-defense, the admissibility of preventative self-defense and self-defense for protection have been and are being controversially discussed. The attempts to reach a consensus in the General Assembly of the United Nations also largely failed, so that neither the "Declaration on Friendly Relations" of 1970 nor the Definition of Aggression of 1974 contain any specification of the right to self-defense.

Nevertheless, some basic characteristics can be stated beyond doubt. Although the authors of the Charter were realistic enough not to want to exclude self-defense completely, they did restrict it quite significantly. The most important criterion is therefore the presence of an armed attack. The difficulties in defining the exact term "armed attack" will still have to be discussed, but what is certain is that states are expected to forego armed self-defense until an armed attack occurs. However, even if there is no doubt that an armed attack has occurred, the right to self-defense is not unlimited. Rather, Article 51 of the Charter contains the obligation to immediately report measures to the Security Council and, more importantly, to stop them immediately as soon as the Security Council itself has taken the measures necessary to maintain international peace. Finally, the principles of

[1] HENRIKSEN, A. (2019): International Law, Second Edition, Oxford University Press, Oxford.

proportionality and necessity[2] apply to the implementation of self-defense measures - although these are not expressly mentioned in Article 51 of the Charter.

2. The military strikes against Afghanistan from the view of international law

It is clear from statements and documents from the governments of the United States and its allies that they seen their attacks on Al Qaeda and the Taliban as a measure of self-defense. However, the validity of this argument is by no means self-evident. Therefore, in the further course of this paper, the legality of the military strikes against Afghanistan will be examined and, where appropriate, critically questioned. However, this point cannot and should not primarily be about a final categorization of military strikes as legal or illegal; Rather, it is intended to show which aspects of the American approach can be classified as problematic under international law and how arguments are or can be made in order to bring them into line with applicable law.

Possible alternative justification models for the American actions apart from the right to self-defense according to the UN Charter, as can be found sporadically in the literature, can be a legitimation based on a possible customary international law right to self-defense that goes beyond Article 51 of the Charter, as “intervention by invitation” , or based on the concept of “Just War”, are deliberately ignored. Since the actors involved clearly rely on the right to self-defense enshrined in the UN Charter to justify their actions, this should also suffice as an analytical framework.

2.1. Requirements for the existence of a self-defense

The concept of “armed attack” is the key concept of the right to self-defense under Article 51 of the Charter, because ultimately its interpretation determines the extent to which the exercise of force by individual states is permissible. Unfortunately, the term is not specified anywhere in the Charter. The definition of aggression adopted by the UN General Assembly in 1974 also merely clarifies the concept of an act of aggression as used in Article 39 of the Charter. As a result, there have been and continue to be disagreements about what types of actions should be considered armed attacks and what should not. It is clear, after all, that not every form of use of force can automatically be classified as an armed attack.

When the UN Charter was drafted and adopted in 1945, the term “armed attack” undoubtedly had in mind primarily military operations in which regular units invade or shell the territory of another state. Since the ruling of the International Court of Justice (ICJ) in the Nicaragua case,[3] it has become clear that an armed attack can also occur in other ways. Since then, no one has seriously disputed that, in principle, the actions of ones who do not belong to the official armed forces of a state can constitute an armed attack; As a criterion, the ICJ stated that the activities had to be so serious that they would have been considered an armed attack if they had been committed by regular armed forces.

Whether a terrorist attack can be equated with an armed attack within the meaning of Article 51 of the Charter is initially rather questionable. Previous actions in which states, namely Israel and the USA, demanded the right to self-defense against terrorists were generally strongly condemned by both the majority of the international community and international law experts.

The question of whether state involvement or attribution is necessary for the occurrence of an armed attack is more difficult to answer. Classical international law assumes that an attack must come from a State (although, as explained above, not necessarily from its regular armed forces) to qualify as an “armed attack” within the meaning of Article 51 of the Charter. Although there is no explicit reference to this in the Charter, it is generally assumed that the need for state attribution can be implicitly assumed.

After all, the UN Charter is international law that regulates the relationships between its subjects, especially between states. Article 51 of the Charter contains the most important exception to the general prohibition of force, which expressly applies between states. Furthermore, it is generally accepted that “armed attack” is a subcategory of “aggression,” and aggression can clearly only come from one State according to the definition adopted by the UN General Assembly.

The most important international law criterion in connection with the responsibility of states for the actions of private individuals is that of “effective control”. Whether the Taliban exercised control over Al Qaeda as defined by this definition is extremely questionable. The ICJ used the criterion of “effective control” in the Nicaragua case. The ICJ considered it proven at the time that the United States had provided weapons, financial and other logistical support to guerrilla groups, the so-called Contras, who had carried out attacks against military and civilian targets in Nicaragua over a long period of time. However, the ICJ did not regard this as an armed attack by the USA because it did not have “effective control” over the groups it supported; the ICJ saw “no clear evidence of the United States having actually exercised such a degree of control in all fields as to justify treating the contrasts as acting on its behalf.”

[2] MRÁZ, S. - POREDOŠ, F. - VRŠANSKÝ, P. (2003): Medzinárodné verejné právo, VO PF UK, Bratislava.

[3] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). ICJ decision of June 27, 1986, ICJ Reports 1986.

The War Crimes Tribunal for Yugoslavia addressed the problem of state responsibility in a similar context. The Tadic case[4] examined the relationship between the Bosnian Serb militias and the government of Yugoslavia; The tribunal assumed a somewhat lower threshold for the existence of effective control, namely “overall control going beyond the mere financing and equipping of such forces and involving also participation in the planning and supervision of military operations.” By this standard, American support for the Contras might have been considered an armed attack. Based on what is known, this formula may apply to the Taliban's relationship with Al Qaeda, because there has been evidence of the Taliban's involvement in the planning and execution of the terrorist attacks. According to the current standards, the “effective control” formula can be used to determine the Taliban’s responsibility for the attacks on New York and Washington.

The point is not to show that the Taliban exercised “effective control” over Al Qaeda and its activities. Rather, it is alleged that Al Qaeda had a relationship with the Taliban that allowed their actions to be viewed as acts of their de facto government of Afghanistan.[5] There are good arguments for this. It is well known that the organization supported the Taliban regime both financially and militarily. In addition, the Al Qaeda network exerted increasing influence on the Taliban leadership; its leaders were not involved in all important decision-making processes only in relation to the military campaign against the Northern Alliance, but also in general political and social questions regarding the future of Afghanistan. A report by the UN Secretary General on the situation in Afghanistan dated December 6, 2001 confirms this, citing statements from “Afghans from all factions”. Provided that the aforementioned statements about the relationship between Al Qaeda and the Taliban are confirmed, treating Al Qaeda as a de facto entity nevertheless offers one, perhaps the only, legally viable path to the attacks of September 11th Attributable to the Taliban regime and thus turning it into an armed attack in the traditional sense, which would then undoubtedly entitle the USA to take self-defense measures in accordance with Article 51 of the UN Charter.

2.2. The role of the Security Council

The United Nations Security Council has a crucial role to play in the exercise of the right to self-defense, which cannot be overlooked when examining the legality of military strikes against Afghanistan. Article 51 of the UN Charter stipulates that the Security Council[6] must be promptly informed of any action taken in self-defense and that the right to self-defense ceases when the Council itself has taken the measures necessary to maintain international peace. Furthermore, the Security Council, as the body with primary responsibility for maintaining international security, has the opportunity to provide the answer by characterizing a situation, for example as an “armed attack” or a “threat to peace and security”. to anticipate the question of the legality of any self-defense measures, at least in a practical, if not in a strictly legalistic sense.

It is important to note that the lack of explicit authorization by the Security Council does not mean that self-defense measures are inherently illegal.[7] The legality of the exercise of the right of self-defense depends solely on the conditions enshrined in the Charter; a formal declaration of consent from the Security Council is not necessary. The fact that the Security Council refrained from describing the attacks as an armed attack does not automatically mean that they cannot nevertheless be seen as such. Likewise, characterizing it as a threat to peace and security does not exclude the simultaneous existence of an armed attack. The two categories are not mutually exclusive, as is clear from the example of the Iraqi attack on Kuwait, which the Security Council classified as both a threat or breach of the peace and an armed attack. The question of whether the terrorist attacks of September 11th should be considered an armed attack that would trigger the right of self-defense of the United States and its allies cannot be answered simply by reading the Security Council resolutions. These must be understood to mean that they basically leave everything open. Even if it can be established that an armed attack has occurred, the right to self-defense expires if the Security Council has taken the necessary measures to repel the attack. The right to self-defense is only subsidiary to collective peacekeeping measures. Finally, as far as the obligation to immediately report the measures taken by the states involved is concerned, the USA and Great Britain have fulfilled the obligation in a timely manner and without restrictions. On October 7, 2001, the day the military strikes against Afghanistan began, American Ambassador to the UN Negroponte submitted a letter to the Security Council that began with the following words: “In accordance with Article 51 of the Charter of the United Nations, I wish […] to report that the United States of America, together with other States, has initiated actions in the exercise of its inherent right of individual and collective self-defense following the armed attacks that were carried out against the United States on September 11, 2001.” Great Britain submitted a letter of similar content. This means that

[4] Prosecutor v. Dusko Tadic. Decision of the Appeals Chamber of the ICTY dated July 15, 1999.

[5] SOLIS, G. (2009): Law of War Issues in Ground Hostilities in Afghanistan. In: Israel Yearbook on Human Rights, Volume: 39.

[6] ČEPELKA, Č. - ŠTURMA, P. (2008): Mezinárodní právo veřejné, 2. vydání, C.H.Beck, Praha.

[7] BIANCHI, A. (2016): International Law Theories, An Inquiry into Different Ways of Thinking. Oxford University Press, Oxford.

the reporting obligation under Article 51 of the UN Charter has been satisfied. What is thought-provoking in this context, however, is that important information was withheld from the UN Security Council. Great Britain presented a document that was intended to prove that Osama bin Laden was the perpetrator. But this document also remains relatively general and does not provide a satisfactory answer to all open questions - it neither addresses the role of the Taliban nor deals with the specific targets of the military strikes.

3. Limitations of self-defense

Even if all the prerequisites for lawful self-defense are met, the right to self-defense does not apply without restriction. An attacked state may not take any measure it wants to defend itself but is subject to the principles of proportionality and necessity when choosing its means. Although Article 51 of the Charter does not mention any restrictions, they arise from customary international law.

It follows implicitly from the principle of necessity that defensive measures must take place immediately or at least within a relatively short period of time after the armed attack and not only when the attack that triggered them has passed. However, the United States did not take military countermeasures until nearly a month after the September 11 attacks. For this reason, it was criticized that the US actions appeared to be more retaliatory strikes than self-defense, since they were no longer necessary to repel the attack.

If one sees terrorist attacks as armed attacks that give rise to self-defense measures, then it actually makes no sense to limit these measures to defending against the attack, because a terrorist attack is of course always an action that is limited in time and must be defended against after the fact is simply no longer possible. It can then only be a matter of preventing further attacks. Legally, recourse to the right to self-defense can then only be justified by assuming that a single attack is just one element in the context of a continuing attack situation. If we follow this argument, an immediate reaction is not absolutely necessary.

The principle of proportionality[8] must also be observed when choosing the means used. However, it is not a matter of offsetting the number of deaths and the damage caused by the underlying attack and the self-defense measures that followed, according to the motto “an eye for an eye, a tooth for a tooth”. In terms of weapons, self-defense does not have to be on the same level as the attack. The benchmark to be applied is rather whether the means used are in a reasonable relationship to the desired goal, i.e. in this case to avert the threat of further attacks. There is no doubt that the use of military force by the United States was massive. However, whether it was excessive is rather questionable.

According to official information from the United States government, the military strikes were directed against Al-Qaeda terrorist training camps and military installations of the Taliban regime in Afghanistan. The reason for the attacks on elements of the Al Qaeda organization on Afghan territory is obvious . But was it also necessary to attack Taliban positions when the direct threat to the USA came not from them but from Al Qaeda terrorists? This question is closely linked to the question already discussed about the Taliban's responsibility for the attacks of September 11th. But even assuming that the Taliban regime, Afghanistan's de facto regime, was responsible for the terrorist acts, this does not necessarily mean that its military becomes a legitimate target for counterattacks. While strikes against terrorist training camps or other terrorist facilities clearly serve the ultimate purpose of self-defense, namely eliminating the future threat posed by these terrorists, it is not immediately clear to what extent the Taliban forces may have posed a direct threat to the United States.

The most critical point for assessing compliance with the principle of proportionality in the exercise of the right to self-defense by the USA and its allies needs to be addressed: the objective of the action. There can be little doubt that the United States' war aim from the outset was not only the elimination of the threat posed by the Al Qaeda terrorists, but also, the liquidation of the Taliban regime. But this is not covered by the classic right to self-defense. The aim of the military operation could only be to eliminate the threat. By not limiting themselves to fighting terrorists, but rather massively intervening in the civil war in Afghanistan, which ultimately led to the expulsion of the Taliban, the USA and its allies have gone far beyond what was previously considered necessary and proportionate Exercise of the right of self-defense was understood. The measures aimed at liquidating the Taliban regime can only be described as covered by the right to self-defense with difficulty and under a number of extremely uncertain assumptions, but would have required authorization from the UN Security Council.[9]

4. Conclusion

Overall, it does not seem appropriate to describe the actions as clearly illegal. But: In order to reconcile the war in Afghanistan with the right to self-defense, as enshrined in Article 51 of the UN Charter, a not insignificant departure or weakening of established principles is required in some areas. So far, the legal situation has been relatively clear - despite frequent controversies between states and international law experts. In the event of an armed attack by one state against another, the victim could assert the right to

[8] DAVID, V. - SLADKÝ, P. - ZBOŘIL, F. (2006): Mezinárodní právo veřejné. 3. vydání, Linde, Praha.

[9] KLUČKA, J. (2023): Medzinárodné právo verejné (Všeobecná a osobitná časť). Wolters Kluwer, Bratislava.

self-defense. However, this right was subject to strict conditions. If it is now to be made usable for combating terrorism, this not only requires an expansion of the concept of "armed attack", possibly including the need to rethink the condition of state attribution, but also brings into question the entire structure of the barriers to self-defense arising from the principles of proportionality and especially necessity, are significantly out of balance - especially when the fight against terrorism goes hand in hand with broader goals, as was the case in Afghanistan with the elimination of the Taliban.

With regard to the trigger for self-defense, the "armed attack", in principle, actions of a non-military nature, including terrorist attacks, can also be viewed as an "armed attack". This is certainly true when the scale is as huge as the attacks on September 11th. However, where the threshold lies, i.e. how high the number of victims or how huge the damage must be for a terrorist act to become an armed attack, is completely open. Regardless of this, there are good reasons for fundamentally adhering to the requirement that armed attacks can be attributed to the state in any case. By treating them as de facto bodies, international law certainly offers an opportunity to justifiably and conclusively prove that the Taliban are responsible for Al Qaeda's actions. However, the US has never sought to prove such responsibility in a legal sense; They never addressed the attribution of the attacks to the Taliban regime and at the same time seemed to argue that simply supporting the terrorists, for example by granting them safe shelter, also made the Taliban a suitable target for military countermeasures based on the right to self-defense. All of this makes it clear that the categories of both armed attack and the perpetrators of such an attack are in danger of becoming blurred.

As far as the role of the UN Security Council is concerned, it should first be noted that the argument that the UN Security Council took the "necessary measures" to restore international security with Resolution 1373, thereby extinguishing the right to self-defense, is hardly tenable. Although the USA and Great Britain have satisfactorily fulfilled their obligation to provide information under Article 51 of the Charter, they have failed to provide convincing evidence for the assumptions they made regarding the background to the September 11th attacks. When assessing the situation, the UN Security Council's behavior can only be described as inconsistent; The affirmation of the right to self-defense without establishing an armed attack basically left everything open and in any case did not contribute to clarifying the legal situation.

The examination of the specific design of the military measures with regard to their timing, the means used and their actual objective has shown that the categorical restrictions resulting from the principle of proportionality and the principle of necessity can only be applied here with great difficulty. The reason for this lies in the different nature of classic self-defense measures and counter-terrorism measures in many respects. If one wants to stick to the ban on preventative self-defense, actions that can hardly be justified from the point of view of defending against an armed attack, which is the basis of classic self-defense, can only be interpreted through a very far-reaching interpretation of the situation as a continuing attack. This makes it particularly clear that the right to self-defense, as it has been understood so far, is actually hardly suitable for combating terrorism.

Overall, the picture is unclear. In any case, recognizing the legality of the self-defense measures taken by the United States and its allies against Al Qaeda and the Taliban implies a departure from a whole series of previously applicable conditions and restrictions on the right to self-defense under Article 51 of the UN Charter. It is entirely conceivable that the international security situation has changed so fundamentally as a result of the attacks on September 11th that certain established criteria have lost their validity. In this regard we may argue that in the course of "spontaneous legal development" international law could change, so that the question of what constitutes an armed attack could in future be defined more in terms of intensity than in terms of the actors.

However, such views may be in clear contrast to the main opinion under international law and have so far received little significant support, at least not outside the USA. However, recent developments seem to indicate that a certain extension of the traditional right of self-defense is now generally accepted, at least for the specific case of the response to the attacks on the USA on September 11th.

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