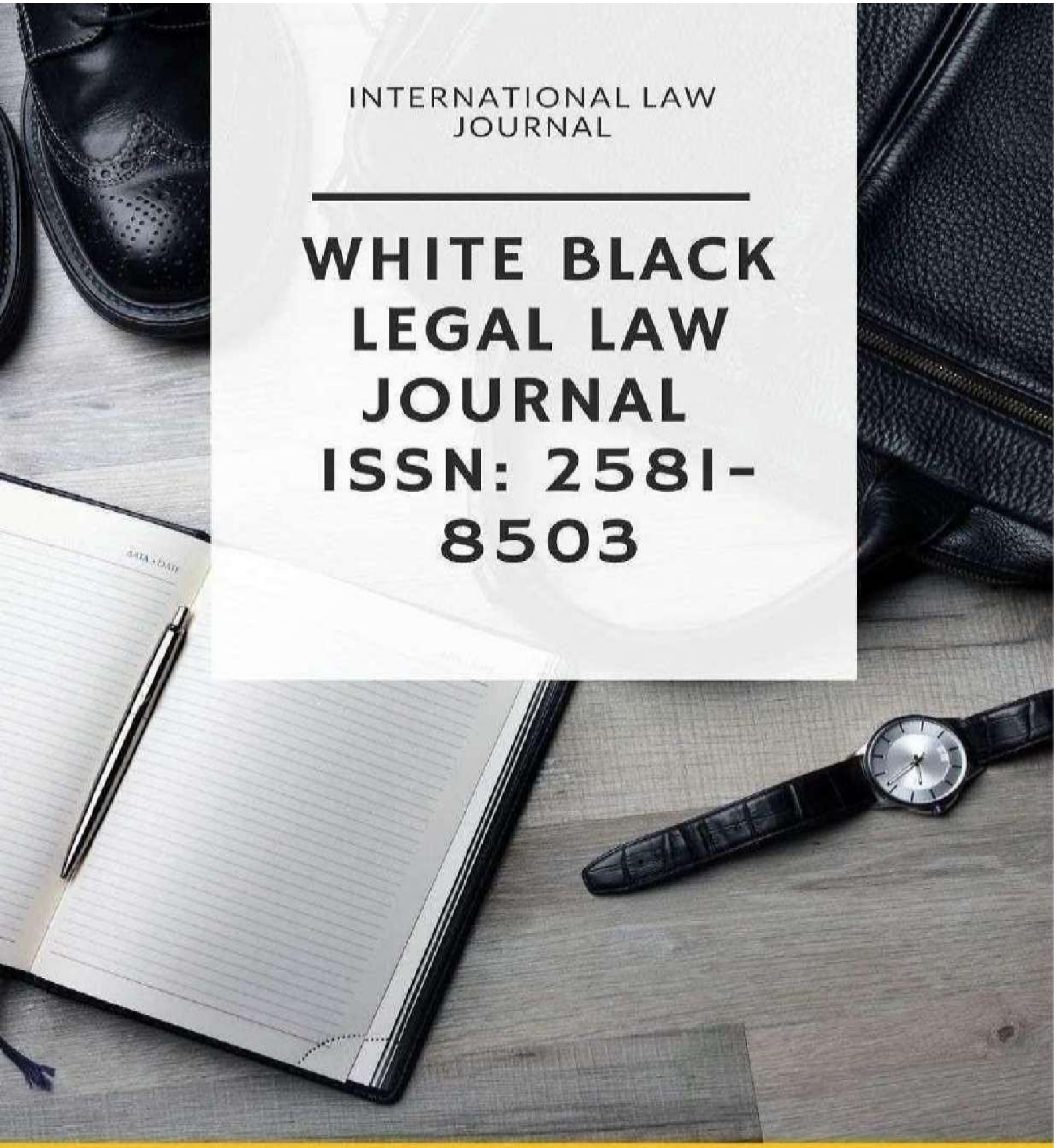

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INDIA'S EVOLVING COUNTERTERRORISM STRATEGY: LEGAL CHALLENGES AND JURISDICTIONAL ISSUES OF CROSS BORDER OPERATIONS.

AUTHORED BY - ARUNDHATHI VIMAL

ABSTRACT

In this paper related to the employment of force for counter-terrorism across borders, this paper has discussed the following issues; analysis of evolving Indian policy and its effect on legal use of force for counter-terrorism operations specifically focusing on the legal position of Indian preemptive strikes. This research aims at discussing how the Indian approach to self-defense conforms to the historical practice of international law, and how the Indian practice in some way or the other, affects change, particularly in the context of self-defense against non-state actors. It goes with doctrinal as well as case based approach and relies on conventions, case laws and India's stance on the issue of self defense. To understand this action by India, then its subsequent actions, this paper will examine Article 51 of the United Nations Charter[1], customary international law, the doctrine of necessity and proportionality. It then examines where India stands in relation to other countries in terms of cross-border threats and proceeds to elaborate the consequences for the international law on the subject.

The Indian counterterrorism strategy underwent major changes particularly in its application for military operations across borderlines against terrorist threats. The transformation in India's strategies has generated crucial international legal problems involving state sovereignty together with self-defense and military power use. International criminal law includes numerous gaps that prevent the enforcement of cross-border terrorism cases and states also maintain different perspectives about their sovereign rights. This paper evaluates India's evolving counterterrorism policy when dealing across borders together with its use of UN Charter and customary international law defenses as well as its challenges in prosecuting transnational terrorism. Research in this document explores international criminal law together with worldwide counterterrorism operations as India's actions influence them through investigations into state behavior and existing international legal principles alongside evaluations of the present legal structures.

[1] U.N Charter art 51.

The following paper tries to bring out the legal justifications for the latest Indian cross-border counter terrorism operation is carried out within the framework of fundamental principles of International laws, case laws, Sovereignty and Self defense analyzed by various authors. So it tries to go a little further in an effort to understand how India's approaches toward counter-terrorism retain or redefine existing norms of international relations. Second, the research will focus on the question of whether the sovereignty attitude of India entails change in international norms concerning the legitimate behavior of states under the counterterrorism regime? On this ground, India's national security policy on counterterrorism[2] across the border is fairly linked with the stand it has taken in managing rising threats coming from insecure bordering states from non-state actors. Counter terrorism has always been conventional and polite unlike other south Asian countries, except for using international organizations and diplomacy to confront terrorism issues particularly to Pakistan. Increasing number of terrorist infiltrations on the Indian soil have forced India to introspect on its strategic designing and thus accept more forward based defensive strategies. On this score there appears to be a trend of states asserting an even more expansive right to self-defence against non-state actors notwithstanding the fact that such actors launch operations from the territories of sovereign states. The surgical strikes of 2016 are thought to have changed India's counter terrorism policy regarding Pakistan. India based its case on an entirely different concept of what constitutes an armed attack, which, it said, it was entitled to use for preemptive purpose[3].

RESEARCH QUESTION

This paper aims to address the following questions:

1) Could India's military actions be justified under the "unable or unwilling" doctrine?
2) What are the jurisdictional difficulties in prosecuting cross-border terrorists under international criminal law?
3) How do India's actions influence international counterterrorism norms and legal frameworks?
4) How does India's evolving position on cross-border counterterrorism align with international law?

[2] Harsh V. Pant, Indian Strategic Thinking and the Return of Offensive Defense, 16 Polity 59, 62-64 (2008).
[3] Thomas M. Franck, Recourse to Force: State Action Against Threats and Armed Attacks, 98 (2002) (analyzing Article 51 of the U.N. Charter and the limits of preemptive self-defense).

LITERATURE REVIEW

1) The Use Of Force Against Terrorism And International Law[4]

"The Use of Force Against Terrorism and International Law"[5] by Jonathan I. Charney, which was published in The American Journal of International Law in 2001, offers a critical analysis of the legal precepts that regulate the use of force against terrorism under international law. His study is especially pertinent to India's changing counterterrorism strategy and the difficulties in prosecuting cross-border terrorism due to jurisdictional issues. Charney looks at the UN Security Council's (UNSC) role in regulating armed force, the application of Article 51[6] of the UN Charter, and the jurisdictional issues in international criminal law prosecutions of terrorism. Since they draw attention to the legal ambiguities surrounding preemptive self-defense against non-state actors—a crucial problem in India's 2016 surgical strikes and 2019 Balakot airstrikes, his arguments are especially pertinent to India's changing counterterrorism strategy. Self-defense under Article 51 of the UN Charter has historically applied to armed attacks by states rather than non-state actors, according to Charney's analysis. He raises questions about the US's expansive claims of self-defense following 9/11, especially when force is employed without clear UNSC approval. Charney cautions that such defenses would jeopardize Article 2(4) of the UN Charter's ban on the use of force. This is especially important for India, which has used self-defense against terrorist organizations based in Pakistan to defend its cross-border counterterrorism operations. India contends that terrorist attacks like the 2008 Mumbai attacks, the 2016 Uri attack, and the 2019 Pulwama attack qualify as armed attacks that warrant self-defense; however, Charney's analysis indicates that this is still up for legal debate because the 1986 Nicaragua ruling of the International Court of Justice restricted self-defense to conflicts involving state actors.

This also highlights that the UN Security Council's participation in counterterrorism initiatives, contending that any extended military action must be approved by Chapter VII of the UN Charter and that self-defense should be a rare exception. He claims that the US's decision to forego the UN in its worldwide war on terror undermines the credibility of international law and establishes a precedent for taking military action without consulting the UN. Given that the UN has not specifically approved India's cross-border counterterrorism activities, this is

[4] Charney, Jonathan I. "The Use of Force against Terrorism and International Law." *The American Journal of International Law*, vol. 95, no. 4, 2001, pp. 835–39. *JSTOR*, https://doi.org/10.2307/2674628. Accessed 14 Mar. 2025.
[5] Charney, Jonathan I. "The Use of Force against Terrorism and International Law." *The American Journal of International Law*, vol. 95, no. 4, 2001, pp. 835–39. *JSTOR*, https://doi.org/10.2307/2674628. Accessed 14 Mar. 2025.
[6] U.N Charter art 51.

pertinent to the country. The creation of legally binding international frameworks has been hampered by Pakistan's resistance, despite India's strong calls for UN-led counterterrorism reforms. Charney argues that instead of depending solely on unilateral claims of self-defense, India should cooperate with the UN system to improve its legal standing.

A solid basis for comprehending the international legal difficulties India encounters in its counterterrorism endeavors may be found in Charney's work. His views support India's stance that international legal frameworks need to change to reflect contemporary security challenges and emphasize the need for more precise international standards on self-defense against terrorism. Charney's criticism, however, also implies that in order to maintain the legality and diplomatic viability of its operations, India needs to work more closely with the UN and pursue official acceptance of its counterterrorism legal principles.

2) International Law and the Use of Force: The Jus Ad Bellum[7]

Author: Michael N. Schmitt

A thorough examination of the legal rules governing the use of force in international relations can be found in Michael N. Schmitt's 2003 book International Law and the Use of Force: The Jus Ad Bellum. His research focuses on the UN Security Council's role in authorizing force, the UN Charter's Article 2(4) ban on using force, and the exceptions for self-defense under Article 51. Schmitt goes on to discuss the concepts of necessity and proportionality, preemptive self-defense, and the changing state practice in counterterrorism operations. His points are especially pertinent to India's changing counterterrorism strategy and the difficulties in establishing jurisdiction when it comes to international law prosecutions of cross-border terrorism.

Schmitt highlights that the UN Charter's Article 2(4), which reflects the core idea of state sovereignty, lays out a comprehensive ban on the use of force. He does concede, though, that there are some exceptions to this rule, especially when states use Article 51 to claim self-defense. Only in reaction to a "armed attack" is the use of force permitted by this clause. According to Schmitt, current state practice—particularly in the wake of the 9/11 attacks—have broadened the understanding of self-defense to encompass non-state actors, whereas the ICJ's Nicaragua Case (1986) restricted it to state-to-state conflicts. This change is especially significant for India, which has used Article 51 to defend its cross-border counterterrorism

[7] Schmitt, Michael N. "International Law and the Use of Force: The *Jus Ad Bellum*." *Connections*, vol. 2, no. 3, 2003, pp. 89–97. *JSTOR*, http://www.jstor.org/stable/26323011. Accessed 14 Mar. 2025.

operations, including the Balakot airstrikes in 2019 and the surgical strikes in 2016.

Schmitt's work also addresses the important topic of preemptive self-defense, which enables governments to use force before an impending attack. Self-defense was traditionally thought to be applicable only after an attack had already occurred. Schmitt contends, however, that state practice is moving toward a more lenient understanding of imminence, especially in the context of WMDs and terrorist threats. He refers to the Caroline Case (1837), which held that only in cases where the requirement is "instant, overwhelming, leaving no choice of means, and no moment for deliberation" is preemptive self-defense legal.

To sum up, Schmitt's study offers a crucial starting point for examining India's changing counterterrorism approach and its legal issues. He provides insightful information about the legal challenges India faces in defending and implementing counterterrorism measures through his study of self-defense, preemptive strikes, state sovereignty, and jurisdictional issues in terrorism prosecution. His arguments underscore the shortcomings of current international law in effectively combating cross-border terrorism, even as they justify India's need for more robust international legal structures. In order to ensure that governments can respond to contemporary security concerns while maintaining international legal norms, Schmitt's work highlights the significance of India's attempts to revise international legal frameworks on counterterrorism.

RESEARCH GAPS

1) Lack of clear jurisdiction for self defense against non state actors.
2) Lack of legal status of “Unable or Unwilling” Doctrine.
3) Weak International mechanism for prosecuting cross border terrorists.
4) Ineffectiveness of existing legal cooperation mechanisms (Extradition and Mutual Legal Assistance- MLATs)

RESEARCH METHODOLOGY

In order to examine India's changing counterterrorism strategy and the jurisdictional difficulties in prosecuting cross-border terrorism under international law, this study uses a doctrinal legal research technique. This study uses a combination of primary legal sources, case law analysis, and comparative legal studies to provide a thorough legal assessment because of the complexity of international legal frameworks controlling the use of force and the prosecution of terrorists. In order to comprehend the legal frameworks surrounding the use of force and jurisdictional

prosecution of terrorism, the study employs a doctrinal research technique, which focuses on examining legal documents, treaties, case law, and state practice. This strategy is crucial for answering important legal issues pertaining to India's counterterrorism policies, the legitimacy of self-defense under Article 51 of the UN Charter, and the difficulties in prosecuting terrorists who operate over international borders.

INTRODUCTION

India's counter terrorism strategy has taken an abrupt change, in the last decade from reactive diplomacy to assertive cross border military activity[8]. This development is deeply ingrained in India's ongoing experience with transnational terrorism, which is mostly caused by non-state groups based in Pakistan, including Lashkar-e-Taiba (LeT), Jaish-e-Mohammed (JeM), and others. India has steadily moved away from diplomatic denunciation and intelligence sharing to preemptive strikes and targeted cross-border strikes in response to high-casualty terrorist incidents such as the 2001 Parliament attack, the 2008 Mumbai siege, the 2016 Uri attack, and the 2019 Pulwama bombing.These operations have triggered a dramatic change of the interpretation of international legal norms in India's conduct with respect to the use of force, self-defense, and sovereignty of states[9].

Indian government openly admitted to having carried out the 2016 surgical strikes and the 2019 Balakot airstrikes as a matter of its right of self defense in accordance to Article 51 of the United Nations Charter[10]. Rather more recently, India has apparently entered Operation Sindoor, an undercover counterterrorist operation, supposedly being deployed in the regions on the line-of-control (LoC)[11]. Although (not) officially declared in all the details, (and not yet specified by India), Operation Sindoor seems to represent a crucial shift to India's counterterrorism stance – namely: secretly utilising selective precision instead of full military exposure, so as to attempt to keep working within the proscribed legal and diplomatic contours (claimed to have been restored by recent times[12].

The legality of such operations is still contentious, especially, where United Nations Security Council does not authorize them. They poses urgent questions about the concept of the principle of state sovereignty, the widened concept of self-defense, and the various usage of the controversial "unable or unwilling" doctrine, which allows using force against another

[8] Ministry of External Affairs (India), Press Release, Sept. 29, 2016, available at https://www.mea.gov.in/.
[9] S.C. Res. 1267, U.N. Doc. S/RES/1267 (Oct. 15, 1999); S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001).
[10] Letter from India to the United Nations Security Council, U.N. Doc. S/2019/157 (Feb. 27, 2019).
[11] Rahul Bedi, *India's Shadow War Across the LoC*, The Hindu (Apr. 12, 2024).
[12] Michael N. Schmitt, Grey Zone Conflict and the Jus ad Bellum, 90 Int'l L. Stud. 125, 145–47 (2021).

state's territory if it is unwilling or unable to prevent attackers, which are the non-state actors, from their attack[13]. These trends are arising on a global background where rules related to the employment of force have been questioned due to the emergence of non-state terrorism and asymmetric warfare[14].

This research seeks to examine to what extent the evolving counterterrorism policy in India, especially the extraterritorial operations, adhere to or deviate from the existing principles of international law. In particular, it aims to answer such core research questions as the following ones:

1. Is the "unable or unwilling" doctrine strong enough to justify military actions of India?
2. What are the jurisdictional complexities to successful prosecution of cross-border terrorists on international criminal law?
3. To what extent does the activity of India shape the norms and the legal framework of international counterterrorism?
4. How does India's changing stance on cross-border counterterrorism go with the international law?

In addressing these questions, the paper will look at pertinent provisions of international treaties i.e. UN Charter and interpretive documents like the Caroline Doctrine, customary international law and famous ICJ judgments eg. Nicaragua Case (1986)[15]. It will also look into state practices and emerging doctrines in counterterrorism, specifically whether there is some consensus or lack thereof on the legality of preemptive strikes against non-state actors who operate from foreign land[16].

As to the paper's research methodology, it is doctrinal, as it uses primary legal sources (treaties, case law, and state statements), scholarly literature, and comparative practice. It profoundly incorporates views offered by the scholars such as Jonathan I. Charney and Michael N. Schmitt who write in such works as those that examine the legal ambiguities in terms of force usage in the context of combating terrorism and how jus ad bellum is broadly understood in modern international law[17].

In addition, this research sheds light on structural loopholes in international criminal law and the inefficacy of mutual legal assistance tools, i.e., MLATs and extradition treaties, in the

[13] Daniel Bethlehem, Self-Defense Against Non-State Actors, 106 Am. J. Int'l L. 769, 771 (2012).
[14] Michael N. Schmitt, Counter-Terrorism and the Use of Force in International Law, in The Changing Character of War (Oxford Univ. Press 2004).
[15] Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶¶ 191–200 (June 27).
[16] The Caroline Case, 2 Moore, Digest of International Law 412 (1906).
[17] Charney, supra note 8; Schmitt, supra note 7.

prosecution of international terrorism. The loopholes have driven India and other victim nations to turn towards alternative, and sometimes provocative, channels of deterrence and administration of justice. With a critical examination of India's participation in forming these new regimes, the paper seeks to address the debate around the creation of international counterterrorism law norms by bringing attention to these jurisdictional and legal concerns.

Given the deteriorating India-Pakistan relations, the regular ceasefire violations, and the continued existence of terror launch sites across the Line of Control, India's shifting strategic recalibration should not be viewed in a vacuum but rather as part of a global trend[18]. As more countries declare their right to use force outside their borders to defend non-state entities, the international community is faced with the challenge of realigning the boundaries of justifiable force in counterterrorism[19]. India's scenario because of its scale, context, and local interests is a case in point on this legal and ethical crossroads.

ANALYSIS OF RESEARCH QUESTIONS

1. Could India's military actions be justified under the "unable or unwilling" doctrine?

The "unable or unwilling" doctrine is a concept arising in international law, which implies that a victim state can legitimately use force in self-defense on the territory of another if the latter is either unable or unwilling to stop the threat coming from the non-state actors within its borders[20]. Although not yet enacted in any treaty, it has being referred in state practice, especially for the United States in operations in Pakistan, Syria, and Yemen.

India has not officially supported such a doctrine, but the explanation of the 2016 surgical strikes and the 2019 Balakot airstrikes appeals to this doctrine. In both cases, India accused itself of engaging in anticipatory self-defense against grave provocations in the form of the Uri and Pulwama acts of terrorism, involving groups that had safe haven in Pakistan[21]. India claimed that Pakistan had failed to deter these groups from making attacks and had placed the sovereign responsibility provided under Article 2(4) and Article 51 of the U.N. Charter in jeopardy[22].

[18] South Asia Terrorism Portal, *Ceasefire Violations Database* (2023), www.satp.org
[19] Koh, Harold H., Why Do Nations Obey International Law?, 106 Yale L.J. 2599, 2623–24 (1997).
[20] Daniel Bethlehem, Self-Defense Against Non-State Actors: A Legal Framework, 106 Am. J. Int'l L. 769, 772–76 (2012).
[21] Daniel Bethlehem, Self-Defense Against Non-State Actors: A Legal Framework, 106 Am. J. Int'l L. 769, 772–76 (2012).
[22] U.N. Charter art. 51; see also Michael N. Schmitt, The Use of Force Against Terrorists, 53 Colum. J. Transnat'l L. 1, 18–24 (2014).

Scholars like Daniel Bethlehem have come up with legal tests to determine use of the doctrine which includes; households. (i) immediate danger, (ii) depletion of peaceful alternatives, and (iii) requirement of action.India's actions can be deemed as meeting these requirements[23]. Its aimed, non-noncivilian-driven responses were temporally constricted with regards to the triggering attacks and they were limited in nature, pointing to a proportional use of force. Also, frequent diplomatic overtures could not prevent future attacks[24].

However, critics say that accepting this doctrine will undermine sovereignty protections and might trigger pretextual use of force. Its controversial nature and lack of significant support from the state, the dependence of India on this doctrine is legally questionable although it is not wrong under the sphere of customary international law.

2. What are the jurisdictional difficulties in prosecuting cross-border terrorists under international criminal law?

Significant restrictions to prosecution of cross-border terrorists are likely to occur due to many jurisdictional limitations stemming from both the international criminal law and the doctrines of sovereignty of states. To begin with, there is no overarching international convention that defines and criminalizes terrorism with an adequate degree of legal certainty after years of working on it at the United Nations[25].

Second, there is limited jurisdiction that international criminal tribunals like the International Criminal Court (ICC) have. The crimes that the ICC can try are limited to some of those included in the Rome Statute (i.e., genocide, war crimes, crimes against humanity) and terrorism is not listed in its jurisdiction unless it is connected to the listed ones[26].

Third, extradition and mutual legal assistance treaties (MLATs) are not reliable, particularly, between politically unfriendly states such as India and Pakistan. Pakistan has always refused India's extradition requests for such people as Hafiz Saeed arguing for insufficient evidence or political objectives[27]. Although even when suspects are found in third party jurisdictions political considerations, dual criminality rules and the principles of non refoulement do impede on extradition. Additionally, agencies of enforcement in host countries could be unable or unwilling to cooperate in evidence gathering or prosecution. India, thus, has resorted to

[23] Bethlehem, supra note 1, at 775.
[24] Tom Ruys, 'Armed Attack' and Article 51 of the UN Charter 416–22 (Cambridge Univ. Press 2010).
[25] See Draft Comprehensive Convention on International Terrorism, U.N. GAOR, 6th Comm., A/C.6/65/L.10 (2010).
[26] Rome Statute of the International Criminal Court, arts. 5–8, July 17, 1998, 2187 U.N.T.S. 90.
[27] India Today, Hafiz Saeed Protected by Pakistan's Political Shield, Mar. 2022.

unilateral strategies such as military operations (e.g., Operation Sindoor) and UN Security Council's 1267 Sanctions committee blacklisting campaigns, which are usually symbolic and non-binding, without global consensus of enforcing them.

3. How do India's actions influence international counterterrorism norms and legal frameworks?

India's post 2016 counterterrorism strategy is influencing global counterterrorism doctrines as well as usage of violence. Taking publicly declared pre-emptive strikes against non-state actors on territories belonging to other states, India has per se rejected the traditionally limited scope of Article 51, which was used to be interpreted by such bodies as the International Court of Justice (ICJ) as aiming at state actors mostly[28].

Indian actions support a growing trend of state practice, such as the US, Israel, and Turkey, which call for increasing the definition of "armed attack" to include major terrorist strikes by non-state actors[29]. Furthermore, India's aggressive stance in the United Nations, particularly its bid to endorse a Comprehensive Convention on International Terrorism (CCIT), testifies to an interest in formulating and universalizing counterterrorism norms. While the presence of political oppositions have stalled the process, the insistence of Indian diplomats India's selective appeal to legal norms, such as appealing to self-defense without uniformly reporting of its operations to the Security Council may run the risk of compromising its credibility and necessity of clarity and consistency in its legal posture[30].

4. How does India's evolving position on cross-border counterterrorism align with international law?

India's changing role on counter-terrorism lies on a legal-normative crossroads between established principles of international law and emerging countries' behavior. Through article 51 of the U.N. Charter the states have their "inherent right" to defend themselves against an "armed attack"[31]. The ICJ's decision in the Nicaragua v. Reaching a close reference, United States limited this to exclude non-state actors unless under the control of a state[32].

India calls into question this narrow interpretation by claiming that constant and lethal assaults

[28] Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14, ¶¶ 191–200 (June 27).
[29] Schmitt, supra note 3, at 20–22.
[30] Charney, Jonathan I., The Use of Force Against Terrorism and International Law, 95 Am. J. Int'l L. 835, 837 (2001)
[31] U.N. Charter art. 51.
[32] Nicaragua, 1986 I.C.J. at ¶ 195.

conducted by organized non-state actors, openly going about in Pakistani borders, are armed attacks, enabling self-defense even independently of state involvement[33]. This reading specific conforms with the more contemporary developments in state practice, one of which has been the post-9/11 U.S. justification of operations in Afghanistan and Iraq.

India's operations have followed broadly the requirement of necessity and proportion in law and has avoided causing mass civilian casualties and restricted targets to terrorist infrastructure. In addition, India has been shifting to intelligence-based operations, including Operation Sindoor, to indicate an attempt to sustain strategic accuracy and a legally defensible position[34]. Though the legal rationale of India may not be universally accepted, it echoes the larger evolution of jus ad bellum – in which self-defense is being reconceptualized to deal with modern threat by transnational terrorism. The actions of India, if sustained and followed by other states, can lead to the development of a customary ius in favour of cross-border self-defence vis-à-vis non-state actors under strict requirements[35].

RESEARCH GAPS

1) Lack of clear jurisdiction for self defense against non state actors.

The conventional system of law on self-defence has been established under Article 51 of the United Nations Charter and has been fashioned in the mind set of states alone and is not clear on use of force against non-state actors[36]. United States, stressed that only such actions that could only be made accredited to state could constitute an "armed attack."[37] This limited view does not recognize asymmetric threat by autonomous terrorist groups such as the Lashkar-e-Taiba or Jaish-e-Mohammed, operating with or without direct state support[38].

Modern challenges require broader interpretation. Yet, there is no legally binding instrument or authoritative judicial ruling that helps decide how or whether Article 51 applies to non-state armed groups, leaving countries such as India to function in a legal loophole.

[33] Bethlehem, supra note 1, at 779.
[34] Rahul Bedi, Inside India's Secret Cross-Border Ops: Operation Sindoor, The Hindu (Apr. 2024).
[35] Ruys, supra note 5, at 421–23; Schmitt, supra note 3, at 23.
[36] U.N. Charter art. 51; see also Thomas M. Franck, Recourse to Force: State Action Against Threats and Armed Attacks 43 (2002).
[37] Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶¶ 195–200 (June 27).
[38] Michael N. Schmitt, Responding to Transnational Terrorism Under the Jus Ad Bellum: A Normative Framework, in International Law and Armed Conflict 91–106 (2011).

2) Lack of legal status of "Unable or Unwilling" Doctrine.

Even though the United States and other nations have stated the "unable or unwilling" doctrine in Syria and Pakistan, it is not recognized in international law. Despite some proposals that seek to explain why the doctrine should be legal[39], it has never been recognized by recognized treaties, International Court of Justice rulings, or U.N. General Assembly resolutions[40].

Both in 2016 and 2019, India has brought up this doctrine to explain its action in Pakistan, as India says Pakistan does not sufficiently control groups terrorizing in India[41]. Laws governing refugees are not always clear, which leaves the interpretation of "inability" and "unwillingness" wide open to political pressures[42]. If there are unclear laws, running necessary defenses may reduce their legitimacy and lead to risks for the company's reputation.

3) Weak International mechanism for prosecuting cross border terrorists.

Even though almost everyone opposes terrorism, there is still no official international legal definition, and international tribunals have not been established to judge terrorism cases. The Rome Statute states that the ICC can only handle war crimes, genocide, and crimes against humanity, so terrorism is considered only if it fits under those headings[43].

India's CCIT has not advanced in U.N. talks for decades because member states cannot agree on what "legitimate resistance" means[44]. Because of this void, the world lacks a unified plan to handle cross-border terrorism, which gives hiding places to terrorists who rely on another country's borders for safety. As a result, people like Hafiz Saeed and Masood Azhar can act freely regardless of their status as global terrorists in the case of India–Pakistan[45].

4) Ineffectiveness of existing legal cooperation mechanisms (Extradition and Mutual Legal Assistance- MLATs)

Although tools such as extradition treaties and MLATs are needed to go after transnational terrorists, they have not been very effective, mainly when dealing with tense countries such as

[39] Daniel Bethlehem, Self-Defense Against Non-State Actors: A Legal Framework, 106 Am. J. Int'l L. 769, 775 (2012).
[40] See Jennifer Daskal, *The Unwilling or Unable Doctrine Comes to Life*, Just Security (Jan. 2015), https://www.justsecurity.org.
[41] Ministry of External Affairs (India), Statement on Surgical Strikes, Sept. 29, 2016; Letter to UNSC, S/2019/157 (Feb. 27, 2019).
[42] Kimberley N. Trapp, State Responsibility for International Terrorism 184–190 (Oxford Univ. Press 2011).
[43] Rome Statute of the International Criminal Court arts. 5–8, July 17, 1998, 2187 U.N.T.S. 90.
[44] U.N. GAOR, 6th Comm., Report on CCIT, U.N. Doc. A/70/94 (2015); see also Press Trust of India, India Pushes for Global Terror Convention at UN, The Hindu, Oct. 2022.
[45] UNSC Res. 1267, U.N. Doc. S/RES/1267 (Oct. 15, 1999); see also South Asia Terrorism Portal, Profile: Hafiz Saeed, www.satp.org.

India and Pakistan. India has several times sought to return Hafiz Saeed and Masood Azhar to custody, but Pakistan has blocked the effort, saying the level of evidence is not adequate and no signed treaty exists.[46]

On a wider note, MLATs are held back by lengthy procedures, strict rules requiring the other country to consider the crime serious, and broad exceptions for states to decline help.[47] Further, human rights law prevents the deportation of terror suspects if they could face mistreatment in the other nation.[48]

So, as a result, India tends to use self-initiated actions, such as intelligence, absentee trials, and listing by the UN. These strategies are fairly limited in their application, which points to the important need to overhaul and depoliticize international legal cooperation bodies.[49]

CONCLUSION

The country's changing counterterrorism approach is a practical way to meet the ongoing and challenging problem of terrorism from groups based in Pakistan. Following the Mumbai, Uri, and Pulwama incidents, India has asserted itself more in military and legal matters, including attacking across the border with surgical strikes, airstrikes at Balakot, and perhaps carrying out Operation Sindoor, all to defend itself from threats under Article 51 of the U.N. Charter[50].

The study examines why India responds in the manner it does by drawing from the "unable or unwilling" principle presently gaining acceptance in international law. Even though it hasn't been set in any formal agreement or approved by the International Court, the idea has appeared in actions taken by the United States, Israel, and perhaps helps justify what India did[51]. Its formal uncertainty and uncertain application standards still make it problematic for building a self-defense argument.

The study discovered that it is especially complicated to try international terrorists because no universal definition for terrorism exists, the ICC has limited powers concerning terrorism, and there are many challenges to extraditing and sharing evidence between countries. The shortcomings in the world legal system have forced India and other countries to have to rely

[46] Ministry of External Affairs, India, No Extradition Treaty with Pakistan, Lok Sabha Debates (Mar. 2020); see also Press Trust of India, Pakistan Rejects India's Dossier on Masood Azhar, Hindustan Times (Feb. 26, 2019).
[47] U.N. Office on Drugs and Crime (UNODC), Manual on Mutual Legal Assistance and Extradition 25–31 (2012).
[48] Convention Relating to the Status of Refugees art. 33, July 28, 1951, 189 U.N.T.S. 150; Soering v. United Kingdom, 161 Eur. Ct. H.R. (ser. A) (1989).
[49] South Asia Terrorism Portal, India's Counterterrorism Measures, https://www.satp.org/.
[50] U.N. Charter art. 51; Letter from India to the U.N. Security Council, U.N. Doc. S/2019/157 (Feb. 27, 2019); Ministry of External Affairs (India), Statement on Surgical Strikes (Sept. 2016).
[51] Daniel Bethlehem, Self-Defense Against Non-State Actors: A Legal Framework, 106 Am. J. Int'l L. 769, 771–78 (2012).

on their own measures, which increases tension across the region and works against the security system set up by the U.N. As other countries now claim a right to take action before an attack from a non-state group, India's approach is shaping customary international law.

Even now, many questions about it go unanswered. For example, it is unclear what guidelines exist for self-defense against non-state actors, how much the "unable or unwilling" doctrine is accepted in law, and the problems associated with extradition procedures around the world. The meaning of criminal law, lawful force, and working as a team in global counterterrorism should be reviewed and updated by international society.

So, India acts between developing legal standards and urgent security measures. The nation's story highlights the difficulties of choosing between national sovereignty and security, multilateral and unilateral action, and what the law requires compared to what is needed. The future status of India's approach in the global legal system will depend on its conduct as well as the ability of world organizations to respond to present-day threats.