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*International law has much to say about the use of force, notes Bryan Schwartz*

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THE anniversary of Pearl Harbor, the beginning of a United Nations intervention in Somalia - this week is a good time to think about the changing international law of war.

First, the formalities. The Hague Convention of 1907 says a state must declare war before attacking. In December, 1941, the Japanese planned to present Washington with a threatening (but not specific) note shortly before the air strike. The timing was bungled, and the bombs hit Hawaii before the message hit the State Department.

International law still favours the principle of prior warning. The UN issued a clear ultimatum before launching Desert Storm. But leaders rarely "declare war" any more; they speak of initiating "enforcement actions," "military embargoes" and "rescue operations." The restrained language pays homage (or lip service) to the underlying principles of the modern law of war. Declaring a war is not enough to validate it. There must be an objective of high moral importance, and violence should be used only to the extent necessary to achieve it.

Before this century, some theorists argued that a sovereign state can lawfully start a war for any "reason of state." Other jurists had a more demanding test: There must be a "just cause." We now accept the latter view. The challenge has been to arrive at a sufficiently precise and narrow definition of the just causes of war.

Modern law has largely confined "just cause" to fending off foreign attack. In 1928 the major powers, traumatized by the Great War, signed the Kellogg-Briand pact. It flatly prohibited any resort to force to settle disputes. The Nuremberg and Tokyo war-crimes tribunals interpreted Kellogg-Briand as banning "aggression" but not "self-defence." The tribunals convicted senior Axis officials, including Prime Minister Tojo and others who planned Pearl Harbor, of "crimes against peace." Around the same time, the UN Charter was being drafted. It prohibits using force against the "political independence or territorial integrity" of another state. The UN Charter expressly permits, however, "individual or collective self-defence."

A state that fires the first shot is considered the aggressor -usually. The right of self-defence can occasionally justify a "pre-emptive strike" against an immediate threat. The UN did not condemn Israel for launching the June, 1967 war. President Gamal Abdel Nasser of Egypt had placed more troops near Israel, blockaded a sea exit and ordered out UN peacekeepers.

What if your adversary is not threatening an immediate attack, but is developing or maintaining weapons that imperil your security? The law is dubious about preventive strikes. During the Cuban missile crisis, many advisers urged U.S. President John Kennedy to bomb nuclear-missile sites in Cuba

before they became operational. Bobby Kennedy countered that his brother should not be remembered as the "American Tojo." The President settled on a blockade to prevent further weapons deliveries. In 1981, Israel tried to squelch Saddam Hussein's weapons program by bombing an Iraqi nuclear reactor. The United Nations condemned the attack. The international community still tends to place a higher priority on state sovereignty than on human rights. Before the Gulf War, Iraq's atrocities against its own people, including the Kurdish minority, were largely ignored. The UN forcibly intervened only after Iraq invaded another sovereign state, Kuwait.

Some international lawyers argue, however, that there should be a doctrine of "humanitarian intervention." Foreign powers would be able to intervene when a government was inflicting extreme abuses on its own people. Two possible precedents from the 1970s: India evicted a West Pakistani army that was brutally oppressing East Pakistan (now independent Bangladesh); Tanzanian troops ousted from Uganda the murderous regime of Idi Amin.

Neighbours are liable to have mixed motives for intervening. Vietnam ended the mass murder in Cambodia, but remained as an unwelcome occupier. Ideally, then, interventions would be authorized or conducted by the United Nations. (Japan, by the way, has become a heavy financial backer of UN peacekeeping, and has recently changed its laws so that it can contribute troops as well.)

The current humanitarian intervention in Somalia has compelling justification. It is directed against a devastating famine. It will not oust a democratic government, but rather try to create one where there is now anarchy. A major source of leadership has been the Secretary-General of the United Nations.

If developed and applied in the future with discretion, the doctrine of "humanitarian intervention" could become an integral and worthy part of the new world order.

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