

Agroterrorism and the Challenges it Could Pose for the UN Regarding the Use of Force under Article 2, Paragraph (4)

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The United States Department of Justice has long recognized agroterrorism as a developing threat to the US—one that could cripple the US economy, threaten its political influence around the globe, and affect the health and wellbeing of millions of people.¹ Agroterrorism is defined as a type of terrorist incident involving the “deliberate introduction of a disease agent” into the food chain, or attack against livestock or crops.² While this is not a particularly new issue that governments around the world may face, the aftermath of the global pandemic of COVID-19, an airborne disease, raises more questions about what a nation would have the *ability* to do under international law if an incident similar to COVID-19 were to occur due to an act of agroterrorism.

Under international law, namely, the rules of *jus ad bellum* in Article 2, paragraph 4 of the U.N. Charter, all Members are required to refrain from the “threat or use of force” against any other state.³ In Article 51, the U.N. Charter does allow for the “inherent right” of self-defense in the case of an “armed attack occurs against a Member” until the Security Council can intervene.⁴ However, the Charter fails to define what constitutes an “armed attack” and precedent shows that the International Court of Justice seldom considers acts to be sufficient to support self-defense under Article 51 unless they are explicit acts of aggression.⁵ The UN General Assembly Resolution 3314 on the Definition of Aggression strongly suggests that an incursion must pass a certain threshold of violence to constitute an armed attack and utilize traditional armed forces.⁶ In the conflict between Ethiopia and Eritrea, the Commission declined to find that “[l]ocalized border encounters” involving loss of life constituted an “armed attack” that justified reacting in self-defense.⁷ If civilian deaths do not always rise to the threshold necessary to retaliate with force, it is hard to imagine whether attacks that do not have any casualties ever could.

An agroterrorism attack would not necessarily result in the death or illness of civilians themselves.⁸ Agroterrorism can be an attack against a food source, including grain mills, crops, livestock pastures or livestock, all of which do not necessarily result in any civilian casualties—they can simply be intended to “undermine socioeconomic stability and/or generate fear.”⁹ Terrorist incidents against ‘food and water supply’ from 1970 to 2020 show a significant rise since the year 2000, but seldom include civilian casualties, with the only known incidents involving over 20 fatalities to be primarily taking place between 1986 and 1996 (with one incident in 2017 in Somalia).¹⁰ While COVID-19 was not a bioterrorism weapon and was an airborne virus that was contagious to humans, the plight of countries around the world in response to this pandemic forces us to consider a comparison to a potential intentional attack utilizing agroterrorism techniques.

If a country were to engage in agroterrorism, by targeting food sources of another state via unarmed means—a disease or destruction of livestock and crops—the UN could potentially have a devastating legal crisis on its hands. Agroterrorism would have devastating effects on the economy of a country, requiring mass slaughter of diseased livestock, mass recall of products, the loss of farmland and crops for years to come, not to mention substantial effects on suppliers, distributor companies, restaurants, and transporting companies.¹¹ The effects could also bleed into the public health sphere as citizens fear the spread of the diseases to humans, resulting in mass hysteria that many feel dominated the COVID-19 phenomenon.¹² Such an attack could also have an effect on a country's government, eroding public trust and affecting the stability of an administration.¹³ The opportunity for this kind of economic and political chaos could be tempting, especially when two countries are competing in particular markets or vying for global dominance. The most obvious response might be economic sanctions or diplomatic intervention; however, many countries may be interested in what their options are when it comes to responding to a large-scale attack with physical force. The UN should prepare a response to an attack on another nation that may not utilize “armed” forces, or even result in direct civilian casualties, but that still causes mass economic destruction or destabilization of government.

The Possibility for the UN to Expand the Scope of What it Considers “Armed Attack”

One possibility for the UN is to change the requirements for a physical response under 2(4). After the threats posed by the Cold War, the UN and most countries interpreted 2(4) to be a “narrow focus” on “kinetic military force.”¹⁴ However, the emerging threat of cyberterrorism in recent decades has caused many to consider that the scope of 2(4) requires re-examination.¹⁵ The National Research Council studied cyber warfare and concluded that they should be judged under the UN Charter and *jus ad bellum* principles by considering the “effects” of the attacks and whether

they are "tantamount to a military attack."¹⁶ The doctrine of "cyber equivalency," proposed by American national security expert Richard Clarke, emphasized that cyber-attacks should be judged by their "effects not their means."

This shift in interpretation has not been recognized officially by either the UN, or the governments of countries such as the United States, but most top-level government officials have hinted that their countries would regard cyber-attacks as "prohibited force" by examining the effects of the attack and whether the effects of such an attack would warrant a response of military self-defense.¹⁷ Considering the very real possibility of cyberattacks in the near future, and those that have already occurred, the UN may want to revise the way it currently interprets armed attack as not just including boots on the ground force, but utilizing the effects test proposed by the National Research Council and others.¹⁸

This possibility could expand 2(4) enough to include agroterrorism as well. While cyberterrorism is at the forefront of most countries' minds, agroterrorism is a particularly vulnerable area. In the United States in particular, the nation is quite vulnerable to a food or agriculture attack.¹⁹ The Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA) are reactionary agencies.²⁰ The US sought to remedy this by passing the Food Safety Modernization Act (FSMA) in 2011, which was designed to have a proactive and preventative approach to food safety and livestock standards, including the purpose of preventing a terrorist attack utilizing food supply.²¹ The FDA estimated that the benefits of averting a terrorist attack on food supply via the FSMA would be approximately \$130 billion.²² However, despite the strides made with the FSMA installing new checks and balances at every stage of production in food supply facilities, the reoccurrence of "naturally occurring outbreaks of foodborne disease"

since the implementation of the FSMA has proven that there are still significant vulnerabilities in the system and prevention is not yet near 100%.²³

The necessity to respond with force to an agroterrorist attack would still require that it meets a certain threshold, much higher than the threshold necessary for political or economic sanctions or diplomatic actions taken against the attacker.²⁴ The Report of the International Commission on Intervention and State Sovereignty (hereafter, the Report) noted that for military action “to ever be defensible, the circumstances must be grave indeed.”²⁵ Given that the effects of an agroterrorism attack would predominantly affect the economy of a country and result in the losses of billions of dollars, it could be argued that agroterrorism should simply be responded to with economic sanctions. However, per the Report, “[b]lanket economic sanctions... have been increasingly discredited in recent years,” with the commission writing that the hardships enacted on the civilian population are “greatly disproportionate” to the impact of the sanctions on the principle players, namely the government or state actors that instigated the attack.²⁶ While there are ways of targeting the sanctions more closely to those principle players, the Report notes that this still requires “effective monitoring” if they are to “have any prospect of being effective.”²⁷

Furthermore, the International Court of Justice (ICJ) has already been inconsistent in identifying particular thresholds when it comes to responses by countries that have been attacked.²⁸ Laurie R. Blank, Clinical Professor of International Law and Humanitarian Law at Emory, noted specifically that the ICJ has contradicted itself in the past when examining the right of a country to respond with force in self-defense, examining the “‘scale and effects’ and gravity” of the United States’ participation in the recruitment, training, and arming of Para militants in the *Nicaragua* case, but then making a statement in the *Oil Platforms* case that the destruction of a “single military vessel could be sufficient” to constitute an armed attack and allow a physical response.²⁹

In the wake of a devastating agroterrorist attack on a nation's food supply, rendering millions of people with food scarcity and a country's economy in shambles, different nations' governments, and the ICJ itself, currently do not have strict guidance on what a threshold may be for a response. If the UN were to clarify the terms "armed attack" to include a broader scope, perhaps by using an effects test so that cyber- and agro- attacks would be included, this would solve a problem that is certainly not far off.

What the UN Must Consider Before Amending the Definition of Armed Attack

In considering whether to amend their interpretation of an armed attack, the UN must also look to the original purpose and character of the UN Charter and 2(4) specifically. The purpose of having international laws on warfare at all was to minimize war and suffering and to promote "peace and the peaceful settlement of disputes," prioritized over an individual state's "right to use force."³⁰ While the definition may be flimsy as threats evolve from a traditional boots on the ground narrative to an increasingly cyberspace and economic and politically-centered landscape, the drafters of the UN Charter deliberately excluded 'low-level incidents' to "protect against escalation of smaller incidents into full-scale conflagrations."³¹ The ICJ in the *Nicaragua* case noted that if the use of force was "made permissible" in response to "minor provocations," World War III would dawn soon after.³²

Furthermore, the categorization of a "large-scale" armed attack as one where there is "loss of life and[/or] ethnic cleansing" was intended to be clear as the threshold for legitimate military action in response.³³ The Commission on the Responsibility to Protect noted that even significant political actions, such as an overthrow of a democratic government or a military take-over may not even rise to the threshold of physical force, but would merely warrant international economic and political sanctions and potentially the placement of peace and security officers.³⁴

The Commission also requires that military intervention is taken as a last resort – “[e]very diplomatic and non-military avenue for the prevention or peaceful resolution of the humanitarian crisis must have been explored.”³⁵

Conclusion

Agroterrorism (like its counterpart, cyberterrorism) presents a unique problem for the UN and for vulnerable countries around the world. It is a highly effective solution for a country that seeks to destabilize another and to take over a particular market, or to simply deconstruct another’s economy. The effects would be widespread, not just commercially to industry, but to all consumers and citizens in the country that would face a market crash, chaotic government response, public health fears, and civil strife. The current requirement of Article 2, paragraph 4 of the UN Charter only dictates that a country may use physical force in self-defense if they are responding to an “armed attack.” As agroterrorist attacks, and cyberattacks, do not use traditional weapons and may not even directly target civilian lives, the UN may need to consider a re-examination the requirements of Article 2(4) to determine whether this definition should be amended to look at the effects of a foreign state attack, rather than the means. By looking at the effects of an attack, a nation would be able to weigh its options in response to a devastation of its food supply or food production infrastructure to determine their possible options in order to prevent another imminent attack in self-defense.

These types of attacks may be much more prevalent in the coming years than a traditional armed attack and may have far-reaching, devastating consequences and amending the definition or at least noting the scope would be an appropriate, anticipatory maneuver.

However, there is also the purpose of the UN charter to consider and the purpose behind the high threshold of Article 2(4). The UN wanted to avoid the perils of war and to minimize human

suffering associated with armed conflict. In order to do this, the decision was made to make the threshold for responding with physical force incredibly high, even if a country is acting in “self-defense” after an attack on their home front. While the effects of agroterrorism would be devastating, the UN intentionally limited the article to armed attacks resulting in large-scale loss of life or ethnic cleansing to avoid the weighing of effects of lesser attacks, which may result in countries choosing to reply with physical force and leading to mass global war.

Endnote

¹ Daniel Olson, *Agroterrorism – Threats to America’s Economy and Food Supply*, FEDERAL BUREAU OF INVESTIGATION: LAW ENFORCEMENT BULLETIN (Feb. 1, 2012), <https://perma.cc/Z4WU-8HAB>.

² Peter Chalk, *Agroterrorism “What is the Threat and What Can Be Done About It?”*, NATIONAL DEFENSE RESEARCH INSTITUTE (2004), <https://perma.cc/4V6M-26YC>.

³ UNITED NATIONS CHARTER, Chapter I, Article 2(4).

⁴ *Id.* at Chapter VII, Article 51.

⁵ *See* Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgement, 1986 I.C.J. 14, ¶ 115 (June 27); Eritrea-Ethiopia Claims Commission (Eth. v. Eri.), Partial Award, 2000 Perm. Ct. Arb., ¶ 12-13 (Apr. 28, 2004).

⁶ G.A. Res. 3314 (XXIX), at Art. 3(a)-(g) (Dec. 14, 1974).

⁷ Eth. v. Eri., *supra* note 5 at 4.

⁸ Olson, *supra* note 1.

⁹ Chalk, *supra* note 2 at 1.

¹⁰ GLOBAL TERRORISM DATABASE, *Attacks on food & water supply*, <https://perma.cc/V2QN-LQSS> (last visited Oct. 8, 2023).

¹¹ Chalk, *supra* note 2 at 1.

¹² *Id.* at 1-2.

¹³ *Id.* at 1-2.

¹⁴ Matthew C. Waxman, *Cyber Attacks as “Force” Under UN Charter Article 2(4)*, 87 INT’L L. STUD. 43 (2011) at 46.

¹⁵ *Id.*

¹⁶ *Id.* at 47.

¹⁷ *Id.* at 47-48.

¹⁸ *Id.* at 49.

¹⁹ K.R. Schneider et. al, *Agroterrorism in the US: An Overview*, UNIV. OF FLORIDA: IFAS EXTENSION, FSHN0521 at 2.

²⁰ *Id.*

²¹ *Id.* at 2-3.

²² *Id.* at 3.

²³ *Id.*

²⁴ INTERNATIONAL DEVELOPMENT RESEARCH CENTRE (IDRC), THE RESPONSIBILITY TO PROTECT: REPORT OF THE INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY 29 (Dec. 2001).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 30.

²⁸ Laurie R. Blank, *Irreconcilable Differences: The Thresholds for Armed Attack and International Armed Conflict*, 97 Notre Dame L. Rev. 1, 255 (2020).

²⁹ *Id.*

³⁰ *Id.* at 257.

³¹ *Id.*

³² *Id.* at 256.

³³ IDRC, *supra* note 24 at 33.

³⁴ *Id.* at 34.

³⁵ *Id.* at 36.