

When Do Preparatory Acts Become a Threat of Force?

Re-examining Article 2(4) of the UN Charter

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The Ambiguity of "Threat"

Article 2(4) of the UN Charter clearly prohibits both the **use of force** and the **threat of force**. While the "use" of force (a kinetic action) is well-defined, the line for "threat" remains dangerously ambiguous.

This is especially true for preparatory acts like troop mobilisations or weapons positioning. Recent crises, including Russia-Ukraine (2021-22) and Iraq (2002-03), highlight the critical need for legal clarity.

The Key Question:

When does preparation cross the line into an unlawful threat?

How We Found the Answer

This study used a doctrinal and state-practice approach to identify the recurring criteria states use to classify an act as a "threat."

Analyzed Primary Sources

- UN General Assembly & Security Council resolutions
- Verbatim meeting records
- ICJ decisions (e.g., *Nicaragua v. United States*, *Nuclear Weapons* opinion)

Analyzed Secondary Sources

- Leading scholarly analyses of *jus ad bellum*
- Military coercion theory
- Customary international law

An Unlawful Threat: The 5-Point Cumulative Test

Preparatory acts become unlawful threats when these five conditions converge. They are not a checklist, but a cumulative test evaluated in context.



1. Objective Capability

The act must make armed force materially deployable and operationally ready, demonstrating an ability to act imminently.

Example: Troop build-ups, not just training.



2. Intent to Coerce

The preparations must aim to pressure another state, either explicitly (ultimatums) or inferred (strategic signalling).

Example: The Cuban Missile Crisis.



3. Specific Targeting

Acts directed at a particular state gain legal significance. Neutral exercises do not qualify.

Example: Russia's 2021-22 border deployments.



4. Communication & Perception

Preparations must be observable in a manner that generates credible apprehension and is perceived as a threat by the target state.

Reinforced by ICJ precedent.



5. Contextual Factors

Political tensions, historical disputes, and regional instability amplify the coercive meaning of otherwise neutral acts.

Past aggression intensifies the threat.

Conclusion & Key Takeaways

- ✓ Coercion can occur **before** the first shot is fired. The legal definition is not limited to kinetic action.
- ✓ Preparatory acts (mobilisation, deployments) **can** constitute an unlawful threat, even without kinetic action.
- ✓ The legal test is a functional, context-driven approach based on the 5 cumulative conditions.
- ✓ **Bottom Line:** This interpretation preserves the preventive purpose of Article 2(4), addressing conduct that makes war **imminent**, not just war itself.

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