**EDITORIAL COMMENT**

**Twitter and the *jus ad bellum*: threats of force and other implications**

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A recent report noted that ninety-seven per cent of UN member states currently have an official Twitter presence.[[1]](#footnote-1) The report also highlighted the proliferation of Twitter accounts of Heads of State, including those that blur the ‘state’ and ‘personal’ divide. For example, the number of followers of the handle @realDonaldTrump has more than doubled in size since the US President took office in January 2017,[[2]](#footnote-2) while the number of people following the French President’s Twitter account, @EmmanuelMacron, has tripled since his election in May 2017.[[3]](#footnote-3)

This editorial provides some initial thoughts on the implications of this increased use of Twitter by states (and, in particular, Heads of State) for the *jus ad bellum*. Its main focus, in section 1, which takes up the bulk of the editorial, is on the question of whether a tweet by a Head of State could constitute a violation of the prohibition of the threat of force in Article 2(4) of the United Nations (UN) Charter. In addition, though, section 2 briefly considers other possible *ad bellum* implications of the rise of Twitter as a means of state-level communication.

**1. Twitter and the threat of force**

Recent escalations in the Persian Gulf, tensions in the South China Sea, and Turkey’s belligerent behaviour in Syria invite a timely re-appraisal of threats of force in international law.[[4]](#footnote-4) However, rather than simply revisiting the well-trodden corpus of literature on threats of force (including the present author’s own work on this subject) this editorial seeks to begin debate as to whether, and, if so, to what extent, threats of force via the medium of Twitter oblige an ‘iOS/Windows update’ to the interpretation of Article 2(4).[[5]](#footnote-5) More specifically, were a particular tweet to originate from, let us say, the personal account of a Head of State, would that necessarily violate or trigger a breach of Article 2(4)? Does Article 2(4) require that the threat originates from an official account of a Head of State? Equally, does one simply dismiss the ‘payload’/delivery system of the threat as being largely irrelevant – whether the threat is delivered by carrier pigeon or tweeted, does this simply fall within Romana Sadurska’s traditional categorisation of a verbal/written ultimata?[[6]](#footnote-6) Ancillary as to whether a threat originating from the personal Head of State can amount to a violation of Article 2(4) is whether such a threat should be taken seriously from a strategic perspective.

Threats of force to this day remain a relatively undefined concept under international law despite their explicit prohibition articulated in Article 2(4) of the UN Charter.[[7]](#footnote-7) One might temper this view, and note that while state practice still typically favours the ‘referencing’ of the prohibition of an *actual use of force* compared to a *threatened use of force*, the latter seems to be slowly gaining some momentum in terms of awareness.[[8]](#footnote-8) Overwhelmingly, though, instances of when a threat of force (a prima facie unlawful action under Article 2(4)) are actually ‘referenced’ by states remain secondary to actual uses of force.[[9]](#footnote-9)

Compared to its loftier counterpart (the prohibition against the actual use of force) the ‘fault lines’ delineating what constitutes a threat of force continue to remain relatively nebulous.[[10]](#footnote-10) Disagreement between commenters typically surfaces in relation to threat categorisation[[11]](#footnote-11) or threat perception,[[12]](#footnote-12) but most accept that threats are not confined to something said, but also can include something done – indeed ‘actions may well speak louder than words’.[[13]](#footnote-13)

The natural starting point for any foray into threats of force is to recall the categorical prohibition of a threat of force as set out in Article 2(4) of the UN Charter.[[14]](#footnote-14) Article 2(4) underlines that:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

The prohibition has also been restated in a variety of soft law declarations, such as the *1970 Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation Among States*[[15]](#footnote-15) and the *1987 Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations*.[[16]](#footnote-16) None of the soft law instruments go beyond a simple restatement of the prohibition contained in Article 2(4), and neither they, nor Article 2(4), provide sufficient clarity as to when a threat of force is lawful or unlawful.

The current test for determining the lawfulness of a threat of force remains the one espoused by the ICJ in its seminal *Nuclear Weapons* advisory opinion.[[17]](#footnote-17) As most readers will recall, the *Nuclear Weapons* advisory opinion considered the lawfulness of both the threat and use of nuclear weapons under international law.[[18]](#footnote-18) Here, the ICJ concluded that the threat of force is unlawful if the force threatened would violate Article 2(4).[[19]](#footnote-19) Essentially, the ICJ posed a retroactive test to the following hypothetical and the contextual coupling of a threat of force to actual use of force.[[20]](#footnote-20) *If* the threat of force were carried out (in other words actual force, and not threatened force) would that actual force be lawful? If yes, that would legitimise the prior threat. If not (i.e. if actual force would be deemed unlawful), then so would the threat that preceded it. Ultimately, this conceivably allows for just two possibilities of a lawful threat of force. The threat would have to fall within one of the two accepted exceptions to Article 2(4): a threat of enforcement pursuant to Article 42 of the UN Security Council’s Chapter VII powers, or a threat of self-defence.[[21]](#footnote-21) In sum lawful force may be threatened, but as with the use of force, the ‘default’ position is that all threats of force are prima facie unlawful.[[22]](#footnote-22)

As noted, there is a gentle differing of academic opinion within the literature as to the specific typology of threats (and, indeed, different categories of threats apparent in state practice).[[23]](#footnote-23) However, most differences are reconciled to the extent that threats of force may take on different guises (something said, as well as something done), albeit the archetypal threat remains a coded warning/ultimatum – i.e. ‘comply or else’.[[24]](#footnote-24) Until now, the scholarship has not yet envisaged the ‘iOS/Windows update’ by seeking to transition the existing Charter tapestry to the Twitter medium, and assess the conceptual, or indeed real possibility, of a threat of force via tweet.

Perhaps the obvious starting point for this discussion is to hone in on the *locus classicus* of arguable threatened force in recent times,[[25]](#footnote-25) President Donald J Trump’s infamous remark of 3 January 2018:

North Korean Leader Kim Jong Un just stated that the “Nuclear Button is on his desk at all times.” Will someone from his depleted and food starved regime please inform him that I too have a Nuclear Button, but it is a much bigger & more powerful one than his, and my Button works![[26]](#footnote-26)

By way of ‘anticipatory caveat’, it is not the purpose of this editorial to dissect each and every tweet. Rather, it is to begin the academic dialogue by highlighting the broader issue as to whether such tweets from a Head of State account could indeed violate Article 2(4) of the UN Charter. One could readily conclude that such threats of force typically fall within the classic typology of verbal/written ultima, albeit via a new medium.[[27]](#footnote-27) And, once the typology has been identified, it is simply a case of ‘running the tweet’ through the present test set out by the ICJ in the *Nuclear Weapons* advisory opinion.

Were one to pursue that trajectory, one could potentially take the view that the tweet itself may well violate Article 2(4) but could possibly be justified as a form of threatened self-defence.[[28]](#footnote-28) In regard to the particular tweet in question, of 3 January 2018, President Trump could claim that his threat was one of self-defence, in that he essentially appears to have said ‘your weapons pose no threat?’ Clearly, for that argument to succeed on the legal front, all of the requirements for self-defence would need satisfying.[[29]](#footnote-29) One would also note that a state cannot act in self-defence against an act of self-defence: if one state has legitimately invoked its inherent right of self-defence the other state cannot then claim on the same basis.[[30]](#footnote-30)

However, perhaps the most useful starting point is to ascertain the ‘status’ of the Twitter account itself. If a tweet were to originate from a ‘personal’ account as opposed to a ‘state’ account, it is difficult to see how it would constitute a potential violation of Article 2(4); individual threats of force from a private actor will not to trigger a violation of Article 2(4).[[31]](#footnote-31) With regards to the current POTUS, and the ‘legal status’ of his tweets, difficulties present in terms of ascertaining the status of the account from which the President issues his tweets. The recent decision of the United States Court of Appeals for the Second Circuit perhaps sheds some much-needed light on this matter.[[32]](#footnote-32)

The July 2019 appeal hearing of *Knight First Amendment Institute, et al v. Donald J. Trump, et al* concerned the blocking of social media users from interacting with the Twitter account of President Trump, on the basis that those users expressed views to the President’s disliking.[[33]](#footnote-33) Such action was viewed by the Plaintiffs as a breach of their First Amendment rights.[[34]](#footnote-34)

As part of the appeal, the Court considered the status of the POTUS’ Twitter account. The Court notes on page 6 of its judgment that President Trump established his account back in March 2009, with the handle @realDonaldTrump, and that both prior to coming into office or on the point of departure, that account is indeed a private one.[[35]](#footnote-35) However, the Court concluded ‘that the factors pointing to the public, non‐private nature of the Account and its interactive features are overwhelming.’[[36]](#footnote-36) The Court went on to note that, since his inauguration in January 2017, the Twitter account, has, to all intents and purposes, taken on the semblance of an official rather than a private account.[[37]](#footnote-37) As such, it is therefore fully conceivable that the contretemps as to who possessed the biggest nuclear arsenal could certainly enter the realm of Article 2(4) for assessing the lawfulness of that particular threat. The tweet is from one Head of State to another, and the nature of the tweet is, of itself, of a minatory nature – albeit President Trump could seek to argue that it amounted to an anticipatory threat of self-defence against the North Korean regime.

Because such action takes place within the cyber sphere, it might be equally prudent to assess whether the 5th dimension offers any peculiarities when it comes to threats of force. The actual use of force in the cyber realm, and particularly whether a cyber operation/action amounts to a breach of Article 2(4), has, quite rightly, received considerable attention in recent years.[[38]](#footnote-38) Without overly revisiting the commentary, the main fault lines within the literature on the cyber realm (as to whether a cyber operation may trigger a breach of Article 2(4)) centre on the modality of attack vs the consequences suffered.[[39]](#footnote-39) Some, such as Sklerov, instead proffer a strict liability approach for all breaches of computer network infrastructures.[[40]](#footnote-40) If one adopts and transposes the ‘consequence-suffered’ type approach – which would be the more natural fit – it would make little difference whether the act of violation (in this case, threat of force) occurred within the cyber realm or not.

Equally, this author remains convinced that a full assessment of a threat of force cannot be undertaken without reference to strategic considerations.[[41]](#footnote-41) Strategic considerations help navigate the distinction between an empty threat (which may well violate Article 2(4) but is ‘tolerated’) and, a threat that is all too ‘real’.[[42]](#footnote-42) Unless the ‘threatening state’ is militarily capable, committed, credible and has communicated the threat (by whatever means), the threat may well violate the letter of Article 2(4) but remains entirely innocuous.[[43]](#footnote-43) If the threatening state is militarily capable of carrying out its threat, however, meaning that the threat is intolerable in the eyes of the international community,[[44]](#footnote-44) then the threat itself must be seen as unlawful under Article 2(4). The same analysis would naturally extend to the Twitter realm.

Finally, taking the discussion in this section further invites some consideration as to the status of ‘retweets’. Retweets, potentially, could constitute an act of the state, and, thus, like a ‘regular’ tweet, could violate the prohibition on the threat of force. However, the potential for this to occur would be with the proviso that the retweeting state is expressing its own view – one would need to factor in the usual disclaimers that retweets do not equate to endorsements.[[45]](#footnote-45)

**2. Other implications for the *jus ad bellum***

Moving beyond the question of whether a tweet could amount to an unlawful threat of force, this section provides some initial thoughts regarding other possible implications of the state-level use of Twitter for the *jus ad bellum*.

First, it may be noted that the logic in *Knight* – i.e., that tweets by Donald Trump constitute ‘official statements’ of the US – may leave open the possibility that tweets and/or retweets could not only engage international law standards (such as potentially amounting to a violation of the prohibition of the threat of force) but could even factor into the process of the *development* of those standards. In time – assuming the *Knight* logic is applied to tweets by other nations’ Heads of State – it may possible that a tweet may evidence state practice or *opinio juris*, or constitute a means of expressing objection for the purposes of establishing a persistent objector claim. In other words, ‘official’ tweets have at least the potential to effect customary international law development or its application. Of course, this possibility could have implications across all sub-areas of international law, but that would notably include the rules of the *jus ad bellum* (where, of course, customary international law plays a big role).[[46]](#footnote-46)

An area that is more specific to the *jus ad bellum* where the ‘Twitter effect’ may also present itself is in relation to collective self-defence. In terms of the requirements for the lawful invocation of collective self-defence, while some commentators are less persuaded by the idea that the state need necessarily declare itself as the victim of an armed attack,[[47]](#footnote-47) a request for assistance – which undeniably *is* a requirement for lawful collective self-defence[[48]](#footnote-48) – could be made via social media. Clearly, and evidently, one would need to ensure that the request came from the verified account of a Head of State, but, providing the text is sufficiently clear (a benefit of the Twitter character-count limit, perhaps), a collective call to arms via Article 51 of the UN Charter or the invocation of Article V of the Washington Treaty is another possible way in which Twitter could play a role.[[49]](#footnote-49)

A state’s reporting obligation under Article 51 (or indeed Article V of the Washington Treaty for that matter) would not seemingly preclude that this takes place via Twitter. The requirement is that measures ‘shall be immediately reported to the Security Council’ – there is no prescription as to form.[[50]](#footnote-50) Providing, therefore, that the tweet is directly addressed to the UN Security Council, reporting (although highly unlikely) could be possible via this medium. In practical terms, this option is perhaps problematic given that the UNSC does not currently have its own Twitter handle (although @UN – the general UN account – may provide a route to the Council via the platform).[[51]](#footnote-51) Ultimately, although technically possible, Twitter would seem an unlikely avenue for a state to seek to comply with the self-defence reporting obligation.[[52]](#footnote-52)

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In conclusion, the type of 21st Century ‘social media diplomacy’ briefly highlighted in this editorial – and its implications for the *jus ad bellum* (as well as, of course, other areas of international law) – is in need of greater scrutiny, and dialogue on the issue by both lawyers and the international community alike is required.

1. Burson, Cole, and Wolfe, ‘Twiplomacy Study 2018: Executive Summary’, <https://twiplomacy.com/blog/twiplomacy-study-2018/> (accessed 1 November 2019). The report notes that Twitter was the leading social media platform in 2018 with 97 per cent of UN member states having a presence (compared to: Facebook 93 per cent; Instagram 81 per cent; Youtube 80 per cent; Periscope 49 per cent; Snapchat 11 per cent). The report also notes that ‘[o]nly six countries, including Laos, Mauritania, Nicaragua, North Korea, Swaziland and Turkmenistan, do not have a Twitter presence.’ [↑](#footnote-ref-1)
2. *Ibid.* According to the study, the [@realDonaldTrump](https://twiplomacy.com/info/north-america/united-states/) had – as of June 2018 – obtained 31 million new followers since the president took office on 20 January 2017. As a result President Trump became the most followed world leader, when he passed Pope Francis ([@Pontifex](https://twiplomacy.com/info/europe/vatican/)) who, with more than 47 million followers, is the second most followed world leader. The report also identifies that ‘[w]hen he took office, the @realDonaldTrump account was followed by 97 world leaders on Twitter while 226 world leaders were following the @POTUS account. Today, heads of state and government realize that the @realDonaldTrump account is not going away and, as a result, the @realDonaldTrump handle is now followed by 185 of the 951 world leader accounts and it occupies the fifth position among the most followed accounts by world leaders behind the @WhiteHouse (290), @POTUS (250) the @StateDept (210) and @10DowningStreet (194).’ [↑](#footnote-ref-2)
3. Twiplomacy 2018 (n 1). According to the study, ‘French President Emmanuel Macron has made a dazzling appearance on the Twittersphere in 2017. Since his election on May 14, 2017, the @EmmanuelMacron account has tripled in size, adding more than 2 million new followers and becoming the EU’s third most followed leader’. [↑](#footnote-ref-3)
4. See, e.g. Deirdre Shesgreen and John Fritze, ‘Donald Trump threatens “overwhelming force” against Iran if it attacks “anything American”’, *USA Today* (25 June 2019) <https://eu.usatoday.com/story/news/world/2019/06/25/donald-trump-threatens-iran-overwhelming-force-if-attacks-u-s/1556587001/> (accessed 31 October 2019) (noting, in particular, the President’s tweet which reads ‘Any attack by Iran on anything American will be met with great and overwhelming force. In some areas, overwhelming will mean obliteration’, Donald J Trump (@realDonaldTrump) *Twitter* (25 June 2019) <https://twitter.com/realdonaldtrump/status/1143529907403788288?lang=en> (accessed 31 October 2019)); ‘Iran Renews Threats Against U.S. Bases And Warships In Gulf Region’, *Radio Farda* (2 June 2019) <https://en.radiofarda.com/a/iran-renews-threats-against-u-s-bases-and-warships-in-gulf-region/29977347.html> (accessed 28 October 2019); Alistair Bunkall, ‘China threatens military response if UK warships go near disputed islands’, *Sky News* (10 September 2019) <https://news.sky.com/story/china-threatens-military-response-if-uk-warships-go-near-disputed-islands-11805868> (accessed 28 October 2019); Tom O’Connor, ‘China and Pakistan warn India after “unacceptable” border moves that threaten new clashes’, *Newsweek* (8 July 2019) [www.newsweek.com/china-pakistan-warn-india-border-1452896](http://www.newsweek.com/china-pakistan-warn-india-border-1452896) (accessed 28 October 2019); ‘Turkey threatens solo army operation into northeast Syria’, *The Telegraph* (5 October 2019) [www.telegraph.co.uk/news/2019/10/05/turkey-threatens-solo-army-operation-northeast-syria/](http://www.telegraph.co.uk/news/2019/10/05/turkey-threatens-solo-army-operation-northeast-syria/) (accessed 28 October 2019) (concerning what turned out, of course, to be a threat of force by Turkish President Recep Tayyip Erdogan that was subsequently carried out). [↑](#footnote-ref-4)
5. Charter of the United Nations (1945) 1 UNTS XVI, art 2(4). [↑](#footnote-ref-5)
6. Romana Sadurska, ‘Threats of Force’ (1988) 82(2) *American Journal of International Law* 239. [↑](#footnote-ref-6)
7. For the latest contemporary discussion regarding threats of force, see Brian Drummond, ‘UK Nuclear Deterrence Policy: an Unlawful Threat of Force’ (2019) 6(2) *Journal on the Use of Force and International Law* (this issue: pagination awaited, advance access [www.tandfonline.com/doi/full/10.1080/20531702.2019.1669323](https://www.tandfonline.com/doi/full/10.1080/20531702.2019.1669323)). See also, more generally James A Green and Francis Grimal, ‘The Threat of Force as an Action in Self-Defense Under International Law’ (2011) 44 *Vanderbilt Journal of Transnational Law* 285, 299; Francis Grimal, *Threats of Force: International Law and Strategy* (Routledge, 2012); Dino Kritsiosis, ‘Close Encounters of a Sovereign Kind’ (2009) 20(2) *European Journal of International Law* 229–330; Marco Roscini, ‘Threats of Armed Force and Contemporary International Law’ (2007) 54 *Netherlands International Law Review* 229; Nikolas Stürchler, *The Threat of Force in International Law* (Cambridge University Press, 2007). [↑](#footnote-ref-7)
8. There is now less of a void in the literature. See, e.g. Drummond (n 7). On this point, Drummond cites a number of contributors, including many of those noted in previous footnotes herein: e.g. Green and Grimal (n 7); Grimal (n 7); Sadurska (n 6). However, Drummond also references a number of recent contributions from commentators such as Patrick M Butchard, ‘Back to San Francisco: Explaining the Inherent Contradictions of Article 2(4) of the UN Charter’ (2018) 23 *Journal of Conflict and Security* Law 229; Gro Nystuen, ‘Threats of Use of Nuclear Weapons and International Humanitarian Law’ in Gro Nystuen, Stuart Casey-Maslen and Annie Golden Bersagel (eds), *Nuclear Weapons Under International Law* (Cambridge University Press, 2014) 148–9, 170; Françoise Dubuisson and Anne Lagerwall, ‘The Threat of the Use of Force and Ultimata’ in Marc Weller (ed), *The Oxford Handbook on the Use of Force in International Law* (Oxford University Press, 2015). [↑](#footnote-ref-8)
9. See generally, Green and Grimal (n 7). [↑](#footnote-ref-9)
10. *Ibid*. [↑](#footnote-ref-10)
11. See Grimal (n 7) chapter 2. The chapter approaches range from categorisation and placing threats on a scale ranging from the innocuous to the extreme to examining the very purpose of the threat. For example, can non-verbal actions such as engaging in military exercises near another state’s border fall within the remit of art 2(4)? Or, is art 2(4) solely concerned with verbal ultimate demanding compliance? [↑](#footnote-ref-11)
12. See, generally Green and Grimal (n 7). [↑](#footnote-ref-12)
13. *Ibid*. [↑](#footnote-ref-13)
14. UN Charter (n 5) art 2(4). [↑](#footnote-ref-14)
15. Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, UNGA Res 2625 (XXV), UN Doc A/RES/2625 (24 October 1970) annex. [↑](#footnote-ref-15)
16. Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, UNGA Res 42/22, UN Doc A/42/22/766 (18 November1987) annex. [↑](#footnote-ref-16)
17. *Legality of the Threat or Use of Nuclear Weapons* (advisory opinion) [1996] ICJ Rep 226, para 47, as noted by Ian Brownlie, *International Law and the Use of Force by States* (Oxford University Press, 1963). See also Grimal (n 7) introduction and chapters 2 and 4; Drummond (n 7); Francis Grimal and Jae Sundaram, ‘Cyber Warfare and Autonomous Self-Defence’ (2017) *Journal on the Use of Force and International Law* 312 (with a focus on cyber-threats). [↑](#footnote-ref-17)
18. While the ICJ’s finding in *Nuclear Weapons* (advisory opinion) (n 17) is undoubtedly the leading authority, to suggest that this is the only statement regarding threats of force would be misleading. See, e.g. *Military and Paramilitary Activities in and Against Nicaragua* (*Nicaragua v United States of America*)(merits) [1986] ICJ Rep 14 (in which the ICJ, albeit very briefly, recognised that the threat of force ‘is equally forbidden’). [↑](#footnote-ref-18)
19. *Nuclear Weapons* (advisory opinion) (n 17) para 48. [↑](#footnote-ref-19)
20. *Ibid*. [↑](#footnote-ref-20)
21. Typically, this still remains the prevailing view within the literature. Brownlie (n 17) was one of the first to iterate this perspective. Admittedly, some commentators have deviated this approach, see, e.g. Sadurska (n 6). However, more recent approaches seem to echo that perspective, see, e.g. Yoram Dinstein, *War, Aggression and Self-Defense* (Cambridge University Press, 6th edn2017) 91. [↑](#footnote-ref-21)
22. See, e.g. Drummond (n 7) 16 (noting that ‘only threats to use force in self-defence, or under Article 42 of the UN Charter, can (although not necessarily will) be lawful’). See also Stürchler (n 7) 273; Butchard (n 8); Grimal (n 7) 97–8. [↑](#footnote-ref-22)
23. See, e.g. Drummond (n 7) 9. Here Drummond discusses the fact that many authors consider whether or not a particular behaviour can be legally justified, while identifying a ‘sliding scale’. See also n 40. [↑](#footnote-ref-23)
24. See Green and Grimal (n 7) 290. [↑](#footnote-ref-24)
25. See**,** e.g. ‘Trump to Kim: My nuclear button is “bigger and more powerful”’, *BBC News* (3 January 2018) [www.bbc.co.uk/news/world-asia-42549687](http://www.bbc.co.uk/news/world-asia-42549687) (accessed 28 October 2019). For a useful discussion regarding the strategic implications arising from the relationship between Presidential tweets and national policy, see Kazim Rizvi, ‘“Tweet and Retreat”? President Trump’s Pakistan Aid Freeze’ (2019) Major Research paper, Graduate School of Public and International Affairs, University of Ottawa. [↑](#footnote-ref-25)
26. Donald J Trump (@realDonaldTrump) *Twitter* (3 January 2018) <https://twitter.com/realdonaldtrump/status/948355557022420992?lang=ga> (accessed 1 November 2019). This tweet followed the Remarks of President Trump’s address to the 72nd Session of the United Nations General Assembly on 19 September 2017, [www.whitehouse.gov/briefings-statements/remarks-president-trump-72nd-session-united-nations-general-assembly/](http://www.whitehouse.gov/briefings-statements/remarks-president-trump-72nd-session-united-nations-general-assembly/) (accessed 1 November 2019) (where the President stated that ‘[t]he United States has great strength and patience, but if it is forced to defend itself or its allies, we will have no choice but to totally destroy North Korea’). [↑](#footnote-ref-26)
27. It remains to be seen whether international law or indeed the international community would be ready to extend such a discussion to other applications (such as, e.g. Instagram or Snapchat). [↑](#footnote-ref-27)
28. Noting if, of course, Kim Jong Un’s initial statement could itself constitute a qualitatively grave, threatened armed attack. [↑](#footnote-ref-28)
29. See, generally Green and Grimal (n 7). See also Grimal and Sundaram (n 17) footnote 133, noting ‘in essence, the threat posed will need to be qualitatively grave, (a threatened armed attack) and also imminent in order for self-defence to be lawfully invoked.’ In other words, it must meet the requisite requirements as set out in *Nicaragua* (n 18) and the *Case Concerning Oil Platforms* (*Islamic Republic of Iran v United States of America*) (merits) [2003] ICJ Rep 161, para 51. On this point, see also Avra Constantinou, *The Right of Self-Defence under Customary International Law and Article 51 of the UN Charter* (Bruylant, 2000) 57. The intertwined principles of necessity and proportionality dictate that force must be used as a last resort: meaning that if non-forcible measures were a reasonable alternative in the circumstances, they must have been explored and exhausted (necessity), see, e.g. James A Green, ‘The *Ratione* *Temporis* Elements of Self-Defence’ (2015) 2 *Journal on the Use of Force in International* Law 100–1; Dinstein (n 21) 268–9; Judith Gardam, *Necessity, Proportionality, and the Use of Force by States* (Cambridge University Press, 2004) 6 and 11. The proportionality requirement, meanwhile, requires that the ‘force employed must not be excessive with regard to the goal of abating or repelling the attack’, see, e.g. Sina Etezazian, ‘The Nature of the Self-Defence Proportionality Requirement’ (2016) 3(2) *Journal on the Use of Force and International Law* 260, 264–7; Theodora Christodoulidou and Kalliopi Chainoglou, ‘The Principle of Proportionality from a *Jus ad Bellum* Perspective’ in Marc Weller (ed), *The Oxford Handbook of the Use of Force in International Law* (Oxford University Press, 2015) 1189–99. For more detailed discussions on self-defence, see, e.g. James A Green, *The International Court of Justice and Self-Defence in International Law* (Hart, 2009); Tom Ruys, ‘*Armed Attack’ and Article 51 of the UN Charter: Evolutions in Customary Law and Practice* (Cambridge University Press, 2010). [↑](#footnote-ref-29)
30. See, e.g. Christian Henderson, ‘Tit-for-Tat-for-Tit: The Indian and Pakistani Airstrikes and the *Jus ad Bellum*’, *EJIL:Talk!* (28 February 2019) [www.ejiltalk.org/tit-for-tat-for-tit-the-indian-and-pakistani-airstrikes-and-the-jus-ad-bellum/](http://www.ejiltalk.org/tit-for-tat-for-tit-the-indian-and-pakistani-airstrikes-and-the-jus-ad-bellum/) (accessed 28 October 2019). N.B. The author is grateful to Professor James A Green for the following observation that a state could of course contest the original invocation as being spurious; that the purported self-defence was really an act of aggression/unlawful use of force, and so then could still claim self-defence in response. [↑](#footnote-ref-30)
31. An individual cannot commit a violation of art 2(4) – violations of art 2(4) can only be committed by states. In other words, unless President Trump’s Twitter handle can be identified as official (both in the ‘confirmed status’ sense, but also as a direct expression of US foreign policy) then the tweet itself is meaningless from the perspective of art 2(4). [↑](#footnote-ref-31)
32. *Knight First Amendment Institute, et al v Donald J. Trump, et al* [2019] 18‐1691‐cv. The Supreme Court of the United States has also considered the status of a presidential tweet in *Trump, President of the United States,* *et al*. *v Hawaii* *et al.* [2018] No. 17-965, 585 U.S. In *Trump v Hawaii* the Supreme Court was asked to consider, *inter alia*, the lawfulness of Proclamation 9645. The plaintiff argued that the proclamation, unlawfully, sort to prevent individuals from a number of Muslim states from entering U.S. sovereign territory. According to the plaintiff, not only did the proclamation violate the US Immigration and Nationality Act (INA), but a number of Presidential tweets also provided evidence of a general White House anti-Muslim policy. Though the Supreme Court did identify that The White House views Presidents Trump’s tweets as ‘official statements’ (see, e.g. the dissenting opinion of Judge Sotomayor), it nevertheless upheld the proclamation, albeit with only a 5/4 majority. In doing so, though, the Court did not rule conclusively on the legal status of Twitter accounts. However, in avoiding the issue, the Supreme Court also did not overrule the decision of the lower U.S. District Court. The lower court’s decision, which is perhaps somewhat more aligned with the present author’s point of view, was that the President was in breach of the First Amendment when he took the decision to block a number of his Twitter followers based upon their political opinions. For a useful discussion, which also considers the closely linked case of *International Refugee Assistance Project (IRAP) v Trump* 857 F.3d 554 [4th Cir. 2017], see, generally Jean Galbraith, ‘Contemporary Practice of the United States Relating to International Law’ (2018) 112(1) *American Journal of International Law* 95. See also Brian Fung, ‘The Supreme Court’s travel ban ruling could have big implications for Trump’s Twitter account’, *Washington**Post* (26 June 2018) [www.washingtonpost.com/technology/2018/06/26/supreme-courts-travel-ban-ruling-could-have-big-implications-trumps-twitter-account/](http://www.washingtonpost.com/technology/2018/06/26/supreme-courts-travel-ban-ruling-could-have-big-implications-trumps-twitter-account/) (accessed 29 October 2019). The author is grateful to Mr Michael J Pollard for a helpful discussion on this point. [↑](#footnote-ref-32)
33. *Knight* (n 32) 4. [↑](#footnote-ref-33)
34. *Ibid*. [↑](#footnote-ref-34)
35. *Ibid*. [↑](#footnote-ref-35)
36. *Ibid*. [↑](#footnote-ref-36)
37. *Ibid*, 7–10, citing several examples to this effect: ‘(1) The page is registered to Donald J. Trump 45th President of the United States of America, Washington, D.C., the header photographs of the Account show the President engaged in the performance of his official duties such as signing executive orders, delivering remarks at the White House, and meeting with the Pope, heads of state, and other foreign dignitaries (2)The President and multiple members of his administration have described his use of the Account as official. The President has stipulated that he, with the assistance of Defendant Daniel Scavino, uses the Account frequently to announce, describe, and defend his policies; to promote his Administration’s legislative agenda; to announce official decisions; to engage with foreign political leaders; to publicize state visits; [and] to challenge media organizations whose coverage of his Administration he believes to be unfair. (3) In June 2017, then‐White House Press Secretary Sean Spicer stated at a press conference that President Trump’s tweets should be considered official statements by the President of the United States. (4) In June 2017, the White House responded to a request for official White House records from the House Permanent Select Committee on Intelligence by referring the Committee to a statement made by the President on Twitter, (5) The National Archives, the agency of government responsible for maintaining the government’s records, has concluded that the President’s tweets are official records.’ [↑](#footnote-ref-37)
38. See, e.g. Grimal and Sundaram (n 17) footnotes 73 and 74. [↑](#footnote-ref-38)
39. *Ibid.* [↑](#footnote-ref-39)
40. Matthew J Sklerov, ‘Solving the Dilemma of State Responses to Cyberattacks: A Justification for the Use of Active Defenses against States Who Neglect Their Duty to Prevent’ (2009) 201 *Military Law Review* 1, particularly 54–5. [↑](#footnote-ref-40)
41. See, generally Grimal (n 7). [↑](#footnote-ref-41)
42. This author maintains that recourse to Schelling’s model, set out in *Arms and Influence*, forms the basis of understanding the severity of a threat – particularly in terms of military appraisal – and helps clarify whether it may constitute a qualitatively grave threat of an armed attack in the strategic sense. In order for the threat to be taken seriously, the threatening state must possess the capability in terms of military platforms and strike force to deliver the payload. A state needs to communicate its intention to its enemy that it will carry out the threat, and that threat must be credible. See Thomas Schelling, *Arms and Influence* (Yale University Press, 1966) particularly 35–91. See also Grimal (n 7) 2 (introduction, and, in particular, *figure 1.2* regarding the severity of threat). [↑](#footnote-ref-42)
43. For example, a threatening tweet from a state without military capabilities is likely to undermine the strategic effect of the threat of force. [↑](#footnote-ref-43)
44. Grimal (n 7). [↑](#footnote-ref-44)
45. The author is particularly grateful to Professor James A Green for all his helpful thoughts and comments regarding this issue. [↑](#footnote-ref-45)
46. For example, in relation to the crucial criteria of necessity and proportionality. See n 29. [↑](#footnote-ref-46)
47. See, e.g. James A Green, ‘Editorial Comment: The “Additional” Criteria for Collective Self-Defence: Request but not Declaration’ (2017) 4(1) *Journal on the Use of Force and International Law* 4. [↑](#footnote-ref-47)
48. See Christine Gray, *International Law and the Use of Force by States* (Oxford University Press, 4th edn 2018) 187 (‘[i]n every case where a third state has invoked collective self-defence it has based its claim on the request of the victim state…’). [↑](#footnote-ref-48)
49. Again, the author is grateful to Professor James A Green for sharing his thoughts regarding this issue. [↑](#footnote-ref-49)
50. See, generally James A Green, ‘The Article 51 Reporting Requirement for Self-Defense Actions’ (2015) 55 *Virginia Journal of International Law* 563. [↑](#footnote-ref-50)
51. *Ibid*, footnote 48. [↑](#footnote-ref-51)
52. UN Charter (n 5) art 51 clearly requires that any High Contracting Party exercising their inherent right to individual or collective self-defence shall immediately report any measures taken to the UN Security Council but remains silent as to the mode of reporting. It is therefore arguable that the Twitter platform could be a legitimate way of instigating a collective response. [↑](#footnote-ref-52)