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Master's Thesis

Right of a self-defense in international law: developments after September 11, 2001

Savigynos teisė tarptautinėje teisėje: pokyčiai po 2001 m. rugsėjo 11 d.

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ABSTRACT AND KEY WORDS

The thesis analyzes the evolution of the right of self-defense within international law, emphasizing developments following the events of September 11, 2001. It examines the historical evolution, legal foundations, and contemporary applications of self-defense, addressing its individual and collective dimensions. Special attention is given to Article 51 of the UN Charter and its interpretation in the context of modern international relations. The thesis evaluates various types of self-defense, including reactive, preventive, and anticipatory actions, and scrutinizes the criteria of necessity, immediacy, and proportionality. Furthermore, it explores the responsibilities of states and non-state actors and discusses the legal consequences of exceeding the limits of self-defense.

Keywords: right of self-defense, Article 51 of the UN Charter, preventive self-defense, anticipatory self-defense, proportionality, necessity, September 11, international law

SANTRAUKA IR PAGRINDINIAI ŽODŽIAI

Baigiamajame darbe analizuojama teisės į savigyną raida tarptautinėje teisėje, akcentuojant raidą po 2001 m. rugsėjo 11 d. įvykių. Nagrinėjama savigynos istorinė raida, teisiniai pagrindai ir šiuolaikiniai aspektai, individualios ir kolektyvinės savigynos klausimai. Ypatingas dėmesys skiriamas JT Chartijos 51 straipsniui ir jo aiškinimui šiuolaikinių tarptautinių santykių kontekste. Baigiamajame darbe įvertinamos įvairios savigynos rūšys, įskaitant atsakomuosius, prevencinius ir išankstinius veiksmus, nagrinėjami būtinumo, neatidėliotinumo ir proporcingumo kriterijai. Be to, darbe nagrinėjamos valstybių ir nevalstybinių subjektų pareigos, aptariamos teisinės savigynos ribų peržengimo pasekmės.

Raktiniai žodžiai: teisė į savigyną, JT Chartijos 51 straipsnis, prevencinė savigyna, išankstinė savigyna, proporcingumas, būtinumas, rugsėjo 11 d., tarptautinė teisė.

CONTENT

INTRODUCTION

Relevance of the topic. After the tragedy of terrorist acts in US on 9.11.2001 the right of self-defense in the international law has become a subject of evolution. The threats of terrorism which are not restrained by the borders of one state concern the traditional approaches towards the definition of the armed attack, the subjects of aggression and permissibility of the use of force. This led to the emergence of a need to reconsider the norms formed by the UN Charter Article 51 and adjust them to the reality of contemporary conflicts, the main danger of which can pose non-state actors, for instance, terrorists. This is an important virtue of the issue since there is always a conflict of interest between the achievement of international peace and security and the protection of human rights.

It can also be claimed that the subject of the study is relevant because of the increasing number of precedents when states appeal to the right of self-defense to use force. That is why it is necessary to analyze compliance of such actions with the principles of necessity, proportionality and immediacy, as well as their effects on the international legal process. The study of these aspects is of crucial significance to guaranteeing successful practice of the norms of international law and protecting the authority of the latter in the settlement of international disputes.

The aim of this study is to analyze the evolution of the right to self-defense in international law, with a focus on its developments and application following the events of September 11, 2001.

Research tasks:

1. Investigate the evolution of the right to self-defense and its nature;

2. Determine the main aspects of the right to self-defense in international law and the impact of events of September 11, 2001;

3. Investigate the legal foundations of individual and collective self-defense in international law and their application in modern conflicts;

4. Disclose modern criteria of necessity, immediacy and proportionality of self-defense (defense against cyber and hybrid threats);

5. Evaluate other limitations of the right to self-defense, including the responsibility of states and non-state actors;

6. To study the legal consequences of exceeding the limits of the right to self-defense.

The object of the study is the legal rules, cases and theories and the practice of enforcement of the right to defense in international law since the September 11 events.

Methods and originality. This research employs doctrinal legal analysis, comparative studies, and case law evaluation to understand the evolving nature of self-defense in international law. The study is unique in its comprehensive examination of post-9/11 legal developments, offering insights into how states and international organizations adapt traditional principles of self-defense to address contemporary threats. It also provides practical recommendations for enhancing the efficacy and coherence of self-defense norms in modern international law.

The originality of this research lies in its in-depth exploration of the evolution of the right to self-defense in international law, with a particular focus on the developments following the events of September 11, 2001. This study not only examines the historical and legal foundations of the right to self-defense but also evaluates how contemporary challenges, such as terrorism and non-state actors, have influenced its application. Furthermore, the research provides critical insights into the compliance of self-defense actions with the principles of necessity, proportionality, and immediacy, offering practical recommendations to strengthen the international legal framework governing self-defense.

This research uses a wide range of academic literature, articles in peer-reviewed journals, international treaties, and court decisions. The theoretical foundation is grounded in the works of leading scholars such as Yoram Dinstein, Christine Gray, and Michael Schmitt, who have made significant contributions to the field of international law and the concept of self-defense. Key sources include the UN Charter, particularly Article 51, the International Court of Justice rulings in cases such as Nicaragua v. United States and Oil Platforms, and the principles established by the Caroline doctrine.

Additionally, the study analyzes pivotal legal texts and judgments from both international and regional courts, as well as state practices in invoking the right to self-defense. These include the responses of the United States, the European Union, and other key global actors to the evolving nature of threats in the post-9/11 era. This comprehensive approach ensures a balanced and well-rounded examination of the subject, addressing both theoretical and practical aspects of self-defense in contemporary international law.

CHAPTER I. HISTORICAL EVOLUTION AND LEGAL FRAMEWORKOF SELF-DEFENSE IN INTERNATIONAL LAW

1.1. The evolution of the right of self-defense and its nature

Self-defense is a concept that should be discussed in terms of its history that is complex and closely connected with the history of the theory and practice of international law and the relations between states. Right for self-defense is one of the essential features of public international law as states needed protection for their existence in the world that was and still is to a significant extent a world of conflict. This section examines the origins of the term, its two-fold character and its ongoing importance in understanding contemporary interstate politics.

This has always made self-defense an off-shoot of aggression and hence the two go hand in hand making it difficult for one to do without the other. Coerciveness invariably calls for assertiveness and, on the other hand, assertiveness may create new subtypes of coerciveness. This relationship has been described in terms of the vicious cycle which means that the two concepts are kindred. In historical development, right to self-defense appeared simultaneously with the formation of the states recognized as holders of the international rights. It might be reasonable to assume that the right to bear arms in self-defense has preceded the concept of statehood ever since.

The subject of the right to self-defense can be referenced back to ancient time. The Roman law of early centuries AD knew only one valid reason for the use of force: self-defense. This was actually not only a legal authority but also a moral one that helped—and influenced—the ethical paradigms of government in classical cultures. When society evolved and contacts of states became more intricate, this principle was followed and transformed to the next level (Bakircioglu, 2009).

From the medieval through to the early modern ages there are more explicit indications of how self-defense was being used in state practice. People and nations went to war in the name of defending themselves against heathens from different territories. A conspicuous instance here is the rending of some colonial wars as measures of self-defense despite the fact that most of the time, such reasons were rather questionable. These examples show how the idea of self-preservation might be understood and, occasionally, massaged for political purposes. Right to defend one's self has also been a feature of international law as it existed before the United Nations. Pacts in early twentieth century were often qualified by the right to self-defense in the non-aggression pledge it contained. For instance, the Treaty between Romania and France Signed 1926 of Friendship contained the right to a lawful defense. Likewise, the Locarno Treaties of 1925 that intended to

preserve peace in Europe allowed for taking defensive measures in case the attack was aggressive or respondents needed to respond immediately because of forces in demilitarized zones. Modern history and gradual emergence of the international law recognize the self-defense as well (Dahal, 2020). However, after the establishment of the United Nations and the adoption of the UN Charter, the protection of states against armed attack was acknowledged in a direct manner. This principle is provided for in article 51 of the Charter and thus has a legal basis, with having a right of States to self-defense being in equal proportion on the international community interests, the main aim of maintaining international peace and security.

Historically the legal argument of self-defense has been a subject of great attention in the relation between states and at the same time on law interpreting the use of force in international relations. Today the right of individual or group self-defense is enshrined in Article 51 of the UN Charter even though this principle has its roots in customary international law. In the past, charter of autonomy posits self-defense as a principle or right of states since the state or its people had the sovereign rights to defend themselves (Kelly, 2016). However, due to the lack of well-defined legal mechanisms in most societies the concept was used loosely and inconsistently causing social strains. Perhaps one of the most crucial points concerning today's concept of self-defense is the Caroline case of 1837, which set the principles of necessity and proportionality. This case of a preemptive attack on British forces against an American ship helping Canadian rebels helped establish the precedent that self-defense must be "instant, overwhelming and leaving no choice of means, and no moment for deliberation." What had been begun by these principles was the later development of rules for self-defense in international law.

However, the practice of using self-defense stays disputable and remains to be uncertain even under current law, with its roots in history. Article 51 of the UN Charter provides a framework that emphasizes the dual nature of self-defense: On the one hand, it is considered as apriori right of states, on the other hand, it is a bureaucrats-controlled tool, which addresses many reservations like, 'necessity, proportionality and immediacy'. These aspects present the dynamic conflict between anarchy and order on the international level marked by praise for the efficiency of the given legal arrangements and criticism for neglecting the anarchical nature of international relations. Today, self-defense is not limited to exclusively military actions; it is a wide range of active and passive activities, potential and actual aimed at defending sovereignty, indigenous population and states' interests. For example, actions more or less military, including expulsion of foreign envoys, are used as non-military reciprocal protection strategies (Lee, 2015). However, these actions are not as

dramatic as military responses depicted below, but more importantly they underscore the possible implications of the right to self-preservation in the conduct of diplomacy. Using the case of expulsion of diplomatic personnel as a formative step, this paper shows how states employ non-military defense as an approach to maintain order while grappling with the basic question of sovereignty: the survival question of states. Measures of this type are strictly peaceful ones and can undermine bilateral relations, make it difficult to advance national foreign policy goals, and pursue the interest of safeguarding one's citizens (Lee, 2015). However, states usually deem such actions as essential for their overall security and sovereignty.

The place of citizens as the base and the raison d'être of the state broadens the meaning of self-defense up to its ultimate forms. Preserving people, at least from one or another impact – economic, political, or military – is still one of the primary values. However, in this regard, it can be peaceful of important way to solve the conflicts because it prevent continuation of violence and save lives. Hence, even in diplomatic actions, reference may be made to the notion of self-defense, but it is not often the reasons for the use of armed force can be regarded as legitimate.

To some extent, expulsion of diplomats is employed as the additional means of armed self-defense. For example, recent measures like expulsion of the Russian diplomats from Ukraine by declaring them 'persona nongrata,' in reciprocation of analogous Russian steps as indicative of how diplomatic measures can be part of defensive actions. This shows that wars are not only waged conventionally but they also take place in the sitting room for lack of better term. Nevertheless, it would be vital to differentiate some such actions as any goal-directed armed activity from armed self-defense, which in its subject matter is not military (McHugh, 1972).

In terms of armed defense, political-diplomatic expulsions have dual effect of affirming a state's status, threatening another state and guarding its security but they are not legally considered as acts of self-defense. In fact, they are instruments of diplomacy used to counter threats without use of force but at the same time protect the sovereignty and the interests of the state.

The contemporary principles of international law of armed conflict acts as median between the natural right of states to self-preservation and the principle of proportionality which seek to contain the application of force. This is in harmony with the changing concept of the right of self-defense which is possible only where there is infringement of the rights of a State or a threat of an imminent armed attack. In addition, the violated right must be a fundamental one and such violation cannot be remedied by any means other than force.

Tensions between two states are not subjects of revenge, but measures taken in response to aggression and believed to be necessary for the existence of the corresponding state. This becomes essential in trying to distinguish between legal stand-your-ground practice and aggression, which, while couched in the language of retribution, is still unjustified force (Naidu, 2021).

When finding out how self-defense has developed over the years it could be observed that it is not a stagnant phenomenon, but rather, it changes with current conditions in international politics. Although it has been practiced since antiquity, and though its modern manifestations have been challenged by States and scholars alike, self-defense remains a critical component of the contemporary practice of international law – both as a principle and as a justification of action.

1.2. The concept of the right of self-defense in international law

In order to define the notion of the right to self-defense legal definition, its nature, differentiation from other similar concepts, and main characteristics shall be identified. This subsection will identify theoretical perspectives to right of self-defense and further, specific to international law. Every attempt to study self-defense starts with differentiating the notion from the one of "self-help," where self-help means helping oneself by seeking the help of others. In legal doctrine there is hardly a distinction between them. For example, such authors as Malcolm Shaw and Judith Pinkard contain "self-defense" to as one of the "self-help" types. These concepts are not the same, despite a variety of similarities, and thus understanding their difference is crucial to an accurate appreciation of the norms of international law.

According to the Commission on International Law "self-help" means a general procedure enabling a state to safeguard its rights where there is a prospect of a violation taking place. In this regard, self-defense works as a type of the special armed self-help action which can be employed only in the case of the armed attack. This conception of the self-defense power is enough restricted to let it be compared with other activities that can also be used against the subject state and are diplomatic, economic or other non-military. The constant development of the institution of the right to self-defense is attributed to the long historical development of international legal system and entwining of national legal systems into the international ones (Naidu, 2021). Of course, following the observations of the Commission on International Law, the probability of a concept of modern self-defense has appeared in the international legal system relatively recently. Thus, in many respects it resembles the concept used in domestic legal systems and this means that this concept has

developed, adapted to modern trends and is a result of the search for an optimum balance of sovereignty and the international order.

Originally, the right to self-defense possessed a conventional aspect, for which one can have numerous examples of international bilateral contracts that were concluded even before the creation of the UN. The adaptability of the United Nations International Court of Justice in relationship to military actions on the territory of Nicaragua also insisted that concepts of the “natural” or “inalienable” right bear direct relation to customary right of self-defense. This right had long precedents even before its codification in international conventions, which underlines the elemental aspects of this right in the legal systems of a country.

Current international law has drastically limited the options of force. According to the UN Charter the right to self-defense can only be exercised in the case of an armed attack and until the security council has taken measures towards non-use of force. On one hand marked hereby the right for self-defense, and on the other hand – certain limitations are set to it; these amendments significantly help to avoid unintended aggravation of the conflict. On the basis of the Charter of the United Nations, the rights itself – right on self-defense, which is the second principle of the international legal order, was established, along with prohibition of aggression, which is defined in Article 2(4) of the Statute. However, the modern means of protection of the right to self-defense are regulated not only by the Charter of the United Nations, but by customary norms as well, which work in parallel with contractual norms. There are some differences as to what is contained and regulated within these two bodies (O'Mear, 2021).

M. Shaw has pointed to the fact that customary law is understood in a much wider sense and the manner in which it has been developed permits a much wider scope than the clear limitations to be found in the provisions of Article 51 UN Charter for that reason alone there arises issues concerning the reconciliation of these sources of law and questions as to the nature and determination of the hierarchy of such sources of law in given circumstances (Shaw, 2008). The modern right of self-defense is in a certain sense novel challenges pertaining to the advanced technological state and different types of threats including those in Internet space or hybrid warfare. For instance, cyberattacks that stifle vital State infrastructures entail consequences which may amount to physical attack, nevertheless present international law does not always permit viewing such as basis for self-defense which reveals the requirement to harmonise existing norms with contemporary practices. Self-help includes any behaviour which is intended as a measure to safeguard the sovereignty or an interest of the state, which may not always be the same. For instance,

economic sanctions, diplomatic expulsion of diplomats, recall of ambassadors and consuls can be categorized in self-help instruments. In case of armed aggression, the state has the right to use force exclusively for self-defense in order to protect its people and state borders. Therefore, self-defense is a subtype of self-help that can be substantiated by the words of Professor Yoram Dinstein insisting that "self-defense is a special subclass of self-help." While self-help, to a significant extent, lacks a definite definition in international law, self-defense enjoys such privilege (Shaw, 2008). The Charter of the United Nations acknowledges any state has a right to self-defense only in the event of an armed attack (article 51). This legal norm means that self-defense can take place only when a threat to the state is imminent and massive. At the same time, the concept of "self-preservation" which is used by Judith Pinkard, attributes ethical meaning to force, stressing that self-defense should be directed at the goal of preserving the basic rights and state's sovereignty.

From the above analysis of the right one can deduce the following characteristics of right to self-defense. First, it is entirely defensive, thus the use of force can only be applied in order to respond to an armed attack. Second, self-measure should be in measure to the harm it is intended to prevent. Thirdly, this type of self-help is legally governed and based on the rules of international law including the rule of notification in the UN Security Council. Self-defense is one of the pillars of international law but the definition of the rights in the UN Charter precedes actual classes (Waxman, 2018). Charter merely states in article 51, that self-defense is allowed in regard to an armed attack, without elaborating its content or scope. Thus, the concept of-self-defense must be explained based on an examination of structural provisions of the Charter – Article 2 and 51 and other related international resolutions. The UN Charter also provides the general prohibition of aggression here, Article 2, but individual and collective self-defense is an exception. Therefore, it can be deduced that self-defense is precipitated by a breakdown in peace, and its objective is the reestablishment of an international order. For instance, the United for Peace General Assembly Resolution notes that the application of force, in the framework of self-defense is directed to prevent a conflict, maintain international peace and security, not to punish a culprit. By this provision, self-defense is limited, and one is allowed to defend him or herself in a manner that is reasonable and only if the force used is enough to neutralize the person or thing that is threatening (Waxman, 2018).

At this point, two things can be stated: First, self-defense and aggression are similar in the fact that they both involve the use of force; second, the role of force in self-defense is markedly different than in aggression. Whereas aggression is an unlawful act of use of force with a view to prejudicing the peace and sovereignty of a state, self-defense is a lawful

response meant to redress the unlawful encroachment of the force trespassing in the international order and sovereignty of the state under attack. Personal protection, as such, is always a reaction always engaged as a response to an act of abuse or a threat of the same.

The legal recognition of self-defense is contingent upon meeting specific conditions and elements:

Self-defense may be observed concerning different subjects. It has been defined, and was commonly used, in the wake of attack by state actors, as provided for in the Article 51 of the United Nations Charter. However, recent changes especially in times of fight against terrorism, and the right to defend themselves against non-state actors such as terrorists or armed groups transnational in nature. It has therefore raised questions on the effectiveness of current provisions of international law (Scott, 2007).

– The force utilized when defending oneself should not be much greater than the force used by the attacker or threatened in a given attack. This means the response should give only what is required to counter the threat or enforce order. The problem with any type of exerting force is that if it is unnecessary and intense, it falls more in the taxonomy of aggression which is certainly not legally sound.

– Self-defense can only be used when there is no alternative way to respond to a continuous or imminent attack and there is no time to consider further measures like negotiation and mediation.

The right of self-defense is time bound like all rights, the right of self-defense has time limitations except in cases of necessity. It has to be used without delay in reaction to an existing or potential act of hostilities. Also, as soon as the act of aggression stops, or the danger subsides, the legal justification for continuing an act of self-defense cannot exist. Operations which are considered necessary beyond the process of eliminating the threat can be considered unlawful.

To bear the principles of self-defense, the right to defend one's self has to be limited to the setting in which the aggression occurs or where the threat was initiated. The use of force beyond one's national boundaries must meet certain conditions to act with consideration of the other states' non-interference (Scott, 2007).

For example, if one of the parties – an aggressor, attacking another state, goes into its territory, the question arises, is it justified by the actions of the attacker, or does it already become a new aggression? Decisive here is the analysis of the circumstances: As long as the threat that has to be addressed still exists, are operations simply an extension of the defense. Such situations become really complicated when the attacker has nuclear weapons or holds hostages.

Worthy of special attention is the evolution of the concept of the right to self-defense in which one of the important works is a doctrine by V.S. Rzhevsk. In her work, she is distilling ways to this right, positioning it with the national legal entities like the individual's right to necessary defense. She has pointed out steadily that function of the two institutes is the same – protection against the attack, but the content is quite dissimilar (Silvestre, 2020).

In terms of the institution of necessary defense, more opportunities for protection are given to the individual if other options are impossible. However, the international law qualifies the rights of states to make defense by setting conditions within which the right may be exercised. There are conditions that may include the armed attack, protection and the proportionality of the actions taken.

special emphasis should be placed on the moral perspective of self-defense and is captured by the term "self-sustenance". Judith Pinkard notes that self-preservation has a deeper ethical meaning, because it is aimed not only at protecting sovereignty, but also at preserving the lives of citizens, which emphasizes the dual nature of self-defense: on the one hand, as a legal aid on the other hand as a moral duty before the state's citizenry (Occelli, 2003).

Self-defense is one of the convoluted categories that are based on legal, ethical and practical concerns. Its restrictions are defined by UN Charter which establishes the constants of the force usage, and international customary law which expands these constants in modern world. The understanding of self-defense is made clearer for the purpose of judging its relevance in international law and for differentiating it with wrongful use of force such as aggression.

The right to defense is one of the basic categories of international law; however, the concept of this right within the framework of the UN Charter is still rather vague. The Charter provides only a rough indication on the nature of self-defense in response to an armed attack as stipulated in article 51 of the Charter. However, is the meaning of self-defense can be discerned from the structural provisions of the Charter, including Articles 2 and 51, and other international resolutions.

Measures of aggression are described in the UN Charter at the same time there is an apparent general rule, namely Article 2, which only allows for self-defense as a justification for the use of force. Thus we have self-defense as a reaction to a break of peace as mentioned earlier , while the purpose is to regain International order. For instance, the unconditional parts of the United for Peace General Assembly Resolution include ensure armed forces and their members are understood as acting in self-defense to maintain peace

and security rather than to punish an aggressor. This provision raises the issue of reasonableness of self-defense actions as being measured and strictly required only to eradicate the aggression.

It is possible to analyze the right to self-defense through two subjects — the individual and the state, and it will be seen that there are distinct differences, which are a result of their distinct nature of work, their functions, restrictions and tasks. Even though it is to protect oneself against an attack, the perimeter and circumstances of self-defense vary greatly. Man functions in a plane where the primary value is life, therefore, society and law attempt to open the broad spectrum of action for the required defense while paying respect to the attacker's right to live as well. At the same time, the state acts in the sphere of international peace which presupposes provision of safety of the population, respect of rights and freedoms, as well as non-use of force and threats by use of arms (Occelli, 2003).

These differences are supported by the position of V. Rzhevska which reveals different trends of evolution of the notions of individual and state defense. In international law not only can they (states) but they must respect human rights as well as restraints to prevent self-defense from degenerating into aggression. This places extra demand on the state and call for proportionality in exercise of this right towards self-defense (Rzhevska, 2003).

Experts analyze the subject of self-defense in international law with the main focus on the meaning of this concept. This concept of Professor N. Vavilova states that self-defense is an armed, compulsory measure taken in response to a major international crime, aggression. Vasylenko states that self-defense is not a measure of protection of the general interests of States, but a response to a gross violation of international law. From this viewpoint self-defense may be viewed as a countermeasure, yet a countermeasure involving the use of force which separates it from non-forcible countermeasures as provided in Articles on Responsibility of States for Internationally Wrongful Acts by the International Law Commission. Although classical countermeasures, including economic or diplomatic sanctions, operate to alter the policy of another state so that the latter fulfills its international legal obligations, recourse to force for self-defense is-reactive and aims at repelling an attack and restoring the matrix of the unlawful act. This is hence the interpretation giving primacy to the specificity of self-defense as a justification of the use of force that can only be used in the circumstance involving armed attack and must be practiced in exact measure, being necessary, proportionate in both extent and timing (Vavilova, 2016).

In the same manner, one of the most important categories of justification within the general prohibition of the use of force is the right of self-defense as the principle of the international law. Taking into consideration the main principles of the international law regulating the relations between the countries the right of self-defense is the concept of the necessity to protect the sovereignty and security of the states against any types of aggression. Though derived from the customary law and UN Charter and other international legal instruments this right acknowledges the right of states to act in their own self-defense while at the same time subjecting this to the broader imperative of an international peace and security. Nonetheless, the day to day application is challenging it brings with it risks of misuse and misinterpretation which include the mixing up of defense with revenge, or the use of disproportionate force. This is particularly important for the concept to remain legitimate and not to be used for abusing the opposition, to be based on specific legal precepts, the principle of proportionality and international justice.

1.3. Article 51 of the UN Charter: key provisions

For the matter being, Article 51 of the charter of the United Nations is one of the most important features in current international law as it forms an acknowledgment of the situations under which an anarchy can employ forceful force for protection. This article is an exception to the Charter's prescription under Article 2(4) banning states from using force or threatening to do so in a manner that disrupts the sovereignty or political autonomy of nations. After presenting in Section III the right to self-defense as applying to collective security, this provision restores the natural rights of states to defend themselves and their citizens.

With reference to Article 51, there is further understanding that the right to self-defense is the inherent or natural one of states and over that the Charter did not create it. Reverting to the traditional concepts of customary international law and historic practice, which always recognized the ability of states to react to acts of aggression in order to survive, this provision has strong grounds in legal theory. However, through this Charter right, states are given the leeway by this treaty to act in their defence of territory even within a system of collective defence.

Article 51 allows only a state to use force in self-defense provided that the legal and factual conditions properly justify this measure so that self-defense is not used irrationally. The provision means that self-defense is only available where there is an unfolding "armed attack" against a member state. As to this threshold, it separates trivial border encroachments, or economic pressures, which cannot be followed by the use of force, and actual violations. Armed attack has been defined with a considerable amount of detail in

international legal forums with discourse and doctrinal development extending to newfound conventional means such as cyber warfare or hybrid warfare. However, this leads traditional interpretations to focus on kinetic, large scale force as the defining criterion.

Furthermore, necessity forms the core of the exercise of force solely in self-defense under Article 51. This implies that defence mechanisms provided by a state have to be compelling and unavoidable in order to counter an on-going or threatened aggression. This is accompanying by the principle of proportionality, which means that a response to an armed attack cannot be larger than necessary to eliminate the threat. These principles are designed collectively to curb the tendency of states seeking cover from Article 51 and engage in either inflated utilisation or counter aggression.

Another pertinent feature of Article 51 is the requirement for the states to report their actions which are based on the right of self-defense to the UN Security Council. This reporting requirement guarantees transparency and let the Security Council to control the situation, determine whether there is need for further action in the restoration of international peace and security. As it has been seen, the absence of notification to the Security Council is not unlawful as far as a state employs self-defense and it may just render it questionable.

Additionally, Article 51 also preserves the right of collective self-defense and permits states to act in defense of another state that has been attacked with force. This principle is most often implemented through partnership like NATO which is an agreement with member nations undertaking to defend the other. Thus, for the M.C.S. for collective self-defense its requirements bear mentioning: the state that requested assistance agreed beforehand on such measures, or the defensive action has to be accented by the principles of necessity and proportionality.

Article 51 represents a strong foundation when it comes to self-defense and has not experienced a lot of problems when it is applied on protocol issues to do with the new world order threats. Classic understanding of self-defense concentrated on conventional attack by one state against the other or threats of its weapons. But new challenges, in the form of non-state antagonists like terrorism and cyber warfare, hybrid warfare have created more ambiguous issues as to what constitutive an ‘armed attack’ under the charter. For example, terrorism especially the September 11, 2001 human calamity has pushed states to exercise right of self-defense against non-state actors at large thereby distorting the state-oriented interpretation of Article 51. In the same way, the development of capabilities that have materialized resulting in destruction, for example, of critical infrastructure or wide-scale economic and social disruption has expanded the definition of an armed attack. Albeit some

states claim that only a serious cyberattack would justify invoking the right of self-defense, its applicability remains rather a contentious issue while using traditional principles at cyber-space domain. The seemly coordinated hybrid threats that not only use military force but also federations, disinformation, economic sanctions and proxies, make it even more so. These tactics usually are just below the line that defines armed attack in contemporary international law, and thus states are hard placed to justify defensive action under existing legal framework. These challenges indicate the need for some overhauling and or modifying of the framework of article51 to suit modern day security threats as the world strives to honor the key principle of sovereignty on one hand and no use of force on the other.

The problem also pertains to the principle of anticipatory self-defense, when states imagine the right to conduct an action against an attack before it occurs. Some of the states with customary international law on the right of preemptive self-defense while others debate how this issue was excluded in Article 51.

Article 51 of the Charter of United Nations represents the adjustment between state supremacy and collective security. The provision recognizes the right of individual or collective self-defense, but does so while placing strict conditions on its application to make sure that self-defense cannot be used as a pree text for the overthrow of the existing order and a return to the law of the fittest, while guaranteeing the right of states to defense. Its meaning is clear, however, due to the continuous changes in threats in the contemporary state system, discussion and elaboration of the scope of Article 51 should not cease in order to provide an effective standard for the regulation of the use of force.

1.4. The concept of individual and collective self-defense in international law

This subsection is aimed at examining the two types of self-defenses provided for in Article 51 of the UN Charter: individual and collective. This classification is based on the number of subjects which are using this right towards self-defense. Specifically, the general provision in article 51 was made that “This Statute in no way shall affect the exercise of individual or collective self-defense right, in accordance with the Charter.” Jeremy Wright says that such kinds of self-defense mean “the act of defending one or one’s friends.” More discussions expand on the nature of these categories, comprehensiveness, as well as relevance in modern international law.

It is necessary to point out that the text of the article does not differentiate between these two types; however, according to C. Greenwood, witness the practice and judicial decisions that showed some distinctions between them [24, paragraph 5]. Hence, we will

go through the characteristics of each kind of self-defense especially in regard to its process based on the number of subjects to be instructed (Ruys, 2020).

It is exercised by one state that has become a target of an armed attack, hence, the name individual self-defense. Elma Katik underlines that this right relates exactly to the state which became an object of aggression. This is typical case which fits to the concept of right for defense. The state has the right to do what is necessary to ensure the safety of a particular state. As it has been declared in the UN General Assembly Resolution No. 60/1 of October 24, 2005 each state bears the obligation to protect population of the state against genocide, other crimes of international jurisdiction, including war crimes, ethnic cleansing and crimes against humanity. The right to individual self-defense is a valuable weapon for preserving the state's territory from external threat. This right, as it has been demonstrated in the Indian case, is normally invoked in situations such as terrorist attacks. India has many times invokable this right for maintaining its territorial integrity and sovereignty. Individual self-defense has a key advantage: practically, they are speed and autonomy, as the state is capable of reacting to aggression immediately and does not need to discuss its actions with other countries.

Right to collective self-defense is another right, which is somewhat different from the discussed rights in this context. It implies a reaction of several states against an aggression, even though this aggression was made against only one of them. This mechanism is also founded on the treaties like the Nuclear North Atlantic Treaty or the Warsaw Pact in which an attack on one party would normally be considered as attack on all members. Collective self-defense not only asserts the security of allies but also has a way of discouraging a potential aggressor. In such cases, the law turns into an ordinary one; actions are worked out in cooperation with states aiming at one and the same objective – the maintenance of peace and stability (Schönleben, 2020).

Through the provisions above, it becomes evident that the states have conferred on each other require to protect each other through the system of collective self-help. What one state does to the other, gets others the chance to fight back and defend themselves. Each of these treaties embeds a reference to Article 51 of the UN Charter so the status of this provision does not seem ambiguous. Therefore, states provided the circumstances under which they would be able to exercise this right of collective defense. However, this right is given not only to parties to such treaties, as well as other states that have made no agreements in this regard (Hansler, 2020). The questions arise: in what manner can they do so, under what conditions, and is the consent of the declaration of the so called 'victim state' necessary?

Collective self-defense does not apply to one state; it means that many states join their efforts because of such common interests that exceed simple treaty. This is in line with the obvious fact of common security where a problem that affects one state may easily become a problem for all. For example, the countries located in a certain geographical area may be concerned with the probability of the aggression expansion to other countries in the region, negative influence on security of the region, commerce or other spheres of people's activity. Another question is if this right should be exercised in the acute threat, or in the future danger is enough. It also becomes pertinent to establish whether this mechanism makes it necessary for states to enhance their cooperation and interdependence, in such a manner that an attack on one of them justifies the action of the others. Further, harm could be done to global peace See, or economic, social, environment or security.) (Stracqualursi, 2020). However, the question remains open: are such threats enough for the application of the right of self-defense, or should it be direct linkage between an attack and the right for collective response?

One can regard the alliance of the United States and Iraq as the example of collective self-defense during the war against ISIS. It can be recalled that in September 2014, Iraq requested for American intervention in leading a coalition campaign against terrorist groups in Syria who was posing a threat not only to Iraq and the Iraqis, but of the region as well. Appealing for its right to confront the group, Iraq explained that ISIS threatens not only Iraq but also every other country, the United States and its allies included. This enables states to assert their right to self-defence, individual and collective as per the provisions of Article 51 of UN Charter.

ISIS continues performing brutal terrorist acts all over the world cooperating with local groups; many-site terroristic attacks, the murder of journalist James Foley, genocide of Yazidis – these and more are actions of ISIS which threat is not limited to Iraq only. Offenses like genocide are regarded as some of the worst international concerns, which compromise peace and security (Robinson, 2005).

However, the application of US collective self-defense in 2014 before the images of mass crimes which ISIS propagated was commiting was questionable. Was an actual threat to the safety of America enough to warrant such an interjection? Concerning similar events, Nicaraguan crisis and the American intervention mainly aids to organize the context. In reactions to the attack on Nicaragua by the United States, the International Court of Justice had to determine whether interference by the United States was legitimate under the principle of collective self defense. The United States averred that its security was at risk due to the actions of Nicaragua that it said were aimed at its allies in the region. The

main question that follow this form was whether Nicaragua was involved in armed attack that would necessitate such actions by United States of America. This example demonstrates how very much can it be problematic to determine the parameters and circumstances of the permissible employment of collective self-defense.

In the analyzed situation, the lack of the treaty on mutual protection is compensated by traditional justification for the act of defense – the threat to the state. However, the question arises concerning the gravity of this threat to the United States, to warrant the exercise of the right to individual self-defense, in addition to what circumstances may warrant the application of the right to collective self-defense.

To help clear up this matter, it would be useful to consider the ruling of the Nicaragua case on US interventionalism. The court noted that a complete change of one of the most important principles of the international law, including that of non-intervention in internal affairs of another state, not even to mention the political or moral motives, would be required for the right to intervention. Namely, force is allowed only when person feels threatened and has no other reasons, even noble ones, to apply force (O'Meara, 2022).

To mask their interferences within Nicaragua's affairs the US resorted to an advertence to the "classic" provisions of collective self defense. The court also stressed that the international law does not constitute an aim-enabling general right to intervene in order to support the opposition of another state even though this opposition is connected to the intention to prevent aggravation of the conflict. Furthermore, any practices that ignore the principle of non-interference and on the other hand, comprise of force are against the basic principle anchored on non-usage of force in interstate relations.

The court found that, in particular, a form of intervention in another state is prohibited, if this intervention was initiated by an opposition party. This is in following a provision of the international law that recognizes non-interference. In the opinion of the Court, this principle would cease to be effective, if intervention could be initiated at the request of Opposition, since it poses a threat to the order of international law and international relations, allowing any state intervene in the domestic affairs of another state – whatever the grounds for its request. The court was clear to point out that only a legitimate government can claim collective self-defense and collective self-defense is a shield against abuses under the guise of self-defense.

Second, the court stated that the intentions of the state involved influences their decision regarding admissibility of Collective self-defense. Again, even if a state has several reasons to intervene, the existence of a single legal ground, namely protection of an

attacked country, suffices to exercise the right to do so. But must be directed that way to counter a real threat that threatens the country and not any other political objectives.

It is important in the case 'Military and paramilitary actions in the territory of and against Nicaragua', the court setting the parameters of collective defense. Based on this it has been concluded that this right cannot be equated to intervention and it does not apply where at the request of the opposition. Just a state that qualifies to be an aggression victim has a right to individual right to self-defense and only under such arrangement that other states can have the right to collective defense to support the victim state (Grotius, 2001).

Christopher Greenwood agreed that collective self-defense is possible only where there exists justified right to individual self-defense in one state. In the event that the threat is not credible or it does not involve any state, right to collective self defense cannot be exercised. Therefore, the right of collective self-defense is a secondary right, which exists when one or the other State of the community is in real danger.

Christopher Greenwood singled out the second important condition for the realization of the right to collective self-defense: according to the organization, the state that was subjected to an armed attack must notify this status formally. The third and the last pre-condition is the right of the other States to employ force in fulfilling it presupposes that the State which is requested assistance in collective self-defense respects the rights of the requesting State. Both are not far related from each other because both put premium on the will of the victim State. The first one enables the victim state to understand that third party intervention is necessary, the second – gives an opportunity to ask for and get a permission to intervene what makes such actions legitimate and distinguishes them from intervention. Such actions may be similar to some actions of states during some treaty, for example, given a treaty on security cooperation where states agree to look for security in cooperation, such as North Atlantic Treaty or Warsaw Pact. However, depending on the other states' goodwill and taking more time for coordination, this format is not suitable for permanent agreements – they need a quicker response (Judge Christopher Greenwood, 2008).

In particular, the justification of the threat to the United States itself was not necessary concerning the presence of the US in the fight against ISIS in Iraq. The right of collective self-defense can only arise on the basis of the appeal of the attacked state only. In this case, the entitlement sufficient for the exercise of this right is the Iraq's right for assistance, as an aggrieved state, from the United States without having to evaluate the degree of threat which the United States may be facing.

Therefore, the rights to self-defense provisions in the Charter of the United Nations as set out in Article 51 are related. Individual self-defense is implemented by the state that

has become a victim of an attack, while collective self-defense is possible under the presence of three conditions: Pursuant to the adopted packs, the victim has the right to individual self-defense, official recognition of his or her status and appeal for help to other states. If there is no such appeal, then any intervention can be only unlawful and they equate to a contrario international law intervention.

1.5. The influence of the tragedy of 9/11 terrorist acts in US on the evolution of self-defense in international law

Terrorist acts, which took place on September 11, 2001, are considered being one of the most tragic incidents in the history of the contemporary world, which had an impact not only on stability of specific countries but international law as well. As a result of these events the matter of self-defense provided in the Article 51 of the Charter of the United Nations has been subject to rather remarkable transformation, which some have attempted to discuss in connection with the use of force against terrorist acts carried out by non-state actors. This unit is concerned with the ways in which September 11shaped the notion of self-defense, especially individual and collective, and how it has changed in the course of practice (McGoldri, 2004).

On September 11th, 2001 it became accepted that the right of self-defense existed in response to an armed attack by a State or group of States. But the actions of the terrorist organization Al-Qaeda have altered this strategy. Non-state actors that are groups or people involved with terroristic organizations have come to be perceived as the personnel capable of aggression that is threatening to international peace. After these events, the United States and its allies have claimed that the pre – existing doctrine of 'self – defense' can also be used in regards to non – state actors if the actions carried out by the latter equate to an armed attack (Paust, 2003).

In retaliation the 9/11 attacks the US took a military action on Afghanistan against Al-Qaeda and the Taliban government that hosted them. This was the first time that the right of self-defense was used against a non-state player. The resolution 1368 and 1373 passed in the UN Security council backed up the US actions by affirming that terrorism was a threat to international peace and security and endorsing the right of self defense in the face of terrorist attack (Ohlin, 2014).

As the consequence of september 11 the focus on the application of self-defense changed. However, the issue of immediacy has become more flexible in respect to some questions, for example, the actions performed by the subject are no longer necessarily immediate. The US used the self-defense clause to justify the protraction of campaigns as a necessary business. This has raised some question on the reasonability of such actions in

that ,international law often demands that self-defense must be measured in equal proportion to the danger posed and must be undertaken for a limited period (Guillaume, 2004).

The events of September 11 also were at the basis of the point of preventive self-defense, which was actively promoted by the USA. This doctrine means that a state has a right to preempt in case the threat is non-obvious though probable. Pre-emptive self defence has raised quite a lot of controversy because the customary international law does not allow any action other than an action in response to an actual armed attack (Garth, 2006).

The tragic events that took place on September 11 facilitated further cooperation of countries in the sphere of fighting terrorism. They made a move to exchange information, cooperate in measures for anti-terrorism and enhance their efforts to prevent the financing of terrorism. Several resolutions were passed by the UN also which called on states not to host terrorists and to refrain from financing terrorism with the cooperation regarding averting further terrorist attacks being required (Duffy, 2015).

The enlargement of the right to self-defense by some states and human rights activists. Main threats associated with possible violations of this right in the fight against terrorism. For instance, preventive self-defense can be employed to legalize preemptivestrike which is prejudicial to the continued survival of the international legal order (Byers, 2002).

Thus, it could be stated that the terrorist acts of September 11, 2001 assisted in the shapeing of the self-defense conception in the international law process. Several of the changes stemmed from the geographical scope of the application of the mechanism to a variety of cases such as acts of terror FC by non-state actors, the principle of immediacy, proportionality, and the creation of others like preventive self-defense. At the same time these processes have led to the appearance of problems for the international legal order, highlighting the potential for shifting from the concept of state security to respect for the norms of international law.

CHAPTER II. TYPES OF THE RIGHT OF SELF-DEFENSE

2.1. Individual and collective self-defense: legal foundations and applications in contemporary conflicts

Article 51 of the United Nations Charter explicitly recognizes two distinct types of self-defense: individual and collective. This classification is derived from the number of entities exercising the right of self-defense, as articulated in the text: 'Non inherent right of individual or collective self-defence shall be affected by anything contained in the present Charter. 'Jeremy Wright considers this distinction as referring to self-defense or the defense of others, which is the best way summarising these two types of self-defense (Wright, 2017).

The idea of individual self-defense has the historical base of the right of a state to use force to repel armed attack. According to the term itself, this type of self-defense is used by a particular state which has been an aggrieved party to an armed attack. This classical understanding is in concordance with the postulations of J. Ohlin who explains Individual self-defense to mean "the action of a state defending itself against an armed attack". This reflects the very essence of self-defense as the founders of UN Charter and as total codified by international law (Ohlin, 2014).

The exercise of individual self-defense refers to the legal imperative which originates in the very concept of state sovereignty and necessitates the protection of individual subjects. There is a principle that every state has the right and the duty to protect its people and its territory from threats of annihilating nature. This responsiility is further elaborated in the 2005 United Nations General Assembly Resolution 60/1 stating that 'every state has the responsibility to protect its population from genocide war crimes, ethnic cleansing or crimes against humanity'. This obligation involves the utilization of proper and essential measures not to allow such acts to take place, portraying the preventive element of self-defense.

While individual self-defense is a technique to be used individually in protection of a state from aggression, collective self-defense is where several states unite in order to defend a member of the world community that has been invaded by an aggressor. Such a type of protection is described by the interdependence of the relations of the contemporary international community and the concept of the collective security. Although no such demarcation has been made in Article 51, the practice of the Court and the jurisprudence have shown the differences in the functioning of Article 51 individual and collective self-defense (Ruys, 2020).

From any textual reading of article 51 one could be forgiven for confusing armed conflict and non-international armed conflict as a similar process but as Christopher Greenwood points out whilst the text of article 51 may not make the distinction between these two forms, legal advocacy as well as state practice has over time made this distinction. Collective self-defense actually appears most often in relation to an international alliance or treaty, though it should be noted that in many cases its precise legal status is a matter of debate. This cooperation approach enhances the aspect of solidarity as maintained in the international peace as well as security.

This means that individual and collective self-defense is also preconditioned by certain legal subjective conditions which are necessity, proportionality and immediacy. These principles prevent the exercise of 'self help 'from forming a cloak for the initiation of force, but a rightful and reasonable reaction to force. Furthermore, the interrelations between these two forms of self-defense prove the development of the classical tradition of IHL as a repertoire of the modern international law systems in response to the modern challenges, including non-state actors, terrorism, and other combined threats.

It is perfectly clear that understanding of the legal basis and specifics of individual and collective self-defense reveal that both concepts are organic parts of the structure of international law. When properly applied they facilitate activities to guarantee that states provide effective responses to threats in line with sovereignty, security, and the rule of law (Paddeu, 2020).

In self-defense, the term 'individual 'stresses the preemptive, unilateral action by a state when armed attack has been perpetrated against it. This approach suggests an instant and individual response to aggression which is foundation on the instinct of self defence. An aggressed state – let us now name this as State A – engages in a unilateral defensive action to prevent an external threat to sovereignty, integrity of its territory and the lives of the citizens. Historical perspectives reinforce this understanding, as noted by 16th-century judge Balthazar Ayala, who stated: "The principal just causes of war in the modern world are self-defense of one's empire, our people, our friends, allies and property; for even individuals do not require any further justifications of war than the law of nations."

The privilege to personal defense is still one of the most utilized rights today in international law. Cross border terrorism is a recent example where India has justified use of force for self defense. India's threatened by transnational terrorist action & continues to be a major concern for the country as mentioned by India's Ambassador K. Nagaraj Naidu in Mexico on February 24, 2021. Taking examples from the 1993 Mumbai bombings, the 26/11 Mumbai attack, Pulwama attack, and Pathankot attack, Naidu noted that the intrusion

was made by identified non state actors who enjoy the support or indulgence of the whole state (Nagaraj, 2021).

India's position underscores an important dimension of individual self-defense: this means that, despite combating non-state actors, actors that cross international boundaries to cause mayhem, measures used to counter such threats accord with the Charter under Article 51. India further claims that it took such measures, in any case even without prior consent of the host state, which is harbouring the said actors, to qualify for defense on grounds of lawful self-defense. This is because all these actions are not instigated out of revenge but are actually informed by the need to protect sovereignty and the interest of the territorial nation state (Naidu, 2021).

When compared to other forms, individual self-defense is the relatively faster, easier to learn in the sense that few movements require much finesse. While collective self-defense involves deliberation and cooperation with friends or other coalition, this right enables a state to exercise individual activity. Lack of external agreement reduces the time lag that would otherwise be incurred while finding common ground either diplomatically, organizationally, or internally within a coalition. Whereas in situations were response is required almost immediately such as in imminent or on-going attacks, this capability is invaluable for the response.

Furthermore, individual self-defense exemplifies the fundamental essence of the right itself: an exploited state defending itself against an act of aggression. This straightforward mechanism enables the victim state to fully maintain independent decision making and reaction management without reliance on outside help. In this sense, individual self-defense is parallel to the principles of sovereignty and self-determination that would allow the state to undertake the measures enabling its protection at once.

Whereas individual self-defense is an assertion of a one-sided right to use force, collectiveness self-defense raises a new legal and practical scenario. Seen in CL and in charter as Article 51, as the doctrine of collective self-defense, its practice brings rise to some questions. , the International Court of Justice has also recognized the right to collective self-defense as a part of customary international law pointing to the Charter itself as evidence of that fact. However, the exercise of the right of collective self-defense usually raises questions about the legitimacy of the right in situations where a state not attacked in the past, claims the right to participate.

Collective self-defense acquires from the view that threat to one state can warrant action by other states particularly where they are in defense pact. This concept has found its legal and practical substantiation in such treaties as the North Atlantic Treaty (NATO), the

Warsaw Pact, etc. emphasis this difference and according to Malcolm Shaw, collective self-defence is not just a combination of individual rights but is a separate legal regime based on solidarity and mutual defense. For instance, the NATO Treaty stipulates, in Article 5 of the Treaty that an armed attack against any [party] in Europe or North America shall be considered as an attack against all the [parties]. On the same note, Article 4 of the Warsaw Pact also contain a similar provision to the effect that each Party shall in accordance with the Charter of the United Nations consider it as a principle that it is obligated to afford mutual assistance in the event of armed attack.

There are principle factors that need to be discussed in relation to the practice of collective self-defense. First, there is need of actual and overt attack on a member state in the defense pact or alliance. Second, the mutual defense agreement has to allow the use of collective response in such circumstances and that the response complies with the international law. Third, such measures should meet two international law principles: necessity, which requires action to be purely defensive and not provocative; and proportionality, which means the action cannot be excessive in comparison with the threat in question.

These criteria meet the basic question of the legitimacy of non-invaded states to exercise collective self-defense. The rationale is rooted in the legal and ethical responsibilities contained within defense pacts activist, which changes an aggression on one state into a threat to the rest within the region or globally. Such structure guarantees that the concept of collective self-defense ISIL not considered as an act of aggression but as the rights under the international law (Schönleben, 2020).

Collective self-defense has not remained stagnant due to the new-type threats. For instance, in the wake of the September 11 2001 terrorist attack, NATO's invocation of the Article 5 provision dramatically broadened the idea. Despite the fact that the attack was against the United States, international solidarity by NATO members in repudiating the act as well as in joining forces to combat terrorism portrayed a reinforced article five of the NATO charter in the face of non-conventional warfare. In this case, flexibility is demonstrated where collective self-defense is able to provide for new forms of aggression.

Likewise, in cyber warfare involving information warfare and proxy war, the collective self-defense is useful to justify an unified concerted action. Even if an 'armed attack 'does not (and perhaps could not) necessarily encompass such threats under Article 51, collective self-defence enables states to act cohesively collectively – pooling their capabilities and drawing on a density of security challenges that are more easily overcome in unison.

The primary claim we can make about collective self-defense is that it empowers the states through the concentration of resources and exercising of defensive strength. This way, states gain strength in numbers and no other state feels free to take aggressive action against any state of that group. Furthermore, structures created by many for common defense like NATO implies consultation and coordination thus member responses are measured and mutual.

However, collective self-defense also has problems of its own. Being alliances of countries with diverse political and strategic agendas, there is often times the question of consensus on any course of action that is to beed, this slows the decision making process of any alliance. Furthermore, being a coalition of some states it is also more prone to escalating a conflict, and actions of a particular member would likely bring in other members into larger scale conflicts. Such challenges require attention to, and compliance with, international legal frameworks in order to preserve the permissive nature of Article 5 in the context of collective defense (Grotius, 2001).

The right of collective self-defense as provided for in the UN Charter of Article 51 permits states to respond in support of one another in case of an armed attack. This mechanism is most often supported formally by treaties, that is NATO Treaty or Warsaw Pact. Nevertheless, such treaties are not signed by all states, but they also, by virtue of the generally recognized principles of international law, have the right to collective self-defense. This raises significant questions: But how can states not directly attacked use this right? For performance of such action, do the victim state's consent is required? To what degree is the threat credible or how close must it be?

Collective self-defence can thus be explained by references to perceived understandings of regional or international security for the states that are not committed under legalised treaties. For instance, neighbors of the country involved in a conflict will associate an attack on one state as a threat to the stability of the whole region. This is especially so where aggression might pose a further threat to other states, economically, socially, or militarily affecting or being perceived to threaten its neighbors (Green, 2024).

The intensity and the kind of threat also have influence over the legitimacy of collective self-defense measure adopted. The threat does not always need to be present as a clear and direct aggression; potential danger combined with a demonstrated potential and willingness to strike might be enough, if a reasonable chance of no-action will lead to detriment to the overall regional security or the sum of individual allied interests. This principle captures the relationships of contemporary security and provinces the states to act proactively on behalf of the common good.

An optimally illustrative present day example of collective self-defense can be seen in the manner, that in 2014 Iraq sought help from USA against the ISIS. Iraq demanded America ‘coordinate global operations against ISIS’s headquarters and breaches in Syria to address continued incursions into Iraq, to bring security to the Iraq citizens and in the long-term allow the Iraqi security forces to regain sovereignty over Iraq’s borders. ’This request positioned ISIS not only as the enemy that endangers Iraq but also the United States and other regional and international allies.

There are several reasons underpinning Iraq’s assertions of right to collective self-preservation as the basis of its right to collective self-defence. It signposted the cross-border threat posed by Isis which has conducted operations across the world such as the 2015 Paris attacks and the 2014 kidnapping and beheading of American photojournalist, James Foley. In addition, Iraq also focused on the group’s ability to foment instability, not just in Iraq, but also its neighbors like Iraqi Kurdistan, where ISIS is accused of carrying out genocide against the Yazidis (Lee, 2015).

In doing so, Iraq played the work ‘international ’which highlighted the fact that action must be taken on an international basis. This is in consonance with the wide interpretation of Article 51 which allows states, in addition to collective self-defense for the defense of the state surviving the attack, as an essential activity meant to defend the international community and its peace.

The case of Iraq and the United States is used to explain how states could use the right of collective self-defense in relation to non-state actors such as terrorism. But such cases are revealing the problem of the practical implementation of this principle. Recent conflicts are not like inter-state conflicts whereby actors of threat work across borders, conduct criminal activities, and operate within the legal loopholes.

On this basis, it is again possible to raise ethical and practical issues with regards to the scope of collective self-defense. As much as the threats to regional stability, economic security and social order are real, are they good enough reason to call upon the right to collective self-defense? Is there need to have closeness between the victim state and those who want to act collectively? Such factors explain the dynamics of the concept of collective self-defense and its significance for countering modern threats and challenges that exist in the modern world such as terrorism, cyber threat, and hybrid warfare.

The gravity of crimes committed by the ISIS organization, including genocide and terrorism, cannot be understated. The Rome Statute, which defines genocide, categorizes it among the "most serious crimes of international concern." However, an examination of the United States' collective self-defense actions in 2014—predating the Paris attacks and other

major ISIS crimes—raises critical questions. Was the military intervention lawful under international law? What level of threat is required for a state like the United States to justify engaging in collective self-defense?

In relation to these questions, certain experience must be cited, namely, the practice of the ICJ in the case of Military and Paramilitary Activities in and Against Nicaragua. This case involved the rights of an entire nation undermined and violated by the United States in Nicaragua through the support of contras insurgents and interference in the governance of Nicaragua's internal affairs. Its actions the U.S. justified by Nicaraguan threat to the neighboring states, including El Salvador, Costa Rica and Honduras, citing the right to collective self-defense. However, this claim was too looked at by the ICJ and much emphasis was put on the measures taken by the US and their appropriateness (Ohlin, 2014).

The ICJ also stressed that the right to collective self-defense cannot be claimed at will, or at whim. Generally, for such a claim to hold water there must have been a demonstrable armed attack on a state, and the reactions given have to meet certain legal characteristics. The Court held that the; U.S intervention to include mining of ports as well as attack on military installations in Nicaragua constitutes the unlawful use of force due to its aggression in the region and doesn't constitute lawful collective self-defense.

The ICJ also elaborated that collective defense does not mean intervention into affairs of the another state. Though sometimes justified on political/moral grounds intervention is governed by CIL principles such as the non-use of force principle and Sovereignty principle. The Court said that today's international law does not provide the right for states to intervene, directly or indirectly, with or without force, in support of an opposition in another country. It also made it clear that consent of the victim state was a legitimate prerequisite of collective self-defense (Beer, 2022).

One of the controversies in the Nicaragua case was whether intervention could be justified by the request from the opposition groups. The ICJ dismissed this argument without hesitation by affirming that only the constitutional government of a state qualifies to seek the assistance. If opposition groups are to be permitted to invite interference, then it would recklessly erode the non-intervention principle as it would allow external forces to encroach into states 'internal affairs, for the excuse of collective self-defense.

This requirement for consent can be seen as a procedural mechanism in order to prevent the principle of collective self-defense as being an abusive cover for acts of aggression or support for insurgent movements. Through this limitation the ICJ preserved the inviolability of the international law and its recognition of mutual essential desire of the states – the peace (Akande, 2020).

With regard to the actions of the United States in relation to ISIS in 2014, consent was established by the request of Iraq for assistance. But, questions …[concern] the U.S response as proportionate and whether its scope is commensurate to the situation given that ISIS was not solely in Iraq but extended its operations into Syria and beyond. The U.S. used Article 51 of empire, he argued that was acting in collective self-defense since ISIS is a transnational threat to Iraq and other countries. Although this logic can be called to pertain to the doctrine of mutually assured security, it also underscores the new realities of applying interstate legal pursuits to nontraditional adversaries andanism.

The example in the case, the collective self-defense against ISIS, is a good primer of contemporary warfare. In modern conflicts while the objective of attack still originates from one state against the assets of another state, the actors are often non-state and the conflict is more likely transnational thus overloading the internal-external security divide. These challenges call for the right approach in the exercise of this collective right, particularly the coupling of the self-help tendency with regard to the international legal order.

Although, it is worthy to consider decision of the ICJ in order to mark that organization pays attention to the principles of legitimacy of collective self-defense, which include such notions as armed attack, necessity of action, and proportionality. Consent of the victim state stays part of this principle to check legalization of these interventions and ensure that they are in the interest of the international peace and security. That is why, it is becoming clear that while these principles work well in theory, adapting them for practical uses in the fight against modern threats such as ISIS has not been easy.

Intent and collective self-defense as I have noted above is an area of focus of legal debates. ICJ dealt with it in the Nicaragua case and said that having more reasons – other than the stated principle of defense against aggression – does not make a null and void the right to collective defense if the principal aim is legitimate. This acknowledgement shows that it is very difficult indeed to define the motives of states in international relations as Reader noted the use of lawful means for what may be politically motivated ends.

This paper examines the ICJ's particular scrutiny of the exercise of collective self-defense by the United States in Nicaragua with a view of identifying the extent to which this principle can be roped in. The Court thus insisted that the actions cannot be an intervention and cannot be done on the basis of a request from opposition groups. The spirit of collective self-defense should always focus on against aggression to the object state, strengthening of sovereignty and preservation of the world peace (Aust, 2005).

The Nicaragua case provided guidelines on the issue of legal status of collective self-defense.1) Collective self-defense can only be invoked if at least one state of an alliance that invoked the right of collective defense has a right of individual defence because of being an aggressed state that has become a victim of an armed attack.ch actions must not constitute intervention and cannot be based on a request from opposition groups. The primary goal of collective self-defense must always be to counteract aggression against the victim state, reinforcing its sovereignty and maintaining international order (Bethlehem, 2009).

The Nicaragua case established a framework for evaluating the legality of collective self-defense. Sir Christopher Greenwood, a renowned ICJ judge, identified three essential criteria (Military and Paramilitary Activities in and against Nicaragua, 1986):

1) Collective self-defense can only be invoked if at least one state has the right to individual self-defense due to being the victim of an armed attack. Greenwood noted that this prerequisite ensures the presence of a legitimate threat to self-preservation. Without a direct threat to a state's sovereignty or security, no other state can claim the right to collective self-defense.

2) The victim state must explicitly declare itself a victim of an armed attack. This declaration is a sign that the government recognises the extent of the problem and the need for outside help. By officially confirming the attack, the state legalizes the participation of other states in its defense.

3) The right of another state to exercise the right of collective self-defence is subject to a prior request by the attacked.t underscored that such actions must not constitute intervention and cannot be based on a request from opposition groups. The primary goal of collective self-defense must always be to counteract aggression against the victim state, reinforcing its sovereignty and maintaining international order.

As it has been said, the criteria for collective self-defense were given when the USA intervened in Iraq against ISIS. The legal requirement for action was then set when Iraq formally asked the US for help. Thus, for the U.S., no proof of an imminent threat was required, as the source of legitimacy was the fact of use of force by Iraq which has claimed the right of individual self-defense and appealed to the collective.

This example is illustrative of the interactional relationship between individual and collective self-defense. After they were attacked, the sovereign right of Iraq to individual self-defense was the legal ground on which the U.S. acted legally in collective self-defense. Also the lack of an imminent threat against the assisting state – as in the case with the US

– does not in any way take away from the legal right that state has to assist a country under attack.

The judgments presented above clearly define that collective self-defense cannot be a cover for interference on domestic affairs of another state. However, even if a state 'sees ' a more general threat, for instance regional insecurity or ideological enmity, the state cannot legally come to the rescue without invitation of the aggrieved state. This principle maintains the differences between the right of collective self-defense and unauthorized interference and to protect the sovereignty of the states and the legal system in international relations (Kretzmer, 2013).

The ICJ also asserted that matters must be introduced by actual governments. These demands coming from Third World opposition groups cannot warrant the application of force for such will defeat the very principle prohibiting intervention.

According to Article 51 of the UN Charter, and organs elaborating on collective self-defense as the ICJ, several points that are crucial for understanding the concept are critical intent, consent and proportionality. Collective self-defense is tied with the individual self-defense The victim state has to exercise its rights, demand assistance. Otherwise, any intervention would_amount to acts that contravene the principles of international law. The invasion of Iraq by the United States of America against ISIS can be taken as example of the working of these principles where states can come together and do something about aggression and at the same time respect law. Thus, preventing the violation of state sovereignty and attuning the imperatives of efficient defense to the principles of legal international cooperation, collective self-defense has become one of the main pillars of the modern international security system.

Self-defense concept, from international law perspective is being currently reconteporized; especially concerning the military operations of Ukraine against Russia aggression. Traditionally, the concept of self-defense has envisioned a force used in reaction to an armed attack and only within the borders of the state under attack. However, tactical and successful military operations against Russia's interests raise legal and ethical dilemmas concerning the nature and degree of this principle. Ukraine blurs such criteria, especially with regard to preventive and deterrent actions against a continuing aggression state.

From a legal point view, it is possible to assess Ukraine's actions within the constant practice of the reinterpretation of necessity and proportionality. The principle of necessity makes force necessary in preventing more attacks while the principle of proportionality makes force used doesn't exceed what is needed to achieve rightful security interests. When

it comes to Ukraine, actions targeting the Russian side are viewed as attempts to prevent the continuous combat operations and prevent further aggression. These measures raise issues to orthodox themes in legal thinking because they go beyond the doctrine of personal vengeance and urge advanced schemas of defense in specific contexts. The legitimacy of these actions hinges on whether they align with the core objectives of international law: the preservation of order as well as the avoidance of an excessive use of force.

Therefore, Ukraine's case is significant beyond Europe: it defines the rules for regulating conflicts with unequal power relations and ongoing threats. It is interesting to note that the doctrine of self-defense, especially as applied to the conduct of operations in the context of the international system, would benefit from further elaboration in light of the developments described in this paper. Academics and policy-makers must ask themselves whether current conceptualisations are sufficient for the new form of warfare, where the attacking state can use maximalist interpretations of territory. Ukraine's actions are consequently a valuable case study that challenges debates on state sovereignty and the international community's commitment to preserving the peace in the political system that seeks to apply Article 51 in a changing world.

2.2. Reactive, preventive, and anticipatory self-defense: analysis of concepts after September 11, 2001

September 11, 2001, attacks was a pivotal point of defining and applying the meaning of self-defense under the international law. Technically, self-defense has been in the past largely defined by its strategies and actions that are basically defensive and routine in nature and only include methods like 'preventive self-defense 'and 'anticipatory self-defense'. Such classifications discussed by scholars who include Michael Reisman allow for the dynamism of the international security structure and the threats that characterize the current world. Reactive, preventive, and anticipatory actions are all different conceptually, as well as with respect to the legal regime and possible questions related to the relationship between state security and the prohibition of the use of force.

Reactive self-defense is the self-defense that is traditional or archival and consumes the lion share of acceptable conception in international law. It is specially enshrined in the UN Charter Article 51, that allows for use of force in conducted against a foreign state that has undertaken an armed attack. Other theorists including Yoram Dinstein assert that this is precisely a form of self-defense that is defensive in nature and that operates only as a reaction to an attack. In Dinstein's words, "Article 51 limits the actions based on self-defence to a response to an armed attack." This is in consonance with the historical meaning

of self-defense you find within CIL especially during the early times when self-defense was always associated with immediate and proportional retaliation.

Reactive self-defense, however, raises no controversy in mobilization and is generally acceptable in the eyes of the law as a mode of action for one person or a group of people. Its legality, thus, stems from the uncontestable fact of an armed attack – this makes it less likely to be abused as compared to other cases. However, it has severe restrictions – it can only be invoked following an attack – which makes it based on the reactive approach some states claim is insufficient to deal with new security threats without immediates threats or non-state actors.

Preventive self-defense therefore depends on the perception of threat. V. Andrejas explained it as aiming at a state or actor that is almost ready to launch an attack. In the same regard, P. Kelly notes the use of the critical condition of referring to preventive action with the help of an "immediate threat". However, this subjective nature defines the concept very much opens it for potential abuse. As Reisman pointed out, preventive self-defense is built around unilateral evaluation of a threat by a state which may produce non-objective or even subjective conclusions. Similar to this argument, Malcolm Shaw raises an issue that if action is taken at the initial stage under the pretext of prevention, it is unlawful aggression (Kelly, 2016).

Nevertheless, the enthusiasts stress that preventive self-defense is the correct response to the situations of the contemporary security. Modern severe security challenges like transnational terrorism, cyberspace threats, and other non-conventional security threats make it necessary for states to have rather legal-freedom combating tools. Still, due to the absence of the universal approval to its legitimacy, preventive self-defense remains a rather disputable phenomenon; many states and scholars doubt it complies with the UN Charter principles.

It is therefore marked as occupying a middle ground neither fully reactive nor fully preventative. It concerns cases where an armed attack has not taken place but should be expected owing to manifestations of threat. This concept relies on the principles that were provided when defining the necessities and proportions for his action in the Caroline case. The c standard of Caroline recognizes anticipatory self-defense where the threat is impending, present, immediate, imminent so imminent that there is no time for thinking.

Since the cases of September 11 the idea of anticipatory self–defense has emerged into the center of action as states are threatened by non-state actors as well as rogue state. The supporters of the preemption model assert that this way is more effective and reasonable than passive anticipation of an attack when there is concrete evidence of

threatening action. But it gets harder when trying to determine what constitutes ‘imminence, ’and whether attempts at preempting an impending danger will be invoked as a means to aggression.

This extension of self-defense to preventive and anticipatory measures is an indication of the dynamic nature of threats facing the global state system but fundamental issues of legal and ethical consideration are at stake here. To some extent, RS take its cue from Reactive Self-Defense, where the techniques employed are much better defined and the overall framework is one that is widely considered more acceptable. Preventive and anticipatory self-defense concern forcible measures that most obviously raise issues of subjective threat assessment leading to varying perceptions and possible breaches of the anti-force provision.

One is the concern on the weakening of the legal perimeters set forth by the UN Article 51. If threat appraisals are based upon such references exclusively, the principle of state sovereignty would be eroded and a less stringent attitude to the application of force is probable. It is on this basis that there is a call for more cautious use of preventive and anticipatory self-defense and this needs more formal codification across the international community.

Discussions of prohibition of preventive self-defense endure to this day among scholars and practitioners of international law with reference to the legal regime of as well as its potential to be manipulated. On the one hand, the supporters emphasize its usefulness in combating threats that are threatening human beings, while on the other hand, the adversaries point on the possibility of relevant subjective interpretations that would endanger the prohibition of use of force recognized by the UN Charter. These complexities are discussed by I. Brownlie, Y. Dinstein and other scholars whose work lays the ground for it.

I. Brownlie raises a critical issue concerning the absence of a legal basis for preventive self-defense in the UN Charter. He observes that preventive self-defense is not sanctioned by treaty law but instead stems from customary international law, with roots in the historical Caroline case. The Caroline standard established a widely accepted threshold for self-defense, stipulating that it is lawful only when the necessity of action is immediate, overwhelming, and leaves no alternative means or time for deliberation. This principle has significantly influenced traditional interpretations of self-defense, emphasizing the temporal proximity of the threat and the measured application of force in response. Brownlie (2008) notes that this standard serves as a cornerstone in the legal understanding

of self-preservation, reinforcing the importance of proportionality and immediacy in the context of defensive measures.

I. Brownlie, also continues the focus on ambiguity of the Article 51 of the UN Charter. Unlike the explicit connection made to establish a link between the right of self-defense and an armed attack, the provisions fail to pronounce on preventive measures. From this omission, he says, it implies that the Charter drafters intended to allow force to be applied only when it is provoked, and this is in consensus with Charter's general objective of limiting conflict (Brownlie, 2008).

Preventive self-defense is criticized by Y. Dinstein, and they agree with the opinion that Article 51 confines defense to any actual armed attack. This is his view on law of the Charter itself: it contains the principles of the customary international law and at the same time, the Charter does not embrace the broad concept of preventive self-defense. As Y. Dinstein pointed out, self-defense cannot be performed with reference to an imagined threat; there is a need for an actual threat (Dinstein, 2003).

Y. Dinstein also continues his argument to the circumstances under which this approach might be warranted. He admits that a state does not have to wait for the 'first shot 'to be fired if the aggression is imminent and imminent. However, he says that this means that the threshold for such anticipatory measures remains high, but there is the need to have clear proof of an imminent attack. His position strengthens the divide between anticipatory and preventive self-defence which the latter is considered too speculative and easily abused (Dinstein, 2003).

Some sources, such as Y. Dinstein, as well as M. Reisman, insist that the drafters of the UN Charter purposely left out the notion of preventive self-defense in order to come up with a framework that would be based on norms of peace and security. This intention is evident under article 2(4) and the exceptions given under article 51 and under the authorization by the security council. For Y. Dinstein, the integration of preventive self-defense would do this, which means means that states can use force under perceived threats (Dinstein, 2003).

This deliberate restriction is reflected in the phrasing of Article 51: "if an armed attack occurs." Malanczuk notes that exact words in the original English, French and Spanish text bear a reactive characterization. While the French version opens the door to the idea of anticipatory action in that a state may respond before an armed attack takes place, the English and Spanish versions clearly state that the circumstances which justify self-help must involve an actual armed attack. According to the given Charter, preventive

self-defense appears not to fall within the provisions of the legal instrument that Malanczuk employ in his linguistic analysis in relation to the subject.

They voiced this concern based on the consideration that the prohibition of preventive self-defense does not mean its exclusion in the state practice and within the framework of discussions at the UN Charter. Critics 'opponents believe that the new threats like the spread of weapons of mass destruction and terrorism require a new strategy to be employed. But, as, for example, W. Reisman and M. Shaw mentioned, preventive self-defense almost always relies on threat assessments, which are subjective and can be easily abused. Some of the issues pointed out by M. Shaw include that, preemptive action essentially cautioned saying that action before a threat manifests oneself actually amounts to unlawful aggression (Shaw, 2008).

The danger of this is best illustrated by the examples of the United States and other states using the claim of preventive self-defense as a justification for unauthorized use of force. Any such action, if not founded on gaze and immediate danger, diminishes sovereign rights and the non-interference norm, making undue development and skepticism foreign for international law.

The controversy around preventive self-defence, then raises the question of whether security of the state preempts the principal requirement of the non-use of force in international law. First and foremost, it has been designed to address some valid concerns regarding some new challenges that are evolving within the global system As the concept is very broad and rather generic the major challenge it also suffers from vagueness and the absence of clear legal status therein the UN Charter. Critics such as DINSTEIN and BROWNLIE have made compelling points that preventive self-defense goes beyond the lawful self-defense provision under Article 51 appropriately noting that the importance of preserving a narrow construction for the sake of international peace and order.

Indeed, as threats to global security change, the international community is faced with the problem of increasing the effectiveness of its actions while preserving the rights of individuals from possible abuses. This means that the societies need to engage constantly and come up with the conditions under which self-prevention can be considered legal and all the more reaching the principles of the UN Charter. That major objections concerning the possibility of limiting the definitions of preventive self-defense itself or of the measures that can be taken in the course of such an activity to purely reactive ones were raised properly by C. O'Meara. While C. O'Meara underscores the importance of limiting the subjective application of self-defense to prevent misuse, he also raises a critical point: why did the drafters of the UN Charter if they wanted to limit self-defense only to the reactive

models, refer to the right to self-defense at all? The use of force in self-defense means that not allowing force to be used only in preventive and early capacities seems unhistorical, as it reduces the chances of states to eliminate threats before they have sprouted in the first place (O'Meara, 2022)

This is a good illustration of the conflict of interest in retaining the world order, and at the same time creating conducive environment for states to defend themselves. Such a model may inadvertently create incentives for the side that wants to start a conflict, for the target knows it cannot act first in response to aggression. To the contrary, the concept of preventive self-defense brings equivocation to the possible aggressors, which may prevent a planned attack.

P. Malanczuk Analyzing the pro arguments for including preventive self-defense in Article 51 of the UN Charter Balancing of Interests. a). Again, one of the major arguments propounded by one side of the divide is that the provisions of Article 51 cannot be taken to mean closed to other conditions and circumstances. They raise the above-said concern because they very strongly believe that interpreting the phrase "if an armed attack occurs" narrowly sets an absurd limit on the provision of Article 51 of the UN Charter and, therefore, posits that UN member states will not be permitted to assist non-UN member states which are threatened with attack. Malanczuk rejects this on the ground that Article 51 is an exception to Article 2(4) which prohibits the use of force. Thus, in light of the principle of narrow interpretation of exceptions Malanczuk aver that the purview of the Article 51 has to remain confined only to the reactive self-defense. He also emphasizes on the structural integration of the UN Charter and cites article 53 which permits regional actions against former axis powers provided that they have "aggressive policies". Whereas Article 51 permitted preventive self-defense and Article 53 provides for further regulations, the latter would no longer be necessary if the former were possible. Besides, Malanczuk's argument against the Charter's inclusion of preventive self-defense is supported by this structural analysis and the treaties such as the North Atlantic Treaty, which, when referring to responses to armed attacks, only (Malanczuk, 2002).

A.Armstrong and W. Reisman add yet another level of analysis noting, that despite, Pulp's claim that preventive self-defense was not intended by the drafters of the UN Charter, subsequent state practice has superimposed upon the Charter certain elements of this concept. Interestingly, they posit that preventive self-defense is akin to the armed attack standard of Article 51 due to the use of probable evidence of an impending attack. This perspective turns out to be a middle ground between the stringent parameters of the Charter, and emerging security challenges (A.Armstrong, W. Reisman, 2006).

Nonetheless, Armstrong and Reisman insist on misuse of preventive self-defense notion, pointing to requirements as the key to the legitimate use of this notion. They emphasize the necessity of having some proof of an impending attack in order to avoid confusion between the legal use of preemption and the application of force in other purely political situations.

Another important point which Malanczuk amply discusses relates to the definition of self-defense as an "inherent right" in the Charter. Opponents of preventive self-defense claim that restricting an inalienable right is oxymoronic, according to advocates of preventive self-defense. To this, Malanczuk has objected on the basis that objective criteria of self-defence cannot be ousted merely by the fact that the action is intrinsic. He notes that none of the states can be sure about an impending attack hence making unrestricted prevention measure unworkable (Malanczuk, 2002).

Based on the same source, Malanczuk extends the considerations on the drafting of the UN Charter by pointing out that it was post World War II effort. He has pointed out that the framers consciously excluded anticipatory self-defence to make certain that the world would not go back to the abuse of rationales of self defence as basis for aggression. This understanding is quite consistent with the historical approach which underlines that the restrictions in Article 51 where not an accident and where made in order to focus on the collective security more than on self-help measures (Malanczuk, 2002).

Preventive self-defense is still one of the most problematic concepts in international law. More effective is the claim advanced by the proponents of preventive self-defense that customary international law recognizes anticipatory response as permissible under the UN Charter. Some authors like M. O'connell, M. Glennon, and P. Malanczuk have engaged an appraisal of this debate since they did a legal and functional assessment of its effects.

In this critique, M. O'Connell, convincingly makes case against preventive self-defense arguing it is impossible to apply the principles of necessity and proportionality where there is no ongoing attack. She elaborates that anticipatory measures do not have a sufficient ground which can meet the requirements of jus ad bellum, governing legal use of force. This view stands in line with exogenous approach to Article 51 that links the right of self-defense to an armed attack (O'Connell, 2020).

However, critics of M. O'Connell s position claim that their is always enough evidence of an impending strike to allow for the assessment of the necessity and proportionality. For instance if in a real intelligence operation it is known that an attack targeting a population centers will lead to massive civilian loss of life, a proportional response would be a strike on the aggressor's military compound. Then, the question arises

as to the admissibility of the evidence and the assurance of the state on the promptness of a threat.

The Caroline case still remains the keystone of the customary law attributed to the prevention of self-defense. The main criteria defined in this case necessity, immediacy, and proportionality are still observed by courts. The Nuremberg Tribunal also upheld these principles; The right of preventive action was stated to be permissible only when there is an "instant and overwhelming necessity," and that there is no choice of the methods to be used, and of the time for action (Paddeu, 2020).

P. Malanczuk also emphasizes that, without adherence to these principles to prevent their misuse, it is impossible. He said that the language of Article 51 does not admit preventive self-defence, because provision of the article presupposes armed attack. Malanczuk's structuralist approach to the UN Charter also points in the very same direction; by expanding the application of Article 51, the prohibition of force under Article 2(4) UN Charter can be easily eroded (Malanczuk, 2002).

One modern example of preventive self-defense can be discussed as the attack with the involvement of the USA drone that in January 2020 eliminated the Iranian general Qasem Soleimani at Baghdad International Airport. Soleimani was a general in the Islamic Revolutionary Guards Corps, Iran's main military force, and he was charged by the U.S. of plotting bombings against Americans and pro-Iraqi government entities as well as planning more attacks in the future. The U.S., in its official pronouncements, claimed that the strike was bound to be self-defensive, or more pointedly as a move "to prevent further Iranian aggression."

President Donald Trump and Mike Pompeo presented the alleged plans as imminent, which is why they tried to eliminate the threat in advance. However, the absence of specific information that would support the assertion on the subject of imminence raised legal and political issues. Some observers even doubt whether the strike involved the Caroline test and whether it was an exercise of an action of legitimate self-defense or an unlawful use of force (Hosenball, 2020).

The Soleimani case illustrates a fundamental challenge of preventive self-defense: the primary mechanical flaw with this approach being use of threat assessments that are often more of an opinion. As far as the assessment of the lawful self-defense is concerned, it needs to be pointed that the nature of aggression is not unanimously recognized around the world which is agreed with by Michael Glennon. This way states will be tempted to use the rather vague ideas of prevention to justify their actions that are in effect contrary to the prohibition of force and to the credibility of international law (Glennon, 2003).

In order to prevent such a situation, preventive self-defense promote the need to have better instructions as well as a better way to check the authenticity of such claims. That could be in form of international supervision or engaging the UN Security Council to assure that preventive measures are appropriate, warranted and substantiated.

Preventive, preemptive, and interceptive self-defense presents legal questions where scholars and practitioners have questioned their legal permissibility in the face of the UN Charter and customary international law. Despite all these concepts trying to attempt at addressing modern security threats, they also provide quite a number of challenges when it comes to their interpretation as well as implementation.

Thus, Michael Reisman and others refer to defensive self-preservation free from harm, designed to counteract threats that are merely potential or generic in nature. Although W. Reisman asserts its functional value specifically in terms of providing an instrument for new threats, such as those enshrined in the 2002 U.S. National Security Strategy, its legal admissibility is inconclusive (Reisman, 2006). Preventive self-defense apparently violates the rules of necessity and proportionality, as M. O'Connell has pointed out. The NEH-her in determinative subjective-factor of 'potential threats 'weakens the believability of such assertions and thereby opens the door for the misuse of preventive self-defense (O'Connell, 2020).

The UN High-Level Panel Report unequivocally rejects preventive self-defense, stating: "The level of threats in this world filled with them is such that threats to the international order and the principle of non-interference are too high for unilateral pre-emptive measures to be qualified as legal." This point of view strengthens the opinion that there is no rational legal grounds for the prevention of the self-defense under the Article 51 of UN Charter and the concept is too vague and unspecific to meet the rigor of CIL standards.

Preventive self-defense is in a different category in that it deals with imminent threats that are not fully realized but which are nonetheless backed by evidence. The doctrine has its origin from the Caroline incident which set down the principles of necessity and immediacy. It has directed application in some of the cases such as the Israeli attack on the Osirak nuclear reactor in Iraq in 1981. Despite the Israeli explanation of the action as an act of anticipatory self-defense against the emergence of even a potential nuclear menace, there was a divergence of opinion among the states as to the propriety of the action in terms of the Caroline test.

Y. Dinstein overly dismisses libel interpretations of preemptive self-defense implying that even imminent threats must have credible evidence and should be reasonable.

He argues that “preventive measures when there is no tangible sign of imminent threat bordering on aggression” thus means aggression, also adding that for the UN Charter to have teeth, there should be restraint (Dinstein, 2003).

Interceptive self-defense, according to A. Tzanakopoulos is different from anticipatory self-defense in a sense that this type of self-defense is used when an armed attack is imminent but has not yet occurred in the territory of the defender state. While it is a form of self defense it enables a state to take measures to counter an attack while the aggression is still latent. For example interceptive self-defense could include the destruction of aircraft or missile systems, on a course to strike the target, but before crossing the international border (Tzanakopoulos, 2021).

Even though interective self defence looks like pre-emptive action there are huge legal differences since the later is usually taken when there is concrete evidence of an ongoing attack. However, as C. Green point out, the similarities between interceptive and preventive self-defense make one question if the former deserves its classification. As per the legal perspectives, interceptive self-defense appear more closely connected to the reactive self-defense mechanism adopted under Article 51 as long it is exercised proportionate and simultaneously (Green, 2024).

The action of killing Qasem Soleimani by a 2020 U.S airstrike remains a good example of preventive and preemptive measure legal dilemma in classification and justification. Anyway, critics such as M. Milanovic pointed out that despite claims and assertions of the U.S. of an imminent attack by Soleimani, there were weak preemptive evidences. M. Milanovic states: ‘If the acting state cannot realistically judge as to whether its actions will avert the impending strike, the measures cannot be said to meet the necessity test (Milanovic, 2020).

In addition, due to the lack of concrete, tactical information and the very fact of Soleimani’s plot underlining that, it was nearly impossible to meet requirements of imminence and proportionality. O’connell determined that the circumstances of Soleimani’s assassination are not consistent with the Lawful Self-defense account, which confirms the doubts regarding the preventive assertions in the given cases (O’connell, 2020).

Expectations of the traditional international law to offer justice for the preventive and preemptive self-defense discloses the shortcomings of the UN Charter system. Although the concept has its root from the Caroline case and subsequent qualifications, the failure to give it an express heading under Article 51 creates legal gap fostering diverse approaches among states. These uncertainties demand a better definition to prevent such

self-defense claims from defeating the exception to the use of force as enshrined under Article 2(4) of the Charter of the United Nations.

The legal analysis the preventive or preemptive or interceptive Self-defense details how earlier legal systems fail to address contemporary security threats. Interceptive and reactive self-defense conformed with the principles of the law and justice, and preventative and strategic attacks require more criticism due to vagueness and misuse. It is for this reason that the resolution of some of these issues as international law develops will be paramount to future world order.

CHAPTER III. LIMITS OF EXERCISING THE RIGHT OF SELF-DEFENSE

3.1. Necessity, immediacy, and proportionality of self-defense: modern criteria

A core of international law governing the legal use of force to protect oneself is in the principles of necessity, probability, and proportionality. These criteria that are provided for in the customary international law and the case law of the International Court of Justice (ICJ), preset standards to which the lawfulness of defensive measures are to be measured. The ICJ has consistently confirmed their continued significance in its workings through the giving of advisory opinions and contentious cases such as; Nicaragua instance, Congo instance and case of Oil platforms.

The principle of necessity entails that measures taken for self-defense must be reasonably commensurate with the threat posed by the armed attack in other words; the measures taken must only be adequate to repel or deter the attack. As earlier post in Nicaragua, necessity is a conventional norm that regulates the use of force. This obligation was similarly further examined in the Oil Platforms case when the ICJ considered the American raids on Iranian-owned oil platforms and did not discover that the obliteration of the deep sea installations posed such a threat that needed to be eliminated. The Court specially underlined that there were no diplomatic steps before and that force must be applied as the last resort.

A. Aust underscores that the necessity test must be rigorous: “The faster and the more acute the attack, the imperative requirement to use force.” He also points out that, defensive behaviours should be ‘restricted to the attainment of near-term goals ’(Aust, 2005). Likewise, in the case of necessity, Y. Dinstein has pointed that it is inappropriate to discuss necessity in the way how it is understood in the civilian law, it rather has to be seen from the local commander’s point of view, which is comprehensible in the framework of tactical necessities disregarding the lack of strategic logic. This way the defensive actions are in harmony with offender’s actions and not overboard pre-emptive or provocative (Dinstein, 2003).

There is one more criterion that forms part of the trend, namely immediacy and under the immediacy criterion, it is mandatory for self-defense to take place soon after threat/attack as far as possible. This principle was put down in the Caroline case and holds the view that self-defense is only permissible only when the threat is one that is instant, irresistible, and it does not allow anyone any option as to the means to be adopted and the time for action (Paddeu, 2020).

Analyzing the application of the immediacy criterion in practice, it is possible to state that it has been applied rather loosely with reference to the number of complicated and nonconventional threats. For instance, in the Armed Activities on the Territory of the Congo case, the ICJ proceeded to review Uganda's claim to self-defense against feared threats posed by armed groups in Democratic Republic of Congo. The Court also disregarded immediacy of Uganda's actions pointing to the fact that no proof has been produced that the threats as mentioned warranted an urgent response.

M. Shaw also points out the need to show that the conclusion being made is correct to some known parameters at the time of making the action. Immediacy is utilised by him to differentiate between actions that are legitimate inasmuch as they amount to defence and those, which qualify as pretext or early application of force (Shaw, 2008).

The ICJ held in Oil Platforms case wherein themselves judged that the U.S. actions were highly preemptory to the alleged threats posed by Iran. The bombing of the platforms, the Court for that matter concluded that the destruction went a notch higher than the level that was necessary to protect the U.S interests hence lacked the proportionality. In the same manner, in the Armed Activities case, the ICJ addressed the military operations of Uganda pointing out that the excessive or disproportionate use of force in repelling alleged cross-border raids adds to this criterion.

It is also an essential part in measuring the degree of necessity. As Y. Dinstein explains, there exists checks through proportionality in determining measures necessary do not turn out to be punitive. These two aspects of a necessity and proportionality serve to also protect the purity of self-defense as a legal justification for aggression (Dinstein, 2003).

The nature of conflicts that cannot be easily explained using the traditional necessity, immediacy, and proportionality is areusal war involving non-state actors, cyber threats, and asymmetrical wars. For instance, the application of such criteria is a bit challenging especially when analysing the element of anticipatory or preventive self defence. The States have to prove actual danger, explain why the preventive measure is needed, and make sure that it does not exceed the possible threat.

The U.S. airstrike that happened in the year 2020 that targeted the Iranian General Qasem Soleimani creates debate. Some The critics opposing the strike pointed out that it did not meet the necessity test due to lack of proof of an impending attack. Furthermore, the proportionality of hitting an important military actor with a strong political payload was a major issue of contentiousness. Proportionality which M. Shaw defines as balancing means and methods of self-defense to stated objectives does not allow unnecessary escalation (Shaw, 2008).

It could therefore be said that there are challenges that follow the principles of necessity, immediacy and proportionality. Generally, evaluating these criteria contains assessments, which could probably be arbitrary, especially in rapidly changing environments. Lack of articulated measures may cause variances that compromise the coherence of the International law.

Furthermore, the new structure of the political world due to non-state actors, the IRA, Al-Qaeda, and other violent non-state actors have blurred the efficacy of self-defense. In such circumstances they are unlikely to be able to convincingly argue about the imminence of an attack or the measures they take in response are necessary and sufficient. According to A. Aust there is so much pressure created at the critical time when an individual must act urgently that it must be controlled from being used in unlawful ways in order to keep defensive measures legal. These include necessity, exigent circumstances, and reasonable force which act as a reference point in determining admissibility of measures of self-defense. Although these principles were well known in the CIJ customary international law they remain dynamic in the modern conflict. According to the above criteria, the States are in a position to maintain the legitimacy of the international legal order while seeking ways and means of an efficient defence while avoiding excessive use of force (Aust, 2005).

The principle of necessity is one of the fundamental principles of legal self-defense in international law. It demands that force be used exclusively only to repel an armed attack, or to avert an imminent threat. According to Y. Dinstein, necessity is most evident when the state deals with an individual armed attack. Y. Dinstein has stressed that the defending state has, firstly, the duty to demonstrate that, apart from the armed reaction, it has attempted to find a peaceful way to resolve the dispute. This corresponds to the international direction in the framework of the Final Act of the Conference on Security and Cooperation in Europe, aimed at the policy of conflict resolution primarily by peaceful means (Dinstein, 2003).

There is thus the requirement of measures necessary be most effective and the necessity of force being the last resort. to Y. Dinstein's point, the elements of force must be substituted by something that, not only, does exist, but also counter threatens. These two conditions come close to explaining the paradox of non-escalation while at the same time seeking to attain the objectives of defense posture.

The Chatham House Principles of the Use of Force have more information regarding the principles of necessity in practicing self-defense. They state that preeminent force can only be employed where and when force is necessary in the defense against an

on-going assault, or to prevent an immanent one and where other reasonably-practicable options aren't attainible. That necessity is included as a prerequisite to inciting self-defense underlines its function as a preventive measure against abuses or extra-measure employments of force.

Of particular interest is wishful construct of necessity not only at the time of initiation of a defensive process but also a critical moment of the process. The Chatham House Principles also demonstrate that necessity put constraints on the prolongation of actions in self-defense. It is stressed that any defensive actions can be only implemented provided that the threats have been defeated or the war halted. This exponentially reinforces the close correlation between the basic principles of necessity and proportionality in an effort to avoid going over and beyond that which is reasonably sufficient to effectively advance the noble cause of self-defense.

D. Kretzmer then builds on necessity to connect it to the objectives of legal defense. He says that the idea helps to determine if the force applied was employed towards making proper defensive aims. Such a point of view can easily help define between legal instances of using force against oneself and mere aggression (Kretzmer, 2013).

In this case, necessity means temporal and substantive limitation. On the one hand , it may require an immediate cessation of the use of force as soon as the defence purpose – the repelling of the attack–has been realised. On the other hand, which guarantees that the measures taken would not be too broad in response to the threat. This double function makes it impossible for self-defense to be used as a justification for long or unrelated action.

The conflict between need and the measures used to protect oneself is an essential legal and ethical concern. As Y. Dinstein rightly points out, defensive measures have to be viewed in terms of the specific command on the ground, stressed relevance and efficiency. Such a decision provides a localized analysis of the situation, without overemphasizing strategy at the operational level of an organization (Dinstein, 2003).

However, when force is applied, it must be done in proportionate manner to avoid commensurate harm it is also agreeable that the means must not exceed its legitimate end of self-defense. The Chatham House Principles underscore this balance by pointing out that necessity applies as much to the use of force and its extent – its initiation, continued application, and degree. This way a defense remains in line with international law and no equivocation transpires as part of a retributive act.

In practical reasons, the use of necessity usually brings about evaluations of urgency, according to the measure, and other forms of measures. For instance, in the Oil Platforms case, the ICJ drew some vacant conclusion of the US action against Iranian oil

platforms, as those failed to satisfy the necessity criterion. Taking note of the fact that the U.S had not pursued processes other than force such as demarches to express its displeasure the Court held that Gumiao had not breached the law of international peace. This explains why it is necessary to show that all efforts have been made to avoid use of force in solving any particular conflict.

As in the case with anticipatory or preventive self-defense, the question of necessity becomes further pronounced. Target states must convince the 'international community' that an attack is inevitable and force is the only suitable recourse. This requirement should also be viewed as a safeguard against frivolous pretext and should properly ground defensive measures in real security considerations.

Immediate necessity is an indispensable criterion in determining the legal admissibility of actions taken in self-defense under the international law. Another principle which is closely related with necessity is immediacy: defensive measures should be temporally connected with threat or attack they are directed against. As Y. Dinstein rightly points out, immediacy is characteristic of on-the-ground responses that demand that counter-force measures shall be 'conventionally linked temporally' to the armed attack upon which they are premised. Nonetheless, immediacy has been changed and expanded to encompass complicated situations, which involve non-state subjects and a sustained threat (Dinstein, 2003).

Y. Dinstein also underlines state's rights concerning when, where and how the protective measures are to be executed. This flexibility raises questions about the boundaries of immediacy: Do you have to react to it at the earliest most possible time, or can you keep on doing whatever you need to do and only respond to it if it is good to do so at some other time? To address this, ser D. Bethlehem, in his principles on the scope of a state's right to self-defense against non-state actors, identifies factors for assessing immediacy, including (Bethlehem, 2008):

- The significance of the threat and its danger level.

- The chance of an attack.

- Whether the armed action one expects is going to be consistent in nature that has in the past been initiated.

- The probable extent of the attack, and the possible consequences should preventive measures are not undertaken.

- The existence of other circumstances under which other adequate protective actions can be taken with minimal harm to third parties.

Such factors point out that immediacy cannot be viewed as an absolute notion but rather as a relative one that always has to be evaluated in relation to the character of the threat and the range of possible measures to counter it.

Measuring immediacy is most daunting when issues under consideration relate to long-term struggles or occupations. The Fourth Hague Convention of 1907 under Article 42 of the Annex defines an occupied territory as that which is under the control of the army of the enemy. That occupation does not imply the continuous fighting but by the same token, fits in the definition of aggression provided by the UN General Assembly.

The question then arises: Under what conditions may a state under occupation claim self-defense many years since the commission of an initial armed attack? International humanitarian law for an armed conflict also recognizes the concept of occupation as permissible under Internal conventions of 1949. Nevertheless, the temporal relation necessary for the immediacy gets obscured even when active hostilities have not been carried on.

In such cases, the immediacy of consequence is relative to the continuing threat posed by the occupation to the sovereign interest and security of the affected state. Measures are required to be proportionate and necessary taken against occupation which needs to show clear and continuous need which has to be proved at the time of using defensive actions.

Immediacy per se is not precise when used in practical domain hence its interpretation is elastic trigger controversy. This include availability of intelligence, nature of threat and geopolitical factors that influences the decision making process. This element of subjectivity is especially acute because the judgments about immediacy quite frequently take place after the fact that a set of decisions has been made and when one has much more data to rely on than during the decision-making process.

As Y. Dinstein mentions, this kind of analysis should not cast doubt on the lawfulness of the action of the state as long as on the basis of the information was available at the time. This means that while approaching a threat, states need to be very careful as much as they have to act quickly, and their action must remain consistent with other principles of the international law system, including principles of necessity and proportionality of actions (Dinstein, 2003).

The appearance of new actors like terrorists has only added to the confused meaning of immediacy. These actors usually take long durations without any attack but that is followed by increased activity in a very short time. To meet this challenge, D.Bethlehem's

principles integrate consistency of armed activities into the context of the immediacy (Bethlehem, 2012).

It therefore befits to inquire the legalities of self-defense actions in occupation applying the principles of contemporaneity and compulsion. Although these principles are used after aggressive actions, their employment is much more ambiguous with extended occupations. It is therefore important to identify how these principles start and finish in such situations because that marks the point where a state's measures are still lawful under international law.

Occupation is not unlawful, but it is a legal status regulated as a legal institution by IHL. As O. Sivash rightly points out "occupation is not the violation of law, but legal regime." Nevertheless, circumstances under which occupation emerges or is sustained may include departure from fundamental principles or international law, including aggression or refusal of self-determination. The International Committee of the Red Cross (ICRC) came up with the most whole some test known as the effective control test in ascertaining whether a particular territory is occupied. This test includes three criteria (Sivas, 2018):

1. Situations when there are foreign armed forces physically present in the territory with the illegitimate local government's consent.

2. The state of affairs where the local government is significantly or partially unable to governing due to foreign forces.

3. The capability of the foreign forces to govern the area instead of the command of the particular country.

Rebuttal of immediacy and necessity most effectively requires knowledge of when occupation begins and the degree to which it continues, and this test offers a legal way of ascertaining both.

Concerning the occupation, questions of law appear when necessity and immediacy are applied temporally. This is why the ICRC rejected the notion it was accepted that the regime of occupation can have one or more phases, be it a partial withdrawal of forces or the delegation of limited powers of administration to local authorities. These phases can cloud the distinctions of the vocational termination. In the opinion of the ICRC, "occupation remains so long as any of the three constituent elements of effective control remain in operation."

Such an analysis is complicated by the so-called "functional approach" described by the ICRC. Under this approach an occupation may persist in certain territorial or functional spheres even when there is a partial disengagement of occupying forces. For example, if foreign forces continue to perform some of the crucial administrative or security

roles the occupation regime may still pertain. This brings into confusion, the determination of whether principles of necessity and immediacy have been met in such circumstances, since the authority is split between the occupying state and the local government.

Occupation which frequently ends with annexation, as we know under international law, does not put an end to the occupation regime. O. Sivash accentuates that annexation does not cease occupation regime. On this, the position is in sync with the rest of the international community that has been unyielding in its vociferous opposition to annexation as a legal category and as a rationale to bring an end to the cessation of obligations of the occupying power under IHL (Sivash, 2018).

As far as the principle discussed is concerned, many important considerations can be derived when it comes to the distinctions of necessity and immediacy. However, if an occupying power seeks to annex a territory, they are occupying they cannot strip the occupied state of its right to defend itself. But immediacy may be lost because the direct relation-linkage is now further blurred with the passage of time between the first act of aggression and any subsequent acts of defense.

The fact that occupation is both functional and phased presents very significant more practical problems to the actual application of the principles of necessity and immediacy. For example:

- Information Gathering

Thus, dependent upon the measure of sharing of effective control or the sustained lingering of occupation, and as such proper knowledge often demands precise and detailed data which may be hard to acquire in an occupied territory.

- Scope of Defensive Actions

Measures of self-organization must be specific and target only these areas which are most sensitive and over which the occupying power retains control. This calls for clear demarcation of the respective jurisdictions that the occupying power and the local government is to exercise.

- Temporal Justification

One disadvantage that results from prolonged occupation is that the impression of imminence may diminish thus denying the ability to justify operations as a preemptory move against further aggression.

Nevertheless, the principles of necessity and immediacy are still closely associated with the problem of occupation, and remain highly significant in this respect. He or she reinforces the principles which state that self defence does not serve as a pretext for

aggression and act of provocation. Defensive actions must continue to meet these criteria, even in prolonged scenarios, by demonstrating (Buchan, 2023):

1. Necessity - this being the case the actions are as apt as necessary to defend sovereignty and security of the state.

2. Immediacy - that it is a temporally located reaction to the continuing consequences of occupation or aggression.

For example, in a conflict where a state is seeking to oppose the occupying power's strategy to assert increased control over new acquired territories, the state has to demonstrate that its measures are essential to maintain continuing acts of aggression, and is done as soon as possible.

But their recent heightened intensity makes the Nagorno-Karabakh case suitable for studying the Has SK application of the principles of self-defense during extended occupations. This territory has always been considered an Azerbaijani territory while Armenian occupied for more than one third of a century as stipulated by the European Court of Human Rights in Chiragov and Others v. Armenia. The conflict continued in 2020 when Azerbaijan launched military actions to liberate the territory. This raises critical legal questions: Has Azerbaijan preserved the right of self-defense after such a long occupation, and were the actions of Azerbaijan proportional and necessary within the requirement of immediacy?

Immediacy means some temporal link between the armed attack and the measure taken in reaction to it. Again, when applied to occupation, this principle turns out to be problematic. In their opinion, T. Ruíz and F. Silvestre stated that indefinite dates prejudice the temporal provisions of the article 51 of the UN Charter. According to them, it is questionable to speak of self-defense years after the aggression had occurred, given a territorial status quo that entails 'peaceful administration by the occupying power '(Ruys, Silvestre, 2020).

This interpretation is more focused on a preservation of the peace and the non-use of force for the settlement of a territorial dispute. According to the original work of T. Ruíz and F. Silvestre, it is true to say that "It should remain fundamental that no territorial disputes should be resolved by resort to force no matter the level of success of diplomacy." From this angle, frequency of the conflict is undermined depressing the plea of self defense even in occupied territories.

However, in their view, the work done by D. Akande and A. Tsanakopoulos maintain that due to the temporal element of immediacy, time itself does not necessarily run out. In this case, they argue that where an invasion results in occupation it constitutes

a continuing armed attack under Article 51. So, the right to self-defense is still existent because the occupation AuSAID still continues. To these scholars, immediacy is met so long as the occupation remains open-ended; time is viewed not as a constraint, but rather as a force reinforcing the need for action – defensive action (Akande, Tsanakopoulos, 2021).

The necessity is a principle that calls for beneficial use of force because there are no more effective solutions to counter threats. With the Nagorno-Karabakh conflict, it may be considered that aggressiveness of Azerbaijan for the start of military actions could be evaluated regarding to its consistent attempts of the storm management in the course of a long time. This is because the absence of any shifts within the negotiations frame, and the daily reinforcement of the occupation deeply imply that moving through force was the only way to restore territorial integrity.

According to D. Akande and A. Tsanakopoulos, the absence of recourse to force for a number of years as used in the definition of necessity maybe enough to justify the fact that peaceful measures have been tried and have failed. They also argue that mere fact of the duration of the occupation speaks for itself as to need for action, as it highlights that other means of dealing with the violation of sovereignty have not been successful in ending the situation.

Nonetheless, as argued by T. Ruíz and F. Silvestre, it should not be so crude approach to bow to necessity while overlooking the general norms of the international system. They stress that the application of pressure in an effort to solve such questions threatens the principles of peaceful settlement of disputes listed in the Charter of the United Nations. Consequently, many of them believe that necessity should be weighed against the risks of creating insecurity and violating the human rights that military actions imply (Ruys, Silvestre, 2020).

Therefore, the legal effectiveness of actions undertaken by Azerbaijan depends on the proper perceiving of the principles such as immediacy and necessity of the actions. If the occupation is looked from this point, then the military response by Azerbaijan could be regarded as the exercise of the right to self Defense under article 51 of The United Nations Charter. This view can also be consistent with the notion that immediacy lasts as long as occupation and that necessity results from inability to end the conflict by diplomatic means.

However, if it is seen as an occupation with no ongoing fight, then the Azerbaijan's actions may be deemed breach of the no use of force provisions. From this perspective, an immediate need in self-defense has faded, and the need for military action is dulled by the obligation to seek the peaceful settlement of disputes.

The experience of the Nagorno-Karabakh conflict suggests numerous problems related to the use of self-defense principles during long occupations. The continued applicability of self-defense due to persistence of occupation is an indication that occupation can justify -create grounds for- the use of force but it also comes with a tone of caution with the possibilities of exploitation and abuse and escalation of the situation. Standing between the rights of the occupied state and the requirement to uphold international peace and security, deciding remains challenging.

Proportionality as one of the criteria for the legal use of self-defense stays one of the most complicated values in the sphere of international law. It presupposes a harmony between the size of countermeasures and the need to respond to an armed attack or bring an aggression. As M. Shaw aptly notes states have always faced difficulties in understanding as to what amounts to a proportionate response. The very task of evaluating which harm is proportional to which benefit remains subjective, and combined with political affiliations and multiple political biases among states not party to the conflict. Such factors indicate that the assessment of proportionality in the given legal category is not easy at all (Shaw, 2008).

Unlike what may be seen as the direct physical comparison of the attack with the response in numerical or force terms, as Y. Dinstein has noted states qualify that proportionality relates to the "scale and effects" of action in responding to legitimate defensive concerns. This point of view does not presuppose that an action that was initiated as a defense has to be of the same degree or in the same measure as the offense. However, it is calculated depending on the efficiency of the adverse activities which are intended to deter the aggression or minimize the impact of the aggression (Dinstein, 2003).

For example, as one ex-UN Special Rapporteur, C. Gray points out, proportionality should be oriented to the goal of the protective measure, not the measure of response taken. The measured arms could go with the first scope of the attack provided that protective measures are necessary to counter the menace. This cognition is in harmony with the definition of military operations during the combat activities where primary individual assaults may lead to generalized skirmishes which need an extensive approach (Gray, 2013).

The concept of proportionality also involves a consideration of the means as well as the methods that are used in defending one's self. M. Shaw also point to the nature of weapons used as well as their compliance with IHL. This is a customary requirement that standardises appropriateness of selected means not to cause unnecessary loss of civilian lives and other innocent persons (Shaw, 2008).

For instance, engaging in a military asset that is accurately connected to an ongoing aggression is locally proportional in deploying precision guidance equipment, bombing innocent populations will fall foul of the principle. By so doing, this distinction underscores why and how the defense of legitimate targets must be aligned to the principles of distinction and necessity under IHL.

Proportionality sounds particularly sensitive in chronic confrontation or occupation when the measure of defense may be blurred by time. According to Y. Dinstein, proportionality could seem least rational especially in extended occupations or in ongoing enmities where the counteractions of the wrongfully attacked state could get out of proportion of the actual act of aggression (Dinstein, 2003).

Whenever occupations are long-term, as in the cases of Afghanistan and Iraq, the proportionality criterion must measure the aggregate effect of the occupation on the sovereignty, security and health of the occupied state. Sužitečné akce, které mají svůj cíl obejmout území, která byla okupována, mohou být vojenské a mohou být rozšířeny o další úroveň agresivity. But if, in any case, its measures can still be deemed proportionate measures to restore the territorial integrity and sovereignty of the victim state.

The recent flare up of the Nagorno-Karabakh conflict between the two countries of Azerbaijan and Armenia in 2020 makes for an interesting study on proportionality. Militarily actions of Azerbaijan, which targeted territories it claims to be its territory based on international law, can be analyzed through the prism of the proportionality principle. Despite their qualitative and quantitative significance, the scale and intensity of Azerbaijan's response were pursued in an attempt to finally free itself from a long occupation that threatened its sovereignty (Ruys, 2020).

Some critics will argue that Azerbaijan was responsible for a great loss of bothlife and property, and whether the extent of the destruction was proportional to the aim of liberating territories from occupied Armenian forces. But the supporters argue that the operations were led in order to bring an end to an unlawful occupation and that the scope of the response was proportional to the goal of reclaiming sovereignty of a territory.

The importance of proportionality as one of the criteria of legal Self-defence, reveals the complex of necessary defence measures and the goal to preserve world peace. It does not require that the scale of the threat that the offender poses should match the degree of response proffered by the victim nation. But it wants to make sure that the response is proportionate and proportionate to the aggression that is being met.

An analysis of legal writings on proportionality shows two competing ontology themes related to the doctrine. The first view argues that the defense should equal the

aggression. This approach provides a clear simple test of the proportionality because the measure of harm is in sets of casualties or material damage. But it usually does not consider the consequences of having an ongoing threat or the dynamics that result from multiple attacks.

The second view is that proportionality should be interpreted to cover the overall damage that could be occasioned in the event that aggression is not checked. This view is in tandem with the contemporary warfare outcomes that involve more than merely destruction of human lives but impact that a war has on the economy, natural resources and stability of a particular state.

Based on victim state advocacy, proportionality means meeting numerous legal and practical challenges. Fast and often snap choices have to be made because very little can be known about the aggressor's intentions/move next step or overall power. As M. Shaw pointed out Proper identification of proportionality reduces great difficulty especially in situations where a series of attacks that together make up a campaign is involved. In such cases proportionality must be measured not only in reference to certain actions but overall in reference to a certain threat (Shaw, 2008).

Likewise, the principle of proportionality crosses with the overaching criteria of necessity and immediacy. Whatever response measures go beyond the scope of the given attack may still be considered proportional if such action is required for stopping further actions of aggression. However, it should also be timely and accurate, and respond to threat in a way that does not give an impression of retribution or pre-emptive strike.

Proportionality becomes quite a delicate issue particularly in continued events or occupations. In these contexts, what aggression builds up has to be balanced against what sustained defense orientations offer proportionate. For instance, in a Nagorno Karabagh conflict, preventive action aimed at liberating occupied territories therefore being an attack on Azerbaijan sovereignty and territorial integrity for decades. The proportionality of these actions cannot be judged by the short-term effects of these actions but by the ultimate goal of ending the occupation, and the Return of legitimate authority.

However, this broader interpretation also gives some concerns on misuse of this system and the general security of the system is questionable. If the proportionality standard is determined too liberally, it would permit the use of force in proportion to enduring harm, in what some define as 'overbearing'. To avoid this risk, international law has to furnish the world with clear limits of this principle of proportionality in such context taking into account the rights of the victim state while at the same time seeking to minimize the suffering of civilians and non-combatants.

Therefore, proportions dual-stage approach can help finding solutions to these challenges. In the course of the conflict, it is crucial to speak about proportionality in the perspective of the direct aggression, so that each operation of self-defense can be associated with the given case. Subsequently, there is the possibility of operating the final assessment to see if the general level of defense was reasonable in terms of the prevented harm and the achieved goals.

This approach conforms to the rationale for international humanitarian law where the importance of preventing suffering and less harm whilst enabling states to protect their national sovereignty. It also gives an opportunity to place pressure on states that apply force in excessive or unlawful measures, ensuring the prin-ciple of legal rationality in interstate relations.

Proportionality is one of the key principles preserving the framework of self-defense; however, that principle is rather ambiguous in its application. In this sense, proportionality ensures that a defensive response is proportionate, justified, and does not overstep what is allowed based on broader strategic considerations in any given conflict at a particular time. In the current era of prolonged challenges and conflicts, this principle serves as a crucial safeguard against the misuse of force, ensuring the legitimacy of the right to self-defense and the preservation of international integrity and law.

3.2. Other limits of the right of self-defense: responsibility of states and non-state actors in international relations

It will be pertinent to mention here that, the right of self-defense enshrined in Article 51 of the Charter of United Nations is not free from number of conditions and limitations. These restrictions are important in order that the use of self-defense is in accordance with the UN Charter and does not allow for an unlawful act of aggression. Besides necessity, urgency and reasonability, self-defense exercise must satisfy the legal requirements regarding character of an armed attack, identity of the attacker and the legal status of the defending state in the international humanitarian law.

The first of the sundry restrictions which the seeming right to self-defense entails is the stipulation that the activator of the right has to be an “armed attack.” The ICJ in the Military and Paramilitary Activities in and Against Nicaragua case set out that an armed attack implies action of serious scale and intensity. Individual uses of force as, for instance, minor armed confrontations on borders are not considered to meet this level. However, the attack has to cause significant impact to the sovereignty, territorial integrity or political independence of the victim state.

Its interpretation also extends to other aggression types, including aggression by proxy. Thus, the Court in Nicaragua expressed the opinion that a state's indirect participation in armed groups and their activities that provide weapons and logistic support: If such groups take measures similar to a direct armed attack on another state, then such action is an armed attack. This interpretation elaborates the provisions in the Article 3(g) of the United Nations General Assembly of 1974 Resolution on Definition of Aggression which list the sending by or on behalf of a State of armed bands, groups, irregulars, or mercenaries as an act of aggression.

The conventional system of defense presupposes an armed assault of one state by another state. However, due to changes of international conflicts – the emergence of non-state actors like terrorists, this interpretation process has to be expanded. Although, the ICJ has recognized the non-state actors as able to initiate the right to self-defense, it has been very strict on a causal connection between the non-state actor and the state alleged to be supporting or sponsoring them.

For instance in the Armed Activities on the Territory of the Congo case, the ICJ pointed out that there was need to impute the acts of armed groups to the specific state. In the absence of such attribution, even the use of force against the state might be unlawful. This has raised the need to argue self-defense when involving decentralized threats, especially if applicable evidentiary statutes are clear enough.

One major restriction of the right to self-defense is that the right is subject to collective security arrangements under the UN Charter. According to the Article 51, any action taken in the exercise of rights inherent in the right of individual or collective self-defense shall be immediately reported to the Security Council which shall decide whether to take action under the Article 39 of the Charter SUN or not.

Finally, the right to self-defense of the defending state is terminated as soon as the Security Council takes measures regarding the aggression. It safeguards the principle on self help as a way of balancing the powers of the council without compromising the main mandate of the council on the preservation of international peace and security. However, it is noteworthy that practical problems of the presented framework are obvious in situations when the Counsil is unable to take proper actions due to political stalemate, and states are forced to rely on their naked self-defence.

The US has also not left the exercise of self-defense without regulation and direction; in particular, reference is made to the principles of International Humanitarian Law including; the principle of distinction, the principle of proportionality as well as the principle of precaution. This outlook was underscored by the ICJ in its advisory opinion of

the Legality of the Threat or Use of Nuclear Weapon where necessity for regard for the conduct to legal justification in application of self-defense was underlined, to be in conformity with the principles of IHL.

This requirement imposes extra conditions on the processes and techniques to be used during self-defense. For example, the use of force that leads to excessive or imprecise targeting of civilians and the referring of civilian objects is not allowed regardless of how grave the violence being replied to is. A state still has the unfettered right to defend itself, under IHL, but it has to adhere to the principle of distinction, which requires it to distinguish between a military objective and a civilian one.

Another critical weakness is that self-defense activities have to be discontinued once the danger is eliminated or the hostility stops. This is because if force is used for a longer time than reasonable or beyond what is necessary to defend oneself or a lawful action a violation of the law is committed. This principle corresponds with the general objective of bringing order and security in the society as opposed to the widespread resort to force.

In as much as a state may have a right to self defense, any alleged armed attack must be so seen and recognized by the victim state. As pointed out in the Nicaragua case it is the state which is the victim of an armed attack, that has to shape and proclaims the view that such an attack has been made upon it [45, para 195, p. 93]. This principle underplays the subjective factor in defining what constitutes an armed attack under Article 51 of the UN Charter. The victim state's acknowledgment is important especially when the they are engaging in collective self-defense. The states which provide assistance cannot independently define the existence of an armed attack but should rely on the declaration of the affected state.

This requirement guarantees that the exercise of the right of collective self-defense is not a result of sheer interparty interpretations of aggression. This, in a way, raises the challenge to the victims by having to claim that they are targets of aggression before other states can legally come to defend them.

One of the critical standards is the character of the armed attack, both in terms of its scale and intensity. The ICJ in Nicaragua opined that force does not at all times lead to an armed attack deserving self-defense. However, it is necessary for the force to attain a level of 'scale and effects', as defined by the authors: [45, para 195, p.93]. For instance, local fights or frontier hostilities cannot be a basis for justified use of the right of self-defense.

This interpretation is consistent with the proportionality as some of the responses for these minor provocations could turn into larger conflict. But finding out this limit

remains a challenge up to this date. Sir Christopher Greenwood said that a series of related events may together give rise to an armed attack even if none of them individually does so [24, at p. 13]. This cumulative approach re-emphasises the role of context in assessing the 'reasonableness 'of measures of self-defence.

Self-defense is not only a defense against an attack on the state territory, its citizens or state organs but also an attack that occurs regardless of its location. The aggression on overseas territory like the invasion of the Falklands isaerch by Argentina is considered aggression on the sovereign state. Likewise, acts against state organs, for example, naval force or military force positioned abroad with the consent of the home state is also categorized as armed attack on the home state [24, p 35].

Other none-military properties that may benefit from this protective shield include civilian properties like ships or Aircrafts registered on a given state. Greenwood stated that an assault on such objects might be regarded as aggression against the state of incorporation. Carrying this analysis further, attacks upon the state's civilians outside its territory may also be considered as acts of aggression owing to the role of the population in the determination of statehood [24, para. 24].

Various uncertainties have been brought about by the use of non-state actors in modern conflicts especially in determination of responsibility of an armed attack. Whereas Article 51 prescribes state-on-state aggression, non-state actors will most often do so with a given state's acquiescence or complicity. The ICJ has stressed that termination of non-state performance and its association with state support or participation is the only way to justify self-defence against the supporting state.

Further this requirement It was highlighted in the armed Activities on the territory of the Congo case where the ICJ held that non-state groups did not constitute an armed attack attributable to the Democratic Republic of Congo where there was no state involvement [Armed Activities on the territory of the Congo (New application 2002) RID 2002-para. 146, p. 59]. It therefore means that self-defense against non-state actors has to meet even stricter requirements regarding evidence in order to fully adhere to the gains made in international law.

Another problem in the practice of the right of self-defense is to define who can be the attacking party. As para 51 of the UN Charter has provided, the right to self defense comes where there is an armed attack, though the wording of the text does not necessarily restrict the attack to a state one. This position, however, is best illustrated by practice, particularly the decision of the International Court of Justice of the United Nations.

In the international law, UN Security Council Resolution 1386 after the attack of September 11, 2001 expressed America's right of self-defense against a terrorist organization not a state and it also justified that self-defense right can be used towards a non-state actor. However in construction of a wall in the occupied territory of Palestine the UN International Court of Justice has not supported this approach disregarding the right of Isreal to defend itself from the attack originating from the territory controlles by it and not from another state.

Some of the dissenting judges pointed out that the above formal approach militates against the core of right to defend ones elf. Judge Kooymans observed that after 9-11 the contemporary practice paves way to the wider interpretation of Article 51, hence, the response to the attack by non-state actors [63; para 35]. This proves the changes in the existing international law while considering the current dangers, including terrorism.

According to Article 51 of the UN Charter, the People's Republic acts in its defense until the UN Security Council takes measures to prevent the continuation of peace. However, it does not explain which actions of the Security Council are enough to stop self-defense .

In the HL Report produced by Anan Panyarachun there is a clear indication of the criterion being underlined that actions of Security Council must be effective. Only practical activities being actualized in one or another form can cease the need for self-defense on the part of the state: it is only possible to send peacekeeping missions or sanction collective actions, for instance. To ensure that patients are safe from the conclusion of a clinical decision, declarative statements or 'concerns entered in the formal concern process 'are inadequate.

The level of effectiveness of actions of the key organ of the United Nations is directly connected with the paramount aim of maintaining the state and international stability. Even if the measures are insufficient or have failed to deter the threat, the state can still assert its choice to defend itself. This is in holding with the provisions prescribed in the Final Act of the Security and Cooperation Council in Europe which call for achieving real peace.

For instance, through Resolution 661, which placed economic and financial ban on Iraq, reaffirmed the inherent right of Kuwait to individual protection under Article 51 [61, preamble]. In effect, the resolution implicitly meant that over the sanctions though stringent, they could not bring about the near perfect order in Kuwait immediately. Thus, Kuwait, obviously, had it right to self-defense so it wasn't limited in this aspect.

The technical concerns in this regard are the following: Self-defense has further limitations aside from the Charter and customary international law; the rule requires compliance with IHL. IHL regulates behaviour in armed conflicts and focuses on the alleviation of the civilian and persons who are out of combat.

In a culmination, the advisory opinion of the International Court of Justice (ICJ) on the Legality of Threat or Use of Nuclear Weapon opines that 'Proportionate use of Force under Article 51 / 5 : 2 of the Charter must conform to International Humanitarian Law ' [40 para 42]. This principle was further strengthened after the ICTY judgment in the Prosecutor against case. Kordic and Cerkez, according to which, military activities allegedly exercised in the framework of measures of self-defense cannot be considered as a pretext for serious breaches of IHL [50, para. 452].

Again, stressing this double compliance is important for the ICJ to highlight that states must defend themselves but at the same time, they cannot ignore the humanitarian law . Proportionality and necessity do not relieve the state of observing precautions towards the civilian society or using excessive force in reacting to aggression.

Self-defense right is limited; it must be assessed in terms of the measures that the UN Security Council can take and IHL. Self-defense must therefore be a proportionate, necessary, and humanitarian measures for states using it. Such limitations are by no means an imperative to maintain international peace and avoid having retaliation for aggression turn into nihilistic or human rights abuses free rampages.

3.3. Legal consequences of exceeding the limits of the right of self-defense

The right to self-defense as a principle of international law is not absolute, and must meet conditions of necessity, proportionality and respect for humanitarian principles. Such consequences may entail severe legal penalties and reproaches for the states and individuals beyond their sovereign rights and responsibilities, and legal liabilities internationally. In the following section, the presented consequences are explained further.

Under the UN Charter, the rights of States to use force is provided under Article 51 but their use of force cannot be directed against the territorial integrity or political independence of any state as provided for in Article 2(4). It becomes vital to determine if a state's response goes beyond Article 1(7) self-defense and if it has, for example, used the armed force too excessively or chase non-military aims, then it will be violating the Article 2(4). On this basis, the state's actions in light of this violation become internationally wrongful and place the latter under threat of censure by the UN Security Council or General Assembly. For instance, punishment where its size outweighs that of the conflict may result to resolution that condemn the state action especially in a unilateral use of force.

The ICJ also has an important role in the determination of the legal question concerning the use of force in some of the world's major conflicts. Those states which are considered to have gone beyond the justified exercise of the right to self-defense are liable to be taken to the ICJ. In Nicaragua v. The same Court held that activities performed by the United States intended to reach and destroy Nicaraguan harbors and support Contra rebels exceeded lawful self-defense and therefore was against international law. The ICJ decisions do not only refer to the legal constraint of self-defense but also set responsibilities of pay and cease/repair for states in breach (Military and Paramilitary Activities in and against Nicaragua, 1986).

In the current study, exceeding the proper self-defence limits gives a legal cause for state responsibility under the Articles on Responsibility of States for Internationally Wrongful Acts. This includes strict legal duties, these being the duty to apologise, to pay compensation/reimburse or to indemnify. For example, if a state's excessive response to crisis interferes buildings and structures of civilians or leads to numerous losses of lives, then it will be expected that it pays a certain amount of money to repair or replace the affected state's properties or respond to the families of the victims. When the breach has occurred the principle of full reparation makes sure that the injured has received full compensation in as way as can make them whole again or in the position they should have been had the violation no taken place.

While action surpassing the boundary of self-defense is also likely to attract individual responsibility under international criminal law. The Rome Statute of the International Criminal Court (ICC) states the following acts are unlawful; war crimes, crimes against humanity and aggression. Some of the political leaders or the military commanders involved in the self-defense operations that involved the use of excessive force or unnecessary force he may be prosecuted. For instance, using violence against civilian population without any justification is considered as war crimes with respect to article 8 (2) (b) and (e) of the Rome Statute.

If a state go beyond self-defense they suffer major criticisms and diplomatic losses. They erode their reputation internationally; dilute partnerships; and may trigger punitive actions like sanctions or trade barriers. For instance, high-profile operations that cause loss of civilian lives can elicit public revulsion because some operations have indicted state forces of using unreasonable force.

Any interference with the principles of the necessity and proportionality normally leads to the violation of international humanitarian law – IHL on armed conflict. If states continue to violate IHL in exercising a right of self-defense, they also face supplementary

legal penalties in the form of sanctions or compensation for humanitarian abuses. The International Committee of the Red Cross (ICRC) insists on the complete non-recognition of the right of legitimate self-defence as a justification for not respecting the rules of IHL, and states which are found to have violated such rules may be proceeded against in international tribunals or any judicial forum.

Going beyond the exercise of the right of individual self-defense may also determine the development of customary international law and the UN Charter. For instance, constant infractions by a state could lead to-break the norm and have the same effect of the rule-breaker as other states follow the same course of action. But in addition to this, the court's decision destabilizes the international legal order and opens the door to restriction of the right to self-defense in future processes.

An example of such criticism is the 2006 Lebanon war in which many condemned the Israeli response to Hezbollah. The huge scale of devastation in Lebanon such as lives lost, human suffering and infrastructural loss as prompted the world to condemn and demand for compensations. Likewise, the United States 'war on Iraq in 2003 that at some point was framed by the Bush administration as pre-emptive self defence attracted lots of legal and political concerns that country had violated international laws.

The implications of the overuse of force entail legal aspects of both state responsibility & reparations and individual criminal responsibility & diplomacy. The stringent prerequisites qualifying the right to self-defense show just how limited this right is, as well as today's imperatives that require scrupulous adherence to international law. Purposively, harms extend not only to the rights of individuals, but also erode the foundational structures of the international system of international peace and security.

Conclusion

1. The structure of the analysis focuses on the evolution of self-defense extending from customary law enshrinement towards contemporary international law. This evolution wisdom came with complexities of the global security and the wish to allow every state to protect itself and its sovereignty through the use of force while at the same time not allowing force and aggression. The historical analysis showed that there has never been any consensus on the right of self-defense in the past and that state practice alone does not determine changes in the right of self-defense. The provision of UN Charter with an Article 51 was another landmark step in this context as it enumerated the legal regime within which states could in turn respond to armed aggression. But still the meaning of ''armed attack '' as well as the domain of actions which in can be taken under the foundational principle of self-defense still raise so many issues. This provided an opportunity to identify core concepts of necessity and proportionality as legitimate criteria for justified defense by referencing successful historical cases such as the Caroline affair. These principles have not changed with development of other forms of self-protection such as protection against cyber attacks or terrorism.

2. The September 11, 2001, attacks on the United States marked a pivotal moment in the application of the principle of self-defense, particularly in the context of responses to terrorism and non-state actors. These events challenged the traditional state-centric framework of international law, compelling states to reconsider their rights and obligations under Article 51 of the UN Charter: specifically, the notions of immediacy, necessity, and proportionality have been interpreted in cases involving responses to terrorism. The discussion highlights the tensions between emerging doctrines, such as anticipatory and preventive self-defense, and the established legal order. While there has been an increasing tendency for states to justify the use of force against non-state actors in foreign territories, the legal and ethical legitimacy of such actions remains deeply contested.

3. The analysis of collective self-defense within a NATO framework figured how collective self-defense has been implemented by the alliances and regional organizations. Nevertheless, the differences regarding the meanings of an 'armed attack' lead to certain contradicted observation of the system of self-defense, especially as concerns the non-state actors or in the context of the asymmetric warfare. In various case studies, we have looked at how states explain their behavior and to what degree those explanations conform to the requirements of international law. For example, the UN Security Council resolutions and state practice recognised a right to self-defence as legitimate to be used un response to

terrorist threats and it was later supported by regional international organisations (NATO), legal doctrine and jurisprudence.

4. The essential principles of the lawfulness of self-defense, namely the elements of necessity, imminence, and proportionality, are preventative measures to counteract aggressive behaviors, to give thoughtful, proportional responses. However, it was challenging to measure most of these criteria in real-time especially when ambushed by new threats such as cybersecurity attacks and incognito activities by non-state actors. Due to the absence of clear interpretative provisions in the international law, there is often much ambiguity and, therefore, a lot of objectivity which can put question marks to the self-defense claims and intensify international conflicts. Examples were used to illustrate the consequences of exceeding the preconditions of this right and the necessity of sanctions to uphold the effectiveness of international legal norms. Breaches of these limits not only undermine confidence between the state but also may lead to the destabilization of the interstate systems. The thesis stressed the absence of workable and widely accepted criteria for the lawful employment of force, and the current lack of a framework to address new and emerging threats.

5. Relevant constraints on the use of the right of self-defense in international law are analyzed comprehensively. Studying the necessity, immediacy, and proportionality of the actions as well as other rules and limits concerning state and non-state actors, and the consequences of violating these constraints, the analysis shows that even lawful responses to aggression are a question of fine line. The concept of necessity, immediacy, and proportionality has been a subject matter of the discussion regarding its indispensability in the regulation of self-defense. In doing so, its use naturally has to be limited to that final escalatory level when all other options are no more available. Immediacy makes it possible to make defensive actions and take place at the time when an attack is on or immediately happening so that shows, what is deemed defensive turns out to be retaliatory due to undue delays. Measures of proportionality remain standard, which means that the intensity of action taken in self-defense should be in proportion to the magnitude and tenacity of the aggressor. All these criteria taken together guarantee that self-defense as a concept fulfills its role of preventing aggression while avoiding the inflammation of more aggression.

6.In regard to responsibility and legal obligations for state and non-state actors, there is stressing of the changing threats in international relations. Battles were once characteristic of state – state rivalries, but in today's world conflicts that arise from non-state actors for example through terrorism complicate existing conventions of self-defense. The discussion raises the issue of the rising membership with state responsibility for

committing or hosting non-state assailants, as well as the general effects of attributing attacks to such actors. The outcomes emphasize attributive responsibility and reference to the norms of international law to avoid the abusive right of self-defense.

In examining the output of legal implications on the grounds of self-defense, it's demonstrated by severity of such actions. Such violations compromise the responding state legitimacy and where they are considered a violation of international law, they can attract International Criminal Court or United Nations sanctions. The work also responds to the threat of undermining international standards if states use self-defense as a cover for unlawful aggression, insisting on the legal and ethical compliance of all defenses.

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SUMMARY

Right of a self-defense in international law: developments after September 11, 2001

Mariia Khamdan

The work is devoted to the study of historical development, legal foundations and modern aspects of the implementation of the right to self-defense in international law. The first chapter examines the evolution of the right to self-defense, starting from its historical origins to the present, as well as the main conceptual approaches to its understanding. Particular attention is paid to Article 51 of the UN Charter, which regulates the right to self-defense in international law, and the meaning of this article in modern conditions. In this context, the influence of the events of September 11, 2001, which became a defining moment in the rethinking of the right to self-defense, particularly in the aspect of fighting terrorism, is analyzed in detail.

The second section focuses on the varieties of the right to self-defense, such as individual and collective self-defense, reactive, preventive, and anticipatory self-defense. It outlines the legal foundations and practical application of these forms of self-defense in the conditions of modern international conflicts. Particular emphasis is placed on the complexities and challenges associated with the use of self-defense after the events of September 11, 2001, particularly in the context of combating non-state actors such as terrorist groups.

The third section covers the analysis of the limits of the application of the right to self-defense, taking into account such criteria as necessity, urgency and proportionality. Attention is also paid to the legal aspects of the responsibility of states and non-state actors in the context of the realization of this right. The consequences of exceeding the limits of self-defense and their impact on the international legal system are considered. Special emphasis is placed on the importance of compliance with international law to ensure global security and stability. The need to develop effective mechanisms and universal norms that take into account modern challenges such as cyber threats, terrorism and globalization is noted.

SANTRAUKA

Savigynos teisė tarptautinėje teisėje: pokyčiai po 2001 m. rugsėjo 11 d.

Mariia Khamdan

Darbas skirtas teisės į savigyną tarptautinėje teisėje įgyvendinimo istorinei raidai, teisiniams pagrindams ir šiuolaikiniams aspektams tirti. Pirmame skyriuje nagrinėjama teisės į savigyną raida, pradedant nuo istorinių ištakų iki dabarties, taip pat pateikiami pagrindiniai konceptualūs jos supratimo požiūriai. Ypatingas dėmesys skiriamas JT Chartijos 51 straipsniui, kuris tarptautinėje teisėje reglamentuoja teisę į savigyną, ir šio straipsnio reikšmei šiuolaikiniame pasaulyje. Šiame kontekste išsamiai analizuojama 2001 m. rugsėjo 11 d. įvykių, tapusių lemiamu momentu permąstant teisę į savigyną, ypač kovos su terorizmu aspektu, įtaka.

Antrajame skyriuje dėmesys sutelkiamas į teisės į savigyną rūšis, tokias kaip individuali ir kolektyvinė savigyna, atsakomoji, prevencinė ir išankstinė savigyna. Jame išdėstyti šių savigynos formų teisiniai pagrindai ir praktinis pritaikymas šiuolaikinių tarptautinių konfliktų sąlygomis. Ypatingas dėmesys skiriamas sudėtingumui ir iššūkiams, susijusiems su savigynos naudojimu po 2001 m. rugsėjo 11 d. įvykių, ypač kovojant su nevalstybiniais subjektais, pavyzdžiui, teroristinėmis grupėmis.

Trečiajame skyriuje nagrinėjamos teisės į savigyną taikymo ribos, atsižvelgiant į tokius kriterijus kaip būtinumas, neatidėliotinumas ir proporcingumas. Taip pat atkreipiamas dėmesys į teisinius valstybių ir nevalstybinių veikėjų atsakomybės aspektus šios teisės įgyvendinimo kontekste. Nagrinėjamos savigynos ribų peržengimo pasekmės ir jų įtaka tarptautinei teisės sistemai. Ypatingas dėmesys skiriamas tarptautinės teisės laikymosi svarbai užtikrinti pasaulinį saugumą ir stabilumą. Pastebėtas poreikis sukurti veiksmingus mechanizmus ir universalias normas, kurios atsižvelgtų į šiuolaikinius iššūkius, tokius kaip kibernetinės grėsmės, terorizmas ir globalizacija.