Page 1350 - 1363 **DOI:** *https://doij.org/10.10000/IJLMH.119807*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 3

2025

© 2025 *International Journal of Law Management & Humanities*

Follow this and additional works at: https://www.ijlmh.com/
Under the aegis of VidhiAagaz – Inking Your Brain (https://www.vidhiaagaz.com/)

This article is brought to you for "free" and "open access" by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact **support@vidhiaagaz.com**.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to **submission@ijlmh.com.**

A Critical Analysis of the Use of Force and Self-Defence in International Law

GAYATHRI U[1]

ABSTRACT

This paper critically examines the complex relationship between the prohibition of the use of force and the right of self-defence under international law. While the UN Charter and other legal instruments emphasize the primacy of peaceful dispute resolution and the general prohibition on the use of force, the inherent right of states to self-defence continues to generate legal and ethical dilemmas. The study explores the evolution and interpretation of these principles through key international frameworks, including the League of Nations Covenant, the Pact of Paris (Kellogg-Briand Pact), and the United Nations Charter.

Keywords: *Use of Force, Self Defence, United Nations, League of Nations, and Pact of Paris*

I. INTRODUCTION

The prohibition of the use of force is the core international legal effort taken by the international community to prevent war.[2] This prohibition is secured by collective measures and international obligation to resort to peaceful means for the settlement of disputes. Self-defence under international law reaffirms a state's inevitable right to the use of force to protect itself from the aggression of another state. It is pertinent to mention that at times, self-defence is in constant conflict with the prohibition on the use of force under international law. The state's inherent right to defend itself by using force is incompatible with the principles of the prohibition of the use of force. However, with the customary international law and state practice, self-defence is rendered as a lawful exception to this prohibition, and it is perceived as a lawful extension of the permitted use of force under international law. Self-defence and the prohibition to use force are two sides of the same coin, and they must be analyzed together to attain an in-depth overview of the fundamental aspects of self-defence.

This research focuses on the permissible use of force in international law and analyses the use of force and self-defence under the League of Nations, the Pact of Paris, and the United

[1] Author is an LL.M. (International Law and Organizations) student at Department of Legal Studies, University of Madras, India.

[2] Sebastian Heselhaus, *International Law and the Use of Force*, International Law and Institutions, UNESCO - EOLSS Publishers, Oxford, United Kingdom, 2002

© 2025. International Journal of Law Management & Humanities [ISSN 2581-5369]

Nations.

II. USE OF FORCE UNDER INTERNATIONAL LAW

In the International system, the use of force remains the most complex and serious object of interest and concern among the international community. Generally, under the notion of developing international law and perceived customary practices, the use of force is prohibited or restricted. Force was perceived as a defining factor that changed the fate of the states. It was used to gain and maximize control, power, and influence, to obtain territory, gold, resources, to extend land, etc. History was created or changed using the force. All the wars that have been fought were mainly for gaining power or influence, or control. Since the use of force brings with it severe casualties, violation, abuse, and degradation of rights of both individuals and states, it is prohibited and restricted under international law.

The use of force in international law is deeply connected with state sovereignty and the state's responsibility to protect. It is stuck between the dichotomy of security and justice.[3] On one hand, the state can use force without any bounds to protect its own interest or for the purpose of self-preservation, which largely falls under the state sovereignty. When it comes to the protection of security, justice is often disregarded, be it in the domestic or international sphere. The practice of use of force is restricted in international relations, and its non-observance can cause imposition of criminal liability and breach of state obligation. The state is excused to use force under certain circumstances encompassing self-defence and humanitarian intervention.[4] "*International law seeks to minimize and regulate the use of force by states in their international relations to preserve and protect international peace and security.*[5]*"* The position of the use of force in international law has changed throughout history to accommodate emerging needs.

The principles of territorial sovereignty, political independence, and equality of the states are fundamentals with which the use of force is deeply connected. Under international law state cannot use force that affects the above-mentioned principles, and at the same time, if any state tends to violate these principles, then the use of force can be exercised by the victim state. Hence, these principles are the two sides of the same coin; in one instance, the state must not use force to affect these principles, and in the other instance, if such principles are violated, then the state can exercise self-defence by using force.

[3] Abdulla Mohamed Hamza, *The Use of Force in International Relations*, International Journal of Scientific and Research Publications, Volume 7, Issue 3, March 2017
[4] *Ibid*
[5] *Ibid*

© 2025. International Journal of Law Management & Humanities [ISSN 2581-5369]

The prohibition of the use of force is a part of customary international law; its general prohibition under the UN Charter plays a significant role in reflecting today's correspondence of the use of force under international law. The prohibition of the use of force has been accepted as a jus cogens norm or preemptory norm of international law by the International Court of Justice[6] at various instances.

Article 2.4 of the UN Charter has two contrasting interpretations. Under broad interpretation, it contains a *blanket prohibition*[7]. It states that the state cannot use force except in self-defence. This interpretation permits the use of force under the guise of self-defence or collective security. Under a narrow interpretation, it contains *qualified prohibition*[8]. According to this interpretation, the use of force is prohibited only when it is against territorial integrity or political independence of the state or contrary to the purposes of the UN Charter. However, if such use of force is not violating or infringing the above-mentioned rules, then such use of force would not be prohibited but permissible. This means a state can use force for carrying out the purposes of the UN Charter, such as putting an end to genocide or promoting self-determination[9] or for peacekeeping or peace enforcement operations. However, according to several international scholars, the use of force under Article 2.4 is perceived as a general ban[10]. The state practice reaffirms that the use of force is only an exception to general prohibition and not conduct permitted under Article 2.4.[11]

III. PERMISSIBLE USE OF FORCE IN INTERNATIONAL LAW

Self-defence is not only an exception to the use of force in the UN Charter, but it is also a part of customary international law. It predates the UN charter. Self-defence is one of the most important grounds for justifying the resort to the use of force[12]. The right to exercise self-defence is subject to two interpretations. According to narrow interpretation, self-defence can be exercised only if "*the territory of the State or its warships or military aircraft on the high seas are attacked"*[13]. This signifies the usage of self-defence only when the direct attack on the state is perpetuated. According to a broader interpretation, self-defence can be exercised even if *"an embassy abroad or individuals or private ships and airplanes on the high seas are*

[6] Natalino Ronzitti, *The current status of the principle prohibiting the use of force and legal justifications of the use of force*, Isotituto Affari Internazionali, Itlay, 2002
[7] *Ibid*
[8] *Ibid*
[9] *Ibid*
[10] *Ibid*
[11] *Ibid*
[12] *Ibid*
[13] *Supra*, note 5

© 2025. International Journal of Law Management & Humanities [ISSN 2581-5369]

attacked"[14]. This signifies the usage of self-defence to indirect attack on the state.

IV. USE OF FORCE AND SELF-DEFENCE UNDER LEAGUE OF NATIONS

The evolution of the right to self-defence in the late 19th century and early 20th century provides a great insight into the modern system of international law. There was a major change in the approach to war at this time period[15]. The resort to war was restricted more than before. War by itself was termed as illegal. Furthermore, this period witnessed the emergence of modern international law[16]. The war as a "last resort" gained a significant importance during the 19th century[17]. The peaceful settlement of disputes gained wide attention, due to which the principle of self-preservation started to lose its dominant position[18].

Several emerging international societies and organizations, such as the International Civil Society and International Committee of Red Cross[19], focused on matters relating to war and peace, and discouraged the states from using force. During the end of the 19th century and the beginning of the 20th century[20], several international conventions relating to war and hostilities were concluded between states. The Hague Conventions and the League of Nations[21] substantially changed the framework on resort to war, which was followed before the 19th century, and grave importance was given to the restricted usage of force. Further, due to several bilateral agreements and the Kellogg-Briand Pact 1928[22], the resort to use of force was restricted.

The two Hague Peace Conferences had taken significant steps to promote the peaceful settlement of disputes, and they created the procedure for arbitration. Due to this, the Permanent Court of Arbitration was established. These both conferences accepted the states' right to wage war but it obligated the states to follow certain principles before actual resort to war.[23] It is pertinent to mention that during the first and second Hague Peace Conferences in 1899 and 1907, respectively, the concept of self-defence was not addressed as there was no discussion on the right of the state to wage war[24]. At that time, international scholars viewed

[14] *Ibid*
[15] Kinga Tibori Szabo, *Anticipatory Action in Self Defence – Essence and Limits under International Law, Part 1 – Pre Charter Customary Law on Self Defence*,29, TMC Asser Press, Netherlands, 2011
[16] *Ibid*
[17] *Ibid* at 82
[18] *Ibid*
[19] *Ibid*
[20] *Ibid*
[21] *Ibid*
[22] *Ibid*
[23] *Supra*, note 14
[24] *Ibid*

© 2025. International Journal of Law Management & Humanities [ISSN 2581-5369]

"*self-defence as the only measure that can be excused as self-preservation"*[25]. In the words of Oppenheim[26], the use of force in the interest of self-preservation is excused as self-defence. But if such force can be prevented or the matter can be settled in a peaceful manner rather than resorting to force, then at that instance, the use of force or self-defense would not be excused or justified. It has been stated that if the danger could be removed through any other means than resort to force, then exercise of self-defence would not fall under the frame. But if such a resort is deemed to be fruitless or impossible or it would cause even more danger in delaying defence, the state can exercise self-defence[27]. According to Oppenheim, there exists a close link between self-defence and the principle of self-preservation[28].

The Clausewitzian interpretation of war[29], after the 1st World War, brought profound changes to society, morality, and legal interpretation of war. The aftermath of the 1st World War led to grave demands for the imposition of legal restrictions on the resort to war. The main motive of the international community at that time was to build a balance of power system, *to construct a legal and institutional structure that would prevent wars in the future*[30]. This was the main purpose of the League of Nations, where *the member states had to accept and maintain the obligation to never wilfully resort to war*[31]. The League also controlled and took measures to reduce the arms race and proliferation of weapons to maintain peace and security.

The Covenant of the League of Nations was adopted by the Paris Peace Conference in April 1919, and it entered into force on 10th January 1920[32]. However, the United States was never a member of the League of Nations, despite contributing great ideas for its formation[33]. Later, several states who were the members of the League started to withdraw due to their political interests, e.g., Germany, the USSR, Italy, Japan, Denmark, Romania, Spain[34], etc. The most important part of the Covenant was Article 10[35], the members of the League undertook to *respect and preserve against external aggression, territorial integrity, and existing political independence of all member states*[36]. This article lays down a firm foundation for a collective

[25] Lassa Francis Oppenheim, *International Law – A Treatise*, 178, Longmans Green and Co, London, 1905
[26] *Ibid*
[27] *Supra*, note 14 at 84
[28] Lassa Francis Oppenheim, *International Law – A Treatise*, 178, Longmans Green and Co, London, 1905
[29] *Supra*, note 14
[30] *Ibid*
[31] *Ibid*
[32] *Ibid* at 85
[33] *Ibid*
[34] *Supra*, note 14 at 85
[35] Article 10 of League of Nations, *"The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled".*
[36] *Supra*, note 14 at 85

© 2025. International Journal of Law Management & Humanities [ISSN 2581-5369]

security system[37] on an international level that obligates the member states to show respect and preserve each other's territorial integrity and political independence during external aggression.

It is predominant to mention that this was the first international treaty that explicitly prohibited aggression[38]. From this period, the traditional foreign policy started to change from a self-centred approach to an approach that acknowledged moral and material interests that are common to all nations[39]. Though Article 10 did not directly restrict or prohibit the use of force, it was used by members to safeguard their territorial integrity and political independence by appealing the same to the aggressor state.

The dispute settlement procedure was given importance by the League of Nations. Article 12[40] of the Covenant stated that, in case of any dispute, the member states must resolve the same peacefully through arbitration, judicial settlement, or enquiry by council and must not resort to war until 3 months from award, judicial decision, or council report[41]. Article 13(4)[42] of the Covenant reaffirms the obligation of the members to carry out the award or judicial decision in good faith and not to resort to war. If any member state resorted to war without following the above-mentioned procedures, then it was considered as war against all other members[43].

In the 1920s, under the League of Nations, the dispute settlement cases were successful, dispute few failures[44]. Later, forceful reprisals were deemed to be incompatible with the Covenant, and it gradually started to disappear from state practice in the period before the second World War[45]. The armed reprisals were perceived as illegal, and the state practice rendered self-defence as the only valid exception to the prohibition to use of force[46].

The Covenant did not explicitly mention self-defence. But it implicitly recognised the right of

[37] *Ibid*
[38] *Ibid*
[39] *Ibid*
[40] Article 12 of League of Nations, *"The Members of the League agree that, if there should arise between them any dispute likely to lead to a rupture they will submit the matter either to arbitration or judicial settlement or to enquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the judicial decision, or the report by the Council. In any case under this Article the award of the arbitrators or the judicial decision shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute".*
[41] *Ibid*
[42] Article 13(4) of the League of Nations, "*The Members of the League agree that they will carry out in full good faith any award or decision that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award or decision, the Council shall propose what steps should be taken to give effect thereto."*
[43] *Supra*, note 14
[44] *Ibid*
[45] *Ibid*
[46] *Ibid*

© 2025. International Journal of Law Management & Humanities [ISSN 2581-5369]

the state to exercise individual and collective self-defence through the scope of Articles 10, 12, and 15. These articles allowed the states to exercise self-defence either individually or collectively when they were subjected to external aggression[47]. The drafters of the Covenant gave predominant importance to preventing future wars and overlooked the importance of self-defence due to the impact of the First World War. Furthermore, no specific reservation was given to self-defence in the Covenant because, at that time, it was regarded as superfluous or unnecessary[48]. However, it is pertinent to mention that the preliminary Pangrazzi of the *Geneva Protocol on the Pacific Settlement of International Disputes*[49] recognised the right of self-defence as an exception to the prohibition of the right to wage war and further stated that the right to legitimate self-defence must be respected by all the states. The prohibition extends only to aggressive war and not defensive war[50]. *The state that was attacked retains complete liberty to resist by all means any acts of aggression*[51]. This states the importance of self-defence, even though it was not explicitly mentioned under the Covenant.

However, during this period, self-defence was gaining prominence outside the League of Nations. Several international treaties and agreements, such as the Locarno Treaties, the Treaty of Mutual Guarantee[52], etc, which were concluded outside the covenant, dealt with the right of self-defence. Though the same was not explicitly mentioned in the covenant but these rights were based on the principles stated in the covenant. Treaty of Mutual Guarantee defined self-defence as *"resistance to a violation of the undertaking not to attack, invade or resort to war against each other or resistance to a 'flagrant breach' of the demilitarization provisions of the Treaty of Versailles (Articles 42 and 43), 'if such breach constitutes an unprovoked act of aggression and by reason of the assembly of armed forces in the demilitarised zone immediate action is necessary.*[53]*"* Only when there exists a violation of an undertaking or acting contrary to such an undertaking, such as attacking or invading or resorting to war, then the right of self-defence can be exercised.

After the First World War, demilitarized zones were established under the Treaty of Versailles to prevent any potential future conflict. This treaty prohibited Germany from maintaining armed forces in these zones, and if this clause was violated, then self-defence could be exercised. In case of a flagrant breach such as an obvious violation of any law or obligation,

[47] *Ibid* at 87
[48] DW Bowett, *Self Defence in International Law*,124, Manchester University Press, Manchester, 1958
[49] *Supra*, note 14 at 87
[50] *Supra*, note 47
[51] *Ibid*
[52] *Supra*, note 14 at 87
[53] Treaty of Mutual Guarantee. *League of Nations Treaty Series* 54: 289–305. Signed at Locarno, October 16, 1925. Entered into force September 14, 1926.

© 2025. International Journal of Law Management & Humanities [ISSN 2581-5369]

or when the breach is of such a nature that the state needs immediate action to respond, then the right to self-defence can be exercised. The self-defence must not be used for retaliation or provocation, it must be in response to an unprovoked act of aggression.

V. USE OF FORCE AND SELF-DEFENCE UNDER PACT OF PARIS

The Kellogg-Briand Pact or the Pact of Paris, also known as the General Treaty for the Renunciation of War, was formed due to France's post-war alliance system where negotiation for the maintenance of peace in Europe was carried out[54]. Due to the grave threat posed by Germany to France's security and that of European countries after the consequences of the First World War, France made a significant initiative in obtaining reassurances and securing alliances from other power countries and its neighbouring states to stand together against Germany in case of any aggression or conflict[55].

In the period between 1920 and 1927, France managed to secure alliances with all major states neighbouring Germany, such as Belgium, Poland, Czechoslovakia, Romania, and Yugoslavia[56]. After securing alliances with Germany's neighbours, France extended the same to Italy and started negotiations with the United States. The France Foreign Minister, Aristide Briand[57], and Frank B. Kellogg, the American Secretary of State, were key figures behind this pact.

A proposal was issued by Briand to the US government to agree to "*never use war as an instrument of national policy against each other"*[58]. Later, it was formed as a draft agreement of the first article of the Pact. The American Secretary of the State, Frank B. Kellogg, suggested an addition to this draft by including "*the adherence of all the principal powers of the world to a declaration renouncing war as an instrument of national policy"*[59].

Though self-defence was not explicitly recognised in the Pact, it was discussed during the pre-pact negotiations[60]. In the official note sent to the US by the French government, few reservations were made, and one of them was the right of self-defence. It was stated that renunciation of war would not deprive states from exercising the right to legitimate self-defence[61]. Along with Briand, Kellog also gave importance to the right of self-defence in his notes sent as a reply to proposals. Self-defence was considered a natural exception to the

[54] *Ibid* at 88
[55] *Ibid*
[56] *Ibid*
[57] *Ibid*
[58] *Ibid*
[59] *Ibid*
[60] *Supra*, note 14 at 89
[61] *Ibid*

© 2025. International Journal of Law Management & Humanities [ISSN 2581-5369]

pact[62].

Kellogg interpreted self-defence as an inherent right of every state. He stated that this pact did not in any way restrict or impair the right of self-defence. He further explained that *"the right is inherent in every sovereign state and is implicit in every treaty. Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion, and it alone is competent to decide whether circumstances require recourse to war in self-defence. If it has a good case, the world will applaud and not condemn its action."*[63] This concludes that self-defence is an inherent right of sovereign states, and it is implicitly stated in every treaty despite its lack of explicit mentions, and every nation is free to defend its territory from attack or invasion regardless of any treaty provisions on the same. Self-defence is an inalienable attribute of sovereignty[64].

This Pact was signed on 27th August 1928 by 15 states,[65] and it consisted of three articles: two substantive and one procedural. Article 1 stipulated obligation on the contracting parties to *"condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another"*[66]. Article 2 stipulated that the contracting parties must solve disputes only through pacific settlement and not by any other means[67]. This Pact did not explicitly mention the compatibility with the Covenant or any other treaties on the violation of treaty or self-defence. The Pact strongly opposed the idea of war and allowed the states to use pacific means for settling issues. The important weakness of this Pact was that it only renounced the resort to war and not the use of armed force[68]. Although the right of self-defence was not expressly stated in the Pact or the Hague Conventions or the Covenant, it was commonly understood as an inherent right that applied directly in case of attack or invasion.

VI. USE OF FORCE AND SELF-DEFENCE UNDER THE UNITED NATIONS

After the end of the Second World War, pacifism started to rise, and there arose strong opposition to war and violence. Even before the end of the Second World War, several meetings took place to achieve common standing between Allied states on the matter relating to international peace and security. In June 1941, all allied states and several governments signed a declaration at St. James Palace in London to work together for the furtherance of

[62] *Ibid*
[63] *Ibid*
[64] *Ibid*
[65] *Ibid*
[66] General Treaty for the Renunciation of War, (Kellogg-Briand Pact), Paris, 27 August 1928
[67] *Ibid*
[68] *Supra*, note 14 at 91

© 2025. International Journal of Law Management & Humanities [ISSN 2581-5369]

international peace[69]. In August 1941, two months later, the Atlantic Charter was signed by the United States President Franklin D. Roosevelt and United Kingdom Prime Minister Winston Churchill[70]. This Charter declared the abandonment of the use of force by all the nations of the world. It also stipulated that no future peace could be maintained or sustained if states continue to use land, sea, or air armaments that threaten and cause aggression. Disarmament was perceived as a means to reduce the arms race and for the maintenance of peace. The establishment of a permanent security system after the collapse of the League of Nations was given predominance during this period. Later, the UN Declaration was signed on 1st January 1942[71].

The issue of self-defence was brought up by China during the Dumbarton Oak conversation. It was stated that both members and non-members could use unilateral force under the pretext of self-defence, and this would not be inconsistent with the purpose of the UN Charter. In cases not falling under the pretext of self-defence, the approval of the Security Council is mandatory for such use of force. However, explicit provisions on the issue of self-defence were not stated in the Dumbarton Oaks Proposals. This proposal only addressed the general prohibition to the use of force. The only exception that was expressly provided in the proposal was the Security Council's permission to take forceful measures if diplomatic, economic, or other forceful measures failed[72]. Apart from this, the Dumbarton Oak proposal also mentioned that this Charter would not preclude the existence of regional arrangements in dealing with matters related to the maintenance of international peace and security. At the same time, it also restricts this power by reinstating that such enforcement action cannot be taken under the regional arrangements without the authorisation of the security council.

The issue of self-defence was again raised by the French government in March 1945, when the Dumbarton Oaks Proposals were sent for review and proposing amendments[73]. It was stated that the mandatory authorisation or decision of the security council was incompatible with the security conditions of some states, which might demand immediate action during an emergency to act or use force before the actual authorisation of the security council. Based on this issue, a proposal was raised by the French government to impose an exception that during emergency times, the states could use urgent measures as per the conclusion with the regional arrangements or assistance among the members of the organisation, but this must be

[69] *Ibid* at 101
[70] *Ibid*
[71] *Ibid*
[72] *Ibid* at 102
[73] Proposal of the French Government, UN Charter travaux préparatoires, 379, Vol. 3, March 1945 and *Ibid*

© 2025. International Journal of Law Management & Humanities [ISSN 2581-5369]

immediately reported to the security council without delay. A similar ground was raised by the Turkish Government[74], it made a similar proposal stating that, at a time of emergency, the states' immediate actions in regional arrangements must not be delayed due to the Security Council's pending decision. This was mentioned to guard against any procedural delay of the Security Council that would be detrimental to the interest of any victim state. Due to these proposals, a major debate on the relationship between pre-existing regional assistance treaties and the principle of prohibition of use of force of the new world organisation started[75].

During the San Francisco Conference in April 1945, the matter of self-defence was again brought up. The majority of the states were of the view that, *"in spite of their willingness to resort to peaceful measures for dispute settlement, if a state was attacked by military force, then such a state had the right to defend itself"*[76]. Though this interpretation was an inherent right but the states still wanted to have an *authoritative explanation*[77] mentioned in the final text of the charter. Based on this interpretation, there arose a question, whether the action taken based on self-defence was in accordance with the purpose of the organization. This was later addressed by the US delegate Durward Sandifer. He stated that *"a state might have the right to act in an emergency, and, if there was an allegation that this action was contrary to the purpose of the Organization, the Security Council might review it."*[78] On the preliminary plenary sessions conducted in May 1945, France and Turkey reiterated their standings on self-defence. France's concern was that it was positioned in a geographically dangerous zone, that is, in close proximity with Germany and Italy, and in order to protect itself from any unlawful aggression from these states, it necessitated exclusive mentioning of self-defence in the charter. Even Turkey was of the same view and demanded for the inclusion of legitimate defence in the provisions of the charter[79]. These issues, along with the matters concerning regional arrangements, were later addressed by the Technical Committee 4 of Commission III on the Security Council[80].

The autonomy of the regional arrangements and the anticipation of the exercise of veto power by the permanent members to prevent any action taken by the regional arrangements were the main concerns of many states[81]. The issue of self-defence, that waiting for the authorisation or

[74] Proposal of the Turkish Government, UN Charter travaux préparatoires, 379, Vol. 3, March 1945 and *Ibid*
[75] *Supra*, note 14
[76] Minutes of the eighteenth meeting of the US delegation, 427, held at San Francisco, 26 April 1945, in Foreign Relations of the US 1945, Vol. 1.
[77] *Ibid*
[78] *Supra*, note 14 at 428 to 429
[79] *Ibid* at 453
[80] *Supra*, note 14 at 105
[81] *Ibid*

approval of the security council and suspension of any action till the intervention of the security council would cause irreparable delays, was further reiterated by several states. An attack against any one of the states was considered as an attack against all of the states under the regional arrangements. Since the use of collective self-defence by several regional arrangements was prevalent from that time, an amendment was made to revise the wording to clarify that these regional arrangements were autonomous for the purpose of self-defence.

The provisions concerning the right to self-defence were amended and revised many times before they made their way to the final charter. Once it was revised for its wordings on *"aggression"*[82] as at that time the term aggression was not defined and many states and in particular UK felt it would cause grave confusions and the same was changed and renamed as *"armed attack"*. Later, this provision was again revised to allow a collective regional security system without compromising the authority of the security council. Finally, this provision was adopted as Article 51[83] of the UN Charter by the San Francisco Conference in May 1945[84]. It gave explicit assurance to the legality of the self-defensive action. The meaning behind Article 51 must be elucidated in the light of the object and purpose of this provision. Few international scholars believe that this article does not permit anticipatory self-defence as the wordings *"if an armed attack occurs"*[85] stipulates the existence of an actual armed attack in the first place as a condition for the exercise of the right of self-defence.

However, the context behind Article 51 could be changed if it is viewed under the lens of the negotiations pertaining to the regional arrangements and the legality of the unilateral use of force that took place during the drafting of this provision. The negotiation came to a favourable conclusion that this charter would not affect the autonomy of the regional arrangements on the use of defensive force, and Article 51 was drafted based on this fallout. If Article 51 is viewed under this perspective, then this Article would indirectly permit pre-emptive or anticipatory self-defence as the mutual assistance system under the regional arrangements permits the same[86]. However, it is pertinent to mention that contents or limits of self-defence were not discussed in the Dumbarton Oaks Proposals and the San Francisco

[82] Minutes of the Third Five-Power Informal Consultation Meeting on Proposed Amendments (Part 1), 692, held at San Francisco, 12 May 1945, In Foreign Relations of the US 1945, Vol. 1

[83] Article 51 of the UN Charter, *"Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."*

[84] *Supra*, note 14 at 109

[85] *Ibid*

[86] *Ibid* at 110

negotiations. However, few international scholars view this right as implicit, and no special reservation is needed to safeguard or exercise this right. Limitations of self-defence[87] were not given importance, and it never made any impact in the negotiations as majority states feared that it would restrict their defensive rights under the regional arrangements such as Act of Chapultepec[88], a resolution adopted by Latin American countries post the 2nd world war for securing collective self defence system to protect them from any future aggression.

Although the matters relating to the temporal dimension of self-defence were not made during the negotiations, but the wordings used by the delegates in their submissions, such as *"measures of urgent nature"* as stated by France, *"cases of emergency"* as stated by Turkey and *"immediate danger"* as stated by Czechoslovakia, states otherwise that a grave importance was given for the immediate need to exercise self-defence without any temporal limitations fixed before or after attack[89]. But as far as the charter interpretation is concerned, preventive action or pre-emptive self-defence is not within its established framework. Hence, it is believed by several authors that the Charter narrowed down the right of self-defence and prohibited preventive unilateral action. It is stated that preventive action during potential dangers could be exercised only upon the express authorization of the Security Council.

After the formation of the United Nations and the surge in the bilateral and multilateral treaties, the right to wage war for punitive purpose or reprisal was restricted or prohibited. Both Article 2(4) and 51 prohibited both punitive and preventive war[90]. Chapter 7 of the Charter vested with the Security Council the power to take collective enforcement measures against a situation that endangers international peace and security. Self-defence was the only lawful exception to the prohibition of the use of force.

VII. Conclusion

The use of force and the right of self-defence remain among the most contentious and vital subjects in international law. This research underscores that while the prohibition on the use of force is a cornerstone of the international legal order, self-defence stands as a recognized and lawful exception, provided it adheres to the principles of necessity and proportionality. Historical and contemporary legal frameworks demonstrate a consistent effort by the international community to strike a balance between the maintenance of international peace and the sovereign right of states to protect themselves. However, ambiguities in interpretation,

[87] *Ibid*
[88] *Supra*, note 14 at 111
[89] *Ibid*
[90] *Ibid* at 113

© 2025. International Journal of Law Management & Humanities [ISSN 2581-5369]

particularly in cases of anticipatory self-defence and non-state actor involvement, continue to pose legal challenges. It is imperative for the international legal system to refine its norms and mechanisms to ensure that the invocation of self-defence is not misused and remains consistent with the collective interest in preventing armed conflict.

*****

© 2025. International Journal of Law Management & Humanities [ISSN 2581-5369]