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Legal Implications of the Entebbe Operation in International Law

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ABSTRACT

The UN Charter 1945 formation demands collective methods and institutions with the intend to eliminate use of ‘act of aggression’ both with and without the use of armed forces except in case of self-defense established under Article 51 of the UN Charter, the forcibility of use of self-defense only under circumstances of ‘necessity’ and with appropriate ‘proportionality’. Nevertheless, the exception of self-defense is highly ambiguous under the International Law till date. The detailed analysis of Entebbe incident along with its legal implications is undertaken in this paper. The requisites of use of armed force claiming the defense on ‘humanitarian ground’ and the principle of violation of ‘National Integrity’ are discussed in detail.

I. INTRODUCTION

A plane carrying 244 people was **hijacked** on June 27, 1976. Four of the hijackers claimed to be members of the *Palestinian Liberation Organization (PLO)*. Six hijackers joined the operation after the plane arrived in *Entebbe, Uganda*, on June 28, 1976. They requested the release of 53 convicts, 40 of whom were Israeli detainees, in return for the hostages' life. The Ugandan military forces looked to be assisting the hijackers in the operation.

On July 3, 1976, planeloads of Israeli commandos landed at *Entebbe airport* and liberated Israeli captives, killing all hijackers and 20 Ugandan troops, as well as destroying 10 Ugandan planes and demolishing the Entebbe airfield.

The Entebbe Incident revolves around two principles. One being ‘*consideration of aggression on other states for the protection of their nationals abroad*’ and the other ‘*principle of territorial integrity*’². From the perspective of International Law there were intense debates held before the *United Nations of Security Council (UNSC)* pertaining to if the act of aggression by *Israel* was illegal and violative of *Article 2(4)*³ of the United Nations Charter

¹ Author is a student at Symbiosis Law School Pune, India.

² Claus Kreß, Benjamin K Nußberger, *Part 1 The Cold War Era (1945–89), 19 The Entebbe Raid—1976*. (Pg. 220-230).

³ *United Nations Charter (1945), Article 2, Paragraph 4.*

and principles of International Law⁴

II. JURISDICTION OF THE UNSC TO HEAR THE MATTER AT HAND

*Article 39 of the U.N. Charter*⁵ empowers the Security Council to determine acts of aggression, breach of the peacekeeping of the UN members.

III. VIOLATION OF TERRITORIAL INTEGRITY

Uganda argued that the ‘*acts of aggression*’ was illegal and violative of territorial sovereignty, independence and integrity of the state as per *Article 2(4)*⁶ of the *United Nations Charter and principles of International Law*. However, the term ‘*acts of aggression*’ seemed unclear as the narration of *Article 2(4)*⁷, many criticisms and analysis has been performed as to if ‘*aggression*’ meant an act of ‘*armed force*’ or merely an act of ‘*threat of use of aggression*’, this still remains unsettled. *Article 3⁸ of the UN Charter* enumerates territorial invasion by armed forces, bombardment, blockage, attacking of other state’s military forces and any form of indirect aggression as use of aggression.

Article 1⁹ of the UN Charter mentions about suppression of ‘*act of aggression*’. Under this Article any use of armed force by a State against the Sovereignty, Independence and Integrity of the Territory in any manner that is detrimental with the peacekeeping principles of UN Charter is aggression.

By reviewing *Articles 1, 2 and 3¹⁰* of the UN definition of Aggression and *Article 2 (4)*¹¹ of the U.N. Charter which states that no member state under the UN shall use threat or force, and in the light of the announcement of ideology of International Law relating to friendly relationships among States, it was apparent that the Israeli raid constituted a *prima facie* evidence of act of aggression against territorial integrity and political independence of Uganda.

IV. DEFENCE OF HUMANITARIAN INTERVENTION

Humanitarian intervention has been distinct as the justifiable act of use of force with the objective of protecting the persons of another State from handling that so arbitrarily abusive that exceed the limits within which the sovereign is supposed to have acted with reason behind

⁴ *International Law Association Sydney Conference: Final Report on Aggression and the Use of Force (2018)*.

⁵ *United Nations Charter (1945), Article 39*.

⁶ *United Nations Charter (1945), Article 2, Paragraph 4*.

⁷ *United Nations Charter (1945), Article 2, Paragraph 4*.

⁸ *United Nations Charter (1945), Article 3*.

⁹ *United Nations Charter (1945), Article 1*.

¹⁰ *United Nations Charter (1945), Articles 1, 2 and 3*.

¹¹ *United Nations Charter (1945), Article 2, Paragraph 4*.

logic and justice¹².

Israel's legal claim was that of the act performed was purely on *humanitarian intervention*. With the reference in **Article 2(4)**¹³ to the use of force against other state's territory is relied upon to support uses of force in circumstances that could be claimed as having other superior objectives such as *humanitarian intervention*. Although this principle was never used broadly under the UN Charter and was sceptical in the past. There are several debates and research papers have been accepting the right of humanitarian intervention as a generally recognized principle of customary international law, although in the pre-Charter period such right was relatively accepted but not clearly distinguished as humanitarian intervention motive. Example, The Major Powers of *France, Great Britain, and Russia* armed intervention against the *Ottoman Empire* to end massacres in *Greece* which resulted in the enforcement of the **1827 Treaty of London**¹⁴.

Article 5¹⁵ of the UN Charter suggests that since a war of aggression is a crime against international peace, it creates international responsibility which is why no consideration whether political, military or otherwise will serve as a permissibility justification for use of force. On the other hand, **Article 6**¹⁶ of the UN Charter indicates that nothing in the U.N. definition of Aggression can prejudice the use of lawful force. **Article 6**¹⁷ talks about the right to use force where it is lawful and within the scope of the Charter.

The specific provision of legitimate self-defense is provided in **Article 51**¹⁸ of the UN Charter that states that where an act of force has been conducted by a particular party in action of self-defense will be considered justified.

V. FORCE CONFINED ONLY TO NON-STATE ACTORS

Israel also argued before the Security Council that the use of force was confined only of the attack of non-state actors who deliberately were threatening the lives of its nationals and so

¹² Professor Solomon E. Salako, *Forcible Protection of Nationals Abroad and Humanitarian Intervention: Might or Right?*

¹³ *United Nations Charter (1945), Article 2, Paragraph 4.*

¹⁴ See Ganji, for discussion on Crimean War (Russia's unilateral intervention, 1853-54 see also; Franck and Rodely, *infra* note 113, 280-81.

¹⁵ *United Nations Charter (1945), Article 5.*

¹⁶ *United Nations Charter (1945), Article 6.*

¹⁷ *United Nations Charter (1945), Article 6.*

¹⁸ *United Nations Charter (1945), Article 51, "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense 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-defense 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."*

does not constitute to violation of State's territory integrity¹⁹. If this claim does not fall as use of force then it does not qualify within the scope of **Article 2(4) of the UN Charter**²⁰.

Article 2²¹ declares that whoever is the first to use of armed force in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression although the Security Council may in conformity with the Charter conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances including the fact that the acts concerned or their consequences are not of sufficient gravity. In the landmark legislative decision in the case of **Democratic Republic of Congo (DRC) vs Uganda**²², the **International Court of Justice (ICJ)** highlights the use of right of self-defence on operations with proportionality, however this judgment does not cover the vital issue on the subject of the circumstances within which the state can enforce this right against non-state actors.

VI. THE PROPORTIONALITY TEST OF LAWFUL COERCION AND AGGRESSION IN SELF-DEFENCE

As per the principle of the customary International Law the proportionality test exists to test the lawfulness of the use of force. "**Necessity** and **Proportionality**" are the *two testing elements* of coercion used in *self-defense*. However, **Article 51**²³ of UN Charter has not taken into consideration of the measure of necessity involved in claims of *self-defense*.

VII. UNWILLINGNESS TO PROTECT OTHER SOVEREIGN'S NATIONALS WITHIN ITS TERRITORIAL JURISDICTION

Article 2 (7)²⁴ of the UN Charter suggests that in case of terrorism or breach of peace there is an international expectation that States will be obliged to seek to prevent acts of terrorism within their borders. However, interpretation of disinterest of Uganda to do so during the Entebbe operation relates to the principle of **non-interventionism** unrelated²⁵.

VIII. APPLICATION OF THE ABOVE-MENTIONED PRINCIPLES IN THE ENTEBBE CASE

Based on factual review in the Entebbe incident and the discussion in the **UNSC** indicates that

¹⁹ Farin Mirvahabi, *Entebbe: Validity of Claims in International Law*, 17 MIL. L. & L. WAR REV. 627 (1978).

²⁰ United Nations Charter (1945), Article 2, Paragraph 4.

²¹ United Nations Charter (1945), Article 2.

²² DRC v CONGO [2005] ICJ Rep 168.

²³ United Nations Charter (1945), Article 51.

²⁴ United Nations Charter (1945), Article 2, Paragraph 7.

²⁵ Farin Mirvahabi, *Entebbe: Validity of Claims in International Law*, 17 MIL. L. & L. WAR REV. 627 (1978).

based on the self-defense right that is declared under **Article 51**²⁶ of the UN Charter and **Article 6**²⁷ of the UN Charter definition of *Aggression*, Israel had every reason to believe that the hostility in Entebbe were directed in opposition to it, consequently, Israel had to defend itself²⁸. Further, as a target State, Israel had to determine whether Uganda was unwilling or unable to release the hostages and to bring the hijackers before justice.

Assuming that *Uganda* in good faith tried its best to negotiate with the hijackers in order to save the lives of hostages, Israeli raid in accordance with **Article 2 (4)**²⁹ and the provisions of the UN definition of *Aggression*, undeniably will constitute to violation of international law under **Article 2(4)**³⁰ of the UN Charter. Therefore, Israel should be internationally held liable for damages done to Uganda. On the other hand, if hypothetically take into consideration of Israel's accusation of Uganda was without a doubt cooperating with the hijackers, Israeli raid was justified.

IX. CONCLUSION

The existing jurisprudential concept of '*use of aggression*' as *self-defense* has evolved from the classical theory of *self-defense* which is complex and confusing especially while having guaranteed every UN member country the right to *self-defense* under **Article 51** of the U.N. Charter. The primary question that still remains unanswered is whether right to self-defense on *humanitarian grounds* qualifies to be an exception to resort to war and if an anticipatory strike against global terrorism is an extension of doctrine of *self-defense* or not.

The defective existing state-centric system lacks grounded enforceability which gives liberty to nations to auto-interpret norms set by international law. The lack of jurisdiction would demoralize the norms for its individual nation's interests although **Article 2 (4)** of the U.N. Charter forbids armed intervention. The military rescue operation carried out by Israel at Entebbe is a classic example of auto- interpretation by states.

Even though the legal principle of forcible self-defense is well established under **Article 51** of the U.N Charter, **Article 51** does not provide essentials as to on which criteria self-defense is considered to be eligible.

Further, the choice of whether or not to follow or utilize international law is a political one. If there is a powerful world government or an international court with mandatory jurisdiction, the

²⁶ *United Nations Charter (1945), Article 51.*

²⁷ *United Nations Charter (1945), Article 6.*

²⁸ *Preethi Lolaksha Nagaveni, USE OF MILITARY FORCE IN PROTECTION OF NATIONALS ABROAD?*

²⁹ *United Nations Charter (1945), Article 2, Paragraph 4.*

³⁰ *United Nations Charter (1945), Article 2, Paragraph 4.*

current tendency of disobeying international rules and agreements will wane. If so, nation states will be liable to explain their use of force in the name of *self-defense*. Auto-interpretations of international law by states for their own convenience can be abated in this fashion.
