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THE USE OF FORCE DOCTRINE: HOW THE LEAGUE OF NATIONS FORGED THE MODERN INTERPRETATION OF USE OF FORCE?

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ABSTRACT

Under the ambit of international law, states are not permitted to threaten to use force nor can they use force against other states. This rule is mentioned under Article 2(4) of the United Nations Charter and is regarded as a peremptory norm. This prohibition on use of force is the most important obligation of the states under the international law. States being subject to international law enjoy both rights and obligations. Article 51 of the United Nations Charter gives the inherent right to the state to use self-defense. But while exercising this right the state can not infringe the rights of another State. As per article 51 of the United Nation Charter states are allowed to use force only in special circumstances but states continue to use the force under other circumstances as well. Before the establishment of the United Nations states were free to decide whether to wage war or not to wage war against one another. There was no regulation on the States for the use of force. The only guiding principle on the State was the moral consideration relating to 'just' war and 'unjust' war. Further the determination of 'justness' of the war was based on subjective interpretation. This allowed states to wage brutal wars against one another. United Nations after its establishment has been successful in dealing with the use of force by the states, but it faces criticisms. The criticisms that are faced by the United Nations Charter are that firstly whether the prohibition of use of force should only continue to be military use of force and secondly how should States deal with the non-state entities such as terrorism organizations which are not governed by the Charter rules.

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INTRODUCTION

The First World War led to disastrous consequences in the form of heavy causalities both soldiers as well as civilians. The Allies had 'won' as they had endured lesser losses than the Axis powers. France, USA and the British Empire rejoiced as they had been successful in pushing out the Germans from France over the course of three months. However, they were also weary of the human lives lost and the overbearing cost of the infantry offensives. The major European powers scrambled to establish peace and lay down systems which would prevent a war of this magnitude from breaking out again. President Widrow Wilson, the then U.S President, declared a set of definitions of principles for the major powers to follow to maintain peace. This led to the formation of the Fourteen Points which was the precursor to the formation of the new European Order. The Order brought together the major European powers to maintain individual national sovereignty and at the same time sought to maintain regional cooperation over issues which would concern the members of the Order. In one of his Fourteen Points, President Wilson called for a "general association of nations…formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.". Most of Wilson's points would require regulation and enforcement. He voiced the opinions of many maritime diplomats of the time who were for the creation of an international forum to resolve disputes and provide security to the members, to ensure peace. This led to the creation of the 'League of Nations' which was a very popular and widely supported initiative in the wake of the destruction left behind by The Great War. However, the most surprising development turned out to be the non-involvement of the US in an initiative which was endorsed by them. Wilson was unable to convince the US to join the League of Nations.

The notion of the League was rooted in broad, international revulsion against the unprecedented destruction of the First World War and modern grasp of its beginnings. This has been reflected in all of Wilson's Fourteen Points, which were themselves based on concepts of joint security and international organization debated amongst academics, jurists, socialists and utopians before and during the war.

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In international law the idea of "use of force" has always been concerned with relations between states, not concerning solely domestic use of force by a state authority against its civilian population. In international law, acts such as these can be driven by treaties on human rights and on the rights of minorities. Thus, addressing the use of force in international law relates only to a very specific field of threats to human life. In the twentieth century, war became a threat not only to the fighters but also to all mankind. Technological development has led to nuclear, biological, and chemical weapons with potentially devastating effects, thus not only erasing the line drawn by international humanitarian law between the military and civil objectives but also endangering all humankind. For a long time, the East–West conflict inserted this potential of mass destruction even into small armed conflicts.

RESEARCH QUESTIONS

1. Whether the failure of the League of Nations actually facilitated the modern interpretation of doctrine of Use of Force?
2. Whether it is binding on the Member States to follow the limitations laid on it by Chapter VII and Article 2(4) of the UN Charter?
3. Whether it is necessary to maintain a proportional balance between justice and security while enforcing the doctrine in a situation of armed conflict?

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CHAPTER I : EVOLUTION OF THE DOCTRINE OF USE OF FORCE

The doctrine of jus ad bellum or 'just war' had its roots much before the World Wars or the formation of the League or nations. It was just that these principles were not identified or named in the ancient times. In reviewing the history of the law relating to the use of force, legal scholars such as Prof. John Norton Moore have found that during particular times a certain normative orientation regarding the recourse to force predominated.[1] Following this model after finding it to be adequate, scholars have divided history into periods based on predominant normative orientation. As approximate and inaccurate this division may be, it aids scholars in understanding the historical changes that have occurred in the *jus ad bellum.* Six rough historical periods have been identified:

(i) The just war period
(ii) The positivist period
(iii) The League of Nations period
(iv) The Kellog-Brandt Pact period
(v) The United nations Charter period
(vi) The post United Nations Charter period

The earliest efforts to provide some sort of a framework for the recourse to force can be found in the earliest religious texts. There was the frequent mention of the 'holy war' approach. According to this approach, such recourse to force was deemed to be morally permissible when it was divinely ordained. Divine ordination was the only element that determined the permissibility of war. However, as time progressed there were efforts to formulate a fixed 'just war doctrine'. Under this doctrine, recourse to force was permissible only when the doctrine of 'just war' was satisfied. This doctrine espoused that there should be a 'just cause'. Divine sanction was not considered a *sine qua non* for recourse to force anymore.

Most of the classical writers like Aristotle criticized the nation states like Sparta of the time which were established for the sole purpose of prosecution of war. Aristotle was of the view that war

[1]Moore, 'Development of the International law of Conflict Management.' In J.Moore, F.Tipson, and R. Turner (eds) *National Security Law*47, 51-83 (1990).

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should be fought and advocated for a larger purpose or end of 'improving the lives of the people in the communities of the nation'. War should be fought only for the 'establishment of peace'.[2] He developed 'three ends' which would aptly justify the recourse to force and the waging of war.

(i) 'Preventing mean from becoming enslaved'. If this phrase were to be interpreted in the modern setting, it would mean self-defense.

(ii) 'Put men in a position of leadership. However, this leadership is to establish peace and stability and not to satisfy the ends of slavery'. This can be interpreted as meaning that leadership through which the people of the state at large can benefit and not a leadership that would establish a state of slavery for men.

(iii) 'Enable men to make the masters of those who naturally deserve to be slaves'. From a bare reading of this statement, it would seem that Aristotle has contradicted his previous admonition of slavery. However, it has to be understood in this sense that some people were cut out for the hard work of slavery. They can realize their full potential and productivity when they are subjected to that kind of a life. It would thus be just force to establish such a system over these people.

However, many of the scholars were of the opinion that the work of Aristotle was not of a juridical nature but of a moral nature. Frederick Russell notes[3] that 'Aristotle was not trying to define a *lawful* war but a *moral* war.'

Cicero was another noted classical writer of this age. He shared the vision of Aristotle that the purpose of war should be to establish peace. In *De Res Publica,* he argued that there were two 'just causes' for recourse to war: 'redressing an injury' and 'driving out an invader'.[4] He also contended that no war should be waged unless ' it is officially announced, it is declared, and unless a formal claim for satisfaction has been made.' Hence, this was a legal argument advanced by Cicero and war should be waged only when the procedural conditions are met.

[2] Aristotle, *The Politics:*317 (E.Barker ed. 1971)
[3] F. Russell, *The Just War in the Middle Ages.* 12 (1975)
[4] Cicero, On the Commonwealth, op. cit.: 217

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Augustine and Thomas Aquinas were some other prominent writers who tried to define the conditions, only on whose satisfaction, war should be waged. Augustine was of the contention that warm under some circumstances, should be 'just'. However, 'just' was not in a divine sense but in an earthly sense. Thomas Aquinas provided a systematic framework for the Christian just war doctrine. Aquinas argued that war can be just only upon the satisfaction of three conditions.

i) There should be a 'proper authority' to declare war. Private authorities were thought to be unworthy and did not possess the power to declare war.
ii) There should be the existence of 'just cause'. Aquinas was somewhat vague in his definition of 'just cause'. He quoted Augustine and argued that 'just cause was something that was waged to right a wrong or recapture a stolen property. Hence, the war should be fought to 'punish a nation who had failed to make amends or correct a wrong done by it'.[5]
iii) It was necessary for the state waging war to show the 'right intention'. Those fighting the war must be doing so to achieve 'some good' or avoid 'some evil'. War was not to fought out some malice , revenge or hatred.

When the medieval age came to and end, the doctrines of Aristotle, Cicero and the works of Augustine and Aquinas came to receive lass emphasis. There was a shift away from the theological aspects and an attempt was made to define the concept of *jus ad bellum* in manner that they would function even 'without the existence of God'.

The major requirements or the evolution of *jus ad bellum* can be highlighted through the following requirements of war that were formulated by Hugo Grotius in his work *De Jure Belli ac Pacis*

(i) It was permissible to use force to defend persons and property
(ii) The war should be undertaken by a lawful authority

Grotius also allowed for anticipatory self-defense. This was a first in international law as up to this point, no mention of this aspect had been made by any of the previous writers. Grotius also mentioned some 'unjust causes of war'.

[5] T. Aquinas, 'Summa Theologiae, Seconda Secundae,' op. cit.: 159

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These included 'a desire for richer land', 'a desire for freedom among a subject people', 'a desire to rule others against their will on the pretext that it is for their own good.'.

Hence, it can be seen that the evolution of the principle of *jus ad bellum* was through the concept of holy war, divine ordination and then there was the formulation of the just war concept which led to the formulation of some principles that were to be fulfilled for the recourse to force. The developments that took place post the medieval ages can be said to be reflective of the development of the epoch. This is because the status of the state or the 'sovereignty' of states came into being. The rulers of a state had supreme authority over their ruled territory and it also included command over their subjects. Hence, there would be no existence of a higher law or *priori* that could question the sovereignty or the authority of the states to protect their interests or do anything that was necessary to safeguard their independence and sovereignty. These developments in the concept of war and *jus ad bellum* served as the backbone and a precedent to the consequent developments and formulations that took place in the subsequent period.

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CHAPTER II : THE LEAGUE OF NATIONS AND KELLOG_BRANDT PACT PERIOD

Before analyzing the League of Nations and the effect and object of the treaty, it is important to analyze what constitutes an act of war and what would constitute 'war' or 'armed conflict' which would satisfy the requirements laid down in League of Nations or the requirements of the Treaty. Even though recourse to war was essentially unrestricted, a distinction was made between a full blown war and the use of force 'short of war'. A use of force short of war was a quick action that did not involve major commitment of forces. It took place in the absence of a declaration of war and was thus regulated by the international law of peace. Typical uses of force short of war include reprisals, and self-defense actions.[6]

Reprisals

A reprisal is an action that a state undertakes to redress an injury suffered during time of peace. It is an act that would normally be a violation of international law but not regarded as such when it is done in response to a prior unlawful act. Reprisals may or may not involve the use of force.[7] For example, if State A violated the provisions of an important treaty with State B, State B's termination of another treaty with State A could be regarded as non-forcible reprisal. On the other hand, if State B responded by shelling a naval base owned by State A, such action would obviously be forcible reprisal.

Over the course of time, customary law came to recognize certain requirements for a lawful reprisal. The classic enumeration of these criteria for a permissible reprisal can be found in the arbitral decision in the *Naulilaa* case. That case dealt with a German reprisal that occurred in 1914 against Portugal, which was not in a state of war with Germany.

[6] ROBERT.J BECK & CLARK ANTHONY AREND, INTERNATIONAL LAW AND THE USE OF FORCE.
[7] Sebastian Heselhaus, *International Law and the Use of Force* 9.

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The Arbitral Tribunal concluded that for a reprisal to be lawful, three conditions must be met.[8]

1) There has to be a previous violation of international law
2) The reprisal has to be preceded by an unsuccessful demand for redress.
3) The reprisal must be proportional to the injury suffered.[9]

Self-Defense

Another use of force short of war that came to be regulated during this period was self-defense. In this context, self-defense does not refer to a major armed attack. Such attack would constitute the initiation of a 'war' and place the injured party in a position where it could simply declare war for its responsive action to be permitted. Instead, self-defense here refers to a protective action aimed at another use of force short of war. It differs from a reprisal in that its purpose is not retaliatory but defensive.[10]

The most celebrated case that dealt with the conditions for permissible self-defense was the *Caroline* case. In 1837, a state of peace existed between the United States and Great Britain. There was, however, an armed insurrection taking place in Canada, and a ship owned by US nationals, the Caroline, was allegedly providing assistance to the Canadian rebels. On December 29th 1837, while the Caroline was docked on the American side of the Niagara river, Canadian troops on board the ship, killed several American nationals on board, set the ship on fire, and sent it over the Niagara Falls. Following an American protest, Great Britain claimed that its forces were acting in lawful exercise of its right of self-defense.

In the course of the diplomatic correspondence, two criteria for permissible self-defense were formulated: necessity and proportionality. First, for a state to be permitted to use the force of self-defense there must be a proven necessity. Secretary of State Daniel Webster explained to the British Foreign Minister that it would have to be demonstrated that the 'necessity of that self-defense is instant, overwhelming and leaving no choice of means, and no moment of deliberation'. Second, the response would have to be proportionate. The state must not only show the necessity

[8] *Id.*
[9] BECK AND AREND, *supra* note 6.
[10] N. MALCOLM SHAW, INTERNATIONAL LAW (Eighth ed.).

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to respond, it must also demonstrate that its actions were not 'unreasonable or excessive'. At the time, these two criteria were accepted by both of the parties and generally accepted under the customary international law.[11]

The use of force to collect contract debts

In addition to the regulations dealing with the use of force short of war that developed under the customary international law, there was one interesting treaty limitation imposed on a very specific use of force. This was the prohibition on the use of force to collect contract debts that was established by the second Hague Convention of 1907. In this Convention, the parties pledged 'not to have recourse to armed force for the recovery of contract debts claimed from the Government of one country by the Government of another country as being due to its nationals.' This restriction was, however, qualified. The Convention went on to provide that this prohibition on the use of force did not apply 'when the debtor State refuses or neglects to reply to an offer of arbitration, or, after accepting the offer, prevents any "Compromis" from being agreed on, or, after the arbitration, fails to submit to the award. Hence, the prohibition established by the Hague Convention was far from absolute.[12]

The League of Nations period (1919-1928)

In 1914, the liabilities of a system of self-help became obvious when the First World War began. Over the course of its four-year run, the war took a devastating toll. Twice as many people were killed during this relatively brief period than had been killed in all wars combined from 1790-1913. The 'Great War' was truly a war unlike any the world had known. Not surprisingly, when the delegates to the Paris Peace Conference assembled in the Palace of Versailles in the spring of 1919, one of their foremost concerns was to ensure that such a war should never again occur.

In the post-mortem following the First World War, the common belief was that the war had resulted from 'accidental' causes. Most statesmen felt that the war was not caused by the aggressive intent of any state, but rather that it resulted from a series of miscalculations and misinterpretations, exacerbated by the lack of procedural limitations on the recourse to war. As a

[11] Judith Gail Gardam, *Proportionality and force in international law*, 87 AMERICAN JOURNAL OF INTERNATIONAL LAW 391–413 (1993).
[12] BECK AND AREND, *supra* note 6.

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consequence of belief, the delegates to the Paris Conference sought to establish a new, global international organization, that, among other things, would provide the necessary procedural checks to prevent such a war form taking place. The League of Nations was thus established.

The League of Nations System and the recourse to war

Under the League of Nations Covenant, an elaborate set of procedures was established to restrict the recourse to force. First, under Article 12 signatories pledged to submit any dispute likely to lead to a rupture to arbitration or judicial settlement or to enquiry by the League Council. A dispute likely to lead to a rupture was presumably one that would have disrupted international peace and led to war. Second, Article 15 provided that if such a dispute were submitted to the League Council, and a report were adopted unanimously by the members of the Council that were not parties to the dispute, the disputants were under an obligation 'not to go to war with any party to the dispute which complies with the recommendations of the report'. Article 13 imposed the same obligation in cases in which there was an arbitral or court decision. Hence a State could never undertake a war against another state if the second state were abiding by the decision of the dispute resolution body. Third, Article 12 provided that the parties 'agree in no case to resort to war until three months after the award by the arbitration or the judicial decision or the report of the Council.' This meant that even if the one side did not comply with the report of the Council, or the decision of the arbitral tribunal or court, the other side was required to wait at least three months before it could go to war. The Covenant imposed a cooling off period.[13]

The procedure while clearly imposing significant restriction compared to the pre-League regime, nevertheless left open substantial rights to take recourse to force. First, if there were no decision by the arbitral body, court, or the League Council, there would be no obligation to refrain from the use of force.

Second, if there were a decision by the Council, states would be obliged to refrain from going to war against a state complying with the decision of the settlement body. If, however, one party were not following the decision, the other party could take recourse to war after waiting for 3 months.[14]

[13] VAUGHAN LOWE & COLIN WARBRICK, THE UNITED NATIONS AND THE PRINCIPLES OF INTERNATIONAL LAW: ESSAYS IN MEMORY OF MICHAEL AKEHURST.
[14] BECK AND AREND, *supra* note 6.

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The arbitral or judicial decisions were the only definitive checks on the recourse to war that existed in the League Covenant. There were also provisions of the Covenant that were more restrictive of the rights of the state to use force. Article 10 of the Covenant meant that the League was to protect the territorial integrity and political independence of states from aggression. It seemed, thus, to imply that 'aggression' was prohibited. However, if Article did prohibit aggression, it would seem to contradict the provisions of the Covenant above which allowed for recourse to war under certain circumstances. Hence, this was a huge loophole in the Covenant of the League of Nations that was exploited by the various member states who could go to war unchecked.

THE KELLOG_BRIAND PACT PERIOD (1928-1939)

Nature of the Pact

An effort was made in addition to the Covenant to impose further restricts on the recourse of war and to regulate the rights of the states to go to war. This was the Treaty Providing for On the Renunciation of War as an Instrument of National Policy, referred to as the Kellog-Briand Pact.

Under the Kellog-Briand Pact, the signatories declared 'in the names of their respective peoples that they condemn the recourse to war for the solution of their international controversies, and renounce it as an instrument of national policy in their relations with one another.' They further agreed that the settlement of the disputes that arose between them would be only thorugh peaceful means. Hence, unlike the Covenant of the League of Nations that provided for recourse to war in special circumstances, the Kellog-Briand Pact outlawed it completely. The text of the Pact nowhere provides for any exception to this general prescription. It was generally recognized by the parties to the pact, however, that the recourse to force would be permissible in the case of self-defense. A number of states, including the United States, presented diplomatic notes prior to the coming into force of the Pact indicating their understanding that wars launched in self-defense would be lawful. It is also interpreted that war would be permissible when it was authorized by the League Council in accordance with the provisions of the Covenant. Such force would constitute war as an 'instrument of national policy'.

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The problems with the Kellog-Briand Pact

Despite the advances made by the drafting of the Kellog-Briand Pact, it still suffered from several loopholes and disadvantages. The Pact only explicitly outlawed 'war'. It did not impose any restrictions on use of force short of war. Once again, the regime that existed in the pre-League period dealing with the use of force continued to apply. Second, since the Kellog-Briand Pact did not define self-defense, many states made explicit statements indicating that they reserved the right to take recourse to war in the exercise of self-defense. However, many important questions such as the nature of questions that gave legitimacy to the right to recourse to war or what constituted an action that gave merit to the recourse to war due to self-defense were not answered by the Pact. Third, the use of the word 'national policy' in the Pact opened the possibility that other motivations for the recourse to war might be legal. Conceivably, states could claim that religious, ideological and similar goals were valid motivations to go to war.[15]

The Kellog-Briand Pact in practice

The Kellog-Briand Pact did little to stop the aggressive powers that brought about the Second World War. However the Pact did play an important role in the interwar development of *jus ad bellum.* It led to further efforts to reaffirm and refine the sequences of the Pact's obligations. During the interwar period, numerous treaties were concluded that reiterated the obligation to refrain from aggressive war. Such agreements included several 'non-aggression pacts' and the 1933 Convention on the Definition of Aggression. Many scholars, diplomats and statesmen referred to the Kellog-Briand Pact as a legally binding instrument to stop recourse to war.

Countries like Germany, Italy and Japan were condemned for violations of the Pact for as late as 1941, when the war was at its peak. Despite the failure of the Pact to prevent the war, the idea of prohibiting aggressive war had been indelibly planted in the minds of the modern world leaders.

[15] FRANCIS GRIMAL, THREATS OF FORCE: INTERNATIONAL LAW AND STRATEGY (1 edition ed. 2014).

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This idea would surface again after the war in the form of Article 2(4) of the Charter of the United Nations.

CHAPTER III : ARTICLE 2(4) OF THE UNITED NATIONS CHARTER AND ITS USE IN CONTEMPORARY INTERNATIONAL LAW

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As per ***article 2(4)*** of the Charter of the United Nations:

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

Article 2 (4) is the essential ingredient of the UN Charter as it provide a better collective security system. But its interpretation is still debated since certain terms of the Article has not been explained properly. The scope of prohibition of "the threat of use of force" is not precisely given.

From the drafting of the League of Nations Covenant, every effort to limit the jus ad bellum has necessarily been accompanied by efforts to solve the structural problem. The U.N. Charter clearly identified the structural defect of the international political system and created a network of institutions and procedures to deal with it. Rather than standing by itself, article 2(4) was part and parcel of a complex collective security system, more aspiring than its predecessors and grounded in the political realities that prevailed at the time of drafting. The Charter established a Security Council on which the members of the United Nations conferred "primary responsibility for the maintenance of international peace and security" (article 24(1)). The Charter regime authorized the Council to "determine the existence of any threat to the peace, breach of the peace, or act of aggression" and to recommend or decide appropriate measures to maintain or restore international peace and security (article 39). When the Council exercised this competence, all members of the United Nations were bound "to accept and carry out the decisions of the Security Council" (article 25). The measures available to the Security Council to implement these decisions ranged from those not involving the use of armed force to those involving positive coercion through the military instrument. This was to be effected by calling upon national units which were to be made available to the Council by special agreement.

A Military Staff Committee was established to advise the Council. Thus, the Charter contemplated collective and effective U.N. execution of Council decisions maintaining or restoring international peace. Consistent with this new centralized international enforcement agency, the justification of

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unilateral resort to coercion by states should have disappeared. Hence article 2(4) quite logically prohibited it in the most general terms as a basic principle of the Organization. As a corollary, article 2(5) affirmed the commitment of member states to lend assistance to the United Nations and to refrain from assisting states "against which the United Nations is taking preventive or enforcement action."

Meaning of Force

There is an ongoing controversy regarding the meaning of 'force' under Article 2(4) of the Charter. This debate arose because of the absence of the adjective 'armed' before 'force' in the provision. The question which arises is whether Article 2(4) envisages any other types of force like economic sanctions in addition to armed force. Basic understanding is that only military force is prohibited under Article 2(4). Those who are support this position has given two main reasons. The first reason is that since United Nations was formed after the Second World War in response to the grave violence and atrocities, the force referred to in the provision means the kind of force which was used during the world war, which was only military force. Psychological or economic pressure does not come within the purview of Article 2(4) unless coupled with the use or the threat of force.[16] Secondly, refusal of one State to trade with another was not considered a violation of international law. Consequently, only military forces were prohibited not any other sanctions in 1945 and that position has not changed till date. Even though only military force is prohibited under Article 2(4), it has been made clear by the United Nations that economic aggression is also not acceptable when used to coerce other states.[17]

Threats of Force

A threat of force is a form of coercion.[18] It is not required under that the international law that a state must have the capability to deliver its threat, or that a threat is coupled with any concrete demand before such a threat can be considered unlawful. Threat is unlawful under Article 2(4) and

[16] Dinstein Y.," War, Aggression and Self Defence", Cambridge University Press, Cambridge, 2011. Available at http://catdir.loc.gov/catdir/samples/ cam031/00045554.pdf [accessed on 30th October 2017]
[17] UN General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 24 October 1970, A/ RES/2625(XXV), available at: http://www.refworld. org/docid/3dda1f104.html
[18] Romana Sadurska. "Threats of Force." The American Journal of International Law, vol. 82, no. 2, 1988, pp. 239–268. JSTOR. Available at www.jstor.org/ stable/2203188.

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the force used for threatening would also be illegal when used. An illegal threat can cause only an unlawful force and vice versa.

Refrain in their International Relations

Use of force by one State against another is prohibited but not force used by State within the territory. The reason for the limitation under this provision can be given as the principle of sovereignty and territorial integrity which States continue to guard. No interfere should be allowed with the internal affairs of any state neither by any other state or by United Nation, and this has been time-honored principle of international law. However, contemporary international law sees the reliance on sovereignty shifting in favor of other critical principles, such as those relating to human rights and self-determination. Sates often argue that they are free to use force to resolve their internal problems within their territory since Article 2(4) only covers international relations. There are several problems with the arguments proffered by States in favor of using force within their territories. Firstly, the UN Charter states that states are supposed to settle their disputes peacefully. Evidence suggest that use of force in one's territory results in equal or even worst impact on a whole region rather than on State attacking another. Also, whenever States argue that they use force only to deal with internal problems, they automatically assume that such use of force is legal and that disputes can be purely domestic. In fact, As per Article 2(7) of the UN Charter, UN is not allowed to interfere in matters occurring within the domestic jurisdiction of its member States.[19] Another problem with this argument of use of force internally is that whenever States argue for the use of force to deal with internal matters, they assume that it is always possible to characterize conflicts as either internal or international.[20] Similarly, by using force to capture a territory, a State assumes that the territory is, in law, its own. Thus, claims by the UK and Argentina over the Falkland Islands, and India and Pakistan over Kashmir all overlooked the important fact that, at the time such force was used; none of these States had undisputed title to the concerned territory.

[19] Edwin W. Patterson, "Hans Kelsen and His Pure Theory of Law", 40 Cal. L. Rev.5. 1952. Available at: http:// scholarship.law.berkeley.edu/californialawreview/ vol40/iss1/2
[20] Weller, Marc. "The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia." The American Journal of International Law, vol. 86, no. 3, 1992, pp. 569–607. JSTOR. Available at www.jstor.org/stable/2203972.

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Territorial Integrity and Political Independence

There is an argument regarding the interpretation of prohibition in Article 2(4). Some support the narrow interpretation which would mean that more cases will fall within the realm of legality; while others think that it should be interpreted as widely as possible, so that fewer cases will be considered legal under the provision. A permissive view in the present context implies that any force that does not result in permanent loss of any part of a State's territory does not violate its territorial integrity. A broad interpretation suggests that the purpose of the phrase is not narrow the scope of the prohibited force; rather, "it is an assurance that the threat or use of force will not be permitted under any circumstances, except as allowed by the Charter".[21] In practice, this interpretation mainly arise whenever a States use force to rescue their nationals from abroad, or they use force for democracy in other countries, or they use force to prevent humanitarian tragedies. None of these instances is explicitly recognized by the United Nation Charter as constituting lawful use of force, no matter how charitable the motive might appear. The operative paragraph 23 of Friendly Relations Declaration, 1970 states that- ..

"*No State or group of States has the right to intervene, directly or indirectly, for any reasons whatever, in the internal or external affairs of any other State. Consequently armed interventions and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are in violation of international law.*"[22]

The reference to 'any reasons whatever' is broad enough to cover such motives as humanitarian interventions, protection of one's nationals, and any other reasons on which a State may want to rely as a justification for the use against another State.

Inconsistent with the purposes of the United Nations

Under Article 2(4) of the United Nation Charter, no State can use force in any other manner inconsistent with the purposes on the United Nations. States sometimes argue that they use force

[21] Stone J., "Aggression and World Order: a critique of the United Nations Theories of Aggression", University of California Press, California, 1958. Available at https://ia800304.us.archive.org/1/items/aggressionworldo00ston/aggressionworldo00ston.pdf
[22] UN General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 24 October 1970, A/RES/2625(XXV), available at: http://www.refworld. org/docid/3dda1f104.html

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in-order to protect human rights or prevent humanitarian tragedies and this is why it is not inconsistent with the purposes of United Nations. Since one of the main purposes of the United Nations is to prevent humanitarian tragedies, using force to prevent a State from violating its citizens' rights or destroying their lives is perfectly inconsistent with Article 2(4). Since the Charter does not recognize humanitarian intervention, such action is illegal unless it is authorized by the Security Council. In other words, humanitarian intervention can become a pretext for meddling in the internal affairs of other states.

Exceptions to the Prohibition of Use of Force

The United Nations Charter provides for exceptions to the prohibition on the use of force:

● States can use of force in self defence (Article 51)

● United Nation Security Council authorized forces commonly called 'collective security' for maintaining peace and security.

● States can use force against former enemy States (Article 107) Article 107 permits UN member State to attack one of the former enemy States if the UN member State believed that the former enemy was renewing its policy of aggression. However, since all former enemy States are now UN members, Article 107 is regarded as a dead provision. Article 2(4) of United Nation Charter prohibits unilateral use of force or force not used in self defence.

Interpretation of Article 51 of UN Charter

The United Nation Charter does not define the term 'armed attack'. Attack of one territory by the regular forces of another state by land, sea or space is usually considered as armed attack. But it is often debated that whether armed attack can only be levied by regular forces. The International Court Justice defined armed attack as "an attack that occur on a significant scale by armed bands or groups on behalf of a state as to amount to an actual armed attack conducted by regular armed forces or its substantial involvement therein".[23]

[23] Nicaragua v. United States of America 1986 ICJ REP

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The International Court of Justice in the Hostages case had used the term armed attack with regard to "the actual storming of the embassy and the hostage taking of its personnel". Since the International Court of Justice work in a consistent manner, it is to be believed that armed attack in the cases of Nicaragua and Hostages would come under the scope of Article 51 of the United Nation Charter. Hans Kelsen stated, "An attack as meant under article 51 UN Charter consists of an actual armed attack by one State against another". Non-state actors were not considered under article 51 at that time. Under Article 2(4) it is not explicitly stated that non-state actors are forbidden from using force and hence such force used by non-state actors cannot create right to self defence under Article 51. Therefore Article 51 is not available in case of terrorist attacks. But the self-defense right against terrorist attack can be used under customary law. Customary right of self-defense comes under the United Nation Charter by the use of the terminology "inherent right" under Article 51.

Case Laws

1. Oil Platforms (Islamic Republic of Iran v. United States of America)[24]

"On 2 November 1992, the Islamic Republic of Iran filed in the Registry of the Court an Application instituting proceedings against the United States of America with respect to the destruction of Iranian oil platforms. The Islamic Republic founded the jurisdiction of the Court upon a provision of the Treaty of Amity, Economic Relations and Consular Rights between Iran and the United States, signed at Tehran on 15 August 1955.

In its Application, Iran alleged that the destruction caused by several warships of the United States Navy, in October 1987 and April 1988, to three offshore oil production complexes, owned and

[24] 6th November 2003

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operated for commercial purposes by the National Iranian Oil Company, constituted a fundamental breach of various provisions of the Treaty of Amity and of international law (…)"

To uphold the claim of Iran, the Court held that it must be satisfied both that (1) the actions of the United States, complained of by Iran, infringed the freedom of commerce and navigation between the territories of the Parties guaranteed by Article X (1), and (2) that such actions were not justified to protect the essential security interests of the United States as contemplated by Article XX (1) 1 (d). NB: Article XX (1) (d) states: "The present Treaty shall not preclude the application of measures: necessary to fulfill the obligations of a High Contracting Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests."

2. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory Advisory Opinion[25]

"(…) (T)he General Assembly decided to request the Court for an advisory opinion on the following question: "What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the Report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions ?" (…)

Turning to the question of the legality under international law of the construction of the wall by Israel in the Occupied Palestinian Territory, the Court first determined the rules and principles of international law relevant to the question posed by the General Assembly. After recalling the customary principles laid down in Article 2, paragraph 4, of the United Nations Charter and in General Assembly resolution 2625 (XXV), which prohibit the threat or use of force and emphasize the illegality of any territorial acquisition by such means, the Court further cited the principle of self-determination of peoples, as enshrined in the Charter and reaffirmed by resolution 2625 (XXV).

[25] 9th July 2004

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The Court then sought to ascertain whether the construction of the wall had violated the above-mentioned rules and principles (…)

… The Court concluded that Israel could not rely on a right of self-defence or on a state of necessity in order to preclude the wrongfulness of the construction of the wall, and that such construction and its associated régime were accordingly contrary to international law (…)

It further stated that it was for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination be brought to an end.

CONCLUSION

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United Nations was formed to avoid the tragedies of war. The main purpose of the UN is to promote peace and security among the member States. Article 2(4) prohibits use of force under and Article 51 is an exception to Article 2(4). Though both the articles provide the circumstances under which force is prohibited and force can be used, but still it is not void of ambiguities. The UN Charter is silent as to the role of non-state actors in use of force. Expanding the scope of Article 51 may lead to the degradation of the fundamental purpose of the United Nation which is to promote peace and security among the member nation and world. Expanding the scope of Article 51 may lead to uncheck use of force by States in pretense of their self defense.

1)The League of Nations was founded primarily to prevent the outbreak of another World War and the object of the organization was the peace and security of its member nations. It emanated from President Wilson's Fourteen Points and his endorsement of attaching the League of Nations Covenant to the Versailles Treaty, signed immediately in the aftermath of the I World War.

2)The First World War and the subsequent failure of the Western Powers to maintain peace, stability and social equity in the subsequent decade led to the outbreak of the Second World War. The failure of the League of nations had a domino effect in the souring of international relations and led to the rising of the autocratic forces who went on to dictate the direction of the "dark decade" of Nazism and Fascism.

3)The doctrine of use of force has gained eminence as a central principle and cornerstone of modern international law. It is an attempt on the part of the international community to balance the interests of justice and security, who often seem to be at loggerheads with each other.

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