
REDEFINING SELF-DEFENCE: CONTEMPORARY CHALLENGES TO ARTICLE 51 OF UN CHARTER

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ABSTRACT

The right to self-defence has always been a part of the society, after the formation of UN Charter right got refined when it was inserted as article 51 in the Charter. The United Nations Charter embodies many important and key provisions for maintenance of international peace and security since its inception. Article 51 being one of those key elements keeps in check that no state violates the territory and sovereignty of the other nation and also gives the right to the victim state to protect themselves during an armed attack while also maintaining the international law's integrity by providing aid to the victim state after the state reports the matter to the security council. Article 51 provides an exception to the general provisions of the international law of prohibition on use of force. This provision has been in debate and in controversy for many states because of the misuse of the right of self-defence and also the emergence of non-state actors such as terrorist organisations as a threat to the security and integrity of nations and their retaliation towards them.

In this evolving world article 51 seems a little redundant with new technologies like autonomous weapon system and cyber warfare are emerging as new ways to combat between nations and increasing complexities and posing greater challenges. After the 9/11 attack on United States, the action on ¹Yemeni Arab Republic by Britain in 1964, the 26/11 attack on Mumbai and the recent Pahalgam attack in Srinagar, India somewhere dials down the importance and effectiveness of security council and the Article 51, where attacks took place and the international law took a back seat and didn't have a strong mechanism to stop these atrocities. UN Charter needs to evolve and implement some new and enhanced provisions and mechanisms to deal with conflicts of 21st century.

¹ Art. 51, Repertory, Suppl. 3, vol. II (1959-1966)

INTRODUCTION

UN Charter came into force in 1945 after the devastating end of World War II. The charter came with new rules and regulations and redefined ways to bring peace and security to the world; it aimed to do a better job than its predecessor “the league of nations”.

Article 51 amongst other provisions is a key rule or factor to bring international peace and security between the states. Given under chapter VII of the Charter, it allows states to use military force as a self-defence towards an armed attack on the state. It clearly states that "Nothing in the present Charter shall impair the inherent right of individual or collective selfdefence 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.” Self-defence is an inherent nature of individuals or a nation so, the framers of the Charter did not intend to impose any new limitation to this traditional right rather they only wanted to secure the already existing customary international rule. Hence this article came into view

Although this measure has to be taken as a temporary resort till the security council takes necessary measures to tackle the situation on its own. The provision of article 51 has to be exercised within international norms and in compliance with other principles of law such as well-founded and rational reason of invoking it and in correlation to the amount of attack that occurred on victim state, the states in today’s era don’t necessary comply with these terms and conditions. This article plays an important role in balancing the basic principles of international law of maintaining peace by prohibition of use of force and state’s right to protect their sovereignty during an armed attack.

Since its inception article 51 has been invoked plenty of times, sometimes rightfully and sometimes illicitly. This provision has been so widely misused that now the essence of the provision almost feels lost and it has become a child’s play to invoke article 51 for the petty and sometimes non-existent reasons to avenge or escalate tension between states. The recent example of misuse of this provision can be seen in the ongoing wars of Russia and Ukraine, Israel and Palestine.

Another example of the violation of right of self-defence would be when ²United States invaded Afghanistan in 2001 without any armed attack by Afghanistan.

ARTICLE 51: USES AND MISUSES

The right of self-defence has been used and misused a lot during the course of time in history. The first or the foremost case involving article 51 would be the ³Caroline case of 1837 where the Canadian rebels burned and destroyed the ship Caroline owned by the US during its travel in the name of self-defence. This incident was seen as a violation of the principle of selfdefence as the ship posed no real threat.

This case became the norm for the right of self -defence and various tests were laid down for self-defence under article 51 of the UN charter.

Another case for self- defence would be the Nicaragua V US case, where the US was found guilty for supporting the Nicaragua rebel forces to overthrow the then government and providing them weapons. This act of US was criticised by the ICJ and US was asked to make reparation to the Nicaragua for its intervention in Nicaragua and rejected its plea of selfdefence.

Another incident would be the attack on American embassy attack in Iran. In 1979 the US embassy was attacked and the Americans inside were held as hostages by the Iranian people, and the Iran government took no measure to secure the hostages or the embassy and just witnessed it as a bystander.

A recent incident of right to self-defence would be the “operation sindoor” by the Indian army in Pakistan on the terrorist camps and headquarters in may 2025, this was done in response to the terrorists attacking the Srinagar area of India and killing 26 tourists. It would also be important from the aspect of armed attack by the non-state actors and the state’s harbouring those non state actors.

ROLE OF NON-STATE ACTORS

Non-state actors the organisations that are not actually states and are not internationally

² <https://iadllaw.org/2022/06/serial-us-violations-of-the-un-charter-marjorie-cohn/>

³ Sang, Nguyen. (2018). The Caroline Affair and the Diplomatic Crisis between Great Britain and the United States, 1837–1841. *Państwo i prawo: organ Zrzeszenia Prawników Demokratów w Polsce*. 8. 73-83.

recognised. These can be armed groups, terrorists, religious organisations or groups.

⁴Armed attack by the non-state actors have been a growing issue around the globe, the attacks by the non-state actors have been increasing day by day, from the 9/11 attack by al-Qaeda in the United States to the 26/11 attack in India and now the recent killings of the tourists in the Pahalgam town of Srinagar, India, these attackers know no boundary and religion and states are exercising their right against these terror groups to retaliate and protect themselves.

The provision of article 51 does not specify the “armed attack” definition, does it include states and non-state actors or is it specifically to be used under the attack by a state on another state. The criteria is not clear, earlier if a country was attacked by a terror group it would not amount to invoking article 51, however a change has been seen in the interpretation of it by the international law specially after the 9/11 attack by the al-Qaeda and non-state actors attack on states can invoke article 51 of UN charter and states can now retaliate and protect their territory, a clearly defined example of it would be the killing of Osama bin Laden by the US forces in 2011 in Pakistan.

REFORMS IN ARTICLE 51

According to today’s changing world when wars and conflicts happen within the blink of an eye, the International Law needs to be updated with every situation and needs to change so that it can comprehend and incorporate any and every challenge that comes its way.

Article 51 is a comprehensive provision in itself and had the ability to incorporate within itself every conflict in the earlier times, however in this ever-changing world where technology has grown so much that drones and cyber-attacks are now being utilised as a war weapon, Article 51 also needs to incorporate these upcoming changes to better protect the nations. Some of these reforms can include:

Armed attacks by non-state actors: The wordings of article 51 clearly implies that armed attacks should be done by other states, it does not involve non-state actors like cross border terror groups or private armies that attack other nations. Attacks such as 26/11

⁴ Zarei, M. H. & Azar Safari. (n.d.). The Status of Non-State Actors under the International Rule of Law: A Search for Global Justice. In *Chapter 13*.
https://www.culturaldiplomacy.org/academy/content/pdf/participantpapers/2014-04-lhrs/Dr_Zarei_and_Azar_Safari_-_The_Status_of_Non-State_Actors_under_the_International_Rule_of_Law-_A_Search_for_Global_Justice.pdf

and 9/11 clearly shows the need to include non-state actors and the amendment of the definition of article 51, so that nations can protect themselves against such aggravations.

Cyberattacks as a form of armed attack: cyber warfare has emerged as a new tool for nations to attack another without raising guns or missiles to shoot, these attacks sometimes prove more fatal than those with guns as these cyberattacks can damage the basic functioning of a nation and stop essential services like hospital and can invade and get valuable military intel of a state. These attacks are vast in nature as compared to those with weapons and article 51 needs to amalgamate these changing circumstances of cyberwarfare.

Include threat of attacks as well: In a world of advanced and autonomous weapon system, threats to attack a nation should also be taken seriously, as we now live in a world where almost every other nation has nuclear power and can destroy the other states within the blink of an eye. So, when there is a clear and evidentiary threat made to a nation, there should be some mechanisms to address that and not to just sit idly and wait for the attack to happen so that the victim state can then address the attack and count casualties.

Methods to tackle misuse: through time and again we have seen the misuse of this provision. States manipulate the provision of self-defence for their own personal agenda and then blame it on the other nation and invoke article 51. UN should make an independent regulatory and review body or panel to check for this so-called invocation of article 51 within a stipulated time frame so that if any misuse happens it can be stopped before any further escalation happens.

Extent of self-defence: there should be some mechanism that calculates the extent and scale of retaliation in the name of self-defence that a nation undertakes after an armed attack has happened to it. States should not be allowed to reign a free will on the retaliation done to the other nation and the extent of self-defence should be within the clearly defined terms of proportionality and reasonability.

CONCLUSION

Article 51 is one of the foundational articles of the United Nations charter and certainly one of

the most important ones to ensure international peace and security. However, when the UN Charter was formed in 1945 post-World War II the world was at a different stage than now and technology was not so advanced as it is today. In the wake of autonomous weapon system and cyber warfare and drone attacks using artificial intelligence, the world has evolved and so should the international laws. These international laws should incorporate the new and advanced ways of warfare and should make mechanisms for stronger accountability and protection of the nation states. Article 51 now seems a little redundant in the 21st century and its practical applicability has decreased many folds. A balanced approach is needed which incorporates the basic principles with a new way to deal with international conflicts.