

WEAPONIZING SELF-DEFENCE: ARTICLE 51 IN THE RUSSIA–UKRAINE CONFLICT

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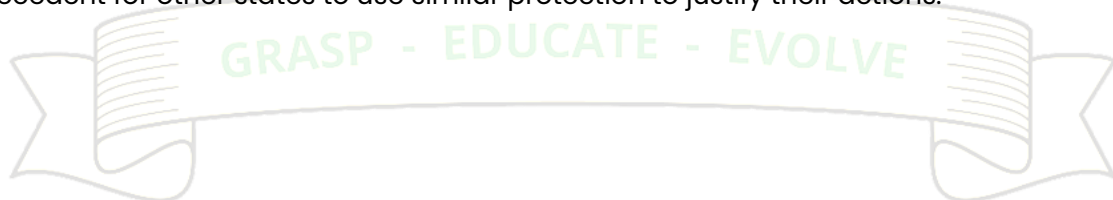
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Abstract :

Weaponisation of self-defence in the Russian-Ukrainian conflict 2014-2025. This highstakes postmortem carries out the "legal gymnastics" of Article 51 of the UN Charter throughout the friction between Russia and Ukraine for over a decade. An exceptional, narrowly drafted words of art 51 of un charter is being weaponised by being overused or invoked under the legal cover of "rule based order". In this article, we delve into the concept where the states or policy makers repeatedly invoke "the emergency exceptional clause" pass round the given rules when it suits their interest, diluting its core concept to advance geopolitical goals⁸²⁵ Now we are not just going to check "black letter" boxes alone, i.e not just sticking around the narrow, formal legal text. Instead, how the law actually made, it looks and function after a prolonged period of intense warfare. Decoding how the scholars, courts, and states have interpreted Article 51 its connection to art 2(4), the Security Council, and doctrines such as necessity, proportionality and imminence.⁸²⁶ LETS SET ASIDE THE ORIGINAL 1945 interpretation of art 51 and delve into the concept of the contemporary misuse of the real intent behind art 51⁸²⁷. we are not just staying around the text books, but Looking into the deep, where the two complicated concepts selfdefence and collective self defence prevails. The Paper Trail: 2014–2025 The heart of this research paper is a detailed step by step evaluation, of what countries actually practice and opino juris by analysing the U.N. official documents from "Dear Mr. Secretary General" letters, UN Security Council (UNSC) transcripts, General Assembly resolutions to trace how the legal vibe has changed between 2014 to now. The 2014 kingpin: decoding how Russia's illegal takeover of Crimea resulted in a tragic precedent for other states to use similar protection to justify their actions.



⁸²⁵ <https://www.lowyinstitute.org/theinterpreter/abandoningrulesbasedordernosolution>

⁸²⁶ https://en.wikipedia.org/wiki/Selfdefence_in_international_law

⁸²⁷ <https://www.justsecurity.org/72177/theunchartersoriginalaffectonstatesovereigntyandthuseofforce/>

Introduction

The UN was created in 1945 after the great destruction caused by world war II, and plays a vital role in preventing world war through diplomacy, peacekeeping and collective action. The UN was established as the result of second world war, which is against unprecedented sufferings of human, largescale destruction, with the ultimate motive of preventing such catastrophic global conflicts through collective security, peaceful settlement of disputes and international cooperation.

At the heart of the post 1945 international order, the UN charter serves as central treaty based framework governing the international use of force by States by setting up clear legal limits providing the essential condition when and how states can use force.⁸²⁸ The heart of the UN charter is art 2(4), prohibits UN member States from using or threatening force against other country's border or political independence⁸²⁹. As art 2(4) treated as the central pillar of post 1945 order, over the years it becomes the foundation of modern international legal system after 1945⁸³⁰. Thus by prohibiting the normal use of force against another states to achieve their foreign policy, most commonly the wars of aggression. Thus by reshaping the core goal of UN member states to maintain peace and the non use of force. The charter doesn't makes the complete ban on the use of force to its member states is not absolute like our fundamental rights under Indian constitution rather than provides reasonable exceptions under art 51 which gives life to self defence. Thus art 51 serving as the inherent right to self defence when an armed attack or use of force occurs. The verdicts of icj (International Court of Justice (ICJ)) makes it clear that this right can be invoked only when a genuine armed attack⁸³¹ takes place, instead of bare

threats. The necessity and proportionality are the essential doctrines that must be satisfied to invoke self-defence legally, principles often traced back to 1837⁸³² Caroline incident. Charter also places the procedural duties on the states, which is mandatory to inform UN Security Council of any act they undertake in respect of that armed conflict.

The evolution since 1945 to this contemporary era has changed a lot over years, as to how the law needs to be interpreted by states. The core legal debates focuses on the 3 issues i.e. anticipatory self-defence, collective self-defence and the response to non state actors on another state's territory. These issues were addressed by the rulings of the ICJ in the case "Armed Activities on the Territory of the Congo"⁸³³. It has both supporter: who says the expansion of the interpretation of self-defence is a necessary adaptation, whereas other scholars criticise that it may limit⁸³⁴ the strict rule of charter. The Russian-Ukrainian conflict gives the present situation, how the art 51 was interpreted in this era. After 2022 the invocation of art 51 becomes an usage, in which the states follows the mandatory procedure by communicating to UN seeking to justify the use of force and military assistance.⁸³⁵

The controversial legal arguments were relied on self-defence to justify and legitimate their armed attack and collective arrangements as self-defence. This recent evolution of usage of self-defence invoked serious issues of the validity of self-defence as they were used strategically just to justify their geopolitical objectives. So here comes our title why the word "weaponization" of self-defence is used lawful.⁸³⁶ Against this backdrop, this paper undertakes a critical legal analysis of Article 51 invocations in the Russia-Ukraine conflict.

⁸²⁸ UN Charter, 24 October 1945.

⁸²⁹ UN Charter, Article 2(4)

⁸³⁰ UN Charter, Article 51

⁸³¹ Correspondence between US Secretary of State Daniel Webster and Lord Ashburton (Caroline Incident, 18

⁸³² UN Charter, Article 51 (reporting requirement

⁸³³ Armed Activities on the Territory of the Congo (DRC v Uganda) [2005] ICJ Rep 168

⁸³⁴ Christine Gray, International Law and the Use of Force (4th edn, OUP 2018)

⁸³⁵ UN Security Council Letters under Article 51 relating to Ukraine (2022 onwards)

⁸³⁶ Tom Ruys, 'Armed Attack and Article 51 of the UN Charter' (Cambridge University Press 2010).

It checks how the use of self-defence complies with three key legal conditions the necessity, proportionality and reporting obligation. It examines whether the recent expanded understanding of self-defence reflects genuine legal interpretation or strategic reinterpretation.

6.1 Returning Article 51 into its True Perspective.

The Russian-Ukrainian conflict showcases the real threat to international not just the use of force unlawfully, but the real threat is misinterpreting the law, resulting in the ultimate misuse of defensive rights. But if a nation comes under attack, it can defend itself, though such actions must be carefully reported to the Security Council. Any counterattack must be reported to the Security Council, as provided under Article 51. But in today's world Article 51 of the UN Charter is highly misused. When it comes to geo political conflict the intensity of that misuse becomes concentrated. To tackle this issue, it's not about creating a new law or any legal framework instead of that we need a clear restoration and proper implementation of art 51: the core concept behind art 51 is the emergency counter attack when their country is being attacked or faced armed attack genuinely until the security council takes place, so the real solution is like to be what constitutes an armed attack? the essential elements to satisfy that armed attack occurs genuinely, through narrowing down the It should be a wellsettled principle that, Article 51 shall be invoked only if it meets the legitimate essential conditions: there must be a genuine armed attack and the response to such attack should be proportionate and necessary at that time, and should not cross any limits. So this paper focuses not on the condemn after the misuse occurs but to initiate a more precise wording that could restrain the interpretation of art 51 before such weaponisation of art 51 becomes normalised

6.2 Making the Armed Attack Threshold a Genuine Check on the Use of Force

A major weakness exposed by contemporary state practice is the gradual softening of the armed attack threshold in theory. States in practical approach uses broader narratives such as security concerns, instability, ideological hostility, humanitarian claims, and fears of future danger are often invoked in its place to justify its action.

Such concept of peace sets to degrade when states to give creative justification for their armed strike to satisfy their geopolitical goals. So from russianukraine conflict we can understand that self defence cant be invoked based on the fear, atmosphere or geopolitical suspicion. International law cannot allow a state to claim that because it felt strategically cornered, politically threatened, or regionally insecure, it therefore acquired a legal entitlement to use force. UN's blueprint crumbles when fear trumps facts; big guys rewrite the game on a whim. Legal straight edge bends to political whims—suddenly, might makes right, not right makes might.

No more rhetoric: armed attack needs to be a hardcore legal wall against rash fights. Words are cheap; armed attack must become an unbreakable legal dam. Ditch the talk—make armed attack a legit, nonsense legal barrier. It means serious, checkable violence from day one; make that rule a hardcore barrier, no mere chatter. Stop making every tough pose, troop move, quarrel, or mistreatment tale a battle excuse.

Its power is in holding back: nations must show a true attack, beyond mere bad vibes. Value in the leash: forces states to confirm attack facts over hostile feels. Lose the limit, and Article 51's just fancy words for "I attack because strategy says so".

6.3 Drawing a Firm Line Against Preventive War

Modern trap—treating "rightnow peril" like "whatif later"; lose the divide, chaos rules law. Blurring instant danger and faroff fears? That's

self-defence law's scariest slide into instability. A country can defend itself against an attack about to hit, not against every future worry. The rule should be simple: react to real, near danger, not imagined future trouble. Preventive war crosses a line that self-defence should never cross. The former may count as anticipatory self-defence in narrow situations, but the latter is preventive self-defence and clashes with the Charter.

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The line is vital. Permitting force against imagined future risks renders the force ban meaningless; states can always craft a narrative of insecurity. Any state can spin a tale of future threats, any government can say waiting is too dangerous, and any attack can be called smart caution instead of aggression. Enjoy these 10 straightforward, lively rewrites

→ 6.4 Protecting Collective Self-defence from Being Politically Tailored .

The Russia-Ukraine conflict reveals collective self-defence's vulnerability when laws are bent for geopolitics. Russia-Ukraine has laid bare collective self-defence's weakness to political manipulation.

At heart, collective self-defence isn't flawed—it lets one country help another hit by an armed attack. But it depends on the invoking entity's legal standing, calling for key reforms. Reserve it for recognized sovereigns attacked and requesting support.

This guardrail is crucial, preventing "recognition" of proxies that launders aggression. This possibility wrecks international stability. The art 51 can be invoked only when the requesting party satisfies the condition as a sovereign

state, in which itself is the victim and for whom the assistance is required. It undermines key Charter pillars—territorial integrity, no meddling, and state sovereignty. Keep collective self-defence firmly state-focused. Don't permit it to legitimize meddling by countries casting their own legal drama.

6.5 Moving from Political Notes to Legal Responsibility: Making Article 51 Reports Matter

It is the mandatory procedure of art 51 of un charter that who invoke art 51, must immediately reported to the council. In case of failure to comply with the condition degrades the charter 's balance . Thereby similarising the defnce and aggression. Even the report to security council is vague and ambiguous as the state frame short letters f5rmed in political language .

This condition should be modified , from simply declaring the legality to obligate the state to demonstrate it. Thus such report must contain higher level of legal and factual detail that reporting should contain the minimum of the following :

- the reasons why force was necessary at that moment,
- The exactly what kind of attack ?
- On whose leadership the attack is formed ?
- As per which rule of law the accusation is made and made it responsible?
- the time on which the attack made?
- and an explanation of how the response remained proportionate.

This kind of approach not just focus on improving the transparency , but also ensures the self-defence claims are strengthened .If the Charter is to retain moral and legal authority, states must be required to do more than simply say, "we acted in self-defence." They were in the legal obligation to prove that such claim is legally sustainable. In a legal order governed by

restraint, self-defence should not operate on assertion alone

6.6 Bringing in Independent Legal Checks Before the Facts Hit the Battlefield

The another flaw raised from the modern conflict is self-defence is often function as a self-certifying doctrine which means, when state uses force they simply used to state it is acting under self-defence under the charter. But the reality is only if the armed attack has occurred and the response is necessary and proportionate these legal conditions should be assessed.

In order to make international legal order more credible state claims of self-defence under art 51 of UN Charter need ensure some form of earlier, independent legal scrutiny. By this restricting the powerful state to invoke art 51 of UN Charter without real armed attack.

Today's situation is that the countries often use of force and then presenting the world fait accompli (the act which can't be reversible by the time law reacts). It is possible for the state to act more useful way, rather than taking action on the matter which already happened.

6.7 Restoration of the Legitimacy of the General Assembly Where the Security Council Does Not Adopt Measures

The most recent military attack by Russia on Ukraine only serves to lay bare an uncomfortable truth within the United Nations framework: the success of the applicable legal regime regarding the resort to force depends on the effective functioning of the entity concerned. In cases, when a permanent member of the Security Council finds itself in the middle of the conflict, then the effectiveness of the organization as a guarantor of collective security becomes debatable. In fact, this problem has been existing for quite a long time, but it must be discussed now. In case the functioning of the Security Council fails because of political reasons, it would be reasonable to make the General Assembly work as an

alternative instrument for preserving the normal power of Charter.

Whereas General Assembly resolutions are not legally binding in the same manner as Security Council resolutions, their importance rests with respect to collective deliberation, record-keeping, opinio juris, and non-abuse through silence.

In that regard, there is much value in revitalizing the use of the Uniting for Peace procedure in such cases. Even though it does not have universal enforcement potential, the procedure can create a path for the international community to assert the legal normative base where the Security Council fails to do so. That is important since there is another way in which law decays beyond violation – through inactivity. Inaction on the part of the international community will set precedents where the distortion of Article 51 goes unchallenged by the international community.

In this case, both institutional and juridical approaches need to be applied to solve this problem. Whereas the first approach will be relevant for developing the theory, the second approach will be needed for ensuring the legitimacy of Article 51 where the Security Council does not adopt measures.

6.8 The Clarification of the “Unwilling or Unable” Doctrine Before It Gets Turned into a Loophole:

The modern type of warfare has gradually made obsolete the state-centric premises of the Charter regime, particularly when the threats come from non-state actors operating transnationally. In reaction, several countries have invoked what is frequently referred to as the “unwilling or unable” doctrine, which means that force can be applied on the territory of another country if the latter is not willing or able to address the threats itself

In fact, the doctrine has emerged in light of security threats that exist nowadays. In particular, the major issue relating to this doctrine is its ambiguity. Namely, the fact is that

the doctrine is vague and poorly recognized because it is interpreted unilaterally, in which case, it can hardly be considered as a principle but becomes a tool of violation of international norms. Thus, it seems reasonable to change the approach to this doctrine by international law so as to prevent its possible abuse in future. In this respect, either international law should establish clear criteria for the doctrine or treat it very carefully.

It is required that the use of this doctrine should be accompanied by:

1. a significant armed attack.
2. incapacity or unwillingness of the state to react to this threat.
3. attempts to utilize other solutions,

as well as necessity and proportionality criteria.

Conclusion:

Without giving up the right to self-defence or accepting that the law can settle geopolitical conflicts entirely, there is no way out of this misuse of Article 51. The Russia-Ukraine crisis shows just how quickly self-defence can evolve. From being a restrained legal safeguard against aggression to a fully developed vocabulary of warfare. Beyond merely criticizing these efforts after the fact, there needs to be something done to stop the trend from happening. Whether or not Article 51 will maintain its credibility in the future will be determined not by whether states continue to refer to it, which they unquestionably do, but by whether the international community continues to demand that they do so legally and normatively. Otherwise, this will be the end of Article 51 as a legal safeguard of last resort. It is not through discarding the doctrine of self-defence, nor in the unrealistic pursuit of a lawless geopolitical world order, but rather through the reassertion of legal discipline, institutional seriousness, and normative constraint within Article 51 that the abuse of Article 51 in contemporary times must be remedied. The current Russia-Ukraine war demonstrates with particular clarity how easy it is to convert self-defence from a highly

circumscribed legal device to a broad political discourse of warfare.

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