SELF-DEFENCE: AN ARM-TWISTING TACTIC OF THE MIGHTY

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ABSTRACT

Over the years a pattern has developed wherein various countries have taken a lax view of the legal requirements to predate their stance upon the use of force and right to self-defence. The actions undertaken by the countries in furtherance of the idea of imminent threat usually gains advantage from their domestic national security law, the interpretation of which is rarely challenged in the courts. When it comes to the International law, countries like the USA have been able to exert their power on the already weak and limited recourse available under the same. The USA- Iran altercation based on the killing of their military leader Qaseem Soleimani has posed a threat to the shaking integrity of UN as an organization and its principles involving the justification of use of force.

Through this paper we analyze the existing framework relating to deployment of force by the states, while focusing on principles relating to self-defence as claimed by the USA to justify their drone strikes on Iran. We trace back the timeline of instances of similar nature and provide the changing means of justification provided by the USA for the use of force, especially after 9/11. Lastly, by analyzing the legal justification to the most recent altercation of the USA with Iran we highlight the incompetence of the system and the way in which countries like the USA have used the lacunae in the framework for their own political and economic gains.

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INTRODUCTION

After the Second World War, the importance attributed to the human rights implementation in the state was amplified considering the object of establishing peace and prosperity in the world community. Various international organizations have worked in furtherance of the same. However, the underlining fact remains that the more powerful and prosperous countries have mostly used this as an agency to promote their interests in one way or the other. The UN framework limiting the use of force as a concept on paper is worthy of appreciation, however, the prolonged history of its practical implementation has showcased a totally different picture.

With the development in International Humanitarian Law, Self-defense and Collective Security are now considered as the only plausible ways to entitle a country to use force. Article 51 which elaborates upon framework related to self-defence, however, due to its vague ambit has now been developed to contain a totally different meaning from what was earlier attributed to it.
The race to establish Hegemonic power has led to a lot of nations violating and using the idea of Self-defence for their own benefit by using the expansive interpretation of the same. One of the major players in the same is the USA, which has had a history of misusing and misinterpreting self-defence as a concept leading up to the recent targeted killing of the Iranian military leader General Qaseem Soleimani.[1]

Even though the International law has a framework to enforce the provisions through the International Criminal Court, powerful nations have conveniently flouted certain principles and have initiated an era of total different

[1] Andrew Chung, *U.S. 'Self-Defence' Argument for Killing Soleimani meets Skepticism*, REUTERS, (Jan. 4, 2020) 19 July, 2020 6:21 AM) https://www.reuters.com/article/us-iraq-security-blast-legal-analysis/u-s-self-defence-argument-for-killing-soleimani-meets-skepticism-idUSKBN1Z301R.

justifications being attributed to the use of force. The dependence of these principles on the states themselves accepting the need of compliance has enabled erratic and disruptive conduct amongst the states.

Such precedents are likely to encourage a global behavior of unjustified application of force, which has the capacity to allow disruption in the partially peaceful atmosphere amongst the states today. Through interpretation of the existing framework we would dwell upon the history of use of force by the USA and finally highlight the erratic behavior of the state through the USA-Iran altercation, which may lead to global unrest.

HISTORY

Humanitarian intervention in the most generic sense refers to the interference of a state or a group of states, by threat or use of force in the matters of another country in order to prevent or end extensive and grave violations of the human rights of individuals who are not their own citizens. This is done without the permission of the state where such force is exerted.[2] Over the years the ambit of the Doctrine of Humanitarian Intervention has expanded.

I. PRE-UN CHARTER

The concept of humanitarian intervention first emerged from the "JUST WAR" Theory by classical Greek and Roman philosophers. According to the theory the war was justified if both of the following existed:

1. *Jus ad bellum*: Justification to indulge in war
2. *Jus in bello*: The conduct during the war was ethical

During the 19th Century, the concept gained more popularity after the European countries conducted interventions on the Turkish territory several times mainly in Greece, Crete, Bosnia, Bulgaria and Macedonia for the

[2] J.L. Holzgrefe, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, Cambridge University Press 18 (2003).

persecutions being committed there. Although these actions too were justified on humanitarian grounds however the major driving force was the power politics prevalent between the eastern and western states during that period.[3] The Hague Convention in 1907 limited the right of war to a large extent. In furtherance to that, The Covenant of the League of Nations of 1919 set up a procedure with the outset that the aggressor state became incapable to wage war. To nurture the lacunae in the procedure laid down by the covenant to combat war The Kellogg- Briand Pact was signed in Paris.[4] This Pact supported the principle of non- intervention and indirectly restricted the right to recourse to war except in the situation of self-defence. The prevention of threat or use of force was also incorporated under Article 2(4) of the U.N. Charter.

II. POST-UN CHARTER

The circumstances that led to the formation of the United Nations were such that it was pertinent to stop the trend of resorting to war and to establish peace globally. The United Nations Charter of 1945 inculcated the same spirit and prohibited the use of force and imbibed the principle of non-intervention.[5] The two exceptions attributed to the use of force were:

1. Self-defense[6]
2. Collective Security (wherein the Security Council is entitled to intervene on humanitarian grounds).[7]

This established that no state or even a group of states can intervene in the sovereign affairs of another state. Every sovereign state is given the right to conduct it's affairs without any interference.[8] The 1981 Declaration on

[3] Ian Brownlie, *International Law and the Use of Force by States*, Oxford: Claredon Press 340 (1963).
[4] Malcom N. Shaw, 6 *International Law*, Cambridge University Press 780 (2008).
[5] The United Nations Charter, art 2, cl. 4 (1945).
[6] The United Nations Charter, art 51 (1945).
[7] The United Nations Charter, art 39, 42 (1945).
[8] Jiaming Shen,7 (1), *The Non- Intervention Principle and Humanitarian Intervention under International Law*, International Legal Theory (2001).

Inadmissibility of Intervention and Interference in the Internal Affairs of States has made any agreement between the states allowing intervention or interference in its sovereign functions as void.

Hence the principle of non-intervention has now become the *jus cogens* of international law.

LEGALITY OF USE OF FORCE

As per the Report by ICISS[9] certain grounds have been laid down wherein humanitarian intervention was considered permissible and justified:

1. Just Cause
2. Right intention of intervention
3. Nonexistence of any other recourse
4. Proportional means of intervention
5. Reasonable prospects of success
6. Intervention through the right authority i.e. the Security Council

Hence a direct intervention is still not permissible as per the UN Charter but the act is considered justifiable if it is based on certain principles.

DEVELOPMENT OF THE CONCEPT OF SELF-DEFENCE

The historical recollection of instances of Humanitarian Intervention provide us an array of specimens which establish that unilateral interventions not only directly violate the international law of non-intervention into the sovereignty of a nation but also leaves the nations with much bigger problems including graver human rights violations.

I. ANALOGY OF SELF-DEFENCE

[9] ICISS Report, *The Responsibility to Protect,* INTERNATIONAL DEVELOPMENT RESEARCH CENTRE, December 2001) (July 22, 2020, 10:37 PM) http://responsibilitytoprotect.org/ICISS%20Report.pdf.

The right to self-defence finds its origin within the concept of *Jus ad bellum.* Post the Kellogg-Briand Pact and the UN Charter, this concept is now regarded only as an exception with the main intention of restricting force in general and giving due regard to international peace and order.
Even though Article 51 recognizes the idea of self-defence against armed conflict, but it is also essential to note that it also exists as an inherent right under customary international law.[10]

Even the Tokyo Judgment, 1948 affirmed that any international or municipal law which will limit or prohibit the use of force would mainly deal with the limitation of the right to self-defence only.[11]

The UN Charter although has recognized the right to self-defence as an inherent right but, it also asserts that the provision does not control all aspects that relate to Article 51. It is considered to be silent on what are the preconditions for legitimately exercising self-defence and what limit would be permissible on the use of force.[12]
Therefore it is can be concluded that Article 51 includes both the customary and inherent right to self-defence.

II. PRESCRIBED RIGHT OF ANTICIPATORY SELF-DEFENSE

There are two schools of thoughts which discuss about the right to take anticipatory action, in case of a threat to the sovereignty of the state.

a) RESTRICTIVE SCHOOL

[10] Yoram Dinstein, 3 *War, Aggression and Self-Defence*, Cambridge University Press 167, (2001).
http://catdir.loc.gov/catdir/samples/cam031/00045554.pdf.
[11] Jhon Pritcard, Sonia M. Zaide, 22 *International Military Tribunal for the East, Judgement of 4th November 1948*, The Tokyo War Crime Trial 59. (July 21, 2020, 01:41 P.M.), https://crimeofaggression.info/documents/6/1948_Tokyo_Judgment.pdf.
[12] Timothy L.H. McCormack, *Self-Defence in International Law: The Israeli Raid on the Iraqi Nuclear Reactor*, Palgrave Macmillan,120 (1996).

It is argued here that self-defence would not include anticipatory self-defence as the rights ceases to exist if there is no actual armed attack. The state can only undertake preparations to resist a possible attack or bring the same within the attention of the UNSC.[13]

This school expands upon the idea that to determine the possibility of an armed attack is not fully possible and hence it is likely to allow unwarranted conflicts. Mere statements by world leaders may be interpreted in the wrong light to allow misuse of the exception of self-defence under just law.[14]

b) EXPANSIVE THEORY

As per this theory, the use of force in anticipation of aggression in certain specific circumstances is included in the customary right to self-defence.[15] Even the drafting of Article 51 itself recognizes that self-defence is a pre-existing and inherent right. Article 2(4) of the UN Charter states that the members are required to refrain from the use of force along with the threat of possible use of the same. But if the sates are required to wait for the armed attack to actually occur, then the whole idea of maintaining peace and security would not be achievable.[16]

III. ESSENTIAL PRECONDITIONS

Over the years even though a world war-like situation has not arisen, but we have witnessed a display of power by the developed nations over the other

[13] Walker, George K, 31 *Anticipatory Collective Self-defence in the Charter Era: What the Treaties Have Said*, 2 Cornell International Law Journal 364 (1998) http://scholarship.law.cornell.edu/cilj/vol31/iss2/3

[14] Van de hole, Leo, *Anticipatory Self-Defence Under International Law*, American University International Law Review 69 (2003) https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1160&context=auilr&-sei-redir=1.Ignatius.

[15] Leo Van den hole, 19 *Anticipatory Self-Defence under International Law*, Am. U. Int'l L. Rev. 69 84 (2003).

[16] *Id,* 86.

states to further their own interest. The expansionist theory of self-defence has been utilized by most of the nations today to justify their role in any form of external/internal aggression.

One of the main reasons that allow them to successfully justify their stance most of the times is the fact that the anticipatory action against the potential danger to international order suffers from the idea of ambiguity.[17]
In *Caroline Case* the basic essential preconditions to Self-defense were provided which are also considered to be applied on Anticipatory actions as well:

i) Necessity
ii) Proportionality
iii) Immediacy[18]

Currently, the international framework accepts two other notions which include the situation where UNSC has failed to take any affirmative action or where the state against which the right of anticipatory self-defence has been deployed has violated international law.[19]

The paper now tries to analyze how the principle of self-defence has been interpreted by various countries over the years, and majorly includes the dynamic interpretation that right to self-defence has received from the USA.

TRANSITION IN APPROACH OF SELF-DEFENCE

[17] Michel Wood, 53 *International Law and the Use of Force: What Happens in Practice?,* Indian Journal of International Law 349 (2013).
[18] The Caroline v. United States, 11 U.S. 496 (1813).
[19] Leo Van den hole, 19 *Anticipatory Self-Defence under International Law*, Am. U. Int'l L. Rev. 69, 97 (2003).

"Under my leadership, America's policy is unambiguous: To terrorists who harm or intend to harm any American, we will find you; we will eliminate you,"

-Donald J. Trump, President of the United States of America

The above-mentioned statement was made by the President of the United States of America justifying the drone strike ordered by him on the 3rd of January 2020 which led to the death of Maj. Gen. Qassem Soleimani of the Islamic Revolutionary Guard Corps and nine others. The idea of carrying out an attack on Maj. Gen. Soleimani was considered and rejected by two former presidents as they felt that such an attack would lead to an all-out war against Iran.

Maj. Gen. Soleimani himself had been sanctioned by the UN and his 25,000 strong militia were categorized as a terrorist organization by the USA and multiple US allies. The General was considered to be the most powerful person in Iran, after Iran's Supreme Leader Ayatollah Ali Khamenei and had on multiple occasions openly threatened the USA.

Although the USA and Iran had maintained adversarial relations since the times of the Islamic Revolution in Iran, the tensions between the two nations heightened when the USA withdrew from the 2015 nuclear agreement with Iran, asserting that the accord did not address the broad range of U.S. concerns about the Iranian behaviour and would not permanently preclude Iran from developing a nuclear weapon[20]. Senior Administration officials explain Administration policy as the application of "maximum pressure" on Iran's economy to firstly, compel it to renegotiate the Joint Comprehensive

[20]Paul K. Kerr and Kenneth Katzman, *Iran Nuclear Agreement and U.S. Exit*, CRS Report R43333, (JCPOA and the U.S. withdrawal).

Plan of Action (JCPOA) to address the broad range of U.S. concerns and secondly, to deny Iran the revenue to continue to develop its strategic capabilities or intervene throughout the region.[21]

THE GLOBAL WAR ON TERRORISM

The terror attack on the twin towers led to a shift in the American approach towards the concept of "self-defence" as this was the first time when the American soil came directly under an attack by a foreign aggressor post the Pearl Harbor incident.

Under the administration of President G.W. Bush, the United States of America started its "Global War on Terrorism". The nature and parameters of this war, however, remained frustratingly unclear. During the Bush administration; rogue states; weapons of mass destruction (WMD) proliferators; terrorist organizations of global, regional, and national scope; and terrorism itself were all tagged as the enemy[22].

By engaging in this Global War on Terrorism the USA set its course towards open-ended conflicts with multiple state and non-state entities that pose a threat to it, this threat, however, as seen through the pages of history were not always imminent or direct. The USA under the garb of the global war on terrorism during the administration of President GW Bush attacked Iraq and overthrew the government of Saddam Hussein in 2003. The Bush administration was criticized on both domestic as well as an international level as what the USA held as necessary actions against terrorism were

[21] Speech by Secretary of State Michael Pompeo, Heritage Foundation, May 21, 2018; Testimony of Ambassador Brian Hook before the House Foreign Affairs Subcommittee, *On Middle East, North Africa, Hearing on U.S.-Iran Relations*, June 19, 2019.

[22] Jeffrey Record, *Bounding The Global War On Terrorism*, STRATEGIC STUDIES INSTITUTE, US Army War College 1 (2003). (July 21, 2020, 10:37 A.M.), https://www.jstor.org/stable/pdf/resrep11240.pdf.

considered to be immoral, illegal, or both by the critics. These included the use of unmanned combat drones to kill suspected enemies in countries far beyond the battlefields of Iraq and Afghanistan.[23]

The Obama administration too is responsible for carrying out the cross border strikes in Pakistan to kill Osama Bin Laden.

THE PRE 9/11 ERA

I. OPERATION EL DORADO CANYON

"Today, we have done what we had to do. If necessary, we shall do it again."

-Ronal Reagan, President of the United States

On the 15th of April 1986, on orders of President Ronal Reagan, the United States of America flexed its military muscles and carried out "pre-emptive" strikes in retaliation to the West Berlin discotheque bombing which had taken place ten days earlier and had resulted in the death of an American serviceman.[24]

The objective behind the strikes as per the USA was to reduce Libya's ability to support and train terrorists.

II. THE INDO-PAK WAR OF 1971

In the wee hours of 26th of February 2019, Indian Air Force's twelve Dassault Mirage 2000[25] fighter jets roared across the skies of the LOC into the Pakistani airspace and allegedly bombed their targets. The aircrafts had the objective of carrying out pre-emptive airstrikes on terrorist training camps

[23] Richard Jackson, *War on terrorism: United States history*, ENCYCLOPAEDIA BRITANNICA (July, 21, 2020, 03:31 P.M.), https://www.britannica.com/topic/war-on-terrorism.

[24] Lindsey Hilsum, *Sandstorm: Libya in the Time of Revolution*, PENGUIN PRESS, (2012) (July 23, 2020, 22:27 P.M.) http://us.penguingroup.com/nf/Book/BookDisplay/0,,9781594205064,00.html?Sandstorm_Lindsey_Hilsum#.

[25] UNI, *IAF Western Air Command coordinated 'anti-terror operation',* THE NEW INDIAN EXPRESS, Feb. 26, 2019, https://www.newindianexpress.com/nation/2019/feb/26/iaf-western-air-command-coordinated-anti-terror-operation-1943999.html#.

situated in the town of Balakot in the Khyber Pakhtunkhwa province of Pakistan.

The statement made by Mike Pompeo, the US Secretary of State following the pre-emptive strikes by India seemed to acknowledge India's right to carry out such strikes against terror outfits which were first reported by the US' own intelligence in 2004. However, the same was not the case the last time Indian Air Force jets crossed the line of control back in 1971 during the administration of President Richard Nixon.

Following the political turmoil in East Pakistan (present-day Bangladesh) the Pakistani regime in East Pakistan under its military leadership began a genocide against its Bengali citizens, particularly the Bengali Hindu Population.

Smt. Indira Gandhi the then Prime Minister of India attempted to seek foreign intervention from multiple nations including the USA but failed to elicit any response. For over a period of 6 months the Indian Prime Minister tried to draw the attention of the world community towards the merciless butchering of the civilian population of East Pakistan[26], this led to the movement of at least 10 million people from East Pakistan to the neighbouring states in India thus further burdening the already overburdened Indian Economy[27]. By the

[26] Rasheed Kidwai, *How the 1971 war was fought and won*, OBSERVER RESEARCH FOUNDATION, (July 24,2020, 09: 20 A.M.) https://www.orfonline.org/research/how-1971-war-fought-won/.

[27] U.S. Consulate (Dacca) Cable, *Sitrep: Army Terror Campaign Continues in Dacca: Evidence Military Faces Some Difficulties Elsewhere*, Department of State, United States, 31st March 1971, (July 24, 2020, 05:30 P.M.) https://nsarchive2.gwu.edu/NSAEBB/NSAEBB79/BEBB6.pdf.

September of 1971, the Government of Pakistan had orchestrated a propaganda campaign, "*Crush India"*, in West Pakistan.[28]
On the evening of 3rd of December, 1971, Pakistan launched Operation Chengiz Khan, against India. The operation consisted of airstrikes on eleven airfields in northwestern India.[29] This resulted in India being sucked into a full-fledged war with Pakistan.

Even though India had been under threat, was attacked first and finally sucked into a war by Pakistan, the USA in order to have a loyal ally in the South Asian region backed Pakistan morally, politically, militarily and economically. When India acted in self-defence[30], the USA acted against India by threatening to take military action against it and placed its navy in the Indian Ocean.

III. OPERATION OPERA

'Israel's sneak attack ... was an act of inexcusable and short-sighted aggression,'

-New York Times, June 9th, 1981, Pg. 14

On a peaceful Sunday afternoon, at 1555hrs eight newly acquired F-16A fighter aircrafts of the Israeli Air force, each loaded with two 2,000 pound delay action bombs, took off from the Etzion Airbase in Egypt along with

[28]DAWN, *1971 'Jihad': Print ads from West Pakistan*, DAWN, Dec. 16, 2015, (July 25, 2020, 11.40 A.M.) https://www.dawn.com/news/1151200/1971-jihad-print-ads-from-west-pakistan.
[29] Peter E. Davies, *F-104 Starfighter Units in Combat*, Osprey Publishing 83 (2014).
[30] Anthony Clark Arend and Robert J Beck, *International Law and The Use of Force*, London: Routledge 118 (1993).

their escort consisting of six F-15A fighter aircrafts.[31]The aircrafts flew over the hostile territories of Jordan and Saudi Arabia towards Iraq.[32]

Once in the Iraqi airspace, this Israeli Air Force squadron carried out an airstrike which lasted for less than two minutes. The target that faced the brunt of the Mark-84 bombs was the Osiraq reactor Complex situated in Baghdad, Iraq[33]. The Israeli intelligence had been keeping a track of the development of the reactor and had confirmed that Iraq intended to develop nuclear weapons at the Osiraq Nuclear reactor. Iraq on multiple occasions had threatened Israel with a nuclear strike as well. The Israelis had estimated that Iraq could have a nuclear bomb within a year and hence, felt that the threat was imminent. [34]

Though the Israelis opted for a diplomatic approach rather than a militaristic one at first and engaged in a diplomatic effort to halt France from financing and supporting the Iraqi nuclear project, they were well aware of the fact that they may have to strike Iraq if the French didn't act on their diplomatic effort. This shows that Israelis had no option but to strike Iraq before it could strike them.

The United Nations Security Council gave a prompt response to the preemptive strike on the 19th of June 1981 through its Resolution 487 and condemned the attack carried out by Israel and called it "a clear violation of the Charter of the United Nations (Article 2, paragraph 4) and the norms of

[31] Gary D. and Solis, *The Law of Armed Conflict: International Humanitarian Law in War*, Cambridge University Press 182 (2010).
[32] Trevor Dupuy, Paul Martell, *Flawed Victory: Arab-Israeli Conflict and the 1982 war in Lebanon*, Hero Books 69 (1986).
[33] Dan Reiter, Preventive Attacks Against Nuclear Programs and the "Success" at Osiraq, Non-proliferation Review 355 (2006).
[34] Maj. Gen. David Ivry, *The Attack on te Osiraq Nuclear Reactor- Looking Back 21 Years Later, "Israel's Strike Against Nuclear Reactor 7th June, 1981*, 35, Jerusalem: Menachem Begin Heritage Center (2003).

international conduct." They called upon Israel to refrain from carrying out such an act or threat in the future and to urgently place its nuclear facilities under IAEA safeguards. The notification also stated that Iraq was entitled to appropriate redress for the loss that it had suffered due to this attack.[35]

Following the resolution passed by the Security Council, the UN General Assembly passed Resolution 36/27 on the 13th of November 1981. Israel was condemned by the United Nations and its acts were termed as, "premeditated and unprecedented act of aggression". The resolution warned Israel to refrain from resorting to such action in the future and demanded a "prompt and adequate compensation" for the damage and loss of life.[36] The USA voted in favor of the resolution and suspended the delivery of four F-16 fighter aircrafts to Israel[37]. The super power adopted this stance, perhaps because it didn't want to go against Iraq, which was then fighting against America's adversary in the Middle East, Iran.[38]

Operation Opera took place on the 7th June 1981, nearly 10 years after the Indo-Pak war of '71 and the stance of the UN and the USA still appears to be similar to what it had been when India acted in self-defence. The fact that in both the situations where the nation states resorted to military action after failing to neutralize the threat diplomatically, and perceived the threat as instant, overwhelming, and felt that they had been left with no choice of means and no moment for deliberation seems to be ignored by the United States of America.

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[35] S-RES-487 (1981) Security Council Resolution 487 (1981), United Nations, June. 19, 1981.
[36] UN. General Assembly (36th session: 1981-1982), "*Armed Israeli aggression against the Iraqi nuclear installations and its grave consequences for the established international system concerning the peaceful uses of nuclear energy, the non-proliferation of nuclear weapons and international peace and security."*, New York : UN, Nov. 25, 1981.
[37] Hersh, Seymour, *The Samson Option: Israel's Nuclear Arsenal and American Foreign Policy*, Wayback Machine 6 Random House Inc (1991).
[38] *Id.* at 33.

It almost seems as if the superpower chose to ignore the grave situation being faced by these nations in order to satisfy its own political ambitions.

LEGAL STANDPOINT OF THE USA-IRAN ALTERCATION

The USA and Iran Altercation based on the killing of Maj. Gen. Qassem Soleimani has started an international debate on whether such strikes in the garb of right to self-defence are acceptable or not.

I. LEGAL IMPLICATIONS OF THE ATTACK

In the early accounts in relation to the right to self-defence, the ability of a state to defend against the imminent threat of an attack,[39] even in the absence of an actual one has been identified as a customary right.[40] The use of force therefore is justified when the state is unable to suppress a threat.[41]

The constitution of the USA grants authority to use military force not only to defend the country against actual or anticipated attacks but also to further national interests.[42] This was not the first instance where the president deployed US forces and military intervention without congressional authority. Even the report about the strike to Congress as mandated under the 1973 War powers Resolution,[43] has been presented as wholly classified, which is an exceptionally rare step by the White House.

However, there is no legal mandate that can prohibit the USA from use of force, as Soleimani was considered as a threat to the USA security and interest since a while now. But essentially the requirement here is to establish that

[39] John Bassett Moore, *A Digest of International Law* 412 (1906).
[40] Daniel Webster, *the Works of Daniel Webster* 292-303 (1851).
[41] Daniel Bethlehem, *Self-Defence against an Imminent or Actual Armed Attack by Non-state Actors,* 106 Am. J. Int'l L. 769, 773 (2012). At 775.
[42] U.S. Const. art. II. § 2
[43] The War Power Resolution, 1978/ War Powers Act, (50 U.S.C. 1541-1548)

there was an imminent threat and that the actions that were taken up by the USA forces were necessary and proportional in nature.

a) PRESENCE OF AN IMMINENT THREAT

In analyzing imminent danger the gravity of the consequences[44], along with the idea of the risk involved is considered rather than material danger.[45] U.S Secretary of State Mike Pompeo has officially claimed that the strikes were carried out with the danger of an imminent threat to security. But what is worth noting in this situation is that the repeated claims of the existence of an imminent threat have not been substantiated by any justification or evidence.[46]

The Obama administration undertook more than 600 drone strikes against terrorists during their term, however, this is the first instance where the strike was planned to kill a foreign government's military official. All the strikes before this have been justified on the touchstone of 2001 AUMF[47] and the international norm of self-defence. But in the instant case, the lack of evidence to establish such an unconventional act do not favour the stand undertaken by the US forces.

b) Principle of Necessity and Proportionality

Necessity can be claimed if the only way to protect the essential interests of the states against imminent danger is through the use of force when a nation faces an armed attack.[48] To invoke the state of necessity, it is essential to

[44] A.S.R, Commentary, ¶ 33.
[45] Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgement, I.C.J. Rep. 1997 at pg. 42, ¶ 54.
[46] Adam Taylor, *The Key Word in US Justification for the Killing of Iranian General: 'Imminent'*, THE WASHINGTON POST, (Jan 5, 2020), (July 22, 2020 04:19 P.M.) https://www.washingtonpost.com/world/2020/01/05/key-word-us-justifications-killing-iranian-general-imminent/.
[47] Authorization for Use of Military Force. (50 USC 1541).
[48] Hans Kelsen, *the Law of the United Nations: A Critical Analysis of Its Fundamental Problems* 797-98 (Stevens & Sons) (1951).

clarify that all the peaceful alternatives available[49], such as diplomatic efforts or legal intervention, have been undertaken by the parties.[50] In terms of measuring proportionality, the scale of the defensive force in relation to the act against which it is directed is compared.[51]

The drone strikes in Baghdad have led to the killing of 5 Iraqi nationals which violates the basic principles of the Hague Convection and hence the action of the USA forces surpasses the principle of distinction in terms of International Humanitarian Law as well. The lack of consent by Iraq to conduct such an operation and the subsequent denial to withdraw military troops from Iraq after the withdrawal of consent[52] furthers how this whole operation amounts to aggression and not self-defence in its textbook form.

The subsequent reaction of Iran as a response to defend "its people, sovereignty and territorial integrity against this kind of aggression" creates an atmosphere of tension between the two nations. What is essential to see here is that targeting of the American base in Iraq by the Iranian forces too has been justified as an action under Article 51.[53]

However, neither of the parties to the disputes have fulfilled the principles of necessity or proportionality which are essential to establish a legitimate use of force. This not only forces us to question the power of the international

[49] Philip Jessup, *A Modern Law Of Nations* 166 (Archon Books) (1968).
[50] Oil Platforms, at ¶ 161, 198-99.
[51] Judith Gail Gardam, *Proportionality and Force in International law,* 87 AM. J. INT'L L. 391, 391 (1993).
[52] Patryk i. Labuda, *The Killing of Soleimani, The Use of Force against Iraq and Overlooked Ius Ad Bellum Questions*, Blog of the European Journal of International Law, (Jan 13, 2020), (July 22, 2020 10:45 P.M.) https://www.ejiltalk.org/the-killing-of-soleimani-the-use-of-force-against-iraq-and-overlooked-ius-ad-bellum-questions/.
[53] Hadley Baker, *U.S. and Iran Submit Article 51 Letters on Use of Force*, Lawfare, (Jan 9, 2020), (July 23, 2020 06:09 P.M.) https://www.lawfareblog.com/us-and-iran-submit-article-51-letters-use-force.

law but also the relevance of the same, wherein, almost barbaric use of force is being defended by hiding behind fancy use of legal terms.
What is likely to happen because such precedents is that over time, the acceptability of pre-emptive actions will grow as the defensive options are likely to narrow down in terms of their success.[54]

Most of the states along with the International organizations have been quite reluctant to take a clear stance as to the legality of the operations by either of the countries. But essentially the recognition of a requirement to curtail such acts has taken the forefront of all the discussions.[55]

CONCLUSION

UN charter's primary objective is to ensure that no member state can attack or threaten to attack another member state. Article 2(4) acts as an instrument to establish global peace and tranquillity. Its exception, however, is Article 51, which gives the states the right to attack another member state in "self-defence" in the scenario of an urgent and imminent threat. As observed through this paper, this exception plays an important role in safeguarding nations and ensuring that a member state doesn't become defenceless by being a signatory or ratifying the charter when facing the brunt of a hostile state and act in order to protect its sovereignty and its citizens.

However, this paper also throws light on the fact that a few powerful and influential states have exploited this provision in order to maintain their own influence globally and for their own gain. Although this provision was seen

[54] Michael N. Schmitt, *Pre-emptive Strategies in International Law*, 24 MICH. J. INT'L L. 513, 535 (2003).
[55] Mehrnusch Anssari, Benjamin Nuberger, *Compilation of States' Reaction to U.S. and Iranian Uses of Forces in Iraq in January 2020*, Just Security, (Jan 22, 2020) (July 24, 2020, 07: 31 A.M.) https://www.justsecurity.org/68173/compilation-of-states-reactions-to-u-s-and-iranian-uses-of-force-in-iraq-in-january-2020/.

as a weapon for a state to defend itself, it is this weapon that has defeated the primary objective laid out in Article 2(4).

Countries like the USA have misappropriated their strong influence over the UN itself and have attained the "superpower" status in the world. Hypocritically the state has not only tried to initiate military action in the garb of self-defence against various other countries but has condemned other states who have tried to initiate similar actions under their own sovereign existence. One of the biggest transition in the behaviour of the USA forces was seen after the 9/11 attack as before the unfortunate incident, the USA mostly failed to grasp the threat that was posed by terrorism or simply chose to ignore it, till its own soil faced a terrorist attack in September 2001. Post the 9/11 attacks, the USA declared a Global War on Terrorism and came forward to assist nations that are suffering from terrorism and have called out countries that are engaged in sponsoring of terrorism.

POSSIBLE FRAMEWORK

As much as we need to ensure a more stable and peaceful world, the fact remains that international agencies like the UN have to be given more power and authority over such incidents. What is required is an institution which can firstly, investigate, assess and act on the threats that may exist for member states. Rather than the country itself, it should be the UN which has to hold the main role in an intervention or in acting up against possible threats.

If the UN is unable to prove its competence, the state should be allowed to undertake such operations on its own as per what the law already provides. However, what needs to change is the process wherein the states must have to prove beyond reasonable doubt about any anticipatory self-defence action within the bounds of the essential preconditions which have already been laid down. A stricter interpretation of these preconditions is more essential than

ever, considering the increasing volumes of anticipatory self-defence actions by various states around the world without any reasonable construct.

However, in a practical outlook, we have to consider that this is a very euphoric idea. When we consider economic and military superpowers around the world, the only way to thrive essentially requires them to ensure chaos and disturbances time and again in other states.

In today's day and age, with the advent of modern military technology, weapons are deadlier than ever. Such weapons hold the capability of causing mass destruction and do not give the enemy any reaction time. Such weapons in the control of a rogue state or even a non-state actor like a terrorist group can lead to disruption of world peace hence, the doctrine of self-defence has gained more relevance today, than ever. One small affirmative action has the potential to trigger a world war. In these testing times, we can only hope that each and every state realizes the consequences of its actions and restrains from disrupting the world peace, which already is at the brink of as collapse.