

LEGAL GROUNDS OF USING ARMED FORCES IN MODERN INTERNATIONAL LAW

Using armed forces is one of the most discussed and relevant issue in modern international law. What is the legal basis of using armed forces. This question has to be answered. Its regulation is essential for ensure universal piece and security.

My goal is to determine how imminent and lawful is using forces. Modern international law on using forces is based on Charter of the United Nations.

Ukraine was one of the founding members of the United Nations when it joined in 1945 as the Ukrainian Soviet Socialist Republic; along with the Byelorussian Soviet Socialist Republic, Ukraine signed the United Nations Charter when they were part of the Soviet Union. After the dissolution of the Soviet Union in 1991, the newly-independent Ukraine retained its seat [8].

Charter of the United Nations, Article 2 states that 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 [1. Article 2, Part 4].

Article 51 provides for the right of countries to engage in self-defense, including collective self-defense, against an armed attack (including cyber attacks).

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international piece and security [1. Article 51].

International law recognizes a right of self-defense, as the International Court of Justice (ICJ) affirmed in the Nicaragua Case on the use of force.

In order to lawfully exercise the right to self-defense, a state must be able to demonstrate that it has been a victim of an armed attack. The burden of proof in such a case lies with the state seeking to justify the use of force in self-defense. Nevertheless, not all attacks will constitute an armed attack for the purposes of Article 51: only the most grave forms of attack will qualify [3. para.191].

Furthermore, the ICJ held in the Nicaragua Case (Merits) that 'self-defense would warrant only measures which are proportional to the armed attack and necessary to respond to it' [2. para. 176]. This statement sets out two important principles in international law concerning the use of force: the principle of proportionality and the principle of necessity. In this context, proportionality means that the response to an armed attack must be reflective of the scope, nature and gravity of the attack itself. On the other hand, the principle of necessity guards against the use of measures which are excessive and not necessary in response to an armed attack.

The so-called Caroline case established that there had to exist "a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment of deliberation," and furthermore that any action taken must be proportional, "since the act justified by the necessity of self-defense, must be limited by that necessity, and kept clearly within it." These statements by Daniel Webster, the US Secretary of State to the British authorities are accepted as an accurate description of the customary right of self-defense [3: p.10].

The imminent threat is a standard criterion in international law, developed by Daniel Webster as he litigated the Caroline affair, described as being "instant, overwhelming, and leaving no choice of means, and no moment for deliberation." The criteria are used in the international law justification of preemptive self-defense: self-defense without being physically attacked first (see Caroline test). This concept was introduced to compensate the strict, classical and inefficient. Definition of self-defense used by Article 51 of the Charter of the United Nations, which states that sovereign nations may fend off an armed attack until the Security Council has adopted measures under Chapter VII of the United Nations Charter.

The Caroline affair has been used to establish the principle of "anticipatory self-defense" and is also now invoked frequently in the course of the dispute around preemptive strike (or preemption doctrine).

These additional criteria were most famously set out by the International Court of Justice (ICJ) in the 1986 Nicaragua merits decision:

The 'victim' state must declare itself to be the victim of an armed attack [2. para 195.]

The 'victim' state must request military aid in response [4. paras 165 and 199.].

The meaning of 'armed attack' causes significant controversy in international law. In the Nicaragua Case and in Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory Advisory Opinion ICJ Rep 2004, the ICJ rejected the idea that an armed attack may include 'not only acts by armed bands where such acts occur on a significant scale but also assistance to rebels in the form of the provision of weapons or logistical or other support' [3. para.195]. In other words, it is necessary to show that an armed attack is attributable to a state.

Humanitarian Intervention has been defined as a state's use of military force against another state, with publicly stating its goal is to end human rights violations in that state." This definition may be too narrow as it precludes non-military forms of intervention such as humanitarian aid and international sanctions. On this broader understanding, "Humanitarian intervention should be understood to encompass... non-forcible methods, namely intervention undertaken without military force to alleviate mass human suffering within sovereign borders." [6: p 253-274].

Humanitarian intervention is a concept that can allow the use of force in a situation when the UN Security Council cannot pass a resolution under Chapter VII of the Charter of the United Nations due to veto by a permanent member or due to not achieving 9 affirmative votes. Chapter VII allows the Security Council to take action in situations where there is a "threat to the peace, breach of the peace or act of aggression". However, any resolution to that effect must be supported by all five permanent members. The reference to the "right" of humanitarian intervention was, in the post Cold-War context for the first time invoked in 1990 by the UK delegation after Russia and China had failed to support a no-fly zone over Iraq. Therefore, in addition to humanitarian objectives the concept is designed to circumvent the UN

Security Council by invoking a right. However, critics base their arguments on the 1648 treaty of Westphalia, which states the rights of sovereign nations to act freely within their own borders. This is upheld in the UN Charter of 1945, where in article 2(7) it is stated that "nothing should authorize intervention in matters essentially within the domestic jurisdiction of any state." Thus, because both proponents and opponents of humanitarian intervention have their legal grounds on the charter of the United Nations, there is still an ongoing controversy as to whether sovereignty or humanitarian causes should prevail. The United Nations has also continuously been involved with issues related to humanitarian intervention, with the UN intervening in an increased number of conflicts within the borders of nations [7].

References

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GEORGIAN WAY TO JOIN EU- PRIORITIES AND CHALLENGES

First of all, we want to highlight the fact that our country aims to get more and more closer to European Union since its independence. In the Soviet Union there was not ability to succeed and develop, because of this nowadays for Georgia it is very important issue to get familiar with European values, culture, economic, political and other fields in order to maintain state strong and competitive on international level.

As we know, Negotiations between Georgia and the EU on "Association Agreement" officially launched in July 2010 (while Deep and Comprehensive Free Trade Area Component – December 2011). Negotiations ended in 2013 In July. The negotiations process involved all relevant Ministries. The Agreement is very ambitious; it covers not only democracy, rule of law, human rights – as essential aspects, but also includes chapters on foreign and security policy. What makes the agreement economically important, is that the Deep and Comprehensive Free Trade Agreement (DCFTA) part enables Georgia to reach very high level of economic integration with the EU. Based on the agreement parties agree on creating Association Agenda with short-term priorities which then serves as a basis document for Georgian government to create annual action plan for implementation