

Rethinking Article 51 of the United Nations Charter Balancing State Security and International Legal Compliance in the Twenty-First Century

Rana Muhammad Asif Wakil¹, Dr Malik Imtiaz Ahmad²

¹PHD Scholar at Times University, Multan, Email: asifwakil@gmail.com

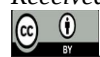
²Assistant Professor, TIME University Multan, Pakistan, Email: Imtiaz.malik.Ahmed@gmail.com,
ORCID: 0000-0001-7226-656x

Abstract

Article 51 of the United Nations Charter embodies the inherent right of individual and collective self-defense and constitutes one of the most significant exceptions to the general prohibition on the use of force under international law. Drafted in the aftermath of the Second World War, Article 51 was designed to regulate interstate armed conflicts within a legal framework centered on state sovereignty and collective security. However, the emergence of twenty-first-century security threats, including transnational terrorism, cyber warfare, autonomous weapon systems, hybrid conflicts, and other forms of asymmetric warfare, has exposed significant limitations in the traditional interpretation of this provision. The growing reliance by states on pre-emptive and preventive self-defense doctrines has further intensified debates regarding the scope, legality, and continued relevance of Article 51 in contemporary international law. This article critically reexamines Article 51 by evaluating the tension between legitimate state security interests and the need to preserve international legal compliance under the United Nations Charter. It explores the historical evolution of the right of self-defense, the jurisprudence of international courts and tribunals, and contemporary state practice in response to evolving security challenges. Particular attention is given to the legal distinction between pre-emptive and preventive self-defense, the concept of imminence, the legality of self-defense against non-state actors, and the application of Article 51 to cyber operations and emerging military technologies. The study further examines the impact of divergent state interpretations on the effectiveness of the collective security system and the authority of the United Nations Security Council. Employing a doctrinal and analytical research methodology, the article analyses treaty provisions, customary international law, judicial decisions, state practice, and recent scholarly discourse to assess whether the existing legal framework adequately addresses modern security realities. The study argues that while the fundamental principles underlying Article 51 remain indispensable for maintaining international peace and security, its contemporary application requires greater legal clarity and interpretative consistency to prevent abuse while accommodating legitimate security concerns. It concludes by proposing reforms aimed at clarifying the concept of imminence, strengthening international oversight of self-defense claims, developing legal standards for cyber and artificial intelligence enabled conflicts, and promoting greater coherence in state practice. Such reforms are essential to balancing evolving security imperatives with the rule of law and preserving the integrity of the international legal order in the twenty-first century.

Keywords: Article 51 of the United Nations Charter: Self Defense under International Law: Use of Force: International Peace and Security: Contemporary Security Threats

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Corresponding Author Email: Imtiaz.malik.Ahmed@gmail.com

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Introduction

The rule against the use of force is one of the most basic and fundamental rules in modern international law and is the backbone of post-Second World War international legal order. The United Nations Charter, which was adopted in 1945, was a radical rejection of the preceding policy of international relations which had tolerated war. The Charter contained a very complete collective security system, in which the threat or use of force against the territorial integrity or the political independence of any state is prohibited under Article 2(4). In this context, the right of individual and collective self-defense as contained in Article 51 is unique in that it is an inherent right of all states, in response to an armed attack, until the United Nations Security Council takes the steps necessary to restore and maintain international peace and security. The balance between state sovereignty, national security and collective security under international law, is therefore reflected in the careful wording of Article 51 which sets out the use of force exception to the general prohibition on the use of force (Aust, 2024).

The legal framework created by the United Nations Charter was shaped by the traditional form of interstate conflict, typified by the existence of clear territorial lines and clearly defined sovereign states who are in conflict, engaging in military hostilities. The drafters of the Charter wanted to make sure that there was no unilateral military action and that the central role in the maintenance of international peace and security was to be played by the United Nations Security Council, while leaving the state's inherent right to self-defense in the face of unlawful armed attack. This set of rules served for many decades as the main legal justification for the use of force and played a crucial role in the evolution of modern international legal rules on armed conflict and state responsibility (Beard & Stephens, 2024).

The security context of the 21st century is, however, more and more distinct from that which prevailed when the Charter was adopted. In today's globalized world, the mode of warfare is shifting to include new forms of armed conflict such as transnational terrorism, cyber warfare, hybrid warfare, proxy warfare, autonomous weapon systems, military operations facilitated by artificial intelligence, and attacks by non-state actors across international borders. These new types of conflicts are often more than just about territorial sovereignty and are over the limits of what is legally defined as an armed attack under Article 51. As the threats to security have changed, there has been a lot of uncertainty about the right of self-defense and how it should be exercised in the existing framework of international law (Chakma, 2025).

Beginning to be a hot topic of debate in recent decades is the tendency for states to act proactively to anticipated threats to security in response to an expanded interpretation of self-defense. After 11 September 2001, some States began to develop wider interpretations of 'self-defense' that went beyond the defense against an actual armed attack. Doctrines of pre-emptive and preventive self-defense, especially as related to counter-terrorism operations, have revolutionized international law discussions of the legitimate use of force. They have brought about a significant dispute between states, researchers and international courts over the dynamic interpretation of Article 51 to adapt it to the realities of today or whether it should be limited to the meaning of the Charter and to the principles of customary international law.

A rising trend in recent years has been to question the traditional approach regarding Article 51; this has become one of the most important issues of contemporary international law. Some states

support the liberal view that it should be able to deal with current and future threats, but other states argue that an extension of the right of self-defense could compromise the principle of the prohibition on the use of force and the collective security system outlined in the United Nations Charter. This gap has recently been highlighted in the context of military operations against non-state actors, anticipatory self-defense, cyber operations and counterterrorism in neighboring countries. Lack of a universal legal standard to address these questions has led to varying state practice and uncertainty over the legality of unilateral acts of force (Council on Foreign Relations [CFR], 2022).

Another major issue is that of "imminence," an element that is still central to the lawful use of self-defense. While necessity, proportionality, and immediacy were key elements in customary international law and were first established in the Caroline Incident of 1837, the modern security challenge is usually slow to develop, covert, and relies on technologies that were not conceived or known at the time the principles were formulated. Cyber-attacks and AI-enabled military systems, as well as terrorist networks, can cause significant damage without any visible military preparations and without the deployment of conventional forces. So, the question of when to make defensive moves in response to an attack has become more complicated. Lacking an authoritative international definition of imminence has led to varying interpretations and, in some cases, has paved the way for a unilateral military action that goes beyond the scope of the traditional unilateral use of force in Article 51.

The use of Article 51 has been further complicated by the advent of artificial intelligence and autonomous weapon systems. The technologies have the power to change the nature of warfare by allowing autonomous target selection, quick decision making, and highly advanced cyber warfare capabilities while allowing for less direct human engagement. Questions about what constitutes attribution, accountability, proportionality, and state responsibility have thus become more salient in the laws of armed conflict. Current legal frameworks are oriented towards "old-fashioned" warfare and offer piece of advice on how to apply the concept of self-defense in technologically advanced warfare. Likewise, the use of cyber capabilities that could impact critical infrastructure operations puts into question the existing concepts of "armed attack" and raises questions about thresholds of force, attribution and acceptable defensive measures (Crawford, 2019).

Institutional problems have also plagued the United Nations collective security system in keyways. While the Security Council has been the main organ for ensuring international peace and security, it has also been plagued by political divisions among the permanent members, the powerful veto, and tardy reactions to fast-changing security issues. Where collective action is impossible, states have increasingly been taking unilateral or coalition military action invoking broad readings of Article 51. Such measures could be an expression of true security concerns but do also pose questions about the ongoing legitimacy of the Charter system and the possible loss of multilateral decision-making authority over the use of force.

Considering the above, the present study critically reviews the UN Charter, Article 51, in the context of the challenges of security in the twenty-first century. It aims to assess the current law on the protection of life and limb against aggression whether it continues to provide a balance between the legitimate security interests of the States and the fundamental purposes of ensuring international peace, the preservation of State sovereignty and respect for international law. The

legal nature of pre-emptive and preventive self-defense, the changing nature of armed attack, military action against non-state actors, cyber warfare, autonomous weapon systems and the impact of the current state practice on the understanding of Article 51 are especially highlighted (Dinstein, 2022).

The research's primary goals are to explore the history and normative basis of the right to self-defense in international law; to examine the jurisprudence of international courts on the issue of Article 51; to analyze state practice on the evolution of its claims to self-defense; to evaluate the legal implications of new security threats for the existing framework of the Charter; and to suggest interpretive and institutional changes that would reinforce state security while strengthening international legal compliance. The study also aims to pinpoint areas in which clarification of international legal principles could help lessen the uncertainty and foster greater uniformity in implementing Article 51.

In terms of methodology, the study follows a doctrinal and analytical approach, involving a thorough analysis of primary and secondary sources of international law. The analysis is based on the United Nations Charter, customary international law as reflected in the judgments and the advisory opinions of the International Court of Justice, the resolutions of the United Nations Security Council and the General Assembly, state practice, official government documents and current scholarly works. Judicial decisions and the development of state practice are compared to consider whether the old understanding of Article 51 is still relevant in today's security context. (Dinstein, 2024)

This is an important study that seeks to answer one of the most important and controversial questions of today's international law: Is the mechanism of self-defense of the law sufficient to meet the challenges of the present day, while respecting the principle of banning the use of force, enshrined in the United Nations Charter? The article thus offers scholarly and policy discussions on the future of international peace and security through a combination of historical development, judicial interpretation, current state practice, new technologies, and institutional reform. It doesn't demand strict adherence to "old fashioned" views on Article 51, or the unlimited extension of unilateral military power. Instead, it demands an impartial and judicious reading which considers the legitimate concerns of security and balances them with the preservation of the rule of law, the sovereignty of the United Nations and the stability of the 21st century international legal order.

II Historical Evolution of the Right of Self Defense

Self-defense is one of the principles of international law that has been present since the earliest times. States have claimed the right to defend themselves against external aggression to protect their territorial integrity, political independence and national security long before the creation of the United Nations. The regulation of the use of force has been vastly different over the centuries, but the principle of self-defense has always been an integral part of the sovereignty of the State. It is not possible to trace the development of the modern formulation contained in Article 51 of the United Nations Charter to a single source; rather, it came about after many centuries of thought, international custom, diplomatic practice and legal evolution. To understand this historical evolution is essential for a better understanding of the current debates on the meaning and use of Article 51 in the twenty-first century. (Doswald-Beck, 2024)

The concept of the right to self-defense has its roots in the classical theories of natural law which prevailed in European legal thought in the seventeenth and eighteenth centuries. Natural law scholars saw self-preservation as a natural, inalienable right not only for people, but for sovereign states as well. This tradition held that the right to self-defense was a natural consequence of the general rule that all political communities had the moral and legal right to defend themselves from unjustified aggression. Natural law did not envision self-defense as a right implicit in any treaty, but as a right that was natural and existed outside of positive law. Thus, the principles of justice, necessity, and survival became the basis for the validity of defensive force, rather than legal authorization.

One of the first and most important voices in this intellectual stream was that of Hugo Grotius, who wrote one of the most important works in modern international law, *De Jure Belli ac Pacis*, in 1625. Grotius's work was written during a time of great conflict between states, and he asserted that war was a legitimate means of resolving conflict for three specific purposes: the defense of aggression, and the restoration of rights in line with law. He believed that self-defense was an expression of the natural law principle of self-preservation, and that states had an inherent right to defend themselves against "imminent dangers". At the same time, Grotius noted, the use of defensive force is still subject to necessity and proportionality. Force could not be employed arbitrarily or excessively but had to be limited to what was reasonably required to remove the threat. His writings had a profound impact on later legal thinking and laid the foundation for the normative framework of limits on lawful use of force. (Edelman, 2024)

Emer de Vattel (1723-1767) continued the natural law tradition, and his work *The Law of Nations* greatly influenced the international legal doctrine of the eighteenth century. Vattel considered states equal and independent members of the international community with natural rights like that of the individual under natural law. He claimed self-defense to be one of the fundamental rights of sovereignty, since no state should give up its life to an illegal act of aggression. Meanwhile, Vattel acknowledged that there was another side to the question of defensive force: it needed to be tightly controlled in a legal sense. He believed that necessity must be the sole reason for going to war and that the force be only as strong as is reasonably necessary to protect the state. The need to 'act in the interests of necessity', to act in 'interests of proportion', and to act in accordance with 'sovereign equality' later became fundamental concepts of customary international law in the lawful exercise of self-defense.

The lack of a single international law on the use of force gave the role of customary international law and of international practice in the use of force greater importance throughout the nineteenth century. Perhaps the most important development in this time was the Caroline Incident of 1837, one of the most influential precedents in the law on anticipatory self-defense. The event happened when a group of British troops set fire to an American ship, claiming it was being used to aid Canadian rebels in their fight against British colonial rule, while it was in United States' territory. This diplomatic controversy between the United Kingdom and the United States, and the large volume of letters that ensued, focused on whether the defensive force used constituted an actual armed attack.

The Caroline correspondence discussed the legal principles which had a profound impact on the subsequent evolution of customary international law. Daniel Webster, the U.S. Secretary of State, contended that anticipatory self-defense would be legitimate only when there was "instant

overwhelming leaving no choice of means and no moment for deliberation." The formulation set an extremely high bar for the justifiable use of anticipatory self-defense, and established the continuous criteria of necessity, immediacy, and proportionality. The two elements of necessity were that the action be essential to prevent the threatened harm and that the threat be actual and not speculative or remote. Proportionality meant that the defensive response should be proportionate to the danger; that is, it should be reasonable in view of the danger. These principles together laid out the foundation of the modern concept of international law and are applicable in a wide range of current discussions about pre-emptive self-defense.

The Caroline Incident was important not only in its own time, but because it showed that the international community was looking for a way to balance State security with legal limitation long before the United Nations Charter was drawn up. Under the Caroline doctrine, anticipatory self-defense was not a right, but rather an exceptional remedy that could be invoked under very special circumstances. The concepts of 'imminence', 'pre-emptive action' and 'preventive self-defense' continue to come into play in contemporary debates about the scope of the right articulated in this nineteenth century diplomatic exchange (Gray, 2024).

International efforts for collective security also began to grow in the early twentieth century, and the world began to move away from unilateral resorts to war. The First World War caused the formation of the League of Nations, an attempt to prevent future wars through international cooperation, dispute settlement, and action against warring states. The Covenant of the League did not provide a complete prohibition on the use of force, but it did provide procedural restrictions on resorting to war. States had a great deal of discretion in the use of military force after meeting certain procedural requirements, and the League had little effective enforcement power to stop aggression.

During the 1930s, the League of Nations was unable to effectively react to acts of aggression, thus revealing serious inadequacies in the existing international legal order. The treaties of collective security failed to prevent Japan from invading Manchuria, Italy from invading Ethiopia and Germany from invading Poland. The League could not enforce international legal obligations due to political divisions, the lack of universal membership, and weak institutional structures. These setbacks led the Allied Powers to decide that after the Second World War there had to be a better system of laws and institutions to keep world peace.

This experience of two great World Wars has changed the thinking of international law on the issue of the regulation of force. In the negotiations that paved the way to the creation of the United Nations, the member states tried to build a legal system in which unilateral military action would be rare rather than the rule. The San Francisco Conference of 1945 thus adopted a Charter which in the first place radically changed the legal nature of war by banning the threat and use of force under Article 2(4); and in the second place, gave the primary responsibility for international peace and security to the United Nations Security Council. It was one of the most radical changes in international law history, as it abolished the previous doctrine of "free choice to wage war" and established a broad legal prohibition with certain very limited exceptions (International Court of Justice [ICJ], 2024a).

Under this new law, the right of individual and collective self-defense was retained in the face of armed attacks, until the Security Council took the necessary steps to restore international peace

and security. The phrase "inherent right" was used on purpose because this principle of self-defense was already present before the Charter and was a part of customary international law. But the Charter made it much more difficult to use defensive force; it required that there be an armed attack and compelled states to notify the Security Council of actions of defense without any delay. The drafting history shows that the drafters had in mind that Article 51 should retain a limited self-defense right while not jeopardizing the collection of security systems set out in the Charter.

Thus, the history of the right to self-defense demonstrates a progressive shift from a natural law, broad understanding of the protection of the sovereign right to self-preservation to a highly contested legal doctrine within the institutional framework of the United Nations. Classical scholars focused on the intrinsic character of defensive rights, while twentieth century scholars began to focus more on the legal restrictions on the use of force by one party to another and the maintenance of peace between states. But the principles that emerged from natural law, customary international law, and diplomatic practice, such as necessity, proportionality and imminence, remain relevant to the interpretation of Article 51 and are at the heart of current discussions on the legality of pre-emptive self-defense, counterterrorism, cyber warfare and other new security threats.

Finally, the evolution of the right to self-defense over the centuries has shown that Article 51 is not a completely new legal construct, but rather a result of legal development over time. In the philosophy of Grotius and Vattel, in the rules of international law from the Caroline Incident, in established institutional reforms like the United Nations Charter, the law of self-defense has always been about balancing security interests of states with the promotion of international peace. This historical background can be useful in examining the traditional interpretation of Article 51 of the UN Charter and in assessing its capacity to address the challenges of contemporary security in the twenty-first century.

Normative Framework of Article 51

Article 51 of the United Nations Charter is the main source of the contemporary international law principle of self-defense. Under the current international law, the principle of self-defense is primarily reflected in Article 51 of the United Nations Charter, which is one of the most important provisions in international law governing the lawful use of force by states. Article 51 is exceptional in that the international legal order does not apply to the threat or use of force in self-defense, as set out in Article 2(4) of the Charter. It also upholds the legitimate right of States to act in self-defense against illegal aggression, while at the same time making sure that actions are taken in self-defense are in keeping with the overall goals of collective security for international peace and security. The interpretation of Article 51, which has been a major topic in the international community, in judicial practice and in the debate on the development of customary international law, has increased its legal force far beyond what is expressed in the text. It is important to analyze not only the text, but also how it relates to other Charter provisions, customary international law, and other legal principles governing the use of force.

Nothing in the Charter shall abridge the inherent right of individual and collective self-defense if an armed attack occurs against a Member of the United Nations until the Security Council has taken measures to maintain international peace and security. It also mandates that the actions of

States in exercising this right be made known to the Security Council immediately and shall not limit the authority and responsibility of the Security Council to take such measures as it considers necessary for the restoration of international peace and security. Each of the elements of this provision has sparked significant legal discussion as to its meaning and interpretation, although it is combined and seems compact (ICJ, 2024b).

The first sentence, about the "inherent right" to self-defense has been of special academic interest as it allows for the validity of a right which predated the Charter itself. Furthermore, the words used by the drafters were chosen with the purpose of acknowledgement that self-defense is a principle of customary international law and not a new legal right. Generally, Article 51 was understood to preserve an existing customary right and at the same time to provide the legal framework for its application in the United Nations. It has important implications as it could raise the issues of whether customary international law continues to develop along with the Charter or whether Article 51 is an exhaustive statement of the situations in which self-defense might lawfully be exercised.

There has been one aspect of Article 51 that has been a subject of dispute: An armed attack is required for the right of self-defense to come into play. A literal reading of this would mean that defensive force can only be used after an armed attack has already occurred. This narrow reading is in line with the interpretation given by many States and the International Court of Justice, which has always insisted that Article 51 is activated by an 'armed attack' and not by 'speculative or remote threats. This stipulation in the text should make unilateral military action more difficult and ensure the predominance of the system of collective security as provided by the Charter. (ICJ, 2024c)

There has been a considerable amount of controversy on a narrow question of the definition of an armed attack, despite the apparent clarity of the text. In the modern world, threats to security frequently take quite new forms, which are not all those visualized by the framers of the Charter. Armed attack, in the form of cyber operations against critical infrastructure, terrorist attacks by non-state actors, hybrid warfare through proxy forces and autonomous military technologies will also demand an understanding of new, nontraditional types of armed attacks and the ability to distinguish between military and non-military force. In recent years, international law experts and state practice have begun to doubt the ability of the term "armed attack" to be understood as a dynamic concept, yet one that retains the meaning and purpose of the Charter.

One should not underestimate the difference between an armed attack and other illegal applications of force, so this is an important part of the normative framework. For Article 51 to be triggered, not all breaches of Article 2(4) necessarily amount to an armed attack. International jurisprudence has accepted that armed attacks are the most serious forms of unlawful force, which have a scale and effect. These acts of violence in small scale border incidents, isolated military incidents or limited uses of force do not necessarily give rise to the right of self-defense under international law. This separation has a crucial normative purpose in that no ordinary diplomatic or political matter can justify the application of defensive force, except in the case of grave threat to State security (ICJ, 2024d).

Individual and collective self-defense are also acknowledged in Article 51. Individual self-defense allows a state to act directly against an armed attack directed against its territory,

population, or sovereign interests. Collective self-defense, on the other hand, enables other states to help the attacked state fight back against aggression, if the state attacked asks them for help. Collective self-defense recognizes that international peace and security may sometimes demand joint measures against aggression, especially if the military forces of smaller states are insufficient to achieve self-defense. However, the law of collective self-defense is not different from that of individual self-defense, and the idea of necessity, proportionality and an 'armed attack' still applies.

One of the most basic restrictions on the use of self-defense is the principle of necessity. Under customary international law and case law, there must be no practicable reasonable alternative to the use of force if it is to be used in defense. Military action must thus be the only reasonable measure to ward off or deter an armed attack. In the absence of the necessity of the situation, diplomatic effort or use of economic sanctions or international institutions should be considered before the use of force. This doctrine of necessity prevents the use of self-defense as a cover for any political or strategic goals other than security.

The principle of proportionality is closely related to necessity, meaning that the intensity, length, and measure of the defense must be proportionate to the threat faced. Proportionality does not mean that a proportion must be exact, but that the response to an attack must be limited to what is "reasonably necessary" to counter the attack and restore security. Military use of force that extends beyond these goals is also disproportionate in relation to the right of self-defense and could be in itself a violation of international law. Judicial rulings made in recent times similarly have repeatedly confirmed proportionality as a key criterion in the lawful use of Article 51.

A unique aspect of Article 51 is that it mandates a report to the United Nations Security Council on any defensive measures taken immediately by states. This reporting obligation as a wider aspect of the Charter's aim to subject unilateral military action to the collective international gaze. States' reporting to the Security Council on measures taken in self-defense acknowledges that self-defense is a temporary exception until the Council takes primary responsibility for security and peace in the international community. State practice shows that not all States are complying with this reporting obligation; it nonetheless is an important legal requirement to strengthen institutional arrangements set out in the Charter. A lack of reporting of defensive measures does not invalidate a claim of self-defense but may pose questions on the legality and transparency of military action.

The interplay between Article 51 and Article 2(4) is one of the core elements of the norm structure of the Charter. Article 2(4) lays down the general principle that there shall be no threat or use of force against the territorial integrity or political independence of any state. This prohibition has become a fundamental rule of international law and is now considered to represent customary international law. In the words of the Article, the clause is supposed to be an exception to the general rule and not an independent way to provide authorization for military action. Therefore, this interpretation should be done in harmony with both provisions to maintain the balance between the protection of state sovereignty and legitimate defensive action. A broad definition of Article 51 that could justify acts by a state to attack another state would have the potential of eroding one of the pillars of the post-war international legal system (International Law Commission [ILC], 2001).

The relationship between treaty law and customary international law also has an impact on the framework of meaning for Article 51. The Charter is the main instrument of law that governs legitimate use of force, although customary international law does continue to help interpret some of the concepts contained in the Charter, such as necessity, proportionality, imminence, and attribution. The International Court of Justice has found that customary principles are concurrent with the Charter system and can offer interpretative guidance in the case of ambiguity in the treaty. There is some controversy about the extent to which customary international law allows anticipatory self-defense beyond what is specifically provided by Article 51. There is a debate whether customary law still retains a right of anticipatory self-defense, as it did during the Caroline Incident, or whether the Charter intended to limit such practices to avoid situations in which force is used on its own.

The understanding of Article 51 has evolved over time and is increasingly influenced by practice at the national level. New interpretations have emerged regarding the scope of self-defense in the context of actions taken in response to acts of terrorism, cyber-attacks and activities by ‘non-state actors. Some states are proponents of a more flexible interpretation, which can respond to new security challenges in the time before irreparable damage is done, while others argue that any deviation from the textual limits of Article 51 would lead to the instability and unpredictability of international law. The gap shows that this is a traditional conflict between legal certainty and national security needs in today's complicated international landscape.

The norm of Article 51 also embodies general principles of international law, such as good faith, the principle of sovereign equality, the peaceful settlement of disputes, and the bar on aggression. All these factors together allow self-defense to be a rare exception to the prohibition on unilateral military action, rather than a blanket of permission to do so. A key part of the integrity of the international legal order rests on this balance, as unchecked use of self-defense arguments would seriously undermine the collective security framework agreed to by the United Nations and bring about a new norm of the use of force as a foreign policy tool.

Finally, Article 51 provides a well-balanced legal regime, which balances the legitimate right of States to defend themselves and the collective security mechanism of the United Nations Charter. It is based on the principles of Armed Attack, Necessity, Proportionality, Collective responsibility, and Security Council oversight. While the current security threats have caused various issues in the way in which Article 51 is interpreted, these are primarily concerned with not using force unlawfully and allowing lawful action to be taken in response to an armed attack under clearly defined legal conditions. In the modern era of warfare, however, the complexity of the situations requires careful interpretation by the judiciary and responsible state conduct to prevent any development of new security requirements from threatening the principles that underpin international law. This normative approach is necessary to analyze the judicial understanding of Article 51, and upon which the remainder of this study concentrates. International Law Commission (2022)

IV Judicial Interpretation of Article 51

But the understanding of Article 51 of the United Nations Charter has been influenced not only by the wording of the article and state practice, but also by the jurisprudence of international courts and tribunals. The International Court of Justice (ICJ) has had the greatest impact on the

interpretation of the law regarding the right of self-defense of the people among these judicial bodies. In a series of seminal decisions and advisory opinions, the Court has shaped an authoritative doctrine on the themes of armed attack, necessity, proportionality, attribution, collective self-defense and the nexus of treaty law and customary international law. The Court's decisions have been an important addition to the rules of international law, but they have also sparked a great deal of discussion about the scope and meaning of Article 51 in the face of changes in security threats. Judicial interpretation has therefore come to play a key role in the current debates on the relationship between state security and respect for the United Nations Charter.

The most important judicial ruling on Article 51 was in the 1986 International Court of Justice decision in the *Military and Paramilitary Activities in and against Nicaragua* case. The conflict stemmed out of accusations that the U.S. was supporting armed groups to overthrow the government of Nicaragua and was engaged in military actions against the country. The United States invoked the right of 'collective self-defense' in justifying its actions, claiming that aggression was being carried out against neighboring states.

The Court dismissed the U.S. argument and provided one of the fullest definitions of Article 51 in international law. It pointed out that the right to self-defense could only be exercised in response to an armed attack and that it is not a right to respond to any other kind of unlawful force. The Court held that not all Article 2(4) breaches are "armed attacks" that would invoke Article 51. Instead, armed attacks are the most severe types of force in terms of their severity and extent. This has been one of the hallmarks of modern international law on self-defense.

The Nicaragua judgment also confirmed the customary international law principles of necessity and proportionality as being key conditions for lawful defensive action. The Court pointed out that defensive measures must be strictly necessary to counter the armed attack and be proportionate to threats faced. Also, it explained that collective self-defense can only be exercised if the victim state has specifically declared itself to be attacked, and formally asked others states for help. The conditions were designed to not allow for unilateral action under the guise of collective defense and to keep the integrity of the collective security system as outlined by the Charter intact. International Law Commission (2024)

The Nicaragua judgment may be the most legacy in the areas of self-defense, in that customary international law continues to coexist with Article 51 of the Charter. While the Charter itself is the main body of law governing the use of force, the Court also noted the continued legal relevance of customary principles like necessity and proportionality. This dual base has proved to be of great value for subsequent courts and scholars to use as a basis for interpreting Article 51 in the light of the development of the customary international law, and at the same time to remain faithful to the fundamental purposes of the Charter.

Significant judicial developments were also taking place in the *Oil Platforms* case between Iran and the United States. The conflict ensued following the United States' destruction of Iranian offshore oil platforms using military force in the Persian Gulf as self-defense against attacks on American vessels. The Court had thus decided whether the destruction of the platforms met with the conditions of law laid down by Article 51.

The ICJ abided by its previous decisions and stressed the responsibility of the defending State to prove an Armed Attack. The Court found the evidence adduced was not enough to establish that Iran was legally bound to have been responsible for attacks of sufficient gravity to invoke the right of self-defense. If an armed attack had happened, the Court went on to say; the destruction of the oil platforms didn't meet the tests of necessity and proportionality because the action was more than was reasonably necessary to eliminate the purported threat. The decision affirmed the principle that states cannot make the determination of self-defense on their own but must be objectively assessed by the courts.

Also, the Court's reading of Article 51 was extended in the Armed Activities on the Territory of the Congo case, where it referred to armed action against non-state actors within the territory of another state. Uganda claimed that invading the Democratic Republic of Congo was an act of lawful self-defense against attacks from armed groups based in Congolese territory. Uganda maintained that its military incursion into the DRC was a lawful act of self-defense against attacks from armed groups operating from Congolese territory. The case was one of the first ones to get before the Court that questioned whether the attacks of non-state actors could justify a response with cross-border military operations, under Article 51. International Law Commission (2026)

The Court took a narrow view, finding that there was no evidence that the Congolese government was responsible for the alleged attacks, and that the attacks met the “armed attack” threshold of Article 51 of the UN Charter. It reiterated that the doctrine of self-defense traditionally applies when there is an armed attack which can be attributed to the actions of a state and it was not prepared to recognize a general right of unilateral military action against non-state actors in the absence of clear evidence of state involvement. This was in line with the prevailing legal orthodoxy of the day but has since been the subject of much scholarly criticism, especially since the rise of transnational terrorist groups that can attack with little direct state involvement at this point.

The Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory extended the interpretation of Article 51 to apply in the context of extended occupation and counterterrorism measures. Israel claimed that building the fence was an exercise of its right to self-defense to protect itself from the threat posed by terrorists coming from the occupied territories. The Court, however, disagreed, stating that Article 51 assumes armed attack as the basis for invoking the right of the state to self-defense, and the circumstances in the case did not meet the legal criteria for invoking the right of self-defense. While not a binding ruling, the opinion further strengthened the Court's narrow view of Article 51 and highlighted its aversion to the doctrine extension beyond the interstate context.

Article 51 has not only been interpreted by the International Court of Justice. There have also been indirect contributions to the development of the law of international action regarding the use of force by various international criminal tribunals, which have considered matters of aggression, armed conflict, and state responsibility. These tribunals are mainly concerned with individual criminal accountability and while they did not have jurisdiction over international conflicts, their decisions have solidified some of the essential principles of proportionality, military necessity, distinction and accountability. These principles build upon the other rules on

which the lawful exercise of self-defense is based and draw attention to the fact that even lawful defensive acts are subject to IHL.

Regional judicial institutions have also played a role in the development of the concept of self-defense, through rulings on the topic of state responsibility, human rights obligations, and military action during an armed conflict. Over the years, regional human rights courts have made several decisions which have placed a greater emphasis on the compatibility of the exercise of self-defense with the United Nations Charter and with international human rights law. This developing jurisprudence illustrates the convergence of various forms of international law and shows that there is no absolute shield for national security against judicial review.

The work of the International Court of Justice has, however, received considerable academic commentary that is highly critical of it. Many scholars have suggested that the Court's interpretation fails to align with reality of modern security and that it remains a traditional interstate view of an armed conflict. Judicial doctrines, mainly written for conventional interstate warfare, have proven to be weak against the new trends in the use of war, especially in the field of terrorism, cyber warfare, hybrid warfare and transnational armed groups, as well as autonomous weapons. Critics argue that the Court's requirement to include state attribution and narrow definition of an armed attack may not be sufficient to deal with the contemporary threats that might inflict catastrophic damages even if they are not directly perpetrated by another person of sovereign authority (Lieblich, 2024).

Since the terrorist attacks of 11 September 2001, some states have introduced more general definitions of Article 51 to allow the state to take military action against non-state actors who are acting from foreign territory where the territorial state has not or is not able to suppress the threat. This fledgling doctrine has been embraced to different extents in state practice and is not yet an IJCJ doctrine per se. There has thus been a growing gap between judicial interpretation and the real practice of states, which poses important issues concerning the development of customary international law of self-defense in the future.

A second judicial uncertainty is whether the concept of the “armed attack” in Article 51 applies to cyber operations. So far, the International Court of Justice has not given a clear ruling on the question of whether a cyber-attack could be considered an armed attack, thereby justifying the use of force in self-defense. However, previous cases in Nicaragua which imposed a gravity requirement offer an analytical framework for determining if cyber operations that cause physical destruction, significant economic disruption or loss of life meet the legal requirements of Article 51. How traditional legal concepts will be applied to technologically sophisticated means of fighting will have a significant impact on future judicial rulings.

Article 51 has also been interpreted by the courts as continuing to have a central role as an overarching principle for all defensive force uses of force, including necessity and proportionality. Whatever threat is faced, the state has a duty to be certain that military action is the least intrusive option to ensure the security of the state and that the use of military force is not disproportionate to the threat. Such principles serve as fundamental protections from misuse of justifications for self-defense and as a balance between security concerns and the promotion of international peace.

Overall, the IJCJ's jurisprudence has had a significant effect on the evolution of the concept of armed attack in the context of Article 51, providing a consistent legal framework for armed attack, attribution, collective self-defense, necessity, proportionality, and the role of the SC. While this is useful legal clarity, it also displays an interpretation of the laws derived from traditional interstate warfare situations, which might need to be adapted to fit twenty first century conflicts. So, the ongoing process of international security should require a never-ending conversation among all three – judicial interpretation, state practice and scholarly analysis to keep the law on self-defense coherent and effective (O'Connell, 2019).

To summaries, one of the main ways in which Article 51 has gained substantive legal meaning is through judicial interpretation. The International Court of Justice has consistently called for restraint in the use of force, for legality and for the supreme importance of the collective security system, while maintaining the right of states to defend themselves against armed attacks. However, the advent of terrorism, cyber warfare, Artificial Intelligence and other non-conventional forms of attack have created greater pressure to review certain issues of the Court's jurisprudence in the context of the current security environment. These judicial developments set the stage for exploring the current issues that Article 51 faces in the modern international legal system.

V Contemporary Challenges to Article 51

In the twenty-first century, the legal aspects of self-defense enshrined in Article 51 of the United Nations Charter have been called into unprecedented question, given the fundamental transformation of the nature of armed conflict. The Charter was conceived and written following the Second World War, to govern 'interstate warfare' in its conventional form, but today's forms of security threats are typically non-state, multi-jurisdictional and technologically advanced. Terrorism, cyber warfare, autonomous weapon systems, hybrid warfare, and the militarization of outer space have all come to the fore and challenged some of the well-established legal principles including "armed attack", "attribution", "necessity", "proportionality" and "state responsibility". The developments have sparked academic and judicial controversies over whether there is justification to read the Article 51 as a dynamic instrument that reflects the changing shape of security threats or to stick to the literal meaning of the provision to ensure the maintenance of international peace and the rule of law.

Some of the most pressing problems that currently face Article 51 are the rise of transnational terrorism and the rise of non-state actors in international armed conflict. The Charter vision historically envisioned armed attacks happening from the sovereign state to another sovereign state. But terrorist groups have shown their ability to cause destruction like that of the conventional military when they are not directly controlled by the state. The events of 11 September 2001 have revolutionized the international legal landscape by showing that non-state actors can threaten international peace and security on an unprecedented scale. The simultaneous attacks on the U.S. caused thousands of civilian deaths and disruption of the U.S. economy and prompted the international community to rethink the legal rules for self-defense.

To counter these attacks, the United Nations Security Council passed Resolutions 1368 and 1373, which have established the principle of self-defense against acts of international terrorism. These resolutions constituted important steps in the evolution of international law because they

established that large-scale terrorist acts could be armed acts, triggering Article 51, even if there was no direct connection with another sovereign state. The following military invasion in Afghanistan was generally approved because of the notion that the Taliban government had given the terrorist group Al-Qaeda appropriate sanctuary and support to establish a strong connection between the territorial state and the terrorist group. This interpretation proliferated significantly in international law and led to an ongoing debate on the precise legal threshold for the attribution of acts of non-state actors to states in international law (Ruys, 2010).

In response to the changing threat of transnational terrorist organizations, the controversial "unable or unwilling" doctrine have been created, which states that a country can use force in another country's territory if that country is unable or unwilling to stop armed attacks by non-state actors from being launched from its territory. Defenders of the doctrine say it's necessary for today's security needs to stop the use of territorial sovereignty as a cover for terrorist groups. They argue that they would not be able to protect themselves from emerging threats if the state had to be stated each time. On the other hand, critics argue that the doctrine is not explicitly mentioned in the Charter, that it could erode the principle of sovereignty, and that it could offer a way through which politically motivated military action could take place. Lack of universal acceptance illustrates the ongoing conflict between the changing state practice and the traditional understanding of Article 51.

Following the emergence of the so-called Islamic State, it became ever more difficult to define Article 51 in the context of modern terrorism. Multinational forces have been authorized to fight in Iraq and Syria using arguments of collective self-defense and incompetence of territorial governments to contain the terrorists. These operations illustrated the real-life need to adjust the legal principles established in traditional interstate conflicts to cases involving decentralized transnational armed groups. Yet, they also revealed enduring doubt about the issue of attribution, territory and territorial consent, and what could be considered the boundaries of defensive cross-border operations (Schmitt, 2017).

Cyber warfare is another serious threat to the norm of Article 51. Digital infrastructure is integral to the functioning of modern societies, powering everything from government facilities to financial systems, transportation networks to healthcare, energy facilities to telecommunications to military operations. As a result, an enemy cyber-attack can have effects like those of a military attack, but with no weapons or land borders being violated. Cyber-attacks on critical infrastructure can also impact electricity grids, communication infrastructure, financial markets, democratic processes, and even civilians' lives.

A fundamental legal issue is whether cyber operations could be defined as an armed attack under Article 51. Armed attacks have been traditionally interpreted in terms of actual military arms and do not offer much clarity about the concept of armed attacks in the context of digital operations. Many states and law professors believe that cyber war can have the same consequence as kinetic war and meet the threshold for a self-defense response. This functional approach is based on the following: the choice of the method used should not be decisive, but rather the scope and consequences of the operation. Therefore, any cyber activity that causes significant damage to infrastructure which supports critical national functions, loss of life, and/or physical destruction of property may justify the inherent right to self-defense.

An additional challenge is the issue of attribution. This is quite different from a military attack, which can be carried out openly in a single jurisdiction, amongst a select group of private entities, proxy entities, and using a range of clear, easily identified methods that would not mask the identity of the attacker. It is therefore essential that, to establish the legal responsibility of a state, highly reliable technical and intelligence evidence can be produced that meets international legal requirements. But in the absence of specific identification of the source of danger to the state, there is great uncertainty in deciding whether defensive measures may be taken lawfully against another state. The Tallinn Manual on the International Law Applicable to Cyber Operations has been helpful in addressing these questions by applying traditional international law principles to the cyberspace context but is not a binding legal document. (Shaw, 2021)

The advent of technological innovation has also brought into today's military applications autonomous weapon systems and artificial intelligence, meaning that there are new challenges for the interpretation of Article 51. In the field of autonomous weaponry, they can find, select, and target targets in varying degrees of human participation, while AI plays an increasing role in military decision-making on the battlefield by means of predictive analytics, surveillance, processing of intelligence and operational planning. The technologies have military benefits that are significant, such as the fact that they can help to make operations faster, more precise, and safer for the military. At the same time, they pose basic legal issues of accountability, attribution, necessity, proportionality, and respect for international humanitarian law.

The proliferation of autonomous weaponry increases the difficulty in determining whether there is a lawful basis for using force, as there may be a growing reliance on algorithmic processes in deciding whether to use force. The problem of who is responsible for the misdirected attack or choice of target becomes much harder to resolve in situations where autonomous systems operate without supervision following activation. It is unclear whether the laws should be applied to military commanders, software developers, manufacturers, software programmers, or states using such technologies. These uncertainties have led to growing international calls for some human oversight of autonomous arms to ensure they are in line with the UN Charter and international humanitarian law.

But with artificial intelligence, the ideas of imminence and necessity found in Article 51 are thrown into question. As the concept of anticipatory self-defense becomes more widely understood and embraced by states, it may be the emerging threat which spurs them into increasingly broad interpretations of the term. Technological developments can make defense more effective but can also make it more likely that defense is based on a probabilistic judgment of an imminent attack, instead of tangible evidence. Overreliance on algorithmic predictions might reduce the legal threshold for the use of force and thus undermine the principle, fundamental objective, or purpose of the Charter of the United Nations in preventing unnecessary military conflict.

Another major hurdle to the effective use of Article 51 of the CFSP today is hybrid warfare. A hybrid conflict consists of a combination of conventional warfare and cyber operations, disinformation campaigns, economic coercion, political interference, intelligence operations, proxy forces, and private military companies. Such integrated approaches purposefully take advantage of the difference between peace and armed conflict by taking actions that individually may not meet the definition of armed attack, but which taken together have serious destabilizing

impacts. These activities make it more difficult to determine whether Article 51 has been met by a combination of non-kinetic operations as they could have a significant impact on national security without the use of traditional armed forces. (Tams, 2019)

With the rise of proxy armed groups, international law gets even more complicated regarding the issue of attribution. States can provide support to insurgent groups without engaging in combat, which might include funding, intelligence, military training, logistics, and even cyber support. In determining whether such an indirect involvement constitutes an armed attack imputable to the supporting state, it is essential to apply established principles of effective control and overall control in a careful manner, as developed by international jurisprudence. Divergent approaches of international courts still leave room for ambiguity as to the exact legal standard that applies to state responsibility in hybrid conflicts.

One of the new areas of law in self-defense is the militarization of outer space. Satellite systems are used today extensively in military operations for navigation, communication, surveillance, collecting information and intelligence, guiding missiles, financial operations, and critical civilian infrastructure. These assets are ever more susceptible, and outer space is thus becoming a more competitive strategic space. Satellite hostile actions, such as cyber interference and electronic jamming, kinetic destruction, or attacks by anti-satellite weapons, could have a serious impact on national security and military effectiveness.

How Article 51 can be applied to the use of force in outer space is not well settled, as current treaties on space activity were drafted before the advent of modern military technology. The Outer Space Treaty does not explicitly specify how a state may exercise its right of self-defense in the event of an attack on outer space infrastructure, but it offers little guidance on this issue. Satellite systems are becoming more vital for States, and international law needs to be further developed to decide whether an attack on essential space assets is an armed attack triggering Article 51.

They illustrate together the challenges that the old concept of the rule of law on self-defense is under pressure from the new behaviors of conflict. The principles set out in 1945 still form an indispensable normative basis for the regulation of the use of force, but this principle has to be interpreted in a legal way and is applicable to new challenges in security that has to be flexible and legal certain. Unnecessary broadening of the scope of Article 51 may lend legitimacy to military force used in isolation and compromise with the collective security system provided by the United Nations Charter. On the other hand, narrowing a definition can limit the options available for states to deal with actual threats from terrorism, cyber warfare, autonomous technologies, and hybrid conflicts (United Nations, 1945).

Overall, the nature of international security in the twenty-first century requires a proper review of the legal principles of Article 51, subject to the fundamental principles of the Charter regarding peace and security in the international community. The term modern conflict, as applied to the current era, is used to describe the various forms of conflict that are not limited to interstate conflict, as was the original intent of the drafters of the Charter, but includes terrorism, non-state actors, cyber operations, artificial intelligence, autonomous weapon systems, hybrid warfare, and space security. Certain conditions have to be fulfilled, and they may only be met through a long-term process of the gradual elaboration of coherent international legal standards,

based on the interpretation of the law by judges, state practices, the mutual cooperation of different countries and the reform of institutions. This will guarantee that the right of self-defense is relevant to today's security challenges without undermining the concept of rule of law, which is central to the United Nations Charter's principles.

VI State Practice and Contemporary Controversies

The meaning of Article 51 of the United Nations Charter has been shaped in a variety of ways, such as through judicial rulings and academic debate as well as how states actually use it when facing new security threats. The role of state practice is of central importance to the development of international law and affects the interpretation of treaty provisions, as well as the development of customary international law. However, in modern times, the doctrine of self-defense has become more fractured in response to national security priorities and to differing understandings of international legality. The post-Cold War era has seen a number of states granting wider interpretations of Article 51 in the context of terrorism, weapons of mass destruction, cyber threats and of course regional instability. These practices have been trying to remedy real concerns about security but have been hotly debated as to their compatibility with the United Nations Charter and even the collective security system set up in 1945.

The evolution and change in United States security practice over the last decade has been one of the most significant events. The attacks had a lasting effect on the way Americans think about national security and showed the weaknesses of the traditional notions of deterrence against transnational terrorist groups that can inflict devastating damage on a nation without the backing of military forces. In response, the United States has taken a much broader stance on the right of self-defense that includes "the force of necessity." This change in policy was dubbed the Bush Doctrine and was one of the biggest deviations from the "rules of Article 51."

The Bush doctrine was first formally declared in the 2002 National Security Strategy of the United States which encouraged an evaluation of traditional legal principles on imminent use in the context of contemporary threats of terrorism and weapons of mass destruction. For the Strategy, it was an unacceptable risk if states waited until an attack was imminent in the classical sense because terrorist groups or hostile regimes could deliver devastating attacks without warning. Thus, the United States was claiming the authority to use military force before a threat even becomes a reality. While the doctrine was based on a distinction between pre-emptive and preventive action, it broadened the scope for military intervention that could be considered in the name of self-defense.

This evolving meaning of Article 51 was strengthened by the wider War on Terror. The military operations in Afghanistan were supported by many countries because they were carried out after the 11 September 2001 attacks and were perceived as a self-defense action against Al-Qaeda and the Taliban regime in Afghanistan as a haven for the terrorist group. In fact, the UN Security Council tacitly recognized the right to self-defense in Resolutions 1368 and 1373, which have recognized that large-scale attacks by non-state armed groups could justify invoking Article 51. But later military campaigns as part of the global conflict against terrorism began to depend increasingly upon more expansive notions of self-defense that included cross-border attacks on terrorist groups based within states that were claimed not to be able or willing to stop them. These developments brought much discussion about the scope of 'private' right to self-defense

against non-states and the ongoing role of territorial sovereignty (United Nations Security Council [UNSC], 2024a).

The debate over the broadened concept of Article 51 came to a head in 2003 when the U.K. and U.S. allies of the U.S. invaded Iraq. The primary rationale for U.S. military action and that of the United Kingdom and coalition partners was the alleged possession of weapons of mass destruction by Iraq, its suspected connections with international terrorism, and the threat of future attacks against international peace and security. While several legal arguments were offered, one of the principal ones was based on an enlarged view of preventive self-defense. As per this logic, the threat of Iraq having or using weapons of mass destruction was enough to warrant war, even when it did not turn into an armed attack against the United States.

Advocates of intervention took the view that the rule of self-defense as it had been defined in classical law was too limited to deal with the threats of new weapons with the potential to cause catastrophic harm. Their stance was that the threat of hostile intentions coupled with past violations of the Security Council's resolutions and the possibility of acquiring WMD was enough for anticipatory defensive action. Other arguments that had been mentioned previously in the Security Council resolutions that were passed following the Gulf War of 1991 were used, implying a re-emergence of previous determinations to use force against Iraq.

The international community was greatly critical of these legal arguments. Numerous states, legal experts and international bodies contended that the invasion was not explicitly authorized by the UN Security Council, thus violating the prohibition on the use of force in Article 2(4) of the Charter. Preventive self-defense was also criticized for having no solid grounding in Article 51, since there had been no armed attack or evidence of an imminent attack. Later investigations didn't reveal any weapons of mass destruction in the alleged stockpiles, which had been a key part of the legal and political rationale for the intervention. The fact that there was no convincing evidence played a major role in undermining the credibility of the preventive self-defense doctrine and strengthened doubts that the doctrine could be misinterpreted to allow unilateral military action against a future threat that is not clearly defined or imminent.

The Iraq War thus turned into one of the most significant debates of the modern treaty on the use of force. It emphasized the perils that would follow if the rationale for "legitimate" self-defense were to be lowered; and it illustrated the potential fragility of the international law order if the calculation of future security threats were to be subjective. Many commentators see the intervention as a "showcase" of the difference between pre-emptive self-defense against a threat that is "imminent" and preventive self-defense against a "potential threat. Many commentators consider the intervention to be an example of the difference between "pre-emptive self-defense against imminent attack" and "preventive self-defense against hypothetical future attack". Under the framework of the Charter, preventive self-defense is strongly opposed as it eliminates objective limitations such as those of necessity and imminence. Although limited self-defense is still supported by some under customary international law, the two concepts are fundamentally incompatible (UNSC, 2024b).

Another important illustration of the development of state practice regarding anticipatory self-defense is Israel. Given its distinctive geopolitical context and the ongoing security threats it faces, the State of Israel has always adhered to the interpretation of Article 51 that takes into

consideration the prevailing threats of the day from hostile neighboring states and non-state armed groups. Thus, the need to respond to threats that are about to happen and prevent them from transforming into irreversible attacks that can become a threat to national survival has been a central point in Israeli security policy.

It is one of the most widely discussed instances of anticipatory self-defense in the history of international legal literature that the Six-Day War of 1967 left. Israel said an Egyptian military buildup in the Sinai Peninsula, closure of the Strait of Tiran and the mobilization of hostile regional alliances posed an imminent threat of armed attack, which warranted pre-emptive military action. Proponents of Israel's interpretation argue that the circumstances met the usual prerequisites outlined by the Caroline Incident; there was an imminent and overwhelming threat and no realistic opportunity for peaceful resolution. Others have said that there were other diplomatic avenues that were not fully explored and that therefore the "necessity" prong of the law was not met. The on-going debate on the Six-Day War demonstrates the inherent challenge of nineteenth-century ideas of imminent crisis to military crises which rapidly change.

Perhaps the most recent self-defense issue that has arisen in modern times is the large-scale, all-out invasion of Ukraine by the Russian Federation in February 2022. Russia made several points in defense of its military intervention under international law. Russia made multiple claims to validate its use of force in international law. Nonetheless, these ranged from statements of collective self-defense on behalf of the self-described Donetsk and Luhansk People's Republics after recognition by Russia, claims of the need to safeguard Russian nationals and Russian-language speaking communities, to more general preventive arguments about threats from Ukraine's military buildup and ties with the North Atlantic Treaty Organization.

Russia also said that there was a risk of "acts of aggression and genocide" against populations living in eastern Ukraine being carried out, necessitating the use of military force. The collective self-defense, humanitarian protection, and preventive argument were brought together in one legal framework. But the vast majority of states denied that these were consistent with Article 51. Although most of the international community considered both recognition of separatist entities and general security issues sufficient to justify the extensive use of force against the territorial integrity and political sovereignty of another sovereign state, the issue of the right of defense was not raised.

In the eyes of international law, Russia has some serious legal problems. The right of collective self-defense assumes of a legitimate state asking for military assistance after it is attacked by an armed force. Most of the international community rejected the idea of recognizing Donetsk and Luhansk as legal states, the territory of which could be subject to the provisions of Article 51. Moreover, allegations of future threats to security did not meet the traditional requirements for legitimate defensive measures of "necessity" and "imminence. In the International Court of Justice (ICJ), provisional measures proceedings, the Court ruled that Russia's reliance on allegations of genocide as a basis for use of force was lacking in any legal basis, thus strengthening the narrow interpretation of Article 51.

It further attests to the current international consensus on the boundaries of legitimate self-defense, as expressed by the United Nations General Assembly. In a series of resolutions passed pursuant to the Uniting for Peace procedure, the General Assembly strongly condemned the use

of force and reiterated that the invasion was a breach of the UN Charter, reaffirmed Ukraine's sovereignty and territorial integrity, and rejected the justifications for military aggression based on broad interpretations of self-defense. The important aspect which needs to be pointed out is that although General Assembly resolutions are not binding on the international community, they have a high degree of persuasive value as an expression of the international community's opinion on the interpretation of the obligations arising out of the Charter (United Nations General Assembly [UNGA], 2024a).

These are all facets of the state's practice and illustrate the flexibility and fragility of Article 51 in the modern international legal order. States are facing complex security issues not imagined by the Charter's authors, such as terrorism, cyber security, WMD, and hybrid conflict. As a result, governments have tried to be more flexible in their interpretation of what constitutes legal conditions for self-defense. Concurrently, these trends highlight the potential for overly expansive reading to fly in the face of the prohibition on the use of force and to vitiate the collective security system laid out by the United Nations.

To sum up, the state practice today shows that there is growing divergence among nations with respect to the meaning of Article 51. The Bush Doctrine, the Iraq War, Israel's sense of self-defense and Russian arguments for invading Ukraine are just a few examples of the different concepts of self-defense that persist in scholarly discourse and in international diplomacy. Security threats are indeed a developing reality, and an adaptation of Article 51 is a necessary legal response; yet maintaining peace at the international level depends on a respect for the sovereign equality of states, and a commitment to basing any development of Article 51 on good faith and necessity. This ongoing gap between state practice and the legal framework established by the Charter thus highlights the pressing need to resolve the issue of scope of self-defense in the twenty-first century through more clarity and international consensus building.

VII Compliance Challenges under Article 51

The success of Article 51 of the United Nations Charter will be as much dependent upon the states and international institutions acting within the legal bounds of the text as it is on the wording of it. The right of self-defense is one of the main exceptions to the principle of the prohibition on the use of force in Article 2(4) since the Charter was adopted in 1945. In recent years, however, the use of Article 51 is becoming a thornier issue due to changing security threats, geopolitical rivalry, technological advances and different national security philosophies leading to different interpretations of the legal obligations of the article. The Charter attempts to balance the sovereign right of states to defend themselves, with the collective responsibility to ensure international peace and security, but today state practice has made it more difficult to achieve this balance. This has caused compliance issues with the Charter, questions of the authority of the Charter, the effectiveness of the collective security system of the United Nations, and the evolution of international law on the use of force ("The Legality and Enlightenment of Preventive Self-Defence," 2025).

Perhaps one of the greatest compliance issues is the continued lack of clarity about the word "imminence. While the term 'armed attack' is specifically mentioned in Article 51, neither the text nor the U.N. Security Council's 1960 regulations leave as much ambiguity as might be imagined about when a threat becomes imminent enough to trigger a defensive military response.

This was historically dealt with by the requirement in the Caroline Incident of 1837 that the necessity for self-defense be "instant, overwhelming, leaving no choice of means, and no moment for deliberation. The formulation set up a strictly guarded line that would not allow for the use of force for speculative or politically motivated purposes but would allow for a state's use of force in the event of a genuine imminent threat (UNGA, 2024b).

The world is changing international security in the twenty-first century, which makes the traditional concept of imminence less applicable. Modern dangers often come from the hands of the decentralized terrorist groups, cyber actors, proxy forces and autonomous technology that can cause significant damage without the use of traditional military forces. These threats are not always abrupt, evident in military preparations, and not always obvious, unlike traditional interstate threats. This, many governments say, does not match the realities of modern military operations and has the potential to force states to take so many blows before the law allows them to respond.

This uncertainty has led to different interpretations from state to state. Some governments believe that the threat must also be imminent, not just the start of the military conflict. Some governments believe that the threat should be imminent, not just the start of the military conflict, but it should involve probability, capability, and intent of potential adversaries. Others argue that any deviation from the Caroline is likely to make Article 51 an open-ended authorization for preventive warfare. Thus, the lack of a consensus definition has created a lack of uniform practice at the state level and reduced the predictability which is central to the proper functioning of international law. Ambiguity from a compliance standpoint helps states to make their own decisions about what is in their security interest, a process without any external references from the international community.

The use of the 'self-defense' clause by the States to justify military operations which surpass the limits set out by the Charter, is closely related to the ambiguity of imminence. While originally Article 51 was to be used as an exception to the rule of law in cases of armament attacks, the practice of the modern world shows that the term used by governments to justify wider geopolitical, strategic and ideological goals. Such practices can destroy the essential balance between lawful defense and unlawful aggression and thus lead to the erosion of the basis of the post-war international legal order (UNGA, 2024c).

One example of this is an expansionist approach to security. States can define other states as potential threats and use military force in response to speculative evaluations of potential hostile intentions. Preventive military doctrines often depend on the incomplete information of intelligence reports, on political notions or on long-term strategic considerations and calculations, instead of on tangible and verifiable evidence of an imminent armed attack. This to a great extent undermines the legal protection guaranteed by Article 51 as it shifts from quantified legal criteria to more arbitrary political appraisal.

Political abuse of self-defense claims further hampers international compliance. A government has sometimes used Article 51 as a basis for actions taken under the guise of "defensive measures" that were deemed to be necessary for "regime change," "territorial ambition," "resource competition," or "regional influence. A government has sometimes used Article 51 as a basis for actions taken under the guise of "defensive measures" that were deemed necessary for

"regime change," "territorial ambition," "resource competition," or "regional influence. The use of the term 'self-defense' may therefore be used for diplomatic and political purposes by seeking to give a legal justification to military actions that break Article 2(4). The international community has consistently warned it to weaken trust in international law through selective interpretation instead of objective application of international law.

Justifications for strategy have become more visible in the new concepts of national security. Some States have tried to update Article 51 to address modern threats, including introducing new concepts like the 'unable or unwilling' doctrine and in the case of collective self-defense, the concept of collective self-defense. These methods might be in response to actual security problems; however, it is unclear whether they are legal, as they have not received universal acceptance either under treaty law or customary international law. The varying use of these doctrines signals the increasing disconnect between changing practice among States and the existing framework of the Charter.

One of the other key challenges to compliance is institutional constraints faced by the United Nations Security Council. The role of keeping international peace and security is given to the Security Council by the Charter, and Article 51 grants a right of individual or collective self-defense only in order to take measures in response to a threat to peace until the Security Council has acted in that regard. Theoretically, this gives unilateral military action a temporary character and puts it under the collective international supervision. However, the Security Council has often faced political and institutional obstacles that affect its capacity to effectively fulfill these responsibilities.

One of the biggest structural problems facing the Council is the veto that the 5 permanent membership members have. Major powers seldom agree on timely solutions to armed conflicts, even when there is serious violation of international law, due to political disagreements. Strategic alliances, competing against geopolitical interests, and other such situations frequently lead to paralysis in institutions and the inability of the Council to implement collective security. This lack of consensus has been fueling states to increasingly rely on unilateral interpretations of Article 51, without waiting for multilateral authorization (United Nations Office of Legal Affairs [UNOLA], 2024).

Lack of institutional response also reduces compliance with the Charter. Cyber operations, missile technologies, terrorist attacks, and other components of contemporary military operations often unfold over a span of hours instead of weeks. The Security Council may thus fail to meet the need for a quick response to changing security situations in diplomatic deliberations. Consequently, states facing an imminent threat may see unilateral military response as the only concrete way of ensuring national security despite the spirit of the Charter that favors collective decision making.

Selective enforcement also harms the trust and credibility of the collective security system. The international reaction to such uses of force has been quite different on different occasions, depending on which countries are involved, based on their geopolitical identities. Some abuses of Article 51 receive widespread condemnation and sanctions, while similar actions by geo-strategically important states, may elicit more measured diplomatic responses. This lack of consistency undermines the sense of equality under international law and fosters the impression

that the implementation of the law can be affected by political concerns, not legal ones. The more selective international law appears, in the eyes of states, the more it is hard to sustain compliance.

Another difficulty with the modern approach to Article 51 is the lack of international agreement. The Charter sets out a common set of legal rules, but there is a growing divergence in states about how to strike the right balance between national security and collective legal restraint. These disparities stem from historical experiences and strategic environments, regional security concerns, and political priorities.

Western states have increasingly relaxed their definition of “self-defense” in response to threats of terrorism, cyber-attacks, and new technology. After the event of 11 September 2001, several governments embraced wider interpretations of armed attacks and decided to accept military action against non-state actors deployed from overseas territory under certain conditions. Other examples of a dynamic interpretation of Article 51 are the recognition of cyber operations as potential armed attacks and the formulation of doctrines on transnational terrorism by some states, which reflect their understanding of the current nature of threats (Van Steenberghe, 2024).

In contrast, developing countries have generally been more concerned about possible misuse of doctrine of extended self-defense. Africa, Asia and Latin America, where sovereignty, territorial integrity and nonintervention are historically important, especially in the context of colonial history and external meddling during the Cold War, are the focus of many of these states. These states often argue that Article 51 should be read restrictively to leave Article 25 of the Charter (i.e. the prohibition on the use of force) undisturbed, and that Article 51 should not be used to provide a suitable legal basis for military intervention by powerful states.

The role of emerging powers is becoming more significant but may also be more complicated in terms of this debate. Most of the states, including China, India, Brazil, Türkiye, South Africa and others, subscribe to the core values of the Charter and at the same time recognize the importance of tackling the contemporary security challenges in a pragmatic way through legal development. Their roles are often tasked with trying to balance respect for sovereignty with the need to carefully adapt the existing law into the realm of terrorism, cyber warfare, and technological innovation. However, there are considerable variations between these states, in what they allow in terms of anticipatory self-defense, collective defense and military action against non-state actors.

The differing views have made it difficult to agree on common understandings of Article 51. The law of self-defense, by contrast, has not seen a consensus in the doctrine, nor a convergence of the law, as many other parts of international law have done, when faced with treaty amendment or general customary practice. The lack of agreement not only creates legal uncertainty but also lowers international institutions' ability to respond to modern-day security crises on a consistent basis (Wilmschurst, 2019).

Adopting new technology is another challenge as it rapidly outpaces existing laws and regulations. Artificial intelligence, autonomous weapon systems, cyber operations, quantum technologies, and space-based military capabilities are the new types of warfare that were not considered by the Charter's authors. The traditional frameworks of 'attribution' and 'armed attack,' 'necessity' and 'proportionality' are increasingly subject to a sophisticated understanding

in relation to these new technologies. In the absence of international law standards that are comprehensive enough to capture these developments, states are likely to differ in their interpretation of those standards and thus will leave room for varying interpretations of compliance.

A second worry is the slow response to the loss of faith in multilateral institutions. States may become more inclined to take unilateral action ahead of a collective decision, if they feel that international organizations are not effectively addressing the security threats at hand. Such trends can undermine the United Nations' legitimacy and diminish the respect for the legal framework laid out in its Charter. Preserving compliance needs to be done not only by clarifying the substantive legal principles, but also by building the capacity of international organizations tasked with implementing those principles.

Second, international courts pose a compliance issue. While the ICJ may have helped clarify Article 51, its jurisdiction is largely dependent on consent of states, and decisions may not always be accepted by states involved in armed conflicts. In addition, judicial action is often delayed well after the fighting stops, reducing its effectiveness as an effective means to prevent unlawful uses of force. Enhancing judicial practice and interpretation is therefore one of the pending prospects for international law in the future (Wilmshurst, 2019).

In the end, the compliance issues facing Article 51 constitutes a general conflict between law and security. States have a right to have effective responses available to them to protect their populations from ever-changing threats, and the international community has a need to keep the prohibition on the unilateral use of force in play under the Charter system. Balancing these goals calls for a law that must be flexible enough to meet the challenges of modern security, but also sufficiently specific to avoid abuse and ensure international peace and stability (Polishchuk, 2025).

Finally, the right to exercise self-defense in international law remains a legal cornerstone of the legitimate use of force, but it is in increasing need of overcoming compliance obstacles to be practically effective. Uncertainties about the doctrine of imminence, the increasing misuse of self-defense, the inherent flaws of the Security Council, the selective application of the doctrine, technological change, and the international consensus that is disintegrating all contribute to the lack of coherence of the Charter system. For all these issues, a new multi-lateral dialogue is needed, as are more precise legal rules, more robust institutional mechanisms of control, and more uniformity between state practice and judicial interpretation. It is only through such full legal and institutional development that Article 51 can continue to balance the legitimate security interests of states with the overarching objective of maintaining international peace, international stability and the rule of law in the twenty-first century.

VIII Conclusion and Recommendations

One of the cornerstones of today's international legal system is the right of self-defense, as provided by Article 51 of the United Nations Charter. Ever since the Charter's adoption in 1945, Article 51 has been the most important legal basis for a state to lawfully use force in response to an armed attack, whilst at the same time maintaining the overall purpose of the Charter, namely, to maintain international peace and security through the collective security system set out in the Charter of the United Nations. The balancing act between the sovereignty of states in protecting

themselves and the prohibition on the use of force by one party is the main theme that has contributed to the peace of international relations after the Second World War. However, the current reconfiguration of the contemporary security landscape in the twenty first century has raised many legal, institutional and practical issues that need to be revisited with the respect of the basic values and principles of Article 51 without diluting its normative content.

The study has shown that the traditional interpretation of Article 51 evolved largely in the setting of traditional interstate warfare, where armed attacks were mostly considered to stem from a sovereign state's use of an organized military force within a known territorial boundary. The drafters of the Charter imagined a legal system where the United Nations Security Council would have the primary responsibility to preserve peace in the world; and the right to self-defense would be a strictly limited exception, awaiting collective action. But today's security world is different from yesterdays. Armed conflicts in the modern era are often fought by transnational terrorist groups, cyber warfare, hybrid warfare, proxy forces, autonomous weapons, artificial intelligence based military technology and other non-conventional means of warfare, which often exceed traditional notions of territorial sovereignty and state responsibility.

The analysis conducted in this article reveals one of the main issues before Article 51: the ongoing uncertainty surrounding the notion of armed attack and the requirement for the use of force to be "necessary" for the legitimate use of self-defense. The International Court of Justice's judgments have always held that these three legal elements of armed attack, necessity and proportionality are key elements in determining whether a lawful response is warranted. All this jurisprudence has highlighted the integrity of the collective security dimension of the Charter, while also exposing its shortcomings in the context of new threats from non-state sources, cyber networks and technologically sophisticated military means. As a result, there is a widening gap between the traditional interpretations of the law and the way the states practice it, especially in anticipatory security measures and counterterrorism operations.

The article also confirms that the law of pre-emptive and preventive self-defense is one of the most problematic areas of international law today. There are principles of customary international law, notably from the Caroline Incident, which allow for anticipatory self-defense to be justified only if the need for defensive measure is immediate, overwhelming, and there is no reasonable alternative. This precise form of pre-emptive response continues to be in line with the basic concepts of necessity and proportionality that have always been part of the lawful use of defensive force. By contrast, preventive self-defense against a foreseen or potential attack is not broadly accepted in international law because it would eliminate the legal objective requirement of imminence and would greatly enhance the chances of unilateral military action. The practice of the modern State, especially the Iraq War of 2003, is a warning of the risks inherent in Article 51 being used beyond the limits of the law, and for the sake of legal certainty and international stability.

This study also shows that state practice has diverged from the Charter framework in several states over the years, with the divergence growing as the study progressed. The Bush doctrine, military counteraction of non-state actors, the Israeli doctrine of anticipatory self-defense, and Russia's legal justification for the invasion of Ukraine are all examples of the lack of a universal interpretation of Article 51. Some governments call for more flexibility with respect to changing security threats; others stick to the Charter's "textual limits" and the importance of the Security

Council. This breakdown in state practice has undermined international agreement on the lawful use of force and heightened the risk of politically motivated claims of self-defense.

The development of cyber warfare, Artificial Intelligence, Autonomous weapon systems, Hybrid conflict and space security are further examples of new technologies that were not anticipated by the Charter's drafters, and which are now forcing international law to adapt. The challenges of attribution, accountability, proportionality and threshold of armed attack are novel legal questions posed by cyber operations that can disrupt critical infrastructure, self-determining military systems, and AI that can accelerate military operations. While much of international law is still in use, it is important to recognize that there is a lack of consistency in how it is applied in practice, which could cause difficulties in the future when conflicts arise.

Accordingly, this study calls for a principled method of legal interpretation which can address the realities of the contemporary security challenges while not undermining the general prohibition on the use of force in Article 2(4) of the Charter, as this is essential to the continued effectiveness of Article 51. Neither is it an appropriate solution to stick to the interpretation of history, nor to allow unlimited unilateral military rule. Rather, international law should move towards a path of balance, maintaining the basic goals of the Charter while at the same time providing states with an appropriate and effective legal response mechanism to legitimate and imminent threats.

In this context, the international community should take meaningful steps to give authoritative interpretations to the concept of imminence, which can help differentiate between lawful anticipatory self-defense and unlawful preventive military action. The lack of a consensus definition has led to some variation in state practice and to some legal uncertainty about what kind of defense is allowed. The legal principles governing the notion of imminence are more objective and need to be better expressed to increase predictability, improve judicial accountability, and cut down on potential misuse.

Likewise, detailed international legal principles need to be established with regard to the use of Article 51 in relation to cyber operations. While the concepts of necessity, proportionality, attribution and state responsibility continue to apply, there is a need for more unity on the threshold for cyber activities to qualify as armed attacks that meet the criteria for a self-defense response. This would help clarify the state's legal obligations to effectively counter growing cyber threats and reduce the potential for legal uncertainty to cause escalation.

AI and autonomous weapon systems are also becoming an integral part of military operations, making the importance of the development of international regimes which help to maintain meaningful human authority over the use of force. There is no room for delegating legal responsibility to autonomous technologies, nor for the states to shift responsibility for new military technologies to the full extent of the requirements of international humanitarian law and the United Nations Charter. As technology advances, international collaboration to develop ground rules for the use and control of AI in waged conflict will grow in significance.

The United Nations' internal governance should also be reviewed to enhance the supervision of claims based on Article 51. The primary responsibility of international peace and security is with the Security Council, although it has often been hampered by disagreements on political matters and using veto-holding members. More openness in reporting defensive measures, better fact-

finding procedures, better legal review of self-defense actions and more active participation from the General Assembly and other United Nations bodies can help to enhance accountability without diminishing the authority of the framework of the Charter.

Finally, more uniformity in practice, interpretation, and analysis of state practice is needed to maintain the legitimacy of international law on the use of force. The divergent views on Article 51 among the member states of the North Atlantic Treaty Organization (NATO) could create an internal Law of the Alliance and reduce trust in multilateral institutions. Such dialogue between states, international courts, academic institutions and international bodies should therefore be geared towards creating a clear and universally agreed understanding of self-defense that captures the enduring principles of the Charter, as well as the realities of international security in the twenty-first century.

Finally, Article 51 continues to be the constitutional foundation of the international legal framework of the lawful use of force. The lasting importance of its message is its balancing of the natural right of state to self-defense against the collective responsibility to ensure international peace and security. The Charter's legal framework remains significant despite the contemporary threats to which it has been exposed, but these threats have revealed some important interpretative issues. Instead, they highlight the need for legal evolution that is measured, based on the principles of necessity, proportionality, good faith, accountability, and respect for state sovereignty. The international community can help to ensure that Article 51 remains an effective and legitimate basis for balancing state security with international legal compliance in the twenty first century by clarifying existing legal standards, enhancing international institutions and fostering coherence in state practice.

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