The Use of Force in International Relations

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Abstract- War is at the core of the efforts to submit the use of military force in international relations to legal rules. For millennia the decision to wage war was not subject to any legal restrictions. Furthermore, war was regarded as a legitimate means of policy, its foremost aim changing territorial boundaries. In the early years of the twentieth century, nearly all states agreed on a ban on the use of force with the explicit exception of self- defense, thus legally accepting only peaceful changes to the status quo. Situations may occur in which the use of force might be believed to be legitimate by moral standards although illegal. Thus, bound between the dichotomy of security and justice, the requirements of legality and legitimacy might not always coincide in international law.

The use of force has been a long standing phenomenon in international relations and has been considered to be directly linked to the sovereignty of states-the limitless power wielded by states to use all possible means to guard and protect their interests. However, the longer period that war has been associated with sovereignty of state, the more the issue has turned into a legal institution by itself. This paper aims to outline what are the situations that force could be used under the charter of UN, and what is the prohibition of the use of force. Developed social awareness has expanded the limits to the right to resort to war. This indeed has abolished the use of force or any form of threats in relation among nations, this has become a rule of law in international criminal law-its violation comes with criminal responsibility in the eyes of the international community. However, there are certain situations in which it is allowed to use force such as for self-defense purposes, humanitarian intervention.

It is well known that the Security Council bears the primary responsibility for the maintenance of international peace and security. According to the Charter of the United Nations, the Security Council determines the existence of any threat to the peace, breach of peace or act of aggression, and it decides what measures, involving the use of armed force, are to be employed to restore peace and security.

Index Terms- International relations, Use of force, Self-defense, Prohibition, United Nation, and Security Council.

I. Introduction

The use of force has been a long standing phenomenon in international relations and has been considered to be directly linked to the sovereignty of states-the limitless power wielded by states to use all possible means to guard and protect their interests. However, the longer period that war has been associated with sovereignty of state, the more the issue has turned into a legal institution by itself. This paper looks at the prohibited and permissible use of force in International Relations. Developed social awareness has expanded the limits (and even led) to the right to resort to war. This indeed has abolished the use of force or any form of threats in relation among nations, this has become a rule of law in international criminal law-its violation comes with criminal responsibility in the eyes of the international community. However, there are certain situations in which it is allowed to use force such as for self-defense purposes, humanitarian intervention, and preemptive power inter alia.

The term "law of war" refers to both the rules governing the resort to force and the rules governing the actual conduct of force in International Law (Peter, 1997). Because each of these two types of rules governs different subject matters, it is reasonable to deal with them separately. Therefore, this chapter is devoted to deal with the rules governing the resort to force; while the next chapter entitled "International Humanitarian Law" is devoted to deal with the rules governing the actual conduct of force. The rules governing the resort to force form a central element within International Law. These rules together with other principles such as territorial sovereignty, independence and equality of States provide the framework for the international order (Malcolm, 2008). While a domestic system prescribes the monopoly on the use of force by a State, through its governmental institutions, in order to enable the State to preserve its authority and maintain its control within its territory, the International Law seeks to minimize and regulate the use of force by States in their international relations in order to preserve and maintain peace and security in the world community.The position of International Law towards the use of force by States has not been the same throughout the history. Because of this fact, in the following sections we will deal with the use of force, first, before 1945, the establishment of the United Nations, and second, under the Charter of the United Nation

II. The Rules Related to the Use of Force Before 1945

"War" is the apparent manifestation of the use of force by States. It is a status or condition of armed hostility between States. It comes into existence either by a formal declaration or by acts of armed force between States without a formal declaration. Early in History, war was resorted to for various reasons and causes without any distinction, and was conducted without any limitation and control. The distinction between "just war" and "unjust war" arose as a consequence of the Christianization of the Roman Empire and the abandonment by Christians of pacifism. The doctrine of "just war" was founded on the belief that force could be used if it complied with the

divine will. Just war was to be employed as the ultimate sanction for the maintenance of an orderly society. St Augustine defined the just war in terms of avenging of injuries suffered where the guilty party had refused to make reparation. War was to be employed to punish wrongs and restore the peaceful status quo, nothing further. Aggression was unjust. The resort to force should be strictly controlled. St Thomas Aquinas in the Thirteenth Century went a further step in the definition of just war by declaring that war could be justified provided it was waged by sovereign authority, it was accompanied by just cause, and i.e. the punishment of wrongdoers, and it was supported by the right intentions on the part of the belligerents (Bailey,1972) . The teachings of the Christian theologians on distinguishing between just war and unjust war were eventually adopted by the early classical writers on "the law of nations", such as Allmerica Gentile and his successor Hugo Grotius (Bledsoe, 2005). . However, all of these writers took a different approach on this question in the light of the rise of the European nation-states and eventually modified the doctrine of just war. The doctrine became linked with the sovereignty of States, and it was approached in the light of wars between Christian States, each side being convinced of the justice of its cause. The early writers on the law of nations approached the doctrine of just war from a purely subjective point of view, admitting the possibility of both sides having a just cause and believing in being in the right even though one of them might have been objectively wrong. Thus, the doctrine of just war could not be objectively applied to determine whether or not a war was just, and consequently the distinction between just war and unjust war never became part of the law of nations. Eventually, in the Eighteenth Century, the distinction was virtually abandoned by the law of nations. The doctrine of the just war that arose with the increasing power of Christianity declined with the outbreak of the inter-Christian religious wars and the establishment of an order of secular national sovereign States in Europe. In the Nineteenth Century, war in the practice of the European States was often represented as a last resort, as a means of dispute settlement. The resort to war was regarded as an attribute of statehood. War was a legal state of affairs in International Law. It was to be justified if it was fought for the defense of certain vital interests. Each State remained the sole judge of its vital interests. Vital interests constituted a source for political justifications and excuses used for propaganda purposes, not a legal criterion of the legality of war. There also existed other methods of employing force that fell short of war, such as reprisals and blockades (Brownlie, 2012). The international jurists of the Nineteenth Century abandoned emphases on the legality of war (jus ad bellum), and concentrated on the legality of the conducts of war (Bledsoe , 2005). Therefore during this century, a series of regulatory conditions and limitations on the conducts of war, or of force in general, were recognized under International Law in order to minimize the resort to war, or at least to restrict its application. There also existed legal consequences resulting from the exercise of the right to resort to war. The unprecedentedsuffering of the First World War caused a revolutionary change in the attitudes towards (Malanczuk ,1997).The doctrine of just war was revived after this war. The creation of the League of Nations in 1919 constituted an effort by the world community to rebuild international affairs upon the basis of a general international institution which would oversee the conducts of the States to ensure that aggression could not happen again. The Covenant of the League of Nations, although it did not prohibit the resort to war altogether, it introduced a different attitude, than that existed previously, to the question of war in International Law. The Covenant set up procedures designated to restrict the resort to war to tolerable levels. It declared that members of the League agreed that they would submit their disputes, which likely to lead to a rupture, either to arbitration or judicial settlement, or to inquiry by the Council of the League. The members also agreed that in no case they would resort to war until the elapse of three months after the award by the arbitrators or the judicial decisions, or the report by the Council. During the years following the creation of the League of Nations, various efforts were made to fill the gap in the League system, which is to transform the partial prohibition of war into total prohibition of war. These efforts resulted in the conclusion of the General Treaty for the Renunciation of War in 1928 (known as the Kellogg-Briand Pact or Pact of Paris). The parties to this multilateral treaty condemned recourse to war for the solution of international controversies, agreed to renounce war as an instrument of national policy in their relation with one another, and agreed to settle all disputes or conflicts only by pacific means. This trend was adopted by the Charter of the United Nations in 1945.

III. The Use of Force under the Charter of the United Nations

The Charter of the United Nations establishes a fundamental distinction between legal and illegal resort to force. By this, it has, in a way, revived in International Law the old distinction between just and unjust war. Moreover, it goes further than the position of the classical international law towards the use of force. While the classical international law did not place any restriction on the right of States to use force and to go to war, the Charter of the United Nations provides provisions aiming to control the use of force, on one hand prohibiting the use of force, and on the other hand permitting the use of force in exceptional cases.

3.1. .The Prohibition of the Use of Force:

The preamble of the Charter of the United Nations starts with the determination of the peoples of the United Nations to save succeeding generations from the scourge of war, and their willingness to practice tolerance and live together in peace with one another as good neighbors, and not to use armed force except in the common interest. To this end Article 2(4) of the Charter provides:All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations. This article formulates the principle of the prohibition of the use of force in International Law, by imposing upon the States members of the United Nations the basic obligation to refrain from the threat or use of force in their international relations. The provision of this article, which marks the general acceptance of the prohibition of the use of force in international relations, is of universal validity. The principle of prohibition of the use of force bounds the States members of the United Nations and the United Nations itself, as

well as, the few States which are not members of this international organization since it is a principle of customary international law. Article 2(4) mentions the use of force not the resort to war; by this, it intends to include in the prohibition all sorts of hostilities, short of war, in which States may be engaged. It prohibits not only the use of force but also the threat of force. The prohibition of the threat or use of force in international relations against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations, as stated in Article 2(4), is reinforced by other provisions of the Charter, particularly paragraph 3 of the same article. Article 2(3) imposes upon States the obligation to "settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." Furthermore, this prohibition is elaborated as a principle of International Law in the 1970 General Assembly "Declaration on Principles of International Law Concerning Friendly relations and Co-Operation among States in According with the Charter of the United Nations (U.N. Doc. 1970). The 1970 Declaration on Principles of International Law provides that the threat or use of force constitutes a violation of International Law and the Charter of the United Nations and should not be employed as a means of settling international issues. It declares that a war of aggression constitutes a crime against peace, for which there is responsibility under International Law. It lists systematically the obligations of States in this regard. Every State has to refrain from propaganda for wars of aggression. It has to refrain from the threat or use of force to violate the existing international boundaries of another State, or the international lines of demarcation. It has to refrain from acts of reprisal involving the use of force. It has to refrain from any forcible action which deprives peoples of their right to self-determination, freedom and independence. It has to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another state, or acquiescing in organized activities within its territory directedtowards the commission of such acts. The Declaration provides that the territory of a State shall not be the object of military occupation or acquisition by another State resulting from the threat or use of force, and that such territorial acquisition shall not be recognized as legal. The Declaration obliges all States to comply in good faith with their obligations under the generally recognized principles and rules of International Law with respect to the maintenance of international peace and security, and to make the United Nations security system based upon the Charter more effective. The Declaration, however, provides that its provisions shall not construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful. By this provision, the Declaration reaffirms the exceptions to the principle of the prohibition provided for in the Charter of the United Nations.

IV. The Exceptions to the Prohibition of the Use of Force

The Charter of the United Nations formulates two exceptions to the principle of the prohibition of the use of force in international relations. The first exception is the use of force in a case of exercising the right of individual or collective self-defense under Article 51. The second exception is the use of force by authorization of the Security Council of the United Nations under Chapter VII.The 1950 General Assembly "Uniting for Peace" Resolution formulates a third exception to the principle of the prohibition of the use of force, which is the use of force upon a recommendation of the General Assembly. A fourth exception is formulated by the 1974 General Assembly Resolution on "the Definition of Aggression" which entitles the people forcibly deprived of the right to self-determination, or under colonial domination or alien subjugation, to struggle to achieve their objectives in self-determination and independence (U.N. Doc. 1950).).

V. The Right of Self-Defense

International law recognizes a right of self-defense, as the International Court of Justice (ICJ) affirmed in the Nicaragua Case on the use of force. Some commentators believe that the effect of Article 51 is only to preserve this right when an armed attack occurs, and that other acts of self-defense are banned by article 2(4). The more widely held opinion is that article 51 acknowledges this general right, and proceeds to lay down procedures for the specific situation when an armed attack does occur. Under the latter interpretation, the legitimate use of self-defense in situations when an armed attack has not actually occurred is still permitted. It is also to be noted that not every act of violence will constitute an armed attack. The ICJ has tried to clarify, in the Nicaragua case, what level of force is necessary to qualify as an armed attack. As a fundamental "Principle of the Organization" and a general principle of international law, Article 2(4) of the U.N. Charter requires that states refrain from the use of force, and states that all Members shall refrain in their international relations from the threat or use of force against the territorial integrity and political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations (U.N. charter art. 2). However, one must consider the prohibition of the use of force under the U.N. Charter in light of other relevant provisions. In Article 42, the U.N. Charter states that the "Security Council may take military enforcement measures in conformity with Chapter VII (U.N. charter art 42). Article 51 envisages a further lawful use of force in the event of an armed attack: Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security (U.N. charter art. 51). The question in relation to anticipatory self-defense is, therefore, whether Article 51 of the U.N. Charter has become the only source of a state's right of self-defense in international law (and, therefore, one is limited to considering whether Article 51 permits anticipatory self-defense), or whether Article 51 only imposes certain conditions for the application of a pre-existing, inherent right of self-defense

(where one would consider, in addition to Article 51, customary international law). For the reasons that follow, this article maintains that Article 51 "only highlights one form of self-defense (namely in response to an armed attack)," and that the right of self-defense is a pre-existing, inherent right recognized in customary international law (Yoram, 2001).

VI. The Use of Force by Authorization of the Security Council

The second exception to the prohibition of the use of force in international relations is formulated in Article 42 of Chapter VII of the Charter of the United Nations. Article 42 provides that the Security Council may take such coercive military action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockades, and other operations by air, sea, or land forces of Members of the United Nations. This means that the Security Council has the power to order or authorize the use of force or, in traditional terminology, the resort to war. However, the Council is required to fellow the procedures provided for in Chapter VII of the Charter of the United Nations.

VII. The Use of Force upon a Recommendation of the General Assembly

The “Uniting for Peace” Resolution, adopted by the General Assembly on November 3, 1950, grants the General Assembly of the United Nations the power to act in place of the Security Council if the latter fails to discharge its primary responsibility in maintaining international peace and security. Under this resolution, the General Assembly may do by recommendations anything that the Security Council can do by decisions under Chapter VII. The Assembly can make appropriate recommendations to members for collective measures, including the use of armed force, if the Council in any case where there appears to be a threat to the peace, breach of the peace or act of aggression fails to exercise its responsibility, because of the lack of unanimity of its permanent members (UN G.A, RES, 1950).

7.1. The Use of Force by Peoples for Self Determination and Independence:

Article 7 of the 1974 General Assembly Resolution on “the Definition of Aggression” grants the peoples forcibly deprived of their right of self-determination, freedom and independence, particularly peoples under colonial and racist regime or other forms of alien domination, the right to struggle for the purpose of achieving their self-determination, freedom and independence. This implies that those peoples can use armed force in their struggle, and this is a forth exception to the principle of prohibition of the use of force in international relations.

VIII. Conclusion

The exclusive right of using force is situated only in the UN Security Council. Nothing impairs the inherent right of individual and collective self-defense in case of committed armed attack against any member state of the UN until the Security Council takes the necessary measures for restoring international peace and security. The use of force by regional organizations like NATO, OSCE, etc. must be mandated by the UN Security Council. If we agree that the NATO Treaty does have a hard legal core which evens the most dynamic and innovative re-interpretation cannot erode, it is NATO’s subordination to the principles of the UN Charter. The right of self-defense, inherent in every state, includes logically the right of anticipatory self-defense, ensuring that a defender has sufficient flexibility to take defensive hostile measures without waiting for the attack. A state that would renounce the right of anticipatory self-defense could be indefensible in a world without a central world body that could prevent powerful aggressor states from acting at will. The elasticity of the doctrine of anticipatory self-defense should however not be stretched past logic and into fantasy In the absence of a clear immediate threat, explaining one state's aggression or violation of another state's territorial sovereignty can lead to some unsubstantial claims.

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