

## Article

# The Legal Framework Governing the Use of Force in International Disputes: An Analysis of Self-Defense, Necessity, and Proportionality

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**Abstract:** With an emphasis on self-defense, necessity, and proportionality, this essay examines the international legal framework controlling the use of force. It looks at how the UN Charter's ban on using force (Article 2(4)) and the inalienable right to self-defense (Article 51) evolved from pre-1945 standards like the League of Nations Covenant. The Responsibility to Protect (R2P) and collective security under Chapter VII are examined in this paper. The application and difficulties of these laws are demonstrated by case studies such as the Gulf War, the Falklands War, and the Gaza Conflict of 2021. Although self-defense is a fundamental state right, the conclusion highlights that it is rigorously constrained by the necessity and proportionality rules, which are essential for preserving global peace and security.

**Keywords:** use of force; international law; self-defense; necessity; proportionality; UN charter; collective security; humanitarian intervention



## **1. Introduction**

Organizing collective violence in war necessitates aligning actions with good causes, minimizing trauma, and complying to legal frameworks. This essay dives at international law, specifically the restrictions governing the use of force around the globe. It investigates fundamental principles, historical settings, and post-1945 trends, emphasizing themes like as necessity and proportionality. The investigation covers the complexity of self-defense, aggression, and the unilateral and collective use of force, providing insights into the changing nature of international law in conflict resolution and global stability preservation.

## **2. Laws Governing Use of Force**

### **2.1. Before 1945**

#### **2.1.1 Jus ad Bellum**

##### Historical Context

The foundation for just war theory was laid by early Greek philosophers who started conversations on the requirements for a just war. During the Middle Ages, the Catholic Church established rules for military ethics and maintained order amid religious and political turmoil. Modern concepts of state sovereignty were created by the Westphalia Treaties. However, challenges emerged in the late 17th century as colonial pursuits often prioritized expansion over ethical considerations, and subsequent eras witnessed geopolitical motivations overshadowing ethical concerns in armed conflicts (Kritsiotis, 2004).

#### **2.1.2 League of Nations**

Devastating civilian and military losses during World War I (1914–1918) drastically changed people's perceptions of war. The League of Nations, as described in The Covenant of the League of Nations, was established as a result of the Treaty of



Versailles after World War I. The main articles of the Covenant placed a strong emphasis on collective security, gave the League's Council the power to settle disputes, established a procedure for using collective security, and required member states to abide by recommendations, including clauses requiring military action to maintain the international peace (Gray, 2001).

### **2.1.3 Pact of Paris**

The Pact of Paris sought to eliminate war as a method for resolving conflicts, although it lacked a viable enforcement mechanism. While it failed to prevent WWII, it did help to establish the legal foundation for postwar prosecutions against Nazi and Japanese officials (Cassese, 1999). The pact's legacy persists in shaping international law, influencing the UN Charter's Articles 2 and 51 on the use of force for settling disputes (Dinstein, 2011).

## **2.2. Post WWII: UN Charter**

- Article 2(4)

“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 manner inconsistent with the Purposes of the United Nations.” This article establishes the general prohibition of the use of force (Gray, 2001).

- Article 39 empowers the UN Security Council to determine threat to international peace and security, and to authorize use of force if so assessed to address the situation.

- Article 51 - limited exception to the prohibition of use of force per Article 2(4)

States have a right to defend themselves if an armed attack occurs against it, and can use force in self-defense until the Security Council takes action (Dinstein, 2011).

#### **Case Study: Falkland War 1982**

Argentina, under military rule, invaded the Falkland Islands, a British Overseas Territory, leading to the displacement of British citizens. The UK invoked Article 51 of the UN Charter, asserting sovereignty and its right to self-defense. Despite seeking international condemnation through the UN, a resolution for a ceasefire failed due to the Soviet Union's veto. A brief armed conflict ensued, resulting in damages for both sides. The conflict ended with the UK successfully regaining control of the islands,



highlighting the complexities of international intervention during the Cold War and providing a historical example of a state asserting its right of self-defense under international law (Gray, 2001).

## **2.3. Collective Use of Force**

**Collective Defense:** The Covenant of the League of Nations established the principle of member states assisting each other in the face of external aggression, resorting to arbitration for disputes. Despite these efforts, the League of Nations failed to prevent aggressions in Abyssinia and Manchuria, ultimately contributing to the outbreak of WWII (Gray, 2001).

**Collective Use of Force:** UN Charter Chapter VII.

- Article 39: UNSC to determine threats to peace and international security, and recommend measures to restore peace, in accordance with Articles 41 and 42.

- Article 41: UNSC to determine and recommend what measures not involving the use of force to take against states in violation of international peace and security.

- Article 42: UNSC to determine and recommend measures involving the use of force including land, sea and air forces, against states in violation of international peace and security.

- Two-Step Approach to Invoking Chapter VII

- UNSC to determine threat to peace in accordance with Article 39, upon the request of victim state.

- UNSC to determine extent of collective action (without use of force iaw Article 41, or involving use of force iaw Article 42).

- Article 25: All UN member states agree to comply with the decision of the UNSC (Gray, 2001).

**Case Study:** Gulf War (1990-91).

In 1990, Iraq invaded Kuwait, leading to swift condemnation by the United Nations Security Council (UNSC). Resolution 660 demanded Iraq's immediate withdrawal, and when Iraq defied, a multinational coalition led by the US launched Operation Desert Storm in 1991, successfully liberating Kuwait. The military effort had limited aims focused on necessity and proportionality, adhering to UN authorization. Humanitarian considerations were emphasized, aiming to protect civilians and ensure humane treatment of prisoners of war. Post-war diplomacy aimed



at regional stability, establishing no-fly zones and emphasizing the integral connection between military force and diplomatic efforts (Gray, 2001).

## **2.4. Collective Humanitarian Intervention in accordance with the UN Charter**

The responsibility to protect (R2P) is a principle established by the UN to fulfill its responsibilities to the international community to prevent and respond to mass atrocities, including genocide, war crimes, ethnic cleansing. It upholds that states must safeguard their populations from these offenses. Should a state fail or refuse to do so, it then becomes the duty of the international community, under the UN's guidance, to step in (ICISS, 2001). For example, the 2011 Libyan crisis, which saw the UN Security Council pass Resolution 1973, is an example of the R2P principle being used to legitimize international involvement to defend people from government violence (Alvarez, 2008).

## **3. “Necessity” and “Proportionality” in Self Defense**

### **3.1. Design and Participants**

The Geneva Conventions are a set of post-World War II treaties that reinforce the prohibitions on the use of force by establishing comprehensive guidelines to safeguard people during armed conflicts. Despite being acknowledged and safeguarded by international law, the right to self-defense is governed by the concepts of “necessity” and “proportionality” (Gardam, 2004). These guidelines set limits to make sure that using force for self-defense is appropriate and doesn't go beyond what is necessary to neutralize an immediate threat (Bethlehem, 2012). Below is a discussion of these principles:

**Necessity:** Necessity in the context of self-defense implies that the use of force is warranted only when it is deemed necessary to protect oneself or others from an immediate and serious threat. It requires a reasonable belief that no other means, such as diplomatic or non-violent measures, would be effective in preventing the harm. The assessment of necessity is based on the immediacy and severity of the threat,



demanding a real and imminent danger to trigger the right of self-defense (Dinstein, 2011; Gardam, 2004).

**Proportionality:** Proportionality states that the use of force in self-defense should be proportionate to the threat. It focuses on avoiding excessive or disproportionate force. The response should be tailored to the level of force required to neutralize the threat while causing little hurt or damage. It needs a delicate balancing act to ensure that the force utilized is not only required but also proportionate to the intensity of the threat (Gardam, 2004; O'Meara, 2021).

**Case Study: Gaza Conflict 2021.**

Ruys and Corten (2018) argue that contemporary conflicts often test the boundaries of necessity and proportionality.

**Necessity:**

**Israeli Perspective:** Israel claimed that its war actions were essential for self-defense. The government stated that it was under constant rocket assaults from Hamas in Gaza, putting Israeli people in danger. Israel said that it had exhausted diplomatic attempts and was left with no choice but to use force to protect its citizens.

**Hamas Perspective:** In contrast, Hamas argued that their rocket assaults were a necessary response to Israeli occupation and perceived aggressiveness. They also justified their conduct as self-defense. This dichotomy illustrates the contested nature of assessing necessity (Ruys and Corten, 2018).

**Proportionality:**

**Civilian Casualties:** The Gaza Conflict claimed a large number of civilian lives. Israel's attacks, which injured civilians and damaged civilian infrastructure, aroused concerns about the proportionality of the force used. Critics claimed that the level of force used was insufficient to address the threat posed by rocket assaults from Gaza (Gardam, 2004).

**Hamas Rocket Attacks:** On the Gaza side, the indiscriminate rocket attacks on Israeli population centers highlighted questions about proportionality. These strikes were not focused at specific military targets and endangered Israeli civilians, constituting a clear violation of the principle of proportionality (Bethlehem, 2012).

## **4. Conclusion**



In short, international law prohibits the use of unilateral force to settle international conflicts, with the exception of the right to self-defense, emphasizing that force should only be used as a last resort (Gray, 2001). While the right to self-defense is acknowledged as a fundamental right of nations, it is limited by the twin criteria of necessity and proportionality, which ensure that any defensive action is strictly necessary to confront the threat and proportionate to the degree of the aggression encountered (Dinstein, 2011; Gardam, 2004). Maintaining international peace and security requires striking a balance between the right to self-defense and the need to avoid using excessive or needless force (Franck, 2002). This is because everyone agrees that using force should only be used in extreme situations and not as a means of settling international conflicts.

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