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### REVISITING THE JUS AD BELLUM: A CRITICAL ANALYSIS OF THE RIGHT OF SELF-DEFENSE AND THE PROHIBITION ON THE USE OF FORCE UNDER INTERNATIONAL LAW

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#### ABSTRACT

International relations involving the use of force are governed by the legal theory known as jus ad bellum. Focusing on the provisions of essay 51 and the relationship between Article 2(4) and Article 51, this essay provides a sociopolitical and contemporary criticism of the UN Charter. Still, the enumerated aggressive action is forbidden and here the word "force" turns out to be amenable to an exception: self-defense in the event that the aggression is armed. This article analyzes shifts in the judicial and institutional nature of the ICJ, state behavior, sovereignty disputes and cooperation frameworks. International relations involving the use of force are governed by the legal theory known as jus ad bellum. Focusing on the provisions of essay 51 and the relationship between Article 2(4) and Article 51, this essay provides a sociopolitical and contemporary criticism of the UN Charter. Analyzing the given topic from a critical perspective of the rights, the author indicates that, although the right to self-preservation continues to be an essential element of the multiple contemporary legal systems, it requires adjustments based on the modern threats/violence nature and the warfare transformations. The assessment expands upon previous work by the United Nations Security Council on the subject of the right to self-defense and the present state of international law as it pertains to the prohibition of force.

**Keywords:** Jus ad Bellum, Self-defense, Use of Force, International Law, UN Charter.

#### 1. Introduction

As a central issue in international law and politics, the jus ad bellum justifies the use of force. An international community-approved action, such a UN Security Council-supported peacekeeping operation, is necessary for a state to properly use armed force against another state, according to jus ad bellum. There are four pillars upon

which the judicial system rests: One is to justify the use of physical force. The use or threat of force in issues pertaining to the political independence or territorial integrity of any state is prohibited by every member state of the United Nations, which is why Article 2(4) bans the use of force. The purpose and meaning of the relevant standard, the right to self-defense, the scope and nature of exceptions, and the binding principles of modern international law have all been the subject of heated debate. The article delves at the legal, ethical and political aspects surrounding the prohibition of force and self-defense, among others. (Shahid et al., 2024).

It will be remembered that this is an important ICL output. Thus, any consideration of its rules must begin and finish with the UN Charter—Article 51 on self-defense if a state is attacked armed. It is an open right, but necessity and proportionality govern its implementation. There have been controversial legal and political concerns surrounding self-defense, including the use of force in territorial waters, protecting nationals overseas and anticipating attacks (U. Manzoor, Baig, Malik, et al., 2020).

In the latter few decades of the 20th century, varied perspectives of an armed attack or when force may be used in self-defense contradicted the Charter. The problems of countering transnational threats while adhering to the legal fabric of interstate interactions and warfare are particularly apparent when considering non-state actors like terrorists (Joyner, 2008). Common principles like Responsibility to Protect (R2P) or humanitarian intervention have only complicated the legal right to use force. Responsibility to Protect (R2P) advocates say states should use force to protect oppressed populations in massive humanitarian emergencies like genocide or mass human rights violations, even without an armed attack. Others argue that such interferences violate sovereignty and may be used to advance hegemonic political or military aims. Conflicting opinions on when to use force exist. There is no consensus on when force should be used to violate the ban. Interventions' legal sanction and relationship to *jus ad bellum* are still debated in international law (Asghar & Khan, 2024).

This essay examines how fresh conflicts and security risks prompted a reevaluation of *jus ad bellum* in subsequent decades. This approach acknowledges the right to self-defense while yet prohibiting the use of force. Security, sovereignty, and participation in international communities are trajectories that will be studied (Gardam, 1993). This article will examine many significant problems about the function of international law in safeguarding state rights and preserving peace and security within the context of the international system of states. Here is what the piece is trying to accomplish: The article examines the concepts of *jus ad bellum* in contemporary international law, highlighting the pros and cons of this body of law. It also draws attention to these problems in the continuing debates (Kanwel et al., 2024).

## **2. Historical and Theoretical Foundations**

An additional focus of this research is the evolution of international force laws. Theoretical and historical understanding of *jus ad bellum*, the international law regulating nations' use of force, is necessary for comprehending the subject. *Jus ad bellum*, literally "right to war" in Latin, determines the threshold for the justification of

military force. The jus ad bellum theory is based on the just war doctrines put forward by Thomas Aquinas, Augustine and Cicero. The legal and moral discourse on legitimate war is set there. Ethics of justice, need and proportionality informed these early systems before state legalism. The ethic rank assigned civilian casualties based on a single combat principle that allowed only rightful motives like defense or protecting innocent life and declared that morality should rule conflict (Afzal et al., 2023).

Jus ad bellum came into being in the twentieth century due to the need to examine legal norms of state conduct in the aftermath of the wars. The United Nations Charter, adopted in 1945, simultaneously legitimized and condemned coercive control. The American-created Charter forbids, under Article 2(4), the use of force or threats against a state's political independence or geographical integrity. Community defense, council enforcement and self-defense all justify the use of force (Kanwel et al., n.d.).

As weapons of mass destruction proliferate, new methods of utilizing force become more effective. In order to fulfill their commitment to eradicate systematic violence and promote international peace and security, nations have issued clear guidelines. Article 51 of the United Nations Charter, which protects the right to self-defense, is the most substantial and challenging exception to this general principle. When the United Nations Security Council does not intervene to restore peace and order, Article 51 of the UN Charter grants ownership against violent assault to a state with sufficient influence. But since its legal definition is vague, nobody knows how wide this right is (Zafar et al., 2024). A state's right to self-defense and the criteria for what constitutes an armed assault are the primary concerns of this phase. An early authority on international law, Grotius, considered self-defense to be either individual or communal. The current application of the 'law of self-defense' equations, which encompassed preventative and proactive measures, was interpreted differently by practicing and learning attorneys (Stahn, 2006).

International law outlawing force has been called a shift in global security threats. Since non-state actors, terrorism and asymmetric warfare are new forms of conflict, jus ad bellum is not being questioned by postmodern wars. For a long time, there has been debate about whether or not governments should use force in response to non-state aggression or interference (Bakircioglu, 2022). Some contend that states should not use force even in the absence of an initial armed assault. As a matter of self-defense after the terrorist attacks on September 11, 2001, the United States entered into a conflict with Al-Qaeda and the Taliban in Afghanistan. This action has raised problems about whether "armed attack" encompasses terrorism and if governments can deploy force in anticipation of being attacked by non-state actors in other states (B. Manzoor et al., 2024).

However, international law specialists cannot yet clearly link state sovereignty rights with individual rights to non-interference from states, hence jus ad bellum is still developing. Additionally, the Responsibility to Protect was necessary, which states that the public charter of international law is to safeguard the people from atrocities such as genocide, crimes against humanity, ethnic cleansing and war crimes. The notion that protecting human rights may justify the use of force beyond what is authorized by the

charter challenges the pre-9/11 belief that the government may only use force in cases of hostility (Grey, 2018).

It is noted that self-defense always necessitates multilateral partnerships. Even within the UN Charter Article 51 provision, governments can employ force for self-defense, but the UN Security Council must be notified. This shows force's dual nature. These two unique aspects of force are enhanced by multilaterality. Some legal writers advocate creating an unlawful international framework to legitimize the use of force that follows Security Council policy. The method is to reduce force and prevent conflict from worsening (Azubuike, 2011). *Lex*, the just-war theory, is limited by two *jus ad bellum* principles: the right to defense and a ban on force under international law. It has been shown that the UN Charter's goal of a universal federal government is more theoretical than practical, especially in political contexts (Sassòli, 2007).

The history of international law and its effects on non-state actors, terrorism and humanitarian action need ongoing reevaluation of legal notions. The critical analysis of *jus ad bellum* has remained important because it advances a continuing vision of international law and today's security threats and defends the foundational legal commitment to world peace as an imperative legal norm (Scobbie, 2019).

### **3. Evolution of the Right of Self-defense and the Prohibition on the Use of Force**

Self-defense and force in international law and politics, one of the most contractual and technological achievements of learning, has evolved in many historical features and systems of global politics and diplomacy. These principles originated in international law, particularly the 1648 Westphalia declaration of sovereignty and territoriality at the end of the Thirty Years' War. These concepts led to the right of self-defense, which allowed independent states to protect themselves from aggressor states. Modern prohibition of force arose in the 20th century, mostly because to the two destructive wars of that century. This argues that the UN's 1945 founding established the Prohibition on Use of Force (Corn, 2012).

According to Article 2(4) of the UN Charter, it is expressly banned for member states to employ force in their contacts with one another. Preventing future wars as catastrophic as those that rocked the globe in the early 1900s was its stated goal. - It has previously been noted that states have the express right to self-defense in the event of an armed attack, as granted under Article 51 of the Charter. It states unequivocally that physical force is not only forbidden but also permissible in cases of reprisal. One may only use severe force in self-defense if absolutely need to do so in response to an armed assault, as per the ICJ's ruling on Article 51 of the Charter and customary international law (Sloane, 2009). Many governments began to use their right to self-defense after WWII, but this wasn't always the case, especially in the decades that followed. Most nations' willingness to use force after the Cold War ended was lower than what Article 51 of the UN Charter would indicate. Nevertheless, governments may employ force even when it seemed to go beyond self-defense due to the Cold War's influence on global relations and the emergence of European

conventional military forces, which rendered the concept of self-defense less distinct and less safeguarded (Murphy, 2009).

State actors in production proxy and intervention wars took pleasure in war under the Bernaus doctrine in response to threats or actions like the Korean and Vietnam wars. However, the right to self-defense has been challenged by non-state actors since the early 1990s, when humanitarian crises began during the Cold War's waning days. Since 9/11, the legal communities of states have reevaluated the right to self-defense. In response to these attacks, the United Nations Security Council reaffirmed the right of states to self-defense in resolution 1368. This revision supported the earlier textual understanding of self-defense and justified non-state actor cross-border terrorism.

After September 11, new considerations about anticipatory self-defense surfaced, including whether it is possible and necessary to avoid armed attacks. Questions about the 2003 US invasion of Iraq were raised. The US said it could have halted the September 11 assault without an armed raid. Despite various experts and states arguing that preemptive self-defense is forbidden under the UN charter, this allegation triggered substantial debates about the legitimacy of foreseen self-defense under international law. Conflicts centre on the right to self-defense and the absence of force (Cox, 2021).

Global terrorism and other unconventional threats, such as cyber threats, have evolved since the UN Charter's promulgation, but the fundamental tenets of its operations have remained constant. The emergence of a new generation of non-state or non-nation international participants has increased pressure on how the fundamental tenets of the UN Charter should be interpreted and applied. Thus, as international law evolves to tackle new challenges, the *jus ad bellum*—the legitimacy of self-defense in controlling armed actions in the modern era—becomes more significant (Ruys, 2014).

#### **4. Current Challenges and Controversies**

The law allows customary and constitutional force. The UN Charter and *jus ad bellum* govern force usage. These changes, together with the nature of warfare, have spurred major discussions regarding self-defense and non-violence. These values include sovereignty, collective self-defense and the UNCSC's unstated role in world peace and order. Self-defense and preventive-preemptive self-defense are still debated under *jus ad bellum*. UN Charter Article 51 raises questions about what constitutes a "armed attack" and if pre-intentions of self-defense are legal. Since the 2003 US invasion of Iraq, which accused Iraq of holding and utilizing WMDs, anticipatory self-defense has remained a politically fraught issue. Some scholars argue that such preventive measures violate the non-forcible participation principle that governs force, change its meaning and impose more strict criteria that can be exploited (Beer, 2021).

Humanitarian intervention, the use of force by states or coalitions of nations to protect or stop serious human rights violations inside a state, is another important and difficult problem. It fiercely rejects the United Nations Charter's Article 2(4) restriction on state control and coercion. When countries conduct atrocities against their own citizens, such as genocide or ethnic cleansing, the international community has an ethical obligation to step in and stop the slaughter. Critics say humanitarian assistance is used

to settle grudges or further strategic goals, worsening the crisis and undermining non-violence. The lack of a consensus-driven notion of humanitarian action still divides *jus ad bellum* discourses (Kaye, 2005).

Another issue is non-state entities like terror organizations taking on roles unfamiliar to the international system. Governments and states are increasingly pressed by non-official players who may be backed by their state or actively engage in government politics. The U.S. "war on terror" following September 11 involves using self-defense rights to strike non-state actors, frequently by drones or in third nations. It is still debatable whether or not sovereign nations may use armed aggression against non-state actors outside of a United Nations mandate, although the right to self-defense remains a cornerstone of international law. By acknowledging the right to self-defense even when faced with non-state actors, one raises concerns about the development of the law and the potential breach of important principles of force under international law (Johnston, 2021).

The UN Security Council, especially regarding force, is also little understood. This prevents the P5 Security Council members from responding quickly to the many threats. The Syrian Civil War shows that the Security Council's 70-year history doesn't allow for clear results. It has been said that the new Security Council should be more representative and effective in addressing new concerns, but the P5 remain very defensive of them and their veto power. Finally, proportionality, which justifies self-defense, is difficult to apply. The proportionality principle in the UN Charter and Article 51 regulation requires that countermeasures to force be commensurate to the threat. Defining proportionality is often difficult and depends on the situation. This analysis has confused self-defense as some states have evolved and violated civilians and war rules. Modern combat's demand for more exact proportionality criteria, notably for precision-guided munitions and asymmetric warfare, presents certain challenges (Moir, 2010).

Wartime experiences, shifts in the United Nations Security Council, new norms in international law, and global megatrends are eroding the right to self-defense and the force prohibition. In light of these changes, we must examine and clarify the elements that have evolved into the normative lawful use of force in maintaining international peace and security. How this cornerstone of international law will evolve is a topic of heated controversy (Casales González, 2023).

### **5. Implications for International Peace and Security**

With the heading "Revisiting the *Jus ad Bellum*," this article takes a critical look at the "no use of force" standard under *jus ad bellum* and the right to individual and communal self-defense, discussing what this means for peace and security. These impacts are poised, spatially inclined and long-lasting rather than straightforward. Achieving the organisational goals of preserving global peace and security requires a fundamental understanding of sovereignty and collective determination. With a particular focus on the idea of self-defense in contemporary conflicts, preemptive self-defense and the role of non-state actors in redefining this concept, the paper explores

contemporary conceptualizations and implementations of jus ad bellum (Corten, 2021).

The complete rejection of the UN Charter's Article 2, point 4, which forbids the use of force, is linked to the first severe upswing in this trend. This ban, which is unquestionably acknowledged as one of the jus cogens of international law, is crucial in preventing governments from engaging in hostilities. Nevertheless, potential dangers to this principle arise when the concept of self-defense itself is broadened or where it is connected with such notions as preventive or preventive-minded warfare. For instance, following the events of September 11, the focus switched to legalising the use of force to exercise the right to self-defense against individuals and organisations engaged in international terrorism. Though this conduct raises several problems regarding the difference between the authorised and unlawful use of force and the extent of its misuse, it may, of course, be justified in the name of national security. However, if states adopt a liberal approach to self-defense, it's not implausible for them to justify their unilateral military actions. This could potentially destabilize the situation, trigger retaliatory actions that intensify conflicts and ultimately impact international peace and security (Gaggioli, 2017).

Another potential interpretation is that international legal principles are beginning to spread. This article also draws attention to the fact that there are consistent contradictions in the generally recognized rules of international law, especially when it comes to the right to self-defense and armed assaults. A good illustration of this trend toward decentralization of power is the fact that the US and other Western countries use distinct legal standards in their actions against so-called rogue nations and in the creation of the Guantanamo prison. This selective application can lead to the perception of a denial of fairness or equity, particularly for nations that feel excluded or negatively impacted by organizational interference.

Overall, the expansion of the right to self-defense under the given principle may exacerbate the segmentation of global law and politics, as well as weaken the authority of international organizations, including the UN. Further complicating factors are brought by new classes of actors: for example, the transnational terrorists may fit all of the above or none of them. With more and more state and non-state actors participating in hybrid warfare, or modern conflict in general, it may be necessary to reconsider the idea of self-defense under international law. The article also briefly discusses the issue of what constitutes an armed assault, focusing on the reality that governments would be confronted with a web of non-state actors with a global presence rather than individual nations.

This is why the constant merging of self-defense and aggression has led to an increase in such conflicts, particularly in areas where non-state actors wield significant influence. These arenas are often porous and instead of adhering to a strict demarcation, the majority of them are interrelated. Consequently, conflicts that necessitate peaceful diplomatic solutions tend to be less diplomatic in nature (Das, 2020). But the problem could shift the concept of self-defense to such a broad extent that states will have to launch attacks in order to defend themselves against threats. This could potentially

increase the level of international security by equipping states with advanced weaponry to combat threats, thereby escalating the potentiality of a military conflict. In this regard, general trends such as arms control and disarmament face increasing challenges, as efforts to redefine the legitimacy of force usage intensify (Yip, 2024). Last but not least, the article's problematic presentation of several approaches shows how the legitimacy of international governance organisations like the UN may be weakened by the lack of rules governing the use of force and self-defense. One of the main UN bodies is the SC. When countries choose to use their legitimate right to self-defense, it might disregard its principal responsibility of preserving international peace and security. Along with undercutting diplomatic efforts and multilateral conflict regulation on a global scale, this endangers the stability of the global peace and security system. Loss of the traditional understanding of *jus ad bellum* poses a significant danger to the existing UN legal framework and the overarching goal of resolving and preventing conflicts within the context of international relations (Canor, 2006).

## **6. Conclusion**

*Jus ad bellum*, the right to go to war, is a fundamental and long-standing principle in international law. The primary setting in which it is addressed is self-defense. These modifications to other UN Charter and international law concepts are further upon in this article. The self-defense provision in Article 51 of the UN Charter permits countries to employ force only to protect themselves from armed attacks. Determining this right has become more challenging because of security concerns such as humanitarian campaigns, non-state actors, preemptive raids and global unpredictability. In international relations, *Jus ad Bellum* governs the use of force, including illegal and unwarranted action.

The UN Charter, Article 2(4), outlaws any force except self-defense and exempts express authority from the UN Security Council, a significant peacekeeper. In several recent conflicts, the self-defense exception has been applied to the same extent. Many states have utilized self-defense in situations that international legal academics and traditional international attorneys cannot understand, such as anticipating an imminent attack and launching a preventive or preemptive strike. This casts doubt on the right to protect under international law and its use to start wars.

This study emphasizes the difficulty of balancing state security with sovereignty and territorial integrity of other states, which complicates security tactics. Anticipatory self-defense, as I explain below, has been much debated. CI and ICJ jurisprudence requires self-defense must be rapid and proportional to the threat, although states have always understood it. Thus, states have employed force in response to non-instantaneous threats, violating the ban on force. Additionally, the presence of non-state actors like terrorists and rebels complicates *jus ad bellum* interpretation. Sometimes states have justified the use of force in other regions, frequently without the permission of the governed, citing self-defense against cross-border threats. Translating the notion of armed conflict that favours state and subnational entities, the right to self-defense and the prohibition of force. Interventions after 9/11, notably in the Middle East,



demonstrate how international law and national security interact in an integrated world.

Two issues are: Lack of clear and consistent legal norms for self-defense might lead to abuse. This inconsistent application has two main issues: other governments may adopt this selective approach in international law and the legitimacy to employ force in legal situations depreciates. The Security Council, which chooses measures and enforcement mechanisms, has been accused of being quiet or inert, especially when geopolitical factors influence its decisions. Jus ad bellum, the right to go to war, is a fundamental and long-standing principle in international law. The primary setting in which it is addressed is self-defense. Further discussion of these revisions to additional ideas from the United Nations Charter and international law follows.

The self-defense provision in Article 51 of the UN Charter permits countries to employ force only to protect themselves from armed attacks. Determining this right has become more challenging because of security concerns such humanitarian campaigns, non-state actors, preemptive raids and global unpredictability. In international relations, Jus ad Bellum governs the use of force, including illegal and unwarranted action. Protecting UN Charter ideas regulates force and its use in certain instances, but expanding threats and new actors complicate war's legal regulation. Jus ad bellum must be more defined and cohesive to preserve state interests, recognize other states' sovereignty and promote international peace. Thus, more discussion, judicial elaboration and reform are needed to ensure that the right to self-defense does not undermine the ban on force but rather preserves and strengthens international peace.

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