



JUSTIFICATIONS FOR ATTACK ON SOVEREIGNTY: ANALYSING THE US-IRAN CONFLICT

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Abstract

The main aim of the world community after both the world wars was international peace and security. This was the main objective of the League of Nations which was formed after the first world war, but it failed in preventing another world war. Because of the failure of this institution, a new institution, the United Nations was established which codified certain principles like, “maintaining international peace and security, to achieve international co-operation in different fields” etc. in its charter in its attempt to maintain world peace. There are obvious restrictions for the use of force by the states in its charter. But there is also the principle of self-defence which acts as an exception for the restriction of use of force. The paper talks in detail about the US- Iran conflict and whether the legal justification taken up by them for their recent activities holds any value in the eyes of law. The purpose of this paper is to understand how the concept of self-defence has changed overtime in contemporary international law. The researcher followed doctrinal methodology and analysed various articles, books, UN reports, UN resolutions etc.

1. Introduction

After witnessing two devastating world wars and colossal damage of life and property, all the states agreed that wars of this magnitude should not happen again and placed international peace as a number one priority. The League of Nations failed to do this when it was established in 1920, right after the First World War. So now the onus was on the newly formed United Nations to maintain world peace. Having seen how other international organisation before its establishment failed to do so, it was also under immense pressure. So the United Nations codified certain principles like, “maintaining international peace and security,¹ to achieve international co-operation in different fields”²etc. in its charter.

In strengthening its case for international peace and security it added other provisions in it's charter like settling of international disputes by peaceful means³, refraining the member states from the threat or use of force etc.⁴ Under article 2(1) of its charter, it makes it clear that UN is based on the principle of the sovereign equality of all its Members. Although the UN is successful till now in preventing another world war, tensions among various countries is at an all-time high and a small act could lead into a major war when all the allies of the states involved, join.

The Latin expression *jus ad bellum* means the right to resort to force or the right to wage war.⁵ In the post-world war era there are obvious restrictions to this principle and they are enshrined in Article 2(4) and Article 2(3) of the charter. However the charter does

¹ The United Nations Charter, art.1(1)

² Id., art.1(2)

³ Id., art.2(3)

⁴ Id., art.2(4)

⁵ Kolb et al., An Introduction to the International Law of Armed Conflicts 9 (2008).



provide for the inherent right to individual or collective self-defence thus making the act of war justified in the case of self-defence which will be explained below in detail.

1.1 History of the Unites States of America and Iran conflict

It is essential for us to understand the history of this conflict to understand the current situation. Iran is a country with high oil reserves in the middle-east region. This conflict started when British government started controlling the oil wealth of Iran right from discovery. At that point of time oil wealth of almost all the states were controlled by foreign powers. This practise continued for nearly half a century and then in 1951 all of this changed when Mohammed Mossadek became the first democratically elected prime minister of the country and nationalised the oil reserves in the country giving no part of the same for the British.⁶ The United States comes into the picture when the British ask them for help in order to stage a coup to overthrow Mossadek because of his policy of nationalisation of the oil reserves which affected the British economy immensely and it lead to many predicting the fall of the British Empire. The United States does offer help after consideration and supports the then Shah of Iran Mohammad Reza Pahlavi. This coup was considered by many Iranians as a setback for the political development of Iran and they felt that the United states had no business in interfering in their internal affairs .This act fuelled the anti-American sentiments among the Iranians⁷.The main

reason why the USA agreed to do this was because they wanted to have a pro-western regime in an area in one of the most influential areas in the world at that point because of the abundance of oil resources present.

In 1979, after several days of protest the Shah of Iran is forced to leave the country because the people wanted a secular government and did not want any interference in their political matters.⁸ After this incident the relations between the USA and Iran deteriorated and there were incidents where citizens of the US where held hostage in the Iranian embassy and an Iranian plane was alleged to be shot down by the US killing 290 civilians⁹. Diplomatic talks did not work either. In 2002, the then President of the US denounced Iran to be a part of “Axis of Evil”, this caused severe outrage in Iran¹⁰. In the meantime, there were several states voicing concerns of the threat of nuclear force of Iran, the US was one among them. Under Obama administration there were several diplomatic talks between Obama and newly elected Iranian president Hassan Rouhani. After several diplomatic talks and negotiations a historic deal was signed between the five Permanent countries of the Security Council plus Germany, the European Union and Iran. Joint comprehensive plan of action (JCPOA), famously called as the Iranian Nuclear deal, lifted some sanctions on Iran which were crippling its economy for exchange of

⁶ Harmeet Kaur et al., The US-Iran conflict: A timeline of how we got here, CNN (last visited July 23, 2020, 7:46 PM), <https://edition.cnn.com/interactive/2020/01/world/us-iran-conflict-timeline-trnd/>

⁷ Id

⁸ Id

⁹ US-Iran relations: A brief history, BBC news , (last visited July 23,2020, 10:15 PM), <https://www.bbc.com/news/world-middle-east-24316661>

¹⁰ Id



reduction of nuclear activities and also allow regular check by international inspectors¹¹.

1.2 Relationship between Trump administration and Iran

After nearly 40 years of no diplomatic talks, Ex- President Barack Obama played an important role in getting the JCPOA deal done. It acted at least for a brief period of time as a major instrument in de-escalating the tensions between Iran and the US. But President Trump staying true to his election promise unilaterally withdrew from the deal¹². All the leaders involved in the deal say that there was no basis for unilaterally withdrawing from the treaty. International Atomic Energy Agency (IAEA), the governing body regarding the use of nuclear power by the states, months before trump decided to withdraw from the treaty verified Iran's compliance with the JCPOA¹³. In fact the United Nations Secretary General in his report regarding the issue stated that, "I continue to believe that the [JCPOA] is the best way to ensure the exclusively peaceful nature of the [Iranian] nuclear programme."¹⁴ All these statements make it very clear that there was no violation from Iran's side on the treaty and Trump administration unlawfully

unilaterally withdrew from the treaty and imposed heavy sanctions. The other countries in the treaty are doing their best to help Iran economically and are trying their level best to satisfy Iran knowing very well what Iran can do with its nuclear capabilities. This can be considered as the tipping point of the already deteriorating Iran – Us relations. This led to various incidents which escalated tensions between both the states. The first direct incident of crisis was when the US alleged that Iran shot down its surveillance drone in international airspace where as state of Iran said it was acting in self-defence and that the drone was in its national territory. Iran argued that the drone did not have any right whatsoever to fly over its airspace and hence was shot down. It is clear that Iran shot down a US drone but the question of law here is whether it happened in Iranian airspace or International Airspace¹⁵. If at all it happened in Iran's airspace like it claims, then it can shoot down the drone under the concept of self-defence enshrined in Article 51 of the UN charter, if it's in the International Airspace like the US claims then it has no right to do so. Whatever the case is, fact is that Iran shot down a US drone and this led to USA assassinating the military

¹¹ Iran nuclear deal: Key details, BBC news, (last visited July 23, 2020, 9:30 PM), <https://www.bbc.com/news/world-middle-east-33521655>

¹² Andrea Mitchell, Trump kept his promise on Iran. But was it the right promise?, NBC news, (last visited July 23, 2020, 11:07 PM), <https://www.nbcnews.com/politics/donald-trump/trump-kept-his-promise-iran-was-it-right-promise-n872546>

¹³ IAEA Director General Press Release, Verification and Monitoring in the Islamic Republic of Iran in Light of United Nations Security Council Resolution 2231, available from <https://www.iaea.org/sites/default/files/gov2017-35.pdf>

¹⁴ UN Secretary-General, Fourth Report of the Secretary-General on the Implementation of Security Council

Resolution 2231 (2015), at 1, UN Doc. S/2017/1030, available from <http://www.un.org/en/ga/search/viewdoc.asp?symbol=S/2017/1030>

¹⁵ Jonathan Marcus, Strait of Hormuz: US confirms drone shot down by Iran, BBC News, (last visited July 24, 2020, 10:30 PM), <https://www.bbc.com/news/world-middle-east-48700965#:~:text=A%20US%20military%20surveillance%20drone,over%20the%20Strait%20of%20Hormuz.&text=On%20Monday%2C%20the%20US%20defence,hostile%20behaviour%22%20by%20Iranian%20forces.>



commander of Islamic Revolutionary Guard Corps (IRGC) General Qasem Soleimani in a Baghdad air strike along with other Iranian officials. It is important to note that IRGC is a part of Iranian military and the US in 2019 designated IRGC as a military organisation. After this incident, Iran vowed vengeance and carried out an airstrike housing US forces in Iraq.

Does Iran have any authority to shoot down the US surveillance drone? Does the US have any right to assassinate Gen. Qasem Soleimani in Iraq? Does Iran under International law have any right to retaliate and conduct the airstrike? These questions will be answered below after an in-depth analysis of what actually took place and what was the justification for the same and whether the US or Iran were entitled by law to do what they did. To understand this we first need to understand what self-defence is under International law and when can it be used as an excuse to attack.

2. Self-defence under article 51 of the UN charter

Article 51 of the UN charter states that, “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence 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.”

In the UN charter the only prerequisite that is mentioned for self-defence is an ‘occurrence of armed attack.’ In many landmark judgements concerning self-defence the court has rightfully pointed out that armed attack has to be a prerequisite. In Nicaragua case (which will be explained later in detail), the court held that US must first find that there was an armed attack by Nicaragua against El Salvador, Honduras or Costa Rica.¹⁶ It also stated that the occurrence of the armed attack is ‘the condition *sine qua non* for the exercise of the right of collective self-defence’.¹⁷ The court reiterated the same principle in Iran Platforms case, thereby making it clear that whether it is collective or individual self-defence the occurrence of the armed attack is a must for a state to claim the self-defence under International law.

2.1 Aspects of Necessity and Proportionality

Although ICJ has made it clear that it considers ‘armed attack’ as *sine qua non* when it comes to dealing with the matter of self-defence, the court also in its relevant decisions made it clear that proportionality and necessity do form as important restrictions for the use of self-defence. These two principles aren’t mentioned explicitly in the UN charter so to interpret the same we need to look into the customary international law i.e. the state practice and *opinio juris*. The court very explicitly in the *Nuclear*

¹⁶ Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua v United States of America*)

merits (1986) ICJ Reports 14, paras 35,127, 191, 210, 211 and 237

¹⁷ Ibid, para 237.



*weapons*¹⁸ advisory opinion stated, “The submission of the exercise of the right of self-defence to the conditions of necessity and proportionality is a rule of customary law.”¹⁹ One of the first and most important case that deals with the customary international law of self-defence is the sinking of *Caroline* case. It is now going to be discussed in detail.

2.1.1 The *Caroline* Incident and how it shaped the international law of self defence

This incident occurred in 1837, Canada was still under the control of the British. It was facing rebellion and the rebels were supported by the US. Many of these rebels who were supporting the Canadian cause were present on Navy Island, which is a part of the British Territory. A private US steamer, *Caroline* was helping them with ammunition and personnel. On 29 December, whilst the *Caroline* was docked at Schlosser, in US territory, it was attacked by British-Canadian forces, which set fire to the steamer and towed it over Niagara Falls²⁰ killing at least one. This caused a lot of unrest in the US because of the violation of territorial integrity and also the death of a US citizen. The unrest slowly subsided but then again in 1840 after the arrest of Alexander McLeod, a British-Canadian, was made by the US alleging his involvement in the *Caroline* incident, the escalation started again. He was later acquitted because of insufficient evidence.

The Correspondence concerning the *Caroline* incident, and particularly that which followed McLeod’s arrest and trial, between the new US Secretary of State, Daniel Webster, and the UK special representative to the United States, Lord Ashburton, gave birth to the so called ‘*Caroline formula*’²¹. This formula had two of the basic essentials of self-defence under international law which are followed by states to this day. The most important part of this formula is in a letter which Webster sends to Ashburton in which he states:

It will be for Her Majesty’s Government to show, upon what state of facts, and what rules of national law, the destruction of the *Caroline* is to be defended. It will be for that Government to show a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation. It will be for it to show, also, that the local authorities of Canada, even supposing the necessity of the moment authorized them to enter the territories of the United States at all, did nothing unreasonable or excessive; since the act justified by the necessity of self-defence must be limited by that necessity, and kept clearly within it.²²

In his reply Lord Ashburton states, “We are perfectly agreed as to the general principles of international law applicable to this unfortunate case.”²³ He also reiterates in his response to the letter the principles of law that Webster set out. So we can understand that there were probably no agreements of the

¹⁸ Legality of the Threat or Use of Nuclear Weapons advisory opinion (1996) ICJ Reports 226, para 41.

¹⁹ Ibid

²⁰ RY Jennings, *The Caroline and McLeod Cases*, American Journal of International Law (1938) at 82, 84.

²¹ James A Green, *The International Court of Justice and Self-defence in International law* 66 (2009).

²² Letter dated 27 July 1842 from Daniel Webster to Lord Ashburton, *British and Foreign State Papers*, vol (1841–1842) 193–94

²³ Letter dated 28 July 1842 from Lord Ashburton to Daniel Webster, *British and Foreign State Papers*, vol (1841–1842) 198.



facts of the case but both the parties had no problem whatsoever with the law involved in the said case. Many writers till today believe this to be a founding stone for self-defence in contemporary international law because the principles of necessity and proportionality are applied till today. But this conclusion was not arrived upon because there was a letter between two states. In fact it is a very problematic assumption to make that a letter between two states would become a legally binding law that most states would follow. This is exactly what happened at that period of time, states did not consider this to be a legally binding rule. This can be clearly understood when we analyse the Corfu incident. Italy responded to assassination of an Italian national by bombing and occupying Corfu. This action of Italy can't be justified because it was totally disproportionate but the League of Nations had no problems with it and in fact thought this act was lawful.²⁴

In only extremely rare scenarios does a single incident amount to customary international law and that happens when there is constant and uniform practise of the principles set out in that incident. However we need to understand that this one incident does not talk entirely about the principles of proportionality and necessity. Other principles which stem out of the incident and which are followed by the states uniformly keep adding value to the principles that have originated from the original incident. Irrespective of how much value a state gives to the Caroline Principles, states cant shy away from the fact that proportionality and necessity form the basis of the law of self –

defence and this is shown by state activities post UN era. However, the application of these principles are subjective and keep changing with change in facts and circumstance which makes it difficult to examine the law. We will first look into how the principle of necessity evolved overtime.

2.2 Necessity – The last resort rule

In order to understand this principle let us start with the Webster's letter where he uses the word 'overwhelming'. This can be interpreted as the action that has to be responded to, has to fundamentally threaten the existence of the state or at least harm its vital interests. In the present status quo however this principle might not be applied because it necessarily indicates that a state's existence has to be threatened for the state to take an action, which is certainly not the practise that is being followed by states right now.

In the Nicaragua case²⁵, the US helped the rebellion contras financially and logistically to overthrow the Nicaraguan government. Nicaragua also alleged that there were attacks on its port and mining areas. It is interesting to note that the US did not appear before the court during the merit stages as it failed to accept the jurisdiction of the court to decide this case. Later it claimed that these activities were carried on lawfully under Art.51 of the UN charter in the form of collective defence. It can be argued that the existence of El Salvador was under question, yet the state saw the actions of the US to be unlawful or unnecessary because this was not a last resort action taken by the US. The doctrine of necessity in self-defence slowly changed

²⁴ JH Wigmore, *The Case of Italy v Greece under International Law and the Pact of Nations*, Illinois Law Review, (1923–24) at 131, 142–47.

²⁵ 1986 I.C.J. 14



from using self-defence when there is an action that threatens the existence of state to a when it can only be used as a last resort.

This can further be explained by the Falkland Islands conflict which happened in the year 1982. Both Argentina and the United Kingdom have been in a dispute regarding the sovereignty of this Island. After long standing negotiations, the Argentine forces deployed troops and wanted to capture the British island. The British troops responded and won the war. This military activity by British was considered to be lawful self-defence by most of the member countries of the UN.²⁶ We have to understand that the occupation of the Falkland Islands did not threaten the existence of the United Kingdom. The United Kingdom also stated that its military intervention was necessary because Argentina failed to comply with the will of Security Council regarding this issue according to resolution 502 of the Security Council. So there was a shift in the ideology of the states as they saw this act as lawful self-defence because this was a 'last resort action'.

Another example where the states used necessity as a last resort action can be dated back to 1958 when there was a conflict between France and Tunisia. Here Tunisia claims that in order to expel French troops out of its territory it did everything possible. It also released 13 French prisoners who were held captive after the bombing of the Tunisian territories and it also tried to negotiate with the French government regarding this situation for almost two years and then finally as a 'last resort' it had to

expel the troops using military intervention.²⁷ Even in the Nicaragua case, the court held that the threat to Salvadorian government, if any, could be dealt with without directly engaging in activities against Nicaragua. The court here did not consider the US's acts as that of last resort. The court thus felt that the acts of the US were unnecessary. With these examples it has been proved that necessity as a last resort is a part of customary international law. Now let us examine the principle of Proportionality also in the same manner.

2.3 Aspect of Proportionality

Another aspect of self-defence in customary international law is that of proportionality. In the contemporary international law there are two possibilities that arise when we talk about this principle. In most of the cases states believe that there has to be equivalence between the response and the amount of force that is required to abate the attack. Some states however argue that this principle should apply to the attack that it suffered directly. A good example of court's application of this principle can be found in the Oil Platforms case ²⁸(Iran v United States), although the court could not come up with a proper precedent it did talk about the principle.

In this case, there were two attacks on the Iranian oil platforms by the US .First instance was on October 19, 1987. It claimed self-defence and that this action was in response to the attack on Sea isle city, a single merchant vessel. It attacked two oil platforms one of them was severely annihilated and the

²⁶ Security council resolution, Falkland Islands (Malvinas), SC/RES/502 (April 3, 1982) available from <http://unscr.com/en/resolutions/doc/502>

²⁷ U.N. SCOR, 819th mtg.,UN Doc S/PV.819, 6 (June 2 , 1958),available from <https://undocs.org/en/S/PV.819>

²⁸[2003] ICJ Rep 161



other was majorly destroyed. Another such instance occurred on April 18, 1988 where again the US attacked two oil platforms this time in response to a US warship which was struck by a mine when it was sailing on the international waters near Bahrain. The US suggested that this mine was set up by Iran.

The court in this case came up with the conclusion that the first case of bombing may be considered as a measure of self-defence because of the proportionality principle. But the second case of bombing can't be considered as self-defence under the same principle. Considering both the events are very identical in nature i.e. the US bombing the Iranian platforms, it is tough to see why the court may consider the first bombing to be proportionate and the second to be disproportionate. But on further analysis this can be because of the fact that in the first case the Iranians bombed a merchant vessel whereas in the second case there was mining of a military ship. Here the court can be criticised for using the same principle ambiguously in two almost similar circumstances but we can't disagree with the fact that the court considered proportionality to be an aspect under self-defence under contemporary international law. But the application of this principle was left ambiguous by the court of law. To get clear understanding of how this principle is followed we have to take a closer look at the state actions regarding this principle. First we will take a look at the Caroline correspondence.

On critically examining the Webster letter, the principle of necessity is dealt with when

words like 'excessive' and "the act justified by the necessity of self-defence must be limited by that necessity, and kept clearly within it"²⁹. It can be interpreted that the self defence should majorly be used in order for the victim state to defend itself but not as a retaliatory measure to the attack committed by the state. This interpretation however might be ambiguous.

Going back to the Falkland conflict, here the military intervention by the British forces as already mentioned was considered lawful because of the invasion of Argentina. In this case, the Security Council passed resolutions stating that Argentina has to leave the territory immediately. So the British action is considered proportional to achieve this goal because the negotiations could not yield a result. In 1950, during the Korean War, the Cuban forces were required to do whatever is necessary to suppress the North Korean attack. A similar view is also taken when during this conflict the US pursued the North Korean troops across the 38th parallel. Although prima facie this might look disproportionate, most of the countries agreed that it was necessary for the safety of South Korea.³⁰ So a conclusion can be drawn that under customary international law, self-defence has to be in proportionate to abate the attack. This is also because customary international law will not permit or tolerate retaliation by a state because if an attack has been completed there is no chance for the state to repel the attack unless the state can prove the fact that an attack is imminent. If an attack is once abated, the state has no right to self-defence again and any violent response from the state will be considered disproportionate. This can

²⁹ Legality of the Threat or Use of Nuclear Weapons advisory opinion (1996) ICJ Reports 226, para 41.

³⁰ JA Meyer, *Collective Security and Regional Security: Necessary Exceptions to a Globalist Doctrine*, Boston University International Law Journal, (1993) at 391, 403.



also be seen from the reactions of various countries regarding the US actions in Grenada in 1983. The US claimed that there was a risk of its nationals in the area and hence ordered a military intervention. But the military continued to stay there even after the removal of their citizens. This was considered to be disproportionate.³¹ Even in the Nicaragua case, the reason why the court considered the action of the US to be disproportionate is because the court was not concerned about the proportionality between the aid of Salvadorian rebels and the act of the US, whether the act of the US was in proportionate to its final goal which was to stop the aid. These actions by states prove that proportionality is also an aspect that is considered as an essential when it comes to self-defence under customary international law.

2.4 Anticipatory Self-Defence and the aspect of imminence

There is a lot of confusion with regard to the terms used regarding self-defence. Terms like anticipatory, pre-emptive, preventative and interceptive are used. For the purpose of this paper and in order to clear ambiguity, anticipatory self-defence is action taken against imminent threat whereas pre-emptive defence is action taken against some threat which is remote. Over the years, states have outright rejected the idea of pre-emptive self-defence and rightfully so because giving the states the right to of self-defence when there is no imminent threat can be misused and create bad precedents for the future which might lead to large scale calamities. However

the principle of Anticipatory self-defence is a bit controversial too.

There are two schools of thought which discuss the existence of anticipatory self-defence under international law. First school of thought interprets the text as is, after reading the article 51 of the charter they say that this act of anticipatory self-defence has withered out in international law and self-defence action can take place only after an armed attack has occurred like the article says. The other school of thought concentrates on the term 'inherent' in the article and argues that the charter is recognising the already existing principle of self-defence which includes anticipatory self-defence and is not restricting the scope of self-defence.

Although some states have perennially disagreed to this type of self-defence recent incidents have changed the ways many states think, especially after the September 11, 2001 attacks on the US. The main concept of this doctrine is that states can't be asked to wait till there is an occurrence of armed attack, when they already know that a threat is imminent. Because many writers believe that after a state is attacked, it will no longer be in a position to defend itself. But the major problem like mentioned above is the misuse of the doctrine and how subjectively this can change depending on the circumstances. There are some circumstances before the 9/11 attacks that actually prove the existence of this concept under customary international law.

2.4.1 The Israeli attack on the Osirak nuclear reactor

³¹U.N. SCOR,2491st mtg, U.N. Doc S/PV.2491(27 October, 1983), available from [https://undocs.org/en/S/PV.2491\(OR\)](https://undocs.org/en/S/PV.2491(OR))



Israel argued that the Osirak nuclear reactor posed an ‘imminent’ threat and hence under the act of self-defence destroyed the reactor. It claimed that if it couldn’t be destroyed now then it could never be destroyed.³² Most states condemned this action of Israel because they believed that this threat was not imminent, not because they argued that this custom doesn’t exist. This incident proved the fact that the custom of anticipatory defence existed in international law even before the 9/11 attacks.

2.4.2 Anticipatory self-defence after the 9/11 attacks

The 9/11 attacks on the US changed global perspective on terrorism and self-defence. Right after the attacks, resolution 1368 was passed which made it lawful for the US to invade Afghanistan to help repel the terrorist organisation. Not many countries in the world opposed this move by the Security Council, in fact many nations applauded the US in taking such a step. We need to understand that terrorism even till today is a major problem which has not yet been completely dealt with. The Security Council after such a massive attack was convinced that the threat is imminent and hence authorised the US to take action.

3. The Authorisation of Use of Military Force (AUMF) and the aftermath

This attack also lead the US to pass Authorisation for Use of Military Force (AUMF) which is a joint resolution of the US congress. This was signed into power by ex-

President George Bush. Section 2(a) of this act states:

“IN GENERAL.—That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001 or harboured such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”

This act and this section has basically given a green light for the president to wage a war against any state he ‘believes’ to be a terrorist organisation or harbour a terrorist organisation. Officials use terms like Al – Qaeda and associates or affiliated forces etc. in order to carry on military operations in various parts of the world. Under the administration of Obama and Bush it has reported that the AUMF has been used to allow military deployment in Afghanistan, the Philippines, Georgia, Yemen, Djibouti, Kenya, Ethiopia, Eritrea, Iraq, and Somalia.³³ Obama administration even controversially applied AUMF to fight the ISIS which was not even present during the time of 9/11 attacks. We can see how there has been wide interpretation made by the presidents and direct misuse of the AUMF. We will have to wait and watch whether President Donald Trump will use AUMF as a lawful excuse to wage war against Iran.

³² See inter alia U.N. SCOR, 2288th mtg, UN Doc S/PV.2288, 32.(19 June , 1981), available from [https://undocs.org/en/S/PV.2288\(OR\)](https://undocs.org/en/S/PV.2288(OR))

³³ CHRISTOPHER WOODY, Congress may repeal the post-9/11 act the US military used to justify the fight against ISIS, Business Insider , last visited on

July 25, 2020, 10:36 PM , <https://www.businessinsider.in/defense/congress-may-repeal-the-post-9/11-act-the-us-military-used-to-justify-the-fight-against-isis/articleshow/59375785.cms>



After analysing the state activities, we can claim that imminence is also an aspect under the customary international law and all though anticipatory self-defence is controversial it can be considered as lawful.³⁴

Having dealt with the aspects of occurrence of armed attack, necessity, proportionality and imminence with regards to the claim of self-defence under International law in detail, let us now examine the actions of both the US and Iran and whether their actions can be claimed as lawful self-defence.

4. Assassination of General Qasem Soleimani and the legal defence taken up by the US

As discussed already on January 3, 2020, Qasem Soleimani the military commander of the IRGC was killed by an air strike in Baghdad which was orchestrated by President Donald Trump. On January 8, 2020 the US reported this matter to the UN and claimed self-defence under article 51 of the UN charter. Let us take a closer look at this letter to understand what the US was claiming and whether they had any right to do so. First let us discuss whether the prerequisite of an occurrence of armed attack was conducted by Iran against United States. There are several instances included in the letter which try to establish this fact. They are as follows:

The letter states, “Over the past several months, the United States has been the target of a series of escalating threats and armed attacks by the Islamic Republic of Iran. These have included a threat to the amphibious ship USS Boxer on 18 July 2019.”³⁵ The first

instance clearly states that there was a ‘threat’ to an armed attack which necessarily means that the armed attack did not take place at all. So the first instance mentioned by the US in the letter can’t be a reason for the US to claim self-defence.

Other instances include, “armed attack on 19 June 2019 by an Iranian surface-to-air missile on an unmanned United States Navy MQ-4 surveillance aircraft on a routine surveillance mission monitoring the Strait of Hormuz in international airspace.”³⁶ This issue like we already discussed, is controversial. Iran claims that the drone invaded their airspace. In a letter dated June 20, 2019 to the United Nations Security Council, Iran claims that despite several radio warnings from Iran, the US drone infringed their airspace and hence under the article 51 of the charter it was entitled to self-defence.³⁷ No such letter after this incident can be seen from the US’s side. But let us give the US the benefit of doubt, let us assume that Iran voluntarily chose to shoot down the drone even if it was not in the Iranian territory. Will this justify the act of the US to conduct an air strike against top Iranian officials in Baghdad? This is where the doctrine of proportionality comes in. Like we have already seen, the act in response should be in proportional to abate the attack. Here clearly the air strike in Iraq can’t be considered to be proportional. This is again assuming that the US might even have a right of self-defence in the first place.

“...attacks on commercial vessels off the port of Fujayrah and in the Gulf of Oman that threaten freedom of navigation and the security of international commerce, and

³⁴ James A Green, The International Court of Justice and Self-defence in International law 101 (2009).

³⁵ UN doc S/2020/20,(9 January 2020) available from <https://digitallibrary.un.org/record/3846463?ln=en>

³⁶ Id

³⁷ UN doc S/2019/512,(20 June 2019) available from <https://undocs.org/S/2019/512>



missile and unmanned aircraft attacks on the territory of Saudi Arabia.”³⁸ This is another instance that is mentioned by the US. However there is no proof as to whether the countries affected asked the US for help in case of collective defence. Also it is the duty of the Security Council to act accordingly if any act threatens the international peace and security so this can't be taken into consideration either.

Additionally another set of claims that US makes under this letter is that 'Iran backed militia' have engaged in armed attacks against the US. But in the case of Nicaragua paramilitary, we have already seen that the court laid out the principle that, “assistance to rebels in the form of the provision of weapons or logistical or other support”³⁹ does not constitute an armed attack.³⁹ If it was proved in this letter that Iran was under direct control of these military groups or that these military groups acted under the directions of state of Iran, only then can this be construed as an armed attack that the state of Iran instituted against the US. The letter does not do this but rather uses vague terms like 'Iran backed militia' and goes on to state several instances where these militia have resorted to armed action against the US. Therefore, even this claim does not give the US a lawful right for self-defence.

The aspects of necessity and imminent threat are not even mentioned in the letter. The closest the US has come in the letter to discuss about these aspects is when they use the line, “These actions were in response to an escalating series of armed attacks in recent months by the Islamic Republic of Iran and Iran-supported militias on United States

forces and interests in the Middle East region.....”⁴⁰

The phrase 'in response to' is very problematic in this paragraph. We have already seen that international law does not allow for military retaliation. The US had to prove that there was a continuous form of armed attack for them to take such a step. If an attack is completed, the cycle is reset this is the time when diplomacy has to work or the UN has to come up with a solution. This is not a time for retaliation. And the terms 'escalating series of attacks' do not prove the imminence of the threat for the US to take such an action in the guise of anticipatory self-defence. This letter by the US fails in addressing every basic requirement that is needed for a country to claim self-defence. So this act of carrying air strikes can't be considered lawful.

Another very concerning issue that the letter does not even bother to mention about is that this incident did not take place in Iran but rather took place in Iraq, without taking the prior permission of Iraq. This is a direct infringement of sovereignty of Iraq.

5. Iran conducts airstrikes in response

As already mentioned, in response to the assassination of Qasem Soleimani, Iran conducted an air strike aiming at the US bases from where the assassination was conducted.⁴¹

For Iran to take any action under self-defence it has to show that an armed attack occurred, there was a threat of imminent future attack for it to take anticipatory self-defence. It is tough to argue that an armed attack did not

³⁸ Supra at 34

³⁹ Nicaragua merits (n 2) para 195.

⁴⁰ Supra at 34

⁴¹ UN doc S/2020/19, (8 January 2020) available from <https://undocs.org/S/2020/19>



take place against Iran. The airstrike that killed General Qasem Soleimani is an obvious armed attack against its national. So the primary necessity that is required for self-defence did take place. Next for us to understand whether Iran could establish that there was an imminent threat, we need to take a deeper look at the letter, “.....the armed forces of the Islamic Republic of Iran took and concluded a measured and proportionate military response.....”⁴²

The letter only talks about there being a measured and proportionate military response, they never establish the fact that Iran was facing an imminent threat. As we all know, after an armed attack has taken place, states are not allowed in the guise of self-defence to retaliate. According to the principle of proportionality they can only retaliate in order to repel that attack and the said attack must be proportionate in order to repel the attack. Here Iran does not establish that there is still an armed conflict for them to repel, hence this act can be seen only as a retaliatory measure and is therefore unlawful. Furthering this case is the fact that Iran does not even establish that it was facing an imminent threat from the US bases in Iraq. The fact that Iran’s supreme leader Ayatollah Ali Khamenei warned that a “harsh retaliation is waiting” for the US⁴³, does not help Iran’s cause either. These actions clearly show that the actions taken by Iran are unlawful because they were retaliatory in nature.

⁴² Id

⁴³ Iran supreme leader vows ‘severe revenge’ after US kills top general Soleimani, The Times of Israel, (last visited on July 26, 2020, 5:20 PM) <https://www.timesofisrael.com/iran-supreme-leader-vows-severe-revenge-for-soleimani-killing/>

⁴⁴ Ahmed Aboulenein, Iraqi leader faces tricky balancing act as main allies confront one another,

6. Position of Iraq

Iraq in this conflict plays a vital role although it is not involved directly. On one side is its neighbour and on the other side is one of its strongest ally and one of the superpowers of the world, the US. It has to be noted that both Iran backed militias and the US troops helped Iraq fight rogue elements in its territory. So it is a tough ask for Iraq to do the balancing act. Nowhere in its letter to the UN did US mention anything about the sovereignty of Iraq. Yes it was carrying on the attack against Iranian troops but it was doing it on Iraq’s territory. The fact that the US does not even try to acknowledge this is baffling. It was a clear violation of Iraq’s sovereignty.

In the case of Iran however, they do acknowledge the fact that they conducted an attack on Iraq’s territory. The letter states, “.....to reiterate the full respect of the Islamic Republic of Iran for the independence, sovereignty, unity and territorial integrity of the Republic of Iraq.” This is also nothing more than mere acknowledging the fact that there was an attack on Iraq’s territory. However the Iraqi government did say that they were informed about the airstrikes from the Iranian government.⁴⁴ But this does not change the fact that Iraq’s sovereignty was violated.

So in both the cases, a country which is not even involved in the conflict has faced attack on its sovereignty.

Reuters, (last visited on July 27 , 2020 , 10:48 AM) <https://www.reuters.com/article/us-iraq-security-government/iraqi-pm-received-word-from-iran-about-missile-attack-idUSKBN1Z71FX>



7. Conclusion

After the 9/11 attacks, war on terror has been used as guise to carry out many military interventions throughout the world. Yes, terrorism is one of the biggest problems that the mankind is facing. But it should not be used as leeway by states to carry out their own personal propaganda. AUMF has been cited as a reason for military intervention in more than 10 states. We should note that the purpose of this act was to go after the forces which took part in the 9/11 attacks to prevent any future attacks, but this act has been rather interpreted widely to go after any terrorist organisation that the president of the US deems to have caused a threat. This act gives president right to wage wars without the congress's consent. It will be curious to see whether President Trump would use this right to wage a war against Iran .Acts like these are extremely problematic in the status quo. The UN should take up initiatives that acts of this nature are not taken up by any other states. There have been on-going discussions in the US, as to whether this act should be repealed. I believe that acts like these should not exist. These acts give the states a chance to carry out their propaganda in the name of 'fighting terrorism' and helping the mankind. This should not be tolerated anymore by the United Nations.

In most of the cases, the fact that a state or organisation is a terrorist organisation is not established clearly as well. Like we have seen in both the letters by the US and Iran to the UN, there is just a blame game as to who the terrorist state is. Like they say, 'terrorist for one side, is a freedom fighter for the other.' Unless there are explicit facts that say that a state is aiding a terrorist organisation or that the states are under direct control of militia which are carrying out these operations, the

states should not be allowed to use military intervention or armed attack. Because in most of the cases, the findings are very subjective.

We have already seen how devastating it can be for nations if at all a war takes place. It would not only affect the countries participating but there is a major possibility that a war affects most of the nations. This is the major reason why UN was established. The aim with which it was set up was to maintain peace and security, there are articles in the charter which strive towards this goal. States should be penalised in cases of clear violation of the norms of the customary international law or when there are violations against the articles of the UN charter. It might be easier said than done in the case of superpowers like the US, Russia, China etc. In these cases , states should at least be held accountable for what they have done and should not be left of the hook because if they are, then it would just approve these state's actions ,the cycle will continue and the states will continue doing the same until we face something we have dreaded for so long, another world war.
