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Rethinking Self-Defence: The Use of Force against Non-State Actors under Article 51 of the UN Charter

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“I would like to be remembered as someone who used whatever talent she had to do her work to the very best of her ability.”

- Ruth Bader Ginsburg

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Introduction

In the contemporary legal and security landscape, the regulation of force in international relations stands at a moment of profound redefinition. The post-1945 international legal order, shaped by the trauma of world war and the collective determination to restrain the unilateral use of violence, established a framework centred on the prohibition of force under Article 2(4) of the United Nations Charter, counterbalanced only by a few narrowly defined exceptions. Chief among these is Article 51, which affirms the inherent right of states to resort to self-defence in the event of an armed attack. This provision, long regarded as a cornerstone of the *jus ad bellum* (the body of international law governing the conditions under which states may lawfully resort to the use of force), was drafted on the basis of a relatively stable set of assumptions: that conflicts would take place between states, that the source of aggression would be clearly identifiable, and that sovereignty would serve as the principal organising framework of international peace and security.

However, the realities of modern conflict increasingly defy these assumptions. Armed threats today often originate not from states, but from non-state actors who operate across borders, embed themselves in fragile or failing states, and challenge the capacity of international law to respond effectively. Transnational terrorist organisations, decentralised insurgent networks, and other non-state armed groups carry out acts of large-scale violence that mirror or even exceed traditional armed attacks in both scope and impact. Yet these actors frequently fall outside the legal categories contemplated by the drafters of the Charter, raising difficult questions about attribution, legitimacy, and the scope of lawful self-defence. Their emergence has generated a growing tension between the existing legal structure and the changing nature of contemporary security threats.

This thesis addresses that tension by critically examining whether, and under what legal conditions, the right of self-defence under Article 51 can be lawfully invoked against non-state actors. It explores the evolution of legal discourse, the practice of states, and the role of international institutions in shaping or resisting reinterpretations of this fundamental norm. Central to the inquiry is the challenge of reconciling the need for effective responses to modern threats with the foundational purpose of the Charter system: to prevent the erosion of legal limits on the use of force. By combining doctrinal

analysis with an evaluation of state practice and institutional responses, this thesis investigates whether the contemporary use of Article 51 represents a lawful adaptation or a gradual departure from the principles that have governed the use of force for over seventy-five years.

This thesis is divided into three substantive chapters, each building upon the other to offer a comprehensive and critical assessment of the evolving interpretation of the right of self-defence under Article 51 of the United Nations Charter, particularly in relation to armed attacks by non-state actors. The research adopts a doctrinal methodology, relying on the interpretation of primary legal texts, international case law, and state practice, combined with contextual analysis of evolving normative trends and scholarly contributions. The approach is both analytical and critical, seeking not only to interpret the law as it stands, but to question the coherence and legitimacy of its development in light of contemporary challenges.

The first chapter provides the foundational legal and conceptual framework of the thesis by exploring the original meaning, structure, and purpose of Article 51 within the post-World War II legal order. It examines the prohibition of the use of force under Article 2(4) and the exceptional nature of self-defence as a tightly regulated right. Central to the analysis are the criteria of necessity, proportionality, and attribution, as developed in customary international law and articulated in landmark jurisprudence of the International Court of Justice. This chapter addresses the restrictive character of the traditional interpretation of self-defence, grounded in the assumption that armed attacks originate from other states, and it identifies the legal tensions that arise when this framework is confronted with violence committed by actors lacking legal personality under international law.

The second chapter focuses on the redefinition of self-defence doctrine in response to the growing presence of non-state actors in transnational armed conflict. It critically examines the legal rationales advanced by states when invoking self-defence in situations where no state is directly responsible for the armed attack. In particular, it investigates the use of the “unwilling or unable” doctrine, the interpretative role of post-9/11 Security Council resolutions, and the implications of increasingly flexible understandings of immediacy and attribution. The analysis is grounded in a doctrinal

reading of legal sources but is complemented by an examination of actual state conduct, including formal statements and communications to the Security Council. The aim is to determine whether these evolving practices reflect a coherent and lawful evolution of the *jus ad bellum* or whether they indicate a more fragmented and potentially destabilizing shift in the normative order.

The third chapter applies the legal and theoretical analysis developed in the earlier chapters to the context of the Syrian conflict, which has become the most prominent site of legal experimentation with expanded interpretations of self-defence. The chapter examines the factual collapse of state authority in Syria, the rise and consolidation of non-state armed groups operating from its territory, and the legal justifications invoked by foreign states conducting military operations against these actors. Particular attention is given to how states such as the United States, France, and the United Kingdom have formulated their claims under Article 51, including their reliance on both collective and individual self-defence in the absence of Syrian consent. Through a close reading of state practice and Security Council correspondence, this chapter evaluates whether these actions reflect an emerging consensus or expose the limits of legal coherence in the application of Article 51. The methodology remains doctrinal but is extended to include empirical analysis of legal justifications in context, allowing for a grounded assessment of the current state of international law.

Taken together, these three chapters form an integrated examination of whether the right of self-defence is being lawfully and normatively adapted to meet the realities of asymmetric conflict, or whether such developments risk undermining the legal constraints intended to govern the use of force. By moving from theoretical foundations to contemporary legal debates and finally to a detailed case study, the thesis offers both a critical interpretation of existing legal norms and an evaluation of their capacity to remain effective and legitimate in an evolving international landscape.

Chapter 1:

The Traditional Understanding of Article 51 and Theoretical Challenges Posed by Non-State Actors

Introduction

The legal framework governing the use of force in international law is fundamentally shaped by the principles enshrined in the United Nations Charter. Among these, Article 51, which codifies the inherent right of self-defence, plays a central role in regulating the conditions under which states may lawfully resort to force. Rooted in a state-centric paradigm, Article 51 was designed primarily to address inter-state conflicts, reflecting the post-World War II legal order that sought to preserve international peace and security through a structured system of collective security. The drafters of the Charter envisioned a legal framework in which the prohibition on the use of force under Article 2(4) would be counterbalanced by the narrowly defined right of self-defence, ensuring that force remained an exception rather than a norm in international relations. However, the evolution of global security dynamics, particularly the increasing involvement of non-state actors (NSAs) in armed conflicts, has raised significant theoretical and practical challenges to this traditional interpretation.

The rapid expansion of NSAs in modern conflicts, ranging from terrorist organizations to insurgent groups and private military contractors, has placed considerable strain on the conventional state-based framework of Article 51. Unlike traditional inter-state conflicts, where attribution of aggression is clear-cut, contemporary security threats often originate from actors operating beyond the jurisdiction or effective control of any single state. Consequently, there is an ongoing debate as to whether the right of self-defence should evolve to encompass responses to non-state actors operating independently of state control, and if so, under what legal parameters.

This chapter provides an in-depth analysis of the conventional understanding of Article 51, outlining its historical foundations, core legal principles, and judicial interpretations that have shaped its application. It examines how the UN Charter constructs a balance between the prohibition of the use of force under Article 2(4) and the exceptional allowance for self-defence under Article 51. By tracing the development of key legal doctrines such as necessity, proportionality, and state attribution, this chapter

highlights the fundamental constraints imposed on the unilateral use of force by states. In light of the increasing prevalence of asymmetric conflicts, this chapter also explores the extent to which existing legal doctrines are capable of addressing contemporary security challenges, and whether legal reinterpretations or amendments are necessary to align international law with modern realities.

In Section 1, the chapter explores the origins of Article 51 within the broader framework of the UN Charter, emphasizing its state-centric foundation and the key legal doctrines that govern its application, including necessity, proportionality, and attribution. In Section 2, the focus shifts to the challenges posed by non-state actors, examining how their increasing role in armed conflicts complicates the traditional legal framework and raises critical questions about the adequacy of the current interpretation of self-defence under international law.

Section 1: Origins of Article 51 and the State-Centric Paradigm

The United Nations was created as a cornerstone for peace in the aftermath of World War II, which devastated much of the world and resulted in over 85 million deaths. It was out of a collective desire to prevent such atrocities and maintain global peace and security¹ that the United Nations was created in 1945 following the San Francisco Conference. It was built as a state-centric institution, reflecting the historical primacy of states in international relations since the Treaty of Westphalia (1648), with its core mandate being the regulation of inter-state relations. The consideration of the United Nations as “an organization of states, by states, and for states”² is embodied in the two first articles of the Charter, listing its purposes and principles. By anchoring its legal framework in the principle of state sovereignty, the United Nations affirms the primacy of states as both the subjects and enforcers of international law, particularly in matters of peace and security.

The article 2(4) appears as the foundation of modern international order, stipulating :

¹ United Nations (1945) *Charter of the United Nations and Statute of the International Court of Justice*. San Francisco: United Nations.

² Himes, A. and Kim, B. (2022) ‘Self-defence on Behalf of Non-State Actors’, *University of Pennsylvania Journal of International Law*, 43, pp. 246–278.

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

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 other manner inconsistent with the Purposes of the United Nations.

This provision encapsulates one of the most fundamental prohibitions in international law, aimed at ensuring the peaceful coexistence of sovereign states and preventing the recurrence of large-scale conflicts. By prohibiting both the threat and actual use of force, Article 2(4) establishes a general legal framework that seeks to promote the resolution of disputes through diplomatic and legal means rather than military confrontation. However, despite its categorical phrasing, the scope and interpretation of Article 2(4) have been subject to extensive debate. One of the primary legal ambiguities surrounding Article 2(4) pertains to the meaning of the phrase “*in any other manner inconsistent with the Purposes of the United Nations.*” This language leaves room for interpretation regarding the circumstances under which the use of force may be deemed permissible beyond the strict prohibition on aggression. The *travaux préparatoires* of the Charter suggest that this clause was included to reinforce the principle of non-intervention, but its precise legal implications remain contested³. The International Court of Justice (ICJ) has reinforced that any exception to this prohibition must be interpreted restrictively, thereby limiting states’ ability to justify the use of force under general claims of preserving international order⁴.

While Article 2(4) reflected a strong post-wars desire to put an end to any type of military conflicts, the Charter does recognize that the total ban of the use of force cannot resist to the reality . The most significant of these exceptions is enshrined in Article 51, which recognizes the inherent right of self-defence. Article 51 states:

³ Brownlie, I. (2008) *Principles of Public International Law*. Oxford: Oxford University Press.

⁴ International Court of Justice. (1986) *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States)*. ICJ Reports.

*“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.”*

The relationship between Articles 2(4) and 51 underscores a fundamental tension in international law: the balance between maintaining strict limitations on the use of force and recognizing the necessity of self-defence in cases of aggression.

The inherent right of self-defence, as recognized in Article 51 of the UN Charter, is a fundamental principle of international law that predates the Charter itself. The term “*inherent*” signifies that self-defence is not a right conferred by the UN system but one that exists independently under customary international law. This principle has its origins in natural law traditions, which assert that states, as sovereign entities, have a fundamental right to preserve their existence and territorial integrity. The French version of Article 51 explicitly captures this idea by referring to “*droit naturel de légitime défense*” (natural right of legitimate defense), reinforcing the view that self-defence is an intrinsic and pre-existing right rather than one contingent on the Charter’s provisions.

This notion of an inherent right is deeply rooted in classical legal thought. Hugo Grotius, in *De Jure Belli ac Pacis* (1625)⁵, argued that self-preservation is an intrinsic right of sovereign entities and a core aspect of the law of nations. According to Grotius, a state’s right to self-defence is derived from natural law, independent of written agreements or international treaties, and is a necessary condition for maintaining order and justice in the international system. His reasoning influenced later scholars, including Emer de Vattel, who, in *Le Droit des Gens* (1758)⁶, elaborated on the idea that self-defence is not granted by treaties but rather constitutes a fundamental right inherent to the

⁵ Grotius, H. (1814) *The Rights of War and Peace*. London.

⁶ Emer de Vattel (1758) *Le Droit des Gens ou Principes de la Loi Naturelle*.

very existence of a state. Vattel emphasized that sovereignty is inseparable from the right of self-preservation, and any limitation on self-defence would be contrary to the essential principles of international law.

However, while Article 51 acknowledges this pre-existing right, it simultaneously regulates its exercise by imposing a reactive framework. The phrase “if an armed attack occurs” (“*dans le cas où un Membre des Nations Unies est l’objet d’une agression armée*”) establishes a clear legal threshold, ensuring that self-defence can only be invoked in response to an actual attack rather than as a preemptive or anticipatory measure. According to the International Court of Justice (ICJ) in *Nicaragua v. United States* (1986), it is “necessary to distinguish the most grave forms of the use of force (those constituting an armed attack) from other less grave forms”⁷. In other words only grave uses of force such as large-scale invasions or substantial military operations constitute an ‘armed attack’. Finally, the force can be used only to repel the aggression until the intervention of the security council, it has a temporary nature due to the subsidiary role of self-defence under the UN system.

The architects of the UN Charter envisioned Article 51 as a mechanism to deter state-to-state aggression while maintaining the collective security system under Chapter VII of the Charter. Chapter VII outlines the authority of the United Nations Security Council to take collective measures in response to threats to international peace and security, including the use of force. It provides the legal framework for enforcement actions, including sanctions and military intervention, when peaceful means are deemed insufficient. This state-centric paradigm was bolstered by customary international law and particularly the previously mentioned *Nicaragua v. United States* (1986) ruling in which the ICJ held that acts by non-state actors could only trigger the right of self-defence if they were attributable to a state. The Court set high standards for attribution, evidence of “effective control” by the state over the armed groups’ actions are required. There are three elements to define effective control: first, the state must have substantial authority and influence over the non-state actors, demonstrating an ability to command or direct their operations. Second, this control must extend to specific actions or operations, meaning the state must be involved in planning or directing the particular conduct in

⁷ *Nicaragua v. United States* (1986), para. 191

question. Third, the relationship must be evidenced by a high degree of involvement, such as providing direct orders or detailed guidance, beyond mere support like funding or arms supply. This strict standard underscored the state-centric nature of Article 51 and limited its applicability to asymmetric conflicts.

Thus, in its traditional interpretation, Article 51 establishes a strictly reactive framework for self-defence, contingent upon the occurrence of an armed attack, confined to grave uses of force as defined by international jurisprudence, and inherently temporary due to its subsidiary role under the UN collective security system. Rooted in a state-centric paradigm, it necessitates clear attribution of aggression to a state and imposes stringent conditions for the lawful invocation of self-defence, ensuring that it remains an exception rather than a justification for unilateral military action.

Section 2: Core Legal Doctrines Shaping Article 51

Article 51 of the United Nations Charter is one of the most significant provisions of international law, codifying the inherent right of states to self-defence while imposing legal constraints to prevent the misuse of force. This section explores the historical foundations of Article 51, the principles of necessity and proportionality, and the role of state attribution in shaping its application.

1.2.1 Historical Basis in Customary Law

The principles of necessity and proportionality, central to Article 51, are deeply rooted in customary international law. These principles were famously articulated in the *Caroline* case (1837), which arose from a dispute between the United States and Great Britain over the destruction of an American steamboat used by Canadian rebels. The *Caroline* doctrine established that the necessity of self-defence must be “instant, overwhelming, leaving no choice of means, and no moment for deliberation”⁸. This standard emphasized that the use of force must be strictly reactive, immediate and unavoidable. The reactive nature of self-defence under Article 51 imposes strict limitations, requiring that force be used only in response to an ongoing or already-initiated armed attack, not preemptively. The immediacy requirement mandates that defensive

⁸ Jennings, R.Y. (1938) 'The *Caroline* and *McLeod* Cases', *American Journal of International Law*, 32(1), pp. 82–99.

action must follow the attack without undue delay, ensuring it serves as a response rather than retaliation. The unavoidability criterion restricts self-defence to situations where no alternative means, such as diplomacy or containment, are available. These three elements: reactive, immediate, and unavoidable; ensure that self-defence remains a narrowly defined exception to the general prohibition on the use of force under Article 2(4).

Article 51's reactive framework reinforces this, permitting self-defence only "if an armed attack occurs" and requiring states to immediately report their actions to the Security Council. By linking self-defence to the occurrence of an armed attack, the UN Charter enshrines a system of checks that curtail preemptive or excessive use of force.

1.2.2 Necessity in International Law

The concept of necessity is a central yet complex principle in international law, manifesting distinctly across various legal regimes. Clear differentiation among these contexts is vital to prevent conceptual ambiguities or incorrect applications in legal justifications⁹.

1.2.2.1 Necessity in the Context of Self-defence (Article 51)

Under Article 51 of the United Nations Charter, necessity requires that force used in self-defence must be strictly limited to situations where no other peaceful means remain to halt or repel an immediate armed attack. The principle emphasizes the reactive and constrained nature of self-defence, ensuring responses remain proportional and justified by the immediacy of the threat¹⁰. Notably, necessity within Article 51 does not necessitate a threat to state survival or existential danger. Rather, it hinges upon the immediate imperative to counter an armed aggression effectively¹¹. The International Court of Justice (ICJ) reinforced this understanding in its landmark judgments, including *Nicaragua v. United States* (1986) and *Oil Platforms* (2003)¹², explicitly affirming the

⁹ Ohlin, J.D. and May, L., (2016). *Necessity in International Law*. Oxford: Oxford University Press.

¹⁰ Lubell, N. (2010) *Extraterritorial Use of Force Against Non-State Actors*. Oxford: Oxford University Press.

¹¹ Lubell (2010)

¹² International Court of Justice (2003) *Oil Platforms (Islamic Republic of Iran v. United States of America)*, ICJ Reports 2003.

objective and stringent criteria for necessity. The Court notably rejected speculative or ambiguous threats as insufficient grounds for invoking self-defence¹³.

1.2.2.2 Necessity Under State Responsibility (Article 25 ARSIWA)

Contrastingly, necessity as defined by Article 25 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) is significantly more restrictive. It justifies acts otherwise considered internationally wrongful solely if they represent the only viable means to safeguard an essential state interest against grave and imminent peril. This necessity doctrine involves higher thresholds, often equating to existential threats or severe dangers to critical state interests, and strictly limits conditions under which such measures are permitted¹⁴. Confusing this stringent criterion with the self-defence framework of Article 51 risks facilitating improper legal justifications and potential abuses of international norms.

1.2.2.3 Military Necessity under International Humanitarian Law (IHL)

In yet another distinct context, military necessity within International Humanitarian Law (IHL) permits specific actions during armed conflicts strictly necessary to achieve legitimate military objectives. This principle operates under stringent rules of proportionality and distinction, obliging belligerents to minimize civilian harm and adhere strictly to humanitarian principles. Importantly, this form of necessity exclusively governs wartime conduct, separate from the peace-oriented self-defence regulations in Article 51, thereby avoiding confusion or overlap between these two legal frameworks.

1.2.2.4 Necessity and the Debate on Anticipatory and Preemptive Self-defence

Accurately distinguishing these varied interpretations of necessity is crucial for preserving clarity, legality, and coherence in the international legal framework governing the use of force. Each definition operates under specific conditions, thresholds, and

¹³ ICJ, *Oil Platform* (2003), para. 76

¹⁴ International Law Commission (ILC). (2001). *Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries*, Yearbook of the ILC, Vol. II, Part Two.

limitations, reinforcing the necessity of context-specific interpretations to ensure lawful state conduct.

This tension highlights a key debate in the interpretation of necessity, particularly regarding anticipatory and preemptive self-defence. While Article 51 restricts self-defence to responses against an ongoing or already-initiated armed attack, some argue that necessity should allow for defensive action before an attack materializes. The claim of anticipatory self-defence has been invoked in response to evolving security threats, including terrorism and weapons of mass destruction, where waiting for an actual attack could be catastrophic. The U.S. National Security Strategy (2002)¹⁵ introduced a broader concept of preemptive self-defence, arguing that legal frameworks must adapt to emerging threats. This remains controversial, as it risks undermining the prohibition on force under Article 2(4) by justifying military action based on subjective threat assessments rather than clear armed attacks. The ICJ has consistently rejected broad interpretations of necessity. In *Oil Platforms (Islamic Republic of Iran v. United States of America)*, the International Court of Justice reinforced a restrictive interpretation of the necessity principle within the context of self-defence. The Court explicitly clarified that necessity, as a condition for lawful self-defence under international law, must be evaluated strictly and objectively. It stated :

*“The Court does not however have to decide whether the United States interpretation of Article XX, paragraph 1 (d), on this point is correct, since the requirement of international law that measures taken avowedly in self-defence must have been necessary for that purpose is **strict and objective, leaving no room for any “measure of discretion”**.”*¹⁶

Through this formulation, the ICJ firmly rejected subjective interpretations of necessity, explicitly ruling out speculative, vague, or hypothetical threats as justifications for defensive military measures. The ruling underscores a conservative approach, mandating clear and objectively verifiable evidence of an immediate armed attack or threat thereof. Nevertheless, debates persist among scholars regarding whether, in exceptional cases, the

¹⁵ White House (2002) *The National Security Strategy of the United States of America*. Washington, D.C.: The White House.

¹⁶ ICJ, *Oil Platform* (2003), para. 73

necessity criterion might justify preventive military actions, reflecting ongoing tensions between strict legal interpretations and evolving state security concerns.

This legal uncertainty places states in a difficult position. A strict reactive standard limits responses to conventional armed attacks, potentially hindering states from countering asymmetric threats. Conversely, broadening necessity to include anticipatory self-defence risks eroding legal barriers and opening the door to unilateral uses of force. As a result, necessity remains a contested issue in international law, requiring a careful balance between national security and the principles of the UN Charter.

1.2.3 Proportionality in International Law

1.2.3.1 Historical Evolution and Legal Foundations

The principle of proportionality, originating from the Christian just war doctrine (a historical ethical framework assessing the moral justification for war¹⁷) and influenced by medieval chivalric traditions (code of conduct associated with the medieval institution of knighthood¹⁸), evolved significantly through the works of early international legal scholars such as Hugo Grotius and Emer de Vattel. Historically, proportionality focused primarily on assessing whether the harm caused by warfare was justified by the anticipated benefits, with early Christian doctrines heavily emphasizing the legitimacy of the cause rather than proportionality of means¹⁹. The transition from medieval to modern international law involved the clear differentiation of *jus ad bellum* (law governing the right to war) from *jus in bello* (law governing conduct during warfare). This separation strengthened proportionality's role in modern international law, making it a critical component for both determining legitimate responses to aggression and regulating the methods and means of warfare²⁰.

¹⁷ Lazar, S. (2016) 'War', *Stanford Encyclopedia of Philosophy*, 3 May. Available at: <https://plato.stanford.edu/entries/war/>

¹⁸ Cartwright, M. (2018) 'Medieval Chivalry', *World History Encyclopedia*, 14 May. Available at: https://www.worldhistory.org/Medieval_Chivalry/

¹⁹ Gardam, J.G. (1993) 'Proportionality and Force in International Law', *American Journal of International Law*, 87(3), pp. 391–413.

²⁰ Cottier, T., Ehandi, R., Leal-Arcas, R., Liechti, R., Payosova, T. and Sieber-Gasser, C. (n.d.) 'The Principle of Proportionality in International Law'.

1.2.3.2 Proportionality in Jus ad Bellum and Jus in Bello

Under contemporary international law, proportionality plays a central role in both *jus ad bellum* and *jus in bello*. Within *jus ad bellum*, proportionality limits state responses to armed attacks, requiring these responses to be strictly confined to what is necessary to neutralize the threat, thus preventing escalation. This legal requirement has been clearly articulated in international jurisprudence, particularly by the International Court of Justice (ICJ) in cases such as *Nicaragua v. United States* (1986), the *Oil Platforms* case (2003), and *Armed Activities on the Territory of the Congo* (2005). The ICJ explicitly recognized proportionality and necessity as fundamental customary international law principles governing self-defence.

In *jus in bello*, proportionality seeks primarily to balance military objectives against humanitarian concerns, prohibiting actions that lead to excessive civilian harm relative to the expected military advantage. The 1977 Additional Protocol I to the Geneva Conventions codified this principle through Articles 51(5)(b) and 57(2)(a)(iii), underscoring that military actions must not cause civilian casualties and damages disproportionate to anticipated military gains²¹.

1.2.3.3 Contemporary Importance and Accountability

In contemporary international relations, proportionality continues to play a pivotal role in ensuring that states' responses to armed aggression are lawful and do not escalate into larger conflicts. Accountability mechanisms, notably those mandated by Article 51 of the UN Charter, require states to report self-defence measures to the Security Council, thus providing oversight and fostering compliance with proportionality standards. The active involvement of the Security Council, reinforces the principle's essential function in maintaining international peace and security. The principle of proportionality thereby ensures that defensive measures adhere strictly to international legal standards, balancing military necessity with humanitarian and global stability considerations²²

1.2.4 State Attribution Doctrine

²¹ Cottier et al.

²² Gardam, J.G. (1993)

According to the traditional interpretation of Article 51, an armed attack must generally be attributable to a state to justify self-defence. This orthodox approach, established notably by the ICJ in *Nicaragua v. United States* (1986), has set stringent standards for state attribution, requiring evidence of “effective control” by the state over the actions of non-state actors. Effective control entails substantial involvement by the state in planning, directing, or executing specific operations carried out by armed groups²³. This standard was reaffirmed in *DRC v. Uganda* (2005), where the ICJ rejected Uganda’s claim of self-defence due to insufficient evidence linking the Congolese government to the actions of rebel groups²⁴. The strict requirements of effective control underscore the state-centric nature of Article 51, reinforcing its design to address inter-state conflicts rather than threats posed by non-state actors.

However, this doctrine presents challenges in modern conflicts where non-state actors operate independently or with limited state involvement. Terrorist organizations like ISIS and Al-Qaeda often exploit ungoverned spaces, creating a legal vacuum under Article 51. This has led to debates about the adequacy of the effective control standard in addressing contemporary threats²⁵. The principles of necessity, proportionality, and attribution form the foundation of Article 51, ensuring that self-defence is invoked only in legitimate and limited circumstances. For instance, post-9/11 state practices, including U.S. drone strikes in Pakistan and Syria, illustrate attempts to expand the scope of self-defence to address imminent threats posed by non-state actors. While these actions highlight the evolving nature of necessity and proportionality, they also raise concerns about the erosion of state sovereignty and the potential for abuse under the guise of self-defence²⁶. These practices reflect the tension between maintaining global security and adhering to the state-centric framework established by the UN Charter.

Article 51 codifies essential legal doctrines that balance the right of states to self-defence with the broader objectives of international peace and security. The principles of

²³ *Nicaragua v. United States* (1986), para 110.

²⁴ International Court of Justice. (2005) *Armed Activities on the Territory of the Congo (DRC v. Uganda)*. ICJ Reports. Para 168

²⁵ Paddeu, F.I. (2014) 'Use of Force Against Non-State Actors and the Circumstance Precluding Wrongfulness of Self-Defence', *British Yearbook of International Law*, 83(1), pp. 67–133.

²⁶ Lubell, N. (2010)

necessity, proportionality, and attribution ensure that self-defence remains a reactive and limited measure, aligned with the UN Charter's commitment to regulating the use of force. However, the challenges posed by non-state actors underscore the need for continued discourse on adapting these doctrines to contemporary threats while preserving the Charter's state-centric framework.

Section 3: Theoretical Issues Raised by Non-State Actors

The traditional legal framework of self-defence established under Article 51 of the United Nations Charter embodies a distinctly state-centric perspective. As previously discussed, Article 51 recognizes states as the primary subjects and recipients of rights and obligations under international law, particularly concerning the use of force. However, contemporary global dynamics, characterized by complex asymmetric threats and shifting power dynamics, challenge the adequacy of this traditional interpretation. Central to this shift is the emergence and significant expansion in influence of non-state actors (NSAs). To understand the implications of their rise, it is essential first to precisely define NSAs, delineating their status, operational modalities, and evolving roles in modern international conflicts. By clearly outlining the characteristics and legal status of NSAs, this section lays the groundwork for a thorough analysis of the challenges they pose to the traditional interpretation of Article 51, highlighting the tensions between existing international legal doctrines and contemporary security needs.

1.3.1 Defining Non State actors

Non-state actors (NSAs) are broadly defined as entities that are not directly affiliated with, controlled by, or officially representing sovereign states but still exert significant influence in international relations. These include a wide array of organizations and groups such as non-governmental organizations (NGOs), multinational corporations, private military companies, media organizations, transnational criminal networks, religious groups, civil society organizations, and even super-empowered individuals²⁷. The term itself is a conceptual counterpoint to the classical Westphalian notion of international relations, which traditionally placed states at the center of the

²⁷ Wijninga, P., Oosterveld, W.T., Galdiga, J.H., & Marten, P. (2014). "State and Non-State Actors: Beyond the Dichotomy," in *Strategic Monitor 2014: Four Strategic Challenges*, Hague Centre for Strategic Studies.

global order. While NSAs initially operated in parallel to states, the past decades have seen their role expand significantly, particularly in security and conflict-related matters²⁸.

The emergence of NSAs as pivotal actors can be traced back to structural changes in the international system, particularly after the Cold War. Globalization, technological advancements, and transnational movements enabled various NSAs to accumulate resources, form networks, and exert political or military influence beyond traditional state mechanisms²⁹. The weakening of state monopolies over security and governance, particularly in conflict-prone regions, further expanded the operational scope of NSAs. Private military companies, insurgent groups, terrorist organizations, and paramilitary factions exemplify this shift, demonstrating that armed conflicts are no longer exclusive to state actors³⁰. Contemporary international law debates increasingly focus on whether and how NSAs should be incorporated into legal frameworks originally designed for state-based interactions³¹.

Given the scope of this thesis, it is important to clarify that not all NSAs will be examined in detail. While the term “non-state actor” is used in a general sense throughout this study, the focus will be exclusively on NSAs involved in armed conflict, including armed insurgent groups, terrorist organizations, and private military companies. These entities are distinct in that they engage in organized armed violence, operate across national borders, and challenge traditional interpretations of self-defence under Article 51 of the UN Charter. The increasing presence of such NSAs in conflicts worldwide necessitates a nuanced examination of their legal status, the applicability of international humanitarian law, and their impact on the traditional state-centric model of international security.

²⁸ Wijninga et al., (2014)

²⁹ Himes, A. and Kim, B. (2022). p.246.

³⁰ Wijninga et al., (2014)

³¹ Himes and Kim (2022)

1.3.2 Non-State Actors and Their Challenge to the State-Centric Framework

The emergence of non-state actors (NSAs) as significant players in international conflicts has fundamentally challenged the traditional framework of Article 51, which was designed with a state-centric focus. These challenges are rooted in the inability of existing legal doctrines to address the unique characteristics and threats posed by NSAs. Non-state actors are entities operating outside the structure of sovereign states, they lack territorial legitimacy and the international legal personality of states (Paddeu, 2014). Their operations can destabilize security by exploiting weak governance, establishing bases in ungoverned areas, and using tactics like guerrilla warfare and cyberattacks³². Such tactics challenge traditional military structures and highlight how the state-centric framework of Article 51 struggles to address modern threats.

The assumption that conflicts primarily arise between states underpins the traditional framework of Article 51. However, this mid-20th-century perspective fails to account for the transnational nature of NSAs, which often operate independently or with minimal state involvement. For instance, suppose State A faces persistent threats from an NSA operating within State B's borders. If State B lacks the capacity to control or neutralize the NSA, State A may feel compelled to act in self-defence. Yet, under the traditional reading of Article 51, State A's ability to justify such an action is constrained by the requirement of attributing the NSA's actions to State B. This limitation demonstrates the difficulty of applying a framework designed for inter-state conflicts to contemporary transnational threats.

1.3.3 Challenge of Responsibility Posed by NSAs

Article 51 permits self-defence only in response to an "armed attack." This term has been narrowly interpreted to include acts of significant gravity, such as large-scale invasions or assaults³³. While major NSA actions, such as a hypothetical coordinated assault on a state critical infrastructure, might meet this threshold, smaller-scale operations, such as sporadic cyberattacks or localized acts of sabotage, often fall below

³² Lubell (2010)

³³ *Nicaragua v. United States* (1986)

it³⁴. This ambiguity about what constitutes an “armed attack” creates uncertainty for states, which may be unable to invoke self-defence under Article 51 despite facing ongoing and destabilizing NSA actions.

Attribution further complicates matters, since the establishment of the “effective control” by the ICJ. This strict standard ensures accountability but also limits the application of Article 51 in situations where NSAs operate autonomously or without direct state control³⁵. For example, if an NSA based in State B launches cross-border attacks into State A, and there is no evidence that State B directed or supported these actions, State A’s claim to self-defence is weakened. This creates a legal vacuum, leaving State A unable to act decisively against threats originating from within State B’s borders

Compounding this challenge is the nature of international legal precedents, which, while not legally binding in the same manner as domestic case law, are traditionally followed by states and international courts as a means of ensuring consistency and predictability in international law. The ICJ, in particular, adheres to a legal tradition of maintaining consistency with its prior rulings, effectively creating a body of precedent that is difficult to overturn. As Devaney (2022) highlights, although the ICJ is not bound by the doctrine of *stare decisis*, its own jurisprudence looms large in its decision-making process. This judicial tradition fosters stability in the international legal order but also makes adapting to new threats, such as those posed by NSAs, particularly challenging³⁶.

Nevertheless, it is essential to recognize that the ICJ does not possess an exclusive interpretative authority over international law. Other international courts and tribunals, including specialized institutions like the International Tribunal for the Law of the Sea, international arbitral tribunals, and regional courts, may offer differing interpretations, thereby diversifying and enriching the broader jurisprudential landscape³⁷. Moreover, customary international law evolves continuously through state practice and *opinio juris* (the belief held by states that their actions are legally required or permitted) independently

³⁴ Himes and Kim (2022)

³⁵ *Nicaragua v. United States* (1986)

³⁶ Devaney, J. (2022) *The Role of Precedent in the Jurisprudence of the International Court of Justice: A Constructive Interpretation*. Leiden: Leiden Journal of International Law.

³⁷ Bodansky, D. (2013) ‘The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?’, *American Journal of International Law*, 93(3), pp. 596–624.

from judicial rulings. Thus, significant and consistent state practice regarding Article 51's applicability to NSAs could lead to shifts in customary norms.

In particular, the traditional state-centric criteria of attribution set out in *Nicaragua v. United States* (1986) may become subject to reinterpretation if substantial state practice diverges from this precedent. If states increasingly assert a right of self-defence against non-state actors operating independently of clear state attribution, the ICJ could recognize such developments without explicitly overturning prior judgments. It might instead acknowledge an evolution in customary international law, reflecting contemporary security realities and state behaviors. Such a path would enable the ICJ to adapt its jurisprudence pragmatically, maintaining doctrinal continuity while responding to new security paradigms³⁸. This process underscores a dynamic tension within international law, balancing doctrinal consistency with necessary flexibility to address emerging threats effectively³⁹.

1.4.4 The Challenge of Recognizing NSAs as Political Actors

One of the core problems in adapting Article 51 to contemporary threats is the evolving nature of NSAs. Traditionally, sovereignty has been understood as the exclusive right of states to exercise control over their territories, with the monopoly on the legitimate use of force being a defining feature of statehood⁴⁰. However, the growing role of NSAs in governance, paramilitary activities, and even international diplomacy has blurred the lines between state and non-state authority. Some NSAs now control significant portions of territory and engage in governance functions indistinguishable from those of recognized states, yet they remain outside the formal framework of international law⁴¹.

This reality raises significant legal and normative questions. If NSAs function as *de facto* governments, should they be afforded legal recognition, and if so, under what

³⁸ Talmon, S. (2015) 'Determining Customary International Law: The ICJ's Methodology between Induction, Deduction, and Assertion', *European Journal of International Law*, 26(2), pp. 417–443.

³⁹ Shaw, M. N. (2017) *International Law*. 8th ed. Cambridge: Cambridge University Press.

⁴⁰ Cassese, A. (2005) *International Law*. 2nd edn. Oxford: Oxford University Press.

⁴¹ Jordan, L. (2024) 'Unwilling or Unable', *International Law Studies*, 103, pp. 151-189.

criteria? The UN Charter was drafted in an era where states were the sole recognized actors in international law. Expanding its legal framework to account for NSAs would require a fundamental rethinking of core principles of sovereignty, legitimacy, and accountability.

Historically, the UN has functioned as a state-centric institution, with recognition and participation in international legal frameworks limited to sovereign states⁴². However, as NSAs increasingly assert control over territories and governance structures, the exclusion of these entities from international legal frameworks creates significant challenges. On one hand, recognizing NSAs could provide a mechanism for holding them accountable under international law, offering pathways for diplomatic engagement, conflict resolution, and legal responsibility. On the other hand, such recognition risks legitimizing non-state groups that engage in violence or undermine existing state structures. The UN's reluctance to formally engage with NSAs reflects the complexities of integrating these actors into a legal system designed exclusively for state interaction. Without a clear framework for engaging with NSAs, states are left to navigate these challenges on an ad hoc basis, further reinforcing the regulatory vacuum that surrounds NSA-related security issues (Non-State Actors Report, 2023).

1.3.5 The Dilemma between Sovereignty and Security

Article 2(4) of the UN Charter enshrines the principle of territorial sovereignty, prohibiting the use of force against another state except in cases of self-defence or Security Council authorization. However, as states struggle to counter NSA threats originating from foreign territories, this principle has been increasingly challenged. The traditional framework of international law creates a conflict between the territorial integrity of the host state and the right of the attacked state to defend itself against ongoing security threats. This tension is exacerbated by the legal uncertainties surrounding self-defence against NSAs and the lack of explicit guidance within Article 51.

While sovereignty is a cornerstone of the international legal order, it is increasingly strained when NSAs operate freely within a state's borders while launching

⁴² Higgins, R. (1994) *Problems and Process: International Law and How We Use It*. Oxford: Oxford University Press.

attacks on other states. The host state may not be directly responsible for these attacks, yet its inability or unwillingness to neutralize the NSA's activities creates a security vacuum. On the other hand, allowing the attacked state to respond militarily within another state's territory without consent risks eroding the principles of non-intervention and political independence that underpin the UN Charter.

This dilemma is further complicated by the humanitarian consequences of military responses to NSA threats. The inability of international law to clearly regulate the use of force against NSAs has led to broad military campaigns in areas where these groups operate, often resulting in significant civilian casualties⁴³. Balancing security concerns with the protection of civilian populations remains a major challenge. The principle of proportionality, which requires that a defensive response be commensurate with the threat posed, becomes increasingly difficult to apply when NSAs embed themselves within urban centers or civilian communities⁴⁴. This situation places both the attacked state and the host state in complex legal and moral dilemmas; while the former seeks to eliminate threats to its security, the latter must ensure the safety of its civilians and maintain political stability.

Conclusion

The traditional legal framework of Article 51, deeply rooted in a state-centric conception of international law, has played a crucial role in defining the right of self-defence within the international legal order. By requiring a clear attribution of an armed attack to a state and enforcing strict conditions of necessity and proportionality, Article 51 has historically functioned as a safeguard against the misuse of force. However, as this chapter has demonstrated, the emergence of non-state actors as prominent players in armed conflicts has exposed significant limitations in this traditional interpretation.

The growing role of NSAs in global security challenges has led to an increasing disconnect between legal doctrine and state practice. The requirement of state attribution, as reaffirmed by the International Court of Justice in *Nicaragua v. United States* (1986),

⁴³ International Committee of the Red Cross (2023) "The Principle of Proportionality." https://www.icrc.org/sites/default/files/wysiwyg/war-and-law/04_proportionality-0.pdf.

⁴⁴ Lubell (2010)

has created a legal tension in cases where NSAs operate independently of state control. This has prompted some states to push for a broader interpretation of self-defence, allowing for military responses against non-state actors even in the absence of direct state involvement. Such an expansion, however, raises concerns about the erosion of the foundational principles of sovereignty and non-intervention enshrined in the UN Charter.

While the core principles of Article 51; necessity, proportionality, and attribution; continue to provide a legal framework for self-defence, their application to contemporary security threats remains a subject of ongoing legal and academic debate. The challenge moving forward lies in reconciling the need for an effective response to asymmetric threats with the preservation of international legal order. As states and international institutions grapple with these challenges, the evolving interpretation of Article 51 will likely shape the future of self-defence in international law, determining whether its foundational principles can adapt to modern security realities without undermining the stability of the international legal system.

Chapter 2:

The Way Forward: Expanding the Interpretation of Article 51

Introduction

The international legal framework governing the use of force has long stood on the dual pillars of state sovereignty and collective security. Central to this architecture is Article 51 of the United Nations Charter, which enshrines the inherent right of states to self-defence in the face of an “armed attack.” Drafted in the aftermath of the Second World War, Article 51 reflects the assumptions, anxieties, and priorities of a state-centric world order. At that historical juncture, international threats were presumed to emanate almost exclusively from other sovereign entities, and the global legal order was designed accordingly. However, the landscape of conflict has since undergone profound transformation. In the 21st century, the dominant security threats are increasingly posed by non-state actors (NSAs); ranging from transnational terrorist networks to insurgent militias; that operate across borders and from within failed or fragile states. This paradigmatic shift has exposed a widening disjuncture between traditional legal categories and the empirical realities of modern warfare. This chapter seeks to explore and critically assess whether, and how, Article 51 can be interpreted more flexibly to address the evolving nature of international threats without undermining the foundational principles of international law. The objective is not to advocate for the abandonment or redefinition of Article 51, but rather to examine the interpretative mechanisms available within existing legal doctrine that might allow for a more dynamic and responsive understanding of self-defence, particularly in relation to NSAs. This inquiry is necessitated by the growing body of state practice invoking Article 51 in response to attacks by non-state entities, a development that has generated both legal controversy and scholarly debate.

To address these concerns, the chapter is structured around three core propositions. First, it examines the legal interpretative tools under international treaty law, particularly those articulated in Article 31 of the Vienna Convention on the Law of Treaties (VCLT), and evaluates their applicability to a reinterpretation of Article 51. Here, the notion of “subsequent practice” becomes particularly salient, offering a legitimate

pathway for doctrinal evolution grounded in state behaviour and *opinio juris*. Drawing from the International Court of Justice's own use of contra-textual interpretation in other areas of Charter law, this section argues that the rigid construction of Article 51 is not legally inevitable, but the result of judicial caution and interpretative conservatism.

Second, the chapter explores alternative doctrinal approaches that aim to address the limitations of classical self-defence theory. Chief among these is the "Unwilling or Unable" doctrine, which proposes that states confronted with armed threats from NSAs may lawfully resort to force within another state's territory, even without its consent, provided that the host state is unwilling or unable to suppress the threat. This section traces the intellectual development of the doctrine, its partial grounding in historical analogies like the law of neutrality, and the growing but still contested body of state practice that supports it. The section also highlights the legal tensions this doctrine introduces, especially in relation to sovereignty and the prohibition on the use of force under Article 2(4) of the UN Charter.

Third, the chapter turns to the role of United Nations Security Council Resolutions 1368 and 1373, which, in the aftermath of the 9/11 attacks, laid the groundwork for a more structured and legitimate form of self-defence against non-state actors. These resolutions do not merely reaffirm the right to self-defence; they reshape the conditions under which that right may be invoked, introducing a layered model that mirrors principles found in peacekeeping operations: host state responsibility, collective oversight, and emergency action with post hoc accountability. This model offers a pragmatic and ethically grounded response to the operational dilemmas posed by asymmetric warfare and fragmented sovereignty.

This chapter thus argues that the international legal system, far from being paralyzed by the state/non-state dichotomy, contains doctrinal tools and evolving practices that can accommodate a more flexible and responsive self-defence paradigm. While caution is warranted to avoid abuse or erosion of the *jus ad bellum* framework, the reinterpretation of Article 51 is not only possible but necessary to preserve its relevance. In this respect, the chapter advocates for a layered and legally disciplined reinterpretation; one that integrates treaty interpretation, state practice, Security Council action, and principles of state responsibility; offering a path forward that is both normatively

grounded and operationally viable in a world where the line between war and peace, state and non-state, continues to blur.

Section 1 : Legal Void or Interpretation? Reassessing the Limits of Article 51

Although Article 51 of the UN Charter is often perceived as a rigid provision, grounded in its textual requirement of an “armed attack” and framed within the state-centric logic of 1945, closer analysis reveals that its application is not static. Rather than reflecting a definitive legal vacuum in cases involving non-state actors, the perceived limitations of Article 51 may instead result from the dominant interpretative paradigm adopted by international courts and scholars. As such, the central question is not whether there exists a legal gap in the Charter but whether the prevailing interpretative framework can evolve to accommodate contemporary threats without compromising foundational legal principles.

2.1.1 The Framework of Interpretation under the VCLT

Article 31 of the Vienna Convention on the Law of Treaties (VCLT) sets out the primary methodology for interpreting treaties in international law and is widely regarded as reflecting customary international law. The provision anchors interpretation in three cumulative elements: the text of the treaty (paragraph 1), its context (paragraph 2), and relevant external interpretative aids (paragraph 3)⁴⁵.

Article 31 – General Rule of Interpretation

1. *A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*
2. *The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:*
 - a. *any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;*

⁴⁵ United Nations. (1969). *Vienna Convention on the Law of Treaties*, 1155 UNTS 331.

- b. *any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.*
- 3. *There shall be taken into account, together with the context:*
 - a. *any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;*
 - b. *any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;***
 - c. *any relevant rules of international law applicable in the relations between the parties.*
- 4. *A special meaning shall be given to a term if it is established that the parties so intended.*

The core principle, found in Article 31(1), requires that interpretation be conducted “in good faith” and guided by the “ordinary meaning” of the treaty’s terms, read in their context and in light of the treaty’s object and purpose. This ensures that interpretation is not merely semantic, but teleological, seeking to uphold the functional and normative integrity of the treaty as a whole. Article 31(2) and 31(3) then expand this base by requiring that interpreters take into account both contemporaneous documents and post-ratification behaviour that reflect the parties’ shared understanding of the treaty⁴⁶.

Among the most powerful tools for interpretative evolution in Article 31 is paragraph 3(b), which directs that any “*subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation*” must be considered. This provision empowers international law to evolve organically by recognising that state behaviour over time can influence the authoritative meaning of treaty obligations. Unlike formal treaty amendments, which require explicit consensus and ratification, subsequent practice offers a more flexible and responsive mode of legal transformation. In the context of Article 51 of the UN Charter, Article 31(3)(b) opens the

⁴⁶ Gaeta, P. Viñuales, J. and Zappalá, S. (2020). *Cassese's International Law*. 3rd edn. Oxford: Oxford University Press.

door to reinterpreting self-defence norms through the lens of consistent and generalised state responses to non-state actor threats, provided such practice reflects a shared legal understanding (*opinio juris*)⁴⁷. While not unlimited, this mechanism ensures that interpretation remains a living process, capable of adapting to emerging security realities while remaining anchored in legal legitimacy.

2.1.2 The ICJ's Use of Contra-Textual Interpretation

The International Court of Justice has, in fact, embraced this evolutionary logic in its treatment of other provisions of the UN Charter. In landmark cases involving Articles 12 and 27(3), the Court adopted interpretative approaches that diverged from the literal text, favouring instead readings that aligned with subsequent state practice and institutional functionality. This method, often referred to as “contra-textual” or “counter-textual” interpretation, illustrates how the Court has permitted the meaning of Charter provisions to adapt over time to the operational demands and normative consensus of the international community⁴⁸. In the case of Article 12(1), the Charter prohibits the General Assembly from making recommendations on disputes already under consideration by the Security Council unless the Council so requests. Nevertheless, in practice, the General Assembly has repeatedly deliberated on such matters; particularly during periods of Council inaction; without a formal request. Rather than viewing this as a violation of the Charter, the ICJ acknowledged it as a reflection of institutional necessity and consistent practice, thereby tacitly endorsing a contra-textual interpretation⁴⁹. A similar interpretative shift occurred in relation to Article 27(3), which stipulates that substantive decisions of the Security Council require the concurring votes of all permanent members. According to a strict textual reading, any abstention by a permanent member would constitute a veto. Yet in the *Namibia* Advisory Opinion (1971), the ICJ upheld Resolution 276 despite abstentions by France and the United Kingdom, relying on established

⁴⁷ Devaney, J.G. (2022). *The Interpretative Methods of International Law: What Are They, and Why Use Them?* Oxford University Press

⁴⁸ Santiago Villalpando (2010) 'The Legal Dimension of the International Community: How Community Interests Are Protected in International Law', *European Journal of International Law*, 21(2), pp. 387–419.

⁴⁹ Simma, B. et al. (2024) (eds.) *The Charter of the United Nations: A Commentary*. 4th edn. Oxford: Oxford University Press.

Council practice treating abstentions as non-obstructive⁵⁰. These examples illustrate how the Court has permitted the meaning of Charter provisions to evolve in light of practical necessity and the normative demands of institutional coherence.

Such decisions demonstrate that legal interpretation under the Charter is not confined to static textualism, but can reflect broader systemic coherence and evolving institutional practices, consistent with the framework authorised by Article 31(3)(b) of the VCLT. Against this backdrop, the continued rigid interpretation of Article 51 appears more a product of judicial conservatism than doctrinal inevitability. While the Court has shown caution in extending the right of self-defence to acts perpetrated by non-state actors, there is no formal legal barrier preventing a more dynamic interpretation. If Articles 12 and 27(3) could be read contra-textually to accommodate evolving practice and institutional necessity, then Article 51 could likewise be reinterpreted in light of consistent state responses to asymmetric threats, so long as such reinterpretation remains anchored in demonstrable *opinio juris* and legal discipline. In this sense, the Charter is not immune to interpretative adaptation; rather, it is the willingness of interpreters, including courts, that ultimately shapes its normative evolution.

2.1.3 State Practice and the Pressure for Interpretative Evolution

This capacity for interpretative evolution is not confined to judicial institutions. The development of international law is equally, and perhaps more profoundly, shaped by the behaviour of states, particularly when accompanied by *opinio juris*, the belief that a certain conduct is carried out as a matter of legal obligation. Since the attacks of 11 September 2001, a discernible shift in state practice has emerged with respect to the interpretation of Article 51 of the UN Charter. A growing number of states; including the United States, United Kingdom, France, Australia, and others, have invoked Article 51 to justify the use of force in self-defence against non-state actors operating transnationally, even in the absence of clear state attribution⁵¹. These justifications are

⁵⁰ International Court of Justice (ICJ) (1971) *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 16.

⁵¹ Hakimi, M. (2015) 'Defensive Force Against Non-State Actors: The State of Play', *International Law Studies*, 91, pp. 1–35.

routinely accompanied by formal notifications to the Security Council under Article 51, explicitly citing the Charter and reaffirming the legal framework within which the use of force is purportedly undertaken ⁵². This repeated practice signals not a rejection of the UN Charter's constraints, but an attempt to stretch its interpretative boundaries while remaining formally within its structure.

Such evolving state conduct generates mounting interpretative pressure on judicial bodies, particularly the International Court of Justice. While the ICJ has traditionally adopted a restrictive approach; emphasising state attribution as a prerequisite for invoking Article 51⁵³; it does not operate in isolation from broader normative trends. As commentators have noted, sustained and widespread state practice, especially when accompanied by claimed legal justifications, can contribute to the formation of new customary norms or reshape the interpretative consensus surrounding existing ones⁵⁴. In effect, states may compel the Court to reconsider prior doctrine, not by altering the text of the Charter, but by gradually redefining its operational meaning through practice and accompanying *opinio juris*.

This process does not suggest that Article 51 is being ignored or undermined. Rather, it reflects how international law absorbs and responds to systemic change. As with Articles 12 and 27(3), the meaning of Article 51 is not static but context-dependent, subject to reinterpretation in light of subsequent institutional realities and the accumulated conduct of states. The VCLT, far from resisting such developments, provides the very doctrinal tools through which interpretative adaptation can proceed. In this sense, Article 31(3)(b) is not a legal loophole but a structural feature of international law, enabling it to evolve without sacrificing its legitimacy.

⁵² UN Security Council (2001) *Letter from the United States to the President of the Security Council*, UN Doc. S/2001/946.

⁵³ *Nicaragua v. United States* (1986)

⁵⁴ Talmon, S. (2015) 'The Use of Force Against ISIL in Syria: New Customary Law or Old Custom Revisited?', *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV)*, 77, pp. 1–15.

Section 2: Expanding the Interpretation of Article 51 Beyond the UN Framework

2.2.1. The “Unwilling or Unable” Doctrine

The “Unwilling or Unable” doctrine has emerged as a pivotal and controversial concept in the evolving discourse on self-defence under international law. It arises from the problem of non-state actors (NSAs) operating transnationally and perpetrating armed attacks from within the territory of states that either lack the capacity or the will to prevent such activity. In such contexts, the doctrine posits that the victim state may resort to self-defensive force within the territorial confines of the host state, even without its consent, provided certain legal thresholds are met⁵⁵. This proposition directly challenges the classical reading of Article 51 of the UN Charter, which presumes self-defence to be invoked only in the context of inter-state armed conflict.

2.2.1.1 Ashley Deeks’ Formulation of the Doctrine

At its core, the doctrine is a response to the lacuna between the contemporary realities of asymmetric threats and the traditional state-centric legal framework. It permits the use of force against an NSA located within a third state when that third state is either unwilling or unable to mitigate the threat and where the victim state’s right of self-defence has otherwise been triggered⁵⁶. One of the most prominent proponents, Ashley Deeks, offers one of the most comprehensive scholarly articulations of the “Unwilling or Unable” doctrine, positioning it as a normative response to the increasing role of non-state actors in contemporary armed conflicts. In her 2012 article, she contends that the doctrine must not be viewed merely as a descriptive account of state behavior, but as a normative framework that integrates evolving state practice with traditional principles of *jus ad bellum*.

Deeks carefully constructs a legal test composed of three cumulative conditions that must be satisfied before a state may lawfully use force in the territory of another state without consent. These conditions include: (1) that the acting state must be the target of an actual or imminent armed attack carried out by a non-state actor. This prong reinforces

⁵⁵ Deeks, A.S. (2012). Unwilling or Unable: Toward a Normative Framework for Extraterritorial Self-defence. *Virginia journal of international law*, 52, pp.483–550.

⁵⁶ Jordan, L. V. (2024)

the principle of necessity under *jus ad bellum* and ensures that the right to self-defence is triggered only in the presence of a credible threat. (2) That the territorial state from which the NSA operates must be demonstrably unwilling or unable to prevent the hostile activities. This element introduces a burden of procedural inquiry: the acting state must attempt to engage the territorial state diplomatically, document its non-compliance or incapacity, and only then consider the use of force. (3) That the use of force by the acting state must be both necessary to repel the threat and proportionate to the scale and effects of the anticipated or actual armed attack. This final condition functions as a substantive limitation designed to prevent excessive or arbitrary military responses. Together, these three criteria aim to preserve the core legal principles governing the use of force, while adapting their application to contemporary security contexts involving non-state actors.

Deeks' formulation has become a key reference point in legal discourse, offering a structured framework through which to assess extraterritorial uses of force, and highlighting the potential for procedural safeguards to mitigate risks of abuse. She draws a parallel to the historical law of neutrality, arguing that just as belligerents were once permitted to enter neutral states to suppress cross-border threats, so too should modern states be able to intervene against non-state actors when the territorial state fails to act. Her synthesis of legal theory, historical precedent, and empirical practice positions the doctrine not merely as a practical workaround, but as a legitimate and structured evolution within the international law of self-defence ⁵⁷.

2.2.1.2 Historical Analogies and the Path to Customary Law

This rationale is strengthened by analogies drawn from the law of neutrality, a principle rooted in classical international law which governed the conduct of neutral states during armed conflicts between other states. According to the law of neutrality, neutral states are obligated to prevent their territory from being used by belligerents to carry out hostilities. If a neutral state fails in this duty, the affected belligerent state is entitled to take limited and proportionate defensive action within the neutral state's territory to suppress the

⁵⁷ Deeks, A.S. (2012).

threat⁵⁸. This principle, enshrined in customary international law and reflected in foundational treatises such as the Oxford Manual of 1880 and reaffirmed in modern legal analysis, has traditionally sought to balance respect for sovereignty with the practical necessities of self-preservation in wartime contexts⁵⁹. By invoking this historical precedent, proponents of the “Unwilling or Unable” doctrine argue that modern states facing threats from non-state actors should similarly be allowed to use force in another state’s territory if that state fails in its obligation to prevent cross-border attacks. Such historical analogies, when combined with contemporary state practice, have contributed to what some scholars and practitioners describe as an emerging norm of customary international law.

For a practice to crystallize into customary law, it must satisfy both elements of consistent state practice (*diuturnitas*) and the belief that such practice is legally obligatory (*opinio juris*)⁶⁰. While state practice in support of the doctrine is relatively robust, particularly among certain Western powers, the element of *opinio juris* remains contested. The lack of widespread and unequivocal belief among states that such uses of force are legally required under international law impedes the doctrine from attaining full customary status. This ongoing division within the international community undermines the normative grounding of the doctrine and leaves its legal validity subject to continuous academic and judicial scrutiny⁶¹.

2.2.1.3 Post-9/11 Practice and Legal Controversy

State practice in favor of the doctrine has increased in the post-9/11 era. The United States has repeatedly invoked it to justify operations in Pakistan, Yemen, and Syria. Israel has similarly cited it in the context of military actions in Lebanon and Syria. The Obama administration, in particular, consistently relied on the doctrine to justify counterterrorism operations conducted outside traditional battlefields. In total, at least ten states, including

⁵⁸ Bothe, M. (2013). ‘The Law of Neutrality.’ In D. Fleck (Ed.), *The Handbook of International Humanitarian Law* (3rd ed., pp. 549–580). Oxford University Press

⁵⁹ Oxford Manual (1880). *The Laws of War on Land. Oxford, 9 September 1880*. Institute of International Law.

⁶⁰ Gaeta, P. Viñuales, J. and Zappalá, S. (2020)

⁶¹ Deeks, A.S. (2012)

the United States, United Kingdom, Germany, Canada, and Australia, have either formally endorsed or implicitly accepted the doctrine's application. However, this emerging practice is counterbalanced by clear objections from several other states. Countries such as Syria, Brazil, and Mexico have explicitly rejected the legal validity of the doctrine, emphasizing the absence of a uniform and consistent *opinio juris*⁶². Consequently, despite its growing invocation, the doctrine remains on uncertain legal footing within the framework of customary international law.

From a doctrinal perspective, the doctrine attempts to resolve a core tension: how to reconcile a victim state's inherent right of self-defence with the principle of sovereignty enshrined in Article 2(4) of the UN Charter. The doctrine presupposes that sovereignty entails responsibility; that is, a state must prevent its territory from being used to harm others. When that responsibility is not met, particularly in fragile or failed states, the international legal system is left with a normative vacuum.

The doctrine seeks to fill that vacuum, even as critics caution that doing so may enable opportunistic uses of force under the pretext of counterterrorism⁶³. In fact, critics of the doctrine argue that it undermines the foundational principles of the UN Charter, particularly the prohibition on the use of force and the strict conditions under which self-defence is permitted. The International Court of Justice (ICJ) has consistently interpreted Article 51 of the Charter as requiring that an armed attack be attributable to a state. In *Nicaragua v. United States* (1986), the ICJ held that indirect support to non-state actors (NSAs) did not meet this threshold, emphasizing that "effective control" is necessary for attribution. As such, the unwilling or unable doctrine departs from established jurisprudence and risks legitimizing acts that might otherwise constitute unlawful intervention⁶⁴.

In response, proponents argue that post-9/11 state practice reflects an evolving interpretation of self-defence. The international response to Al-Qaeda's presence in

⁶² Jordan, L. V. (2024)

⁶³ Jordan, L. V. (2024)

⁶⁴ Paddeu, (2017) 'Use of Force Against Non-State Actors and the Circumstance Precluding Wrongfulness of Self-Defence', *Leiden Journal of International Law*, 30(1).

Afghanistan marked a significant shift in the interpretation of state responsibility and the right to self-defence. This is clearly reflected in UN Security Council Resolution 1373, adopted under Chapter VII of the UN Charter, which reaffirmed the inherent right of individual or collective self-defence and imposed legally binding obligations on states. Specifically, it required states to prevent those who finance, plan, facilitate, or commit terrorist acts from using their territory for such purposes against other states (Clause 2(d)), and to deny safe haven to individuals and groups involved in terrorism (Clause 2(c)). The resolution also emphasized that all states must refrain from providing any form of support, active or passive, to terrorist entities or individuals (Clause 2(a)). These provisions reflect a growing international consensus that the failure to prevent the use of one's territory by terrorist actors may attract legal consequences and legitimize a self-defensive response⁶⁵. The United Kingdom⁶⁶ and France⁶⁷ have further invoked similar reasoning to justify the use of force against ISIL targets in Syria, arguing that Syria's failure to suppress the threat justified limited extraterritorial action.

2.2.1.4 Normative Tensions and Future Prospects

Nonetheless, the doctrine remains conceptually ambiguous. Determining whether a state is "unwilling" or "unable" to address a threat involves inherently subjective judgments. As scholars such as Deeks (2012) have noted, assessing whether a territorial state is genuinely incapable or merely uncooperative presents complex legal and factual challenges. Moreover, there is apparently no established legal framework or procedural standard for making such determinations, leaving them largely to the discretion of the acting state. This subjectivity becomes particularly problematic in situations involving imminent threats, where decisions are often made unilaterally and with limited international oversight.

⁶⁵ United Nations Security Council (2001) *Resolution 1373 (2001)*, S/RES/1373 (28 September 2001).

⁶⁶ United Nations Security Council (2015) *Identical letters dated 7 September 2015 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Secretary-General and the President of the Security Council*, UN Doc. S/2015/928.

⁶⁷ United Nations Security Council (2015) *Identical letters dated 8 September 2015 from the Permanent Representative of France to the United Nations addressed to the Secretary-General and the President of the Security Council*, UN Doc. S/2015/879.

In sum, the “Unwilling or Unable” doctrine has evolved in response to the legal and operational vacuum created by the rise of NSAs and the rigidities of the traditional Article 51 framework. Its use reflects a trend toward pragmatism in state practice, but it remains on precarious legal footing. While its proliferation suggests growing acceptance, the absence of consistent *opinio juris* and its departure from ICJ precedent prevent it from achieving the status of a fully crystallised customary norm. Whether it will be codified, further clarified, or rejected in future international legal developments remains to be seen. Nonetheless, the doctrine continues to challenge and reshape the landscape of self-defence in international law.

2.2.1 Circumstances Precluding Wrongfulness

2.2.2.1 Legal Nature and Function of Circumstances Precluding Wrongfulness

The doctrine of circumstances precluding wrongfulness (CPW) forms an integral part of the international legal framework regulating state responsibility. Developed and codified by the International Law Commission (ILC) in its 2001 *Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA)*, CPW encompasses a set of exceptions that suspend the legal consequences of conduct that would otherwise be deemed internationally wrongful. These circumstances operate not to nullify the existence of the breached obligation, but to excuse the legal responsibility of the acting state during the exceptional condition. Thus, they function as defences under the law of state responsibility and serve to balance legal predictability with pragmatic flexibility in international relations⁶⁸.

Legally, CPW is grounded in the principle that under certain narrowly defined situations, a state may engage in conduct contrary to its international obligations without incurring responsibility. These situations are exhaustively listed in Chapter V of the ARSIWA and include consent (Article 20), self-defence (Article 21), countermeasures (Article 22), force majeure (Article 23), distress (Article 24), and necessity (Article 25). Each provision is governed by stringent criteria to ensure that these exceptions are not misused as blanket justifications. CPW thus reflects a broader recognition within

⁶⁸ ARSIWA (2001)

international law that rigidity must occasionally yield to necessity, without compromising the integrity of the international legal order⁶⁹.

In general terms, CPW addresses a structural problem in international law: how to resolve conflicts between a state's obligations and its pressing need to respond to extraordinary circumstances. Unlike primary rules, such as the prohibition on the use of force under Article 2(4) of the UN Charter, CPW rules do not create new rights or entitlements; rather, they operate at the level of secondary rules, mediating the legal consequences of breaches. In doing so, they allow states to justify exceptional actions without abrogating or denying the existence of their international obligations. As the ICJ noted in *Gabčíkovo-Nagymaros* (1997), the invocation of a CPW does not terminate the breached obligation but suspends its enforceability during the emergency period⁷⁰.

2.2.2.2 Applying CPW to the Use of Force Against Non-State Actors

The relevance of CPW becomes particularly salient in the context of the use of force against non-state actors. Here, the international community faces a growing legal and operational challenge: states are increasingly compelled to defend themselves against armed threats posed by terrorist groups or militias operating across borders, often from within the jurisdiction of states that are unable or unwilling to suppress them. However, the traditional state-centric framework, as reaffirmed by the ICJ in *Nicaragua v. United States* (1986), limits the right of self-defence to inter-state conflict. Consequently, a tension arises between the need for security and the legal norms preserving state sovereignty. This is where CPW, particularly Article 21 on self-defence, emerges as a crucial doctrinal mechanism for reconciling these competing imperatives within the bounds of international law.

Article 21 of the ARSIWA states that the wrongfulness of an act of a state is precluded if that act constitutes a lawful measure of self-defence taken in conformity with

⁶⁹ Gaeta, P. Viñuales, J. and Zappalá, S. (2020)

⁷⁰ "Even if a state of necessity is found to exist, it is not a ground for the termination of a treaty. It may only be invoked to exonerate from its responsibility a State which has failed to implement a treaty. Even if found justified, it does not terminate a Treaty; the Treaty may be ineffective as long as the condition of necessity continues to exist; it may in fact be dormant, but—unless the parties by mutual agreement terminate the treaty—it continues to exist. As soon as the state of necessity ceases to exist, the duty to comply with treaty obligations revives." - *International Court of Justice (1997) Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment*, para. 101

the UN Charter. As a circumstance precluding wrongfulness, it does not provide a freestanding right to use force but is instead derivative, it assumes the existence of a justified act of self-defence under Article 51 of the Charter and confirms that such conduct does not engage state responsibility for otherwise wrongful acts, such as violations of another state's sovereignty or territorial integrity⁷¹. The significance of Article 21 lies in its ability to function as a legal shield: where the conditions of lawful self-defence are met, the state acting in defence does not incur international responsibility for the incidental breach of other obligations.

2.2.2.3 Paddeu's Interpretation and Doctrinal Impact

This reading of Article 21 becomes particularly consequential in scenarios involving non-state actors. In these cases, the principal legal challenge is that the hostile conduct, while rising to the level of an armed attack, cannot be attributed to a state, thereby making it difficult to invoke Article 51 under a classical reading. Federica Paddeu, a leading international law scholar and fellow at Queens' College, University of Cambridge, is especially recognised for her comprehensive doctrinal analysis of Article 21⁷². Her work is particularly relevant because it provides a principled legal framework that helps reconcile the traditional rules of attribution with the realities of asymmetric threats posed by non-state actors. To address this challenge, Paddeu has argued for an expanded role for Article 21 as a doctrinal bridge. She maintains that lawful self-defence against non-state actors can, under certain conditions, preclude wrongfulness even when the use of force infringes the sovereignty of a non-responsible state, provided that the conditions of necessity and proportionality are respected⁷³.

Central to Paddeu's theory is the idea that Article 21 does not require the armed attack to be attributable to a state; rather, it focuses on the justification of the response as self-defence. If a state is the victim of an armed attack by a non-state actor and responds with force in accordance with the Charter's criteria, then any incidental breach of

⁷¹ ARSIWA (2001).

⁷² Cam.ac.uk. (2025). *Dr Federica Paddeu | Faculty of Law*. [online] Available at: <https://www.law.cam.ac.uk/people/academic/fi-paddeu/2208>

⁷³ Paddeu, F.I. (2015). 'Self-Defence as a Circumstance Precluding Wrongfulness: Understanding Article 21 of the Articles on State Responsibility', *Leiden Journal of International Law*, 29(1)

obligations, including respect for another state's territorial sovereignty, is rendered non-wrongful under Article 21. This interpretation enables a nuanced application of the law of state responsibility, aligning it with the operational realities of cross-border terrorism and asymmetric warfare⁷⁴.

2.2.2.4 State Practice and the Emerging Legal Consensus

Paddeu's approach is supported by an emerging, though not universally accepted, body of state practice. Following the attacks of 11 September 2001, the United States and its allies invoked Article 51 to justify military operations against Al-Qaeda and the Taliban in Afghanistan. These operations received widespread international support, including explicit endorsement from the UN Security Council in Resolutions 1368⁷⁵ and 1373⁷⁶, despite the fact that the attacks were not directly attributable to the Taliban regime under the strict "effective control" standard elaborated by the ICJ in *Nicaragua* and reaffirmed in *Bosnia v. Serbia*⁷⁷. The use of force was nonetheless viewed as a legitimate act of self-defence, with Article 21 functioning to shield the acting states from responsibility for breaches of Afghanistan's sovereignty.

A similar pattern emerged in 2014 when several states, including the United States, United Kingdom, and Australia, invoked the right of self-defence against the Islamic State in Syria, citing the inability or unwillingness of the Syrian government to neutralize the threat. In these cases, states invoked Article 51 to justify the use of force and implicitly relied on Article 21 to preclude responsibility for violating Syrian sovereignty⁷⁸. While some states, such as Iran and Russia, objected to the legality of these actions, the absence of broad condemnation, coupled with repeated practice and

⁷⁴ Paddeu, F.I. (2017)

⁷⁵ United Nations Security Council (2001) *Resolution 1368 (2001)*, S/RES/1368 (12 September 2001).

⁷⁶ UNSC, *Resolution 1373 (2001)*

⁷⁷ International Court of Justice (2007) *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, ICJ Reports 2007, p. 43.

⁷⁸ United Nations Security Council (2014) *Letter dated 23 September 2014 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General*, UN Doc. S/2014/695. & United Nations Security Council (2015), UN Doc. S/2015/928.

notifications to the Security Council, suggests a gradual shift in *opinio juris*, at least among a subset of states.

Nonetheless, this evolving practice remains contested. Critics argue that too permissive an interpretation of Article 21 risks hollowing out the prohibition on the use of force and enabling powerful states to engage in unilateral interventions under a broad, self-judged mandate of self-defence. To mitigate these concerns, proponents of the Article 21 justification, including Paddeu, emphasize the importance of rigorous factual and legal scrutiny: the attacking state must demonstrate that an armed attack occurred, that no reasonable alternative was available, and that the response was proportionate to the threat.

In conclusion, Article 21 serves a critical function in contemporary international law by enabling states to respond to non-state threats in a way that accounts for the limitations of classical attribution doctrines. As interpreted by Paddeu and applied in recent state practice, it provides a doctrinal mechanism for precluding wrongfulness in situations where the territorial sovereignty of an innocent third state is affected by a lawful act of self-defence. While its legitimacy remains debated, Article 21 increasingly appears to be a key node through which the international legal system adapts to the complex threat environment posed by non-state armed actors.

Section 3 : A Legal Turning Point: UN Security Council Resolutions 1368 and 1373 as a Structured Framework for Self-Defence Against Non-State Actors

The terrorist attacks of 11 September 2001 exposed the inadequacy of traditional legal interpretations of Article 51 of the UN Charter, particularly concerning the use of force against non-state actors operating from within sovereign territories. It is within this context that UN Security Council Resolutions 1368 and 1373 emerged, representing more than a reactive affirmation of states' right to self-defence, they signalled a normative evolution. When read together, these resolutions recast the legal boundaries of self-defence to address the realities of 21st-century threats. They articulate a graduated, proportionate, and law-guided model for responses to terrorism, functioning as the first institutional framework that anticipates the structure now seen in modern self-defence practice.

2.3.1 Peacekeeping Principles as a Legal Blueprint for Structured Self-Defence Against Non-State Actors

The legal and operational architecture of UN peacekeeping provides a valuable conceptual lens for reinterpreting self-defence against non-state actors, particularly within the framework established by UN Security Council Resolutions 1368 and 1373. UN peacekeeping, operating primarily under Chapters VI and VII of the UN Charter, is founded on the core principles of consent of the parties, impartiality, and non-use of force except in self-defence or in defence of the mandate⁷⁹. While traditional peacekeeping mandates emphasize stabilization and conflict prevention, recent evolutions; particularly the emergence of robust peacekeeping; demonstrate how the international community can lawfully intervene in fragile or failed states, often to suppress threats posed by non-state actors in conditions where the state has lost effective control⁸⁰.

This legal logic finds parallel expression in Resolution 1373, which, although not framed as a peacekeeping mandate, embodies a graduated model of international response. It prescribes a clear sequence of obligations: states must criminalize terrorism-related activity, suppress financing and support for terrorist groups, and deny safe havens to individuals or organizations involved in terrorist acts⁸¹. In doing so, the resolution shifts the paradigm from passive condemnation to active prevention and suppression, implicitly permitting consequences where a state fails to meet its obligations under international law.

This sequence maps closely onto the operational model of peacekeeping, especially in environments where state consent and capacity are lacking. Both models rely on a stepwise escalation that reflects legal prudence and strategic restraint. In the self-defence context, Resolution 1373 outlines what may be considered a three-phase model that operates through a graduated escalation from primary host state responsibility to collective international cooperation, and ultimately to individual state action where the

⁷⁹ United Nations Department of Peacekeeping Operations (2008) *United Nations Peacekeeping Operations: Principles and Guidelines*. New York: United Nations.

⁸⁰ Howard, L.M. and Dayal, A.K. (2018). The Use of Force in UN Peacekeeping. *International Organization*, 72(1), pp.71–103.

⁸¹ UNSC, *Resolution 1373 (2001)*, paras. 1–2.

preceding phases prove inadequate. The first phase establishes the expectation that states must take all necessary and reasonable measures to prevent their territory from being used for terrorist purposes, while the second phase encompasses collective international cooperation through intelligence-sharing, capacity building, and multilateral coordination. Where these initial phases fail, the third phase permits affected states to invoke self-defence, subject to the stringent requirements of necessity, proportionality, and accountability. This incremental architecture departs from the binary logic of the traditional doctrine of self-defence under Article 51 of the UN Charter, which presumes a clear-cut “armed attack” threshold. In its place, Resolution 1373 offers a functional, compliance-oriented approach, allowing states to act in stages while remaining within the bounds of international legality.

The parallel with robust peacekeeping is especially instructive. Mandates such as UNSC Resolution 2098 on MONUSCO have empowered peacekeeping missions to undertake “offensive operations” against non-state armed groups, signaling a normative shift toward proactive and dynamic threat engagement⁸². Just as robust peacekeeping departs from the traditional non-use of force principle, Resolution 1373 departs from the rigid structure of Article 51 by introducing flexible, yet legally structured, responses to asymmetrical threats. This framework enhances the legitimacy of force by embedding it within collective expectations and procedural safeguards. The Counter-Terrorism Committee established by the resolution⁸³ functions analogously to the accountability mechanisms in peace operations, requiring states to report on implementation efforts and enabling a form of post-action oversight. These features help prevent abuse, ensure proportionality, and foster transparency in the use of force, a normative concern long associated with peacekeeping doctrine.

In essence, Resolution 1373, while not expressly designed as a peacekeeping tool, incorporates peacekeeping principles into the emerging practice of self-defence against non-state actors. It articulates a layered, lawful, and cooperative model that addresses the

⁸² United Nations Security Council (UNSC), *Resolution 2098 (2013)*, S/RES/2098 (28 March 2013), para. 12.

⁸³ UNSC, *Resolution 1373 (2001)*, para. 6.

realities of fragmented sovereignty without discarding the legal and ethical safeguards central to the UN Charter system.

2.3.2 Solving State-Centric Barriers Through a Graduated Response

2.3.2.1 Layer 1: Host State Responsibility and Initial Cooperation

The first layer of the proposed self-defence framework rests on the foundational principle that the primary responsibility to suppress non-state threats lies with the host state. This foundational principle is firmly rooted in customary international law, which has long imposed upon states a positive duty to ensure that their territory is not used to the detriment of other states. This duty is most clearly articulated in two seminal instruments. First, the UN General Assembly's Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States (Resolution 2625, 1970) proclaims that "*no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State*"⁸⁴. This declaration, though adopted by the General Assembly, has been widely accepted as reflecting customary international law, particularly in the area of state responsibility for indirect uses of force.

Second, the ARSIWA (2001) reinforce this obligation through a codified framework. Article 2 outlines the elements of an internationally wrongful act, including conduct attributable to a state that constitutes a breach of an international obligation⁸⁵. Articles 8 and 11 further clarify attribution standards, stating that states are responsible not only for their direct conduct but also for acts carried out by non-state actors acting on their instructions, under their direction or control, or where the state acknowledges and adopts the conduct as its own.⁸⁶ While the Draft Articles are not legally binding treaties, they have been widely cited by the ICJ, international tribunals, and state practice as an authoritative statement of the law of state responsibility. Together, these instruments

⁸⁴ United Nations General Assembly (1970). *Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States*, A/RES/2625(XXV).

⁸⁵ ARSIWA (2001) Art. 2

⁸⁶ ARSIWA (2001) Arts. 8 and 11.

converge to impose a clear duty of vigilance: that a state must take all reasonable measures to prevent its territory from becoming a base for hostile actions against other states⁸⁷. This is not merely a question of moral responsibility or political prudence, but a legally enforceable standard, breach of which may entitle the injured state to invoke lawful countermeasures, including, under appropriate conditions, the right of self-defence under Article 51 of the UN Charter.

This principle of due diligence (the obligation of a state to prevent its territory from being used to inflict harm on others⁸⁸) is operationalized in binding terms by UN Security Council Resolution 1373, which was adopted under Chapter VII of the UN Charter. The resolution imposes clear and enforceable obligations upon all states to criminalize terrorism-related activities, to suppress terrorist financing, and to deny safe haven to individuals or groups involved in terrorism⁸⁹. In particular, Paragraph 2(d) directs states to “*prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens.*”⁹⁰ This provision introduces a legal expectation of proactive governance, rather than passive sovereignty. By failing to fulfill this duty, either through inaction, incapacity, or tacit acquiescence, a host state may be deemed in breach of its international obligations, thereby giving rise to the possibility of lawful self-defence by the injured state. This aligns with jurisprudence from the International Court of Justice (ICJ), particularly in the *Oil Platforms* case, where the Court reiterated that any use of force in self-defence must satisfy the criteria of necessity and proportionality⁹¹.

In practical terms, this layer of the framework prioritizes peaceful resolution and international cooperation, requiring the injured state to first engage the host state diplomatically. Only after all reasonable avenues for redress have been exhausted, and a

⁸⁷ Tancredi, A. (2017). Doctrinal Alternatives to Self-Defence Against Non-State Actors. *ZaöRV*, 77, pp.69–73.

⁸⁸ Barnidge, R. (2006). The Due Diligence Principle Under International Law. *International Community Law Review* 8, 1, 81-121, Available From: Brill <https://doi.org/10.1163/187197306779173194>

⁸⁹ *Resolution 1373 (2001)*, S/RES/1373, paras. 1–3.

⁹⁰ *Resolution 1373 (2001)* para. 2(d).

⁹¹ ICJ (2003), *Oil Platforms*, p. 161, paras. 43–74.

clear failure of due diligence is established, can the use of force under Article 51 be considered. This reinforces the legitimacy of self-defence while safeguarding the principle of non-intervention, an essential balancing act in the post-Charter order. By embedding the duty of due diligence into binding Security Council practice, Resolution 1373 effectively elevates host state responsibility from a moral expectation to a legal obligation. It thereby establishes the first formal step in a structured framework for lawful responses to non-state threats, aligning evolving state practice with the foundational principles of international law.

2.3.2.2 Layer 2: Collective Self-Defence with International Oversight

The second layer of the proposed framework builds on the foundational idea that effective self-defence, particularly in response to non-state actors, requires not only legal justification but also collective legitimacy and procedural oversight. While Article 51 of the UN Charter affirms the inherent right of individual or collective self-defence in the event of an armed attack, it does not preclude states from acting jointly to protect themselves from common threats, provided such actions are necessary and proportionate⁹². UN Security Council Resolution 1373, though not explicitly authorizing the use of force, embeds this collective dimension within its binding counterterrorism obligations. The resolution calls upon states to “increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism”, and to exchange operational information, intelligence, and legal frameworks to suppress terrorist networks⁹³. It further encourages mutual legal assistance, border controls, and shared responsibilities in preventing terrorist mobility and financing⁹⁴.

This architecture of cooperation aligns closely with the collective self-defence framework envisioned under Article 51. In particular, the ICJ’s ruling in the *Armed Activities* case (2005) confirmed that collective self-defence requires a prior request or consent from the state under attack and must adhere to the principles of necessity and

⁹² Simma, B. et al. (2024)

⁹³ *Resolution 1373 (2001)* paras. 2(f), 3(a), and 3(c)

⁹⁴ *Resolution 1373 (2001)* paras. 2(g), 3(b).

proportionality⁹⁵. Resolution 1373, while not detailing these criteria, reinforces their procedural and normative logic by establishing a collective security environment in which unilateral actions are not the default, but a last resort.

This collective architecture becomes particularly salient in cases where non-state actors pose a transnational or regional threat, such as the rise of ISIS in Syria and Iraq. While the anti-ISIS coalition initially relied on individual states invoking self-defence, the justification was often reinforced by broad-based cooperation and intelligence-sharing, demonstrating that international oversight, even absent formal Security Council authorization, can strengthen the legitimacy of defensive actions⁹⁶. In such contexts, Resolution 1373 serves as a form of legal scaffolding, implicitly affirming that collaborative frameworks are essential to both lawful and effective responses to global terrorism.

Thus, this second layer of the framework addresses the procedural vacuum between unilateral self-defence and collective security, by institutionalizing intergovernmental cooperation and oversight. It ensures that self-defence measures, particularly when conducted by coalitions or alliances, are not only lawful under Article 51 but also anchored in international norms, shared accountability, and multilateral legitimacy.

2.3.2.3 Layer 3: Emergency Action with Post-Action Accountability

The third layer of the proposed self-defence framework recognizes the reality that, in certain cases of imminent and grave threats, the legal and diplomatic delays required for multilateral coordination or Security Council authorization may be operationally infeasible. In such instances, the framework permits unilateral self-defence, but strictly conditions it upon post-action accountability mechanisms to ensure compliance with international law standards and to prevent abuse.

This emergency response model finds its legal foundation in customary international law, specifically the Caroline Doctrine (1837). The doctrine established that anticipatory self-defence is permissible only when the threat is “*instant, overwhelming, and leaving no choice of means, and no moment for deliberation*”, a formulation that has

⁹⁵ ICJ (2005), *DRC v. Uganda*, paras. 146–147.

⁹⁶ Hakimi, M. (2015)

since become a touchstone for evaluating necessity and proportionality in pre-emptive uses of force⁹⁷. While not codified in treaty law, the Caroline criteria have been consistently reaffirmed in state practice, legal scholarship, and ICJ jurisprudence, serving as the legal threshold for anticipatory or emergency self-defence⁹⁸.

UN Security Council Resolution 1373 builds upon this foundational logic by introducing an essential innovation: the requirement for post-action reporting and institutional oversight. Paragraph 6 of the resolution establishes a Counter-Terrorism Committee (CTC), composed of all members of the Security Council, which monitors state implementation of counterterrorism obligations and requires member states to submit reports within 90 days of the resolution's adoption, and thereafter as required⁹⁹. While the resolution does not explicitly mandate ex post facto legal review of defensive military actions, this institutional framework creates a normative expectation of transparency, inviting scrutiny of both compliance and proportionality in the conduct of counterterrorism and defensive operations. This mechanism resembles post-mission reporting structures in UN peace operations, as well as the notification requirement under Article 51 of the UN Charter, which obliges any state acting in self-defence to immediately report such action to the Security Council. The reporting structure under the resolution therefore supplements existing obligations by adding a more general layer of counterterrorism oversight, thereby expanding the scope of post-action review beyond kinetic action to include systemic and policy-based responses to terrorism.

The importance of post-action accountability is particularly evident in historical cases where its absence has led to controversial or legally ambiguous uses of force. For instance, in Israel's Entebbe Raid (1976)¹⁰⁰, while the operation arguably met the operational criteria for necessity and proportionality, it was conducted without any international reporting or review, leading to criticism regarding precedent-setting

⁹⁷ Webster, D. (1841) 'Letter to British Minister', cited in Jennings, R. and Watts, A. (eds) (1996) *Oppenheim's International Law*. 9th edn, Vol. 1, Peace. Oxford: Oxford University Press, pp. 420–421.

⁹⁸ Dinstein, Y. (2017). *War, Aggression and Self-Defence*, 6th ed., Cambridge: Cambridge University Press, pp. 234–240.

⁹⁹ *Resolution 1373 (2001)* para 6

¹⁰⁰ Kreß, C. and Nußberger, B.K. (2018) 'The Entebbe Raid—1976', in Ruys, T., Corten, O. and Hofer, A. (eds) *The Use of Force in International Law: A Case-Based Approach*. Oxford: Oxford University Press.

unilateralism and undermining its normative legitimacy¹⁰¹. A structured post-action review, as required under Resolution 1373, could have helped assess the operation's legality, necessity, and proportionality, thereby promoting international confidence in the state's intentions and conduct. Scholars such as Dapo Akande and Marko Milanovic have emphasized that transparency mechanisms, especially in cases of anticipatory or unilateral self-defence, are crucial for preserving the integrity of the *jus ad bellum* regime and ensuring that exceptions to the prohibition on the use of force under Article 2(4) remain genuinely exceptional¹⁰². Without such accountability, states risk eroding the very legal framework that justifies defensive action, inviting abusive interpretations of anticipatory threat and enabling pretextual uses of force.

In this way, Resolution 1373 introduces a structural constraint on emergency self-defence: although it does not restrict a state's right to respond to imminent threats, it subjects such responses to a broader regime of institutional oversight, legal transparency, and political accountability. This layered accountability ensures that the emergency use of force remains compatible with the principles of necessity, proportionality, and sovereignty, reinforcing the legitimacy of self-defence while minimizing the space for unlawful military adventurism.

2.3.3 The normative dimension: how values like sovereignty, accountability, ethics, and legitimacy support the framework.

2.3.3.1 Balancing Sovereignty with Security Needs

The layered self-defence framework is grounded in a contemporary interpretation of sovereignty, one that respects the territorial integrity of states, but equally recognizes that sovereignty is not absolute, especially when a state fails to control or suppress transnational threats emanating from within its territory. This refined understanding aligns with the Responsibility to Protect (R2P) doctrine, which was formally endorsed by the international community in the 2005 World Summit Outcome Document (UNGA Resolution 60/1). The document asserts that “*each individual State has the responsibility*

¹⁰¹ Cassese, A. (2005)

¹⁰² Akande, D. and Milanovic, M. (2015) ‘The Constructive Ambiguity of the UN Security Council’s ISIS Resolutions’, *American Journal of International Law*, 109(2), pp. 153–160.

to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity” and that the international community has a responsibility to act when national authorities manifestly fail to uphold this duty¹⁰³. Although R2P was initially conceived for mass atrocity prevention, its normative thrust applies more broadly to the management of cross-border security risks, including terrorism. It redefines sovereignty not merely as control over territory, but as the exercise of responsible governance in the service of both domestic and international peace¹⁰⁴. A failure to prevent non-state actors from using national territory as a base for transnational violence, therefore, constitutes not just a security lapse, but a violation of international legal expectations.

UN Security Council Resolution 1373 (2001) reflects this evolving conception of sovereignty. Adopted in the immediate aftermath of 9/11, the resolution imposes binding obligations on all UN Member States to prevent terrorist groups from operating on their territory, to criminalize terrorist financing, and to deny safe haven to those involved in planning or executing terrorist acts¹⁰⁵. In doing so, the resolution transcends the traditional passive view of sovereignty, emphasizing that states are accountable to the international community when threats emerging from their territories jeopardize global peace and security. This reinterpretation is supported by customary international law and recognized in various legal texts and judgments. For example, the ARSIWA (2001) articulate the notion that a state may be held responsible for failing to prevent wrongful acts by non-state actors if it exercises effective control, or fails in its due diligence obligations to stop harm from being inflicted on other states¹⁰⁶. Similarly, the International Court of Justice (ICJ) in *Corfu Channel* (1949) stated that states have an obligation not to allow knowingly their territory to be used for acts contrary to the rights of other states, thereby reinforcing the functional limits of sovereignty in the context of harmful cross-border conduct¹⁰⁷.

¹⁰³ United Nations General Assembly (2005) *2005 World Summit Outcome*, A/RES/60/1, paras. 138–139.

¹⁰⁴ Stahn, C. (2007). 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?', *American Journal of International Law*, 101(1), 99–120.

¹⁰⁵ *Resolution 1373 (2001)* paras 1-2

¹⁰⁶ ARSIWA (2001), Art. 2, 8, and 11.

¹⁰⁷ International Court of Justice (ICJ), 1949. *Corfu Channel Case (UK v. Albania)*, ICJ Reports 1949, p. 22.

The layered framework captures these developments by placing sovereignty within a cooperative and accountable legal structure. Rather than undermining sovereignty, it affirms it as a bundle of legal duties. Intervention under the framework is permissible only once the host state has failed to meet clearly defined obligations, whether through incapacity, unwillingness, or negligence. This ensures that unilateral action is not arbitrary, but based on objective failures to comply with international responsibilities, thereby preserving the legitimacy of defensive responses. The logic of this balance is also reflected in state practice. In situations such as the international coalition's response to ISIS in Syria and Iraq, the legal justification rested not only on the right of individual and collective self-defence, but also on the claim that Syria had lost the capacity, or the will, to prevent ISIS from launching attacks from its territory. In this context, the international community's tolerance of intervention, even without explicit host state consent or formal UNSC authorization, suggests a normative shift toward conditional sovereignty based on compliance with international peace obligations¹⁰⁸.

In sum, the layered framework's treatment of sovereignty aligns with the broader post-Charter evolution of international law, wherein sovereignty is preserved not as an obstacle, but as a platform for cooperative security and legal responsibility. When non-state threats metastasize within a state's borders and pose danger to others, sovereignty no longer functions as an impenetrable legal shield, but as a conditional status, contingent on the fulfilment of duties owed both to domestic populations and the international system.

2.3.3.2 Ensuring Accountability and Preventing Abuse

The layered self-defence framework, as implicitly articulated in UN Security Council Resolutions 1368 and 1373, introduces a vital normative structure aimed at balancing operational effectiveness with legal accountability. By embedding obligations such as reporting, collective cooperation, and phased escalation, the framework moves away from an unregulated model of force and toward a system of internationally verifiable self-defence. These mechanisms are not merely procedural; they represent an effort to align the law of self-defence with broader international legal standards, especially those

¹⁰⁸ Lewis, D. (2015) 'The Use of Force Against ISIS: International Law and the Coalition Airstrikes in Syria', *Leiden Journal of International Law*, 28(3), pp. 749–765.

articulated in International Humanitarian Law (IHL) and the Rome Statute of the International Criminal Court (ICC).

These reporting and oversight mechanisms echo principles embedded in IHL, particularly the obligation to ensure that all uses of force meet the criteria of distinction, proportionality, and military necessity¹⁰⁹. Although IHL primarily governs conduct during armed conflict (*jus in bello*), its principles influence the assessment of whether a defensive action is legally and ethically justified, especially in cases involving cross-border force against non-state actors. The Rome Statute of the ICC, which codifies individual accountability for crimes such as aggression and disproportionate attacks, further reinforces the global consensus that unregulated uses of force are unacceptable, even in the name of self-defence¹¹⁰. The layered framework, by conditioning self-defence on structured escalation and subsequent oversight, effectively limits the potential for pretextual or opportunistic uses of force. As legal scholars such as Antonio Cassese and Michael Schmitt have argued, the erosion of formal checks, especially in anticipatory or collective self-defence scenarios, risks enabling a return to “might makes right” reasoning, undermining the *jus ad bellum* regime¹¹¹. Resolutions 1368 and 1373 implicitly counter this risk by requiring that states integrate their self-defence actions into an international legal and institutional framework, subject to ongoing review and cooperation.

This model becomes particularly important in an era where non-state threats operate across borders and military responses often occur without the consent of territorial states. Without embedded mechanisms for accountability, such responses can easily exceed lawful boundaries or contribute to regional destabilization. The framework established by the resolutions does not prohibit self-defence; it channels it through a system of legal accountability, one that is both responsive to urgent threats and constrained by international norms.

¹⁰⁹ Henckaerts, J.M. and Doswald-Beck, L. (2005) *Customary International Humanitarian Law*, Volume I: Rules. Cambridge: ICRC/Cambridge University Press. Rules 14–18.

¹¹⁰ International Criminal Court (1998) *Rome Statute of the International Criminal Court*. Arts. 8 and 15 bis.

¹¹¹ Cassese, A. (2005) & Schmitt, M.N. (2002) 'Wired Warfare: Computer Network Attack and *Jus in Bello*', *International Law Studies*, 76, pp. 187–246.

Ultimately, this layered approach seeks to harmonize the right of self-defence with the rule of law, ensuring that force remains an exceptional, regulated instrument rather than a default foreign policy tool. It reflects a broader international trend toward rules-based security, in which states must justify not only their ends, but also their means, within the legal community of nations.

2.3.3.3 Ethical and Collaborative Solutions to Modern Threats

The layered self-defence framework not only operates within the bounds of legality, it is also ethical in its architecture, reflecting the collective values and peace-oriented goals of the United Nations Charter. Article 1 of the Charter establishes that the primary purpose of the UN is to “*maintain international peace and security, and to that end... take effective collective measures for the prevention and removal of threats to the peace.*”¹¹² This emphasis on collective, peaceful, and lawful action sets the normative backdrop against which any doctrine of self-defence must be assessed; not simply in terms of legal formality, but in light of ethical legitimacy.

UN Security Council Resolutions 1368 and 1373 serve as pivotal instruments in this regard. By condemning the terrorist attacks of 11 September 2001 and reaffirming the inherent right of self-defence, Resolution 1368 aligns with the ethical imperative of protecting populations from indiscriminate violence while invoking the international community’s shared responsibility to act collectively against threats to peace. Crucially, it recognized terrorism as a matter of international peace and security, thereby setting the stage for a cooperative legal and moral response. Building on this, Resolution 1373 operationalizes these values by establishing binding obligations on all states to prevent and suppress terrorism through non-military but enforceable means, including criminalization, financial regulation, intelligence-sharing, and border control. These measures aim not to escalate conflict, but to strengthen legal resilience and multilateral trust, ensuring that action against terrorism remains rooted in law, cooperation, and mutual accountability.

This ethical foundation is particularly important in an era marked by deep geopolitical division, where interventions are often met with suspicion or interpreted as

¹¹² *Charter of the United Nations*, Art. 1(1).

hegemonic. By institutionalizing counterterrorism obligations within the UN framework, Resolutions 1368 and 1373 help unify state practice under a shared legal rubric, reducing the risk of unilateralism masked as self-defence and promoting a global consensus on the legitimate parameters of force. Legal scholars such as Michael Reisman and Thomas Franck have long emphasized the importance of legitimacy in international law, arguing that rules are more likely to be followed when they are perceived as fair, inclusive, and ethically justifiable¹¹³. The layered framework contributes to this legitimacy by ensuring that self-defence is not a *carte blanche* for aggression, but a carefully regulated exception, exercised under collective guidance and subject to international norms.

Moreover, this ethical design is forward-looking, promoting the kind of collaborative security infrastructure necessary to address modern, non-traditional threats such as terrorism, cyberattacks, and transnational criminal networks. It emphasizes shared responsibility, mirrors peacekeeping logic, and positions international law as a living system, capable of adapting to emerging challenges without sacrificing its moral foundations. It helps to clarify the often ambiguous terrain of force and security, while preserving the core values of cooperation, restraint, and respect for sovereignty that define the UN Charter system.

2.3.3.4 Avoiding Expansion of Article 51 While Redefining Its Applicability

Perhaps the most critical legal achievement of the interpretation as layered self-defence framework is that it manages to preserve the textual integrity of Article 51 of the UN Charter, while simultaneously broadening its interpretative scope in response to contemporary threats, particularly those posed by non-state actors. Rather than advocating for formal treaty amendment, the framework operates through a functional reinterpretation, grounded in Security Council practice, state conduct, and legal scholarship.

In the post 9/11 context, UNSC Resolutions 1368 and 1373 became the first institutional expressions of an evolving consensus that armed attacks by non-state actors may, under certain conditions, justify the invocation of Article 51. Importantly, these

¹¹³ Franck, T.M. (1990) *The Power of Legitimacy Among Nations*. Oxford: Oxford University Press. & Reisman, W.M. (1990) 'Sovereignty and Human Rights in Contemporary International Law', *American Journal of International Law*, 84(4), pp. 866–876.

resolutions do not seek to rewrite Article 51. Instead, they reinterpret its conditions of applicability, using state practice and Security Council authority as vehicles of normative development. Resolution 1368 explicitly reaffirms the inherent right of self-defence, while condemning the 9/11 attacks as a threat to international peace and security, thus implicitly recognizing that a non-state actor can initiate an “armed attack” within the meaning of the Charter¹¹⁴. Resolution 1373 then operationalizes this understanding by imposing obligations on all states to prevent their territory from being used by terrorist actors; thereby embedding a due diligence standard into the Charter system without altering its text¹¹⁵.

This process reflects what Olivier Corten refers to as “doctrinal evolution through institutional interpretation”, a dynamic in which practice and resolution-based reinterpretation transform the meaning of existing legal norms without undermining their textual foundations¹¹⁶. Similarly, Christine Gray emphasizes that much of the contemporary law on the use of force has developed not through new treaties, but through a “mosaic of case law, state practice, and UN resolutions”, which cumulatively shift the legal understanding of core principles like self-defence¹¹⁷. This approach avoids the political and legal risks associated with formal Charter revision; an almost impossible task given the amendment procedures under Articles 108–109; while still ensuring that international law remains responsive to new threat paradigms, including cyberattacks, hybrid warfare, and transnational terrorism¹¹⁸.

Thus, the framework represented by Resolutions 1368 and 1373 exemplifies how customary law and institutional practice can serve as mechanisms of legal evolution, updating the law from within. It reflects a living interpretation of Article 51: one that

¹¹⁴ Resolution 1368 (2001), preamble and para. 1.

¹¹⁵ Resolution 1373 (2001) paras 1&3

¹¹⁶ Corten, O. (2010) *The Law Against War: The Prohibition on the Use of Force in Contemporary International Law*. Oxford: Hart Publishing.

¹¹⁷ Gray, C. (2018) *International Law and the Use of Force*. 4th edn. Oxford: Oxford University Press.

¹¹⁸ Daugirdas, K. and Mortenson, J.D. (2015) ‘Contemporary Practice of the United States Relating to International Law’, *American Journal of International Law*, 109(3), pp. 661–662.

honors the Charter's original purposes while expanding its applicability to non-state violence in a manner that is both legally grounded and normatively justified.

Conclusion

The nature of conflict has changed dramatically since the UN Charter was drafted in 1945. Today, the most pressing security threats often come not from states, but from non-state actors operating across borders, exploiting weak or failed governance, and challenging the traditional legal frameworks built around inter-state warfare. At the heart of this tension lies Article 51 of the UN Charter, which affirms the right of self-defence but was clearly written with state-to-state aggression in mind. This chapter has explored how that provision might evolve; through careful interpretation rather than formal amendment; to remain relevant in an age of asymmetric and unconventional threats.

What emerges from this analysis is not a call to rewrite the rules, but to read them more thoughtfully and adaptively. The tools for such reinterpretation already exist within international law. Article 31 of the Vienna Convention on the Law of Treaties (VCLT) provides a flexible but disciplined framework for understanding treaties in light of their object, purpose, and the evolving practice of states. Far from undermining legal certainty, this approach ensures that legal texts remain responsive to real-world challenges. It also highlighted how the International Court of Justice (ICJ) has, in other contexts, moved beyond strict textualism, recognizing the importance of institutional practice and normative coherence. These examples suggest that a more dynamic reading of Article 51 is not only legally possible but well within the tradition of international jurisprudence.

Doctrines like "Unwilling or Unable", and mechanisms such as circumstances precluding wrongfulness under Article 21 of the ARSIWA, offer further avenues through which states can legally respond to threats from non-state actors; so long as those responses remain necessary, proportionate, and accountable. These evolving interpretations reflect a growing awareness among states and scholars that sovereignty today also entails responsibility, and that a state's failure to prevent cross-border violence may shift the legal equation.

Perhaps most significantly, UN Security Council Resolutions 1368 and 1373 show that the international community has already begun to rethink how self-defence is

understood. While these resolutions don't formally redefine Article 51, they implicitly endorse a more layered, structured model of response; one that prioritizes host state responsibility, promotes international cooperation, and leaves room for unilateral action only in exceptional, clearly justified cases.

In short, this chapter argues that a more nuanced, context-sensitive interpretation of Article 51 is both necessary and legitimate. It allows the international legal system to meet the demands of modern security without abandoning its core principles. Such an approach doesn't weaken the Charter, it strengthens its credibility and relevance by ensuring that it remains fit for purpose in a world where the lines between war and peace, state and non-state, are increasingly blurred. International law must evolve not through shortcuts or opportunistic exceptions, but through principled adaptation. The reinterpretation of Article 51, grounded in existing doctrine and supported by emerging practice, represents one such evolution, a way forward that stays true to the rule of law while meeting the realities of our time.

Chapter 3:

Case Study on Syria: Testing the Boundaries of Legitimate Self-Defence

Introduction :

The preceding chapter demonstrated how the classical understanding of self-defence under Article 51 of the United Nations Charter has been progressively challenged by contemporary threats, particularly the rise of non-state actors operating transnationally from within sovereign territories. Through the analysis of evolving doctrinal debates, including the reinterpretation of “armed attack,” the redefinition of imminence, and the emergence of the “unwilling or unable” test, it became apparent that the law of self-defence is undergoing a profound process of pressure and transformation. The tension between maintaining the structural integrity of the Charter system and adapting to operational necessity has generated significant theoretical controversy, exposing both the strengths and vulnerabilities of the existing legal framework.

Building upon this theoretical foundation, the present chapter turns to the Syrian conflict as a critical empirical case study. Syria has served as the primary arena in which the contestation over the scope of Article 51 has been played out in practice. The disintegration of Syrian state authority, the proliferation of armed non-state actors such as ISIS and Hezbollah, and the intervention of external powers have combined to create an environment where the application of traditional self-defence doctrine has proven particularly problematic. This case provides a unique opportunity to observe how states have sought to operationalize expanded interpretations of self-defence, and to assess the degree to which emerging practices either reflect or reshape the customary international law governing the use of force.

The first section examines the practice of self-defence in Syria by analyzing the interventions carried out by the United States-led coalition and Israel. It focuses on the operational justifications articulated by these states, highlighting how collective and individual self-defence claims have evolved when directed against non-state actors operating across borders. The second section explores the legal debates surrounding

Article 51 and the “unwilling or unable” doctrine, with particular attention to the risks posed by expanding self-defence without clear sovereignty safeguards. It critically evaluates whether the repeated use of Security Council Article 51 letters and the consistency of certain state practices indicate a true evolution of custom or merely a contested pragmatic adaptation. Finally, the third section considers the blurring of the boundaries between state and non-state actors, studying the emergence of quasi-state entities such as the Syrian Democratic Forces and their implications for collective self-defence frameworks and attribution theory.

The Syrian conflict also highlights the systemic consequences of these doctrinal developments. The fragmentation of state practice, the paralysis of the Security Council, and the absence of authoritative judicial clarification by the International Court of Justice have combined to produce an environment of profound legal uncertainty. The Syrian experience thus serves not only as an illustration of the operational challenges faced by states but as a potential indicator of a broader normative drift within the *jus ad bellum*. This drift raises fundamental concerns about the resilience of the international legal order: whether the expansion of self-defence can be controlled within principled boundaries, or whether it will further erode the Charter's role as a constraint on unilateral uses of force.

In analyzing Syria, this chapter does not seek to provide a definitive answer to the question of whether customary law has already shifted. Rather, it aims to critically assess how far practice has moved, where legal consensus remains fractured, and what risks and opportunities these trends present for the future evolution of the law of self-defence. Ultimately, the Syrian conflict stands as both a symptom and a driver of the ongoing transformation of international law, a test case that reveals the stakes involved in redefining the permissible boundaries of force in an increasingly fragmented and asymmetric global order.

Section 1 : Rise and Fragmentation of the Syrian State: Historical Roots to Contemporary Collapse

3.1.1 Syria historical background

The contemporary Syrian Arab Republic occupies territory that has long held strategic, religious, and cultural significance. Historically known as Bilad al-Sham, this

region was a critical component of successive empires, from the Umayyads (whose capital was Damascus), to the Abbasids, the Ottomans, and briefly under the control of European colonial powers following World War I. Syria's modern borders were not the result of indigenous political movements or natural geographic consolidation, but rather emerged from external imperial arrangements, primarily the 1916 Sykes-Picot Agreement between Britain and France, and later formalized through the League of Nations' French Mandate in 1920¹¹⁹. The imposition of the French Mandate over Syria, confirmed at the San Remo Conference, introduced a fragmented system of governance, dividing the territory into several ethnic and religious administrative zones (e.g., Alawite, Druze, and Sunni-majority regions). This divisive colonial structure exacerbated existing sectarian divides and disrupted any nascent efforts at Syrian unity or self-determination. French policies were designed to weaken nationalist opposition, and the colonial administration frequently relied on minority groups such as the Alawites to man the military ranks, laying the foundations for future power dynamics in the state¹²⁰.

Syria gained nominal independence in 1946, but the state entered a period of pronounced political turbulence. Between 1949 and 1970, Syria experienced a series of coups, reflecting both the fragility of its institutions and the competing interests of internal factions and external powers during the early Cold War¹²¹. Amid this instability, Syria gravitated toward Arab nationalism, particularly under the influence of Gamal Abdel Nasser's pan-Arabism. Syria even entered into a short-lived union with Egypt, the United Arab Republic, from 1958 to 1961, but the experiment failed, largely due to Syrian resentment of Egyptian dominance¹²².

The turning point in Syria's modern political history came with the 1970 "Corrective Movement," when General Hafez al-Assad, an Alawite officer in the Ba'ath Party and the Air Force, seized power. His coup established the Assad dynasty, which has

¹¹⁹ Ford, C.M., (2018) *Syria: A Case Study in International Law*. University of Cincinnati Law Review, 85(1), pp.185–191. Available at: <https://scholarship.law.uc.edu/uclr/vol85/iss1/5>

¹²⁰ Dekel, U., Boms, N. and Winter, O., (2016). *The Rise of the Non-State Actors in Syria*. Institute for National Security Studies.

¹²¹ Shoup, J.A. (2018). *The history of Syria*. Santa Barbara, California: Greenwood, An Imprint Of Abc-Clio, Llc.

¹²² Gelvin, J.L., (2012). *The Arab Uprisings: What Everyone Needs to Know*. Oxford: Oxford University Press

dominated Syrian political life ever since. Hafez al-Assad implemented an authoritarian regime characterized by an extensive security apparatus, Ba'athist ideological indoctrination, and a cult of personality. The regime suppressed political pluralism, dissent, and free civil society under the guise of stability and resistance to imperialism and Zionism¹²³. Importantly, Assad institutionalized a sectarian hierarchy: although Syria is majority Sunni, key positions in the military and intelligence services were systematically filled by Alawites, members of the president's own minority sect. This created a durable internal security framework, but also a deep sense of exclusion and resentment among the majority population. These tensions would later explode during the 2011 uprising¹²⁴. The regional role of the Assad regime also merits attention. Syria became a Soviet client state during the Cold War, receiving economic and military aid in exchange for geopolitical alignment. Hafez al-Assad waged wars with Israel (including in 1973) and supported a variety of Palestinian and Lebanese militant groups, notably Hezbollah. Syria's occupation of Lebanon (1976–2005) further extended its regional influence¹²⁵. After Hafez's death in 2000, his son, Bashar al-Assad, assumed power. Though initially perceived as a potential reformer, Bashar continued, and in some cases intensified, the authoritarian legacy of his father¹²⁶.

Syria's ethnic and religious mosaic has shaped both the durability of the Assad regime and the dynamics of the current conflict. The country's population includes Sunni Arabs (about 70%), Alawites (10 - 15%), Christians (10%), Kurds (10%), Druze, Ismailis, Armenians, and others¹²⁷. Despite the rhetoric of pan-Arabism and Ba'athist secularism, the regime has often governed through informal sectarian balancing and co-optation. In particular, the elevation of Alawite elites in the military and security services created a de facto sectarian oligarchy, while maintaining an outwardly secular and nationalist political

¹²³ Wedeen, L. (1999). *Ambiguities of Domination: Politics, Rhetoric, and Symbols in Contemporary Syria*. Chicago: University of Chicago Press.

¹²⁴ Ford, C.M. (2018).

¹²⁵ Part, R. and Holliday, J. (2013). *The Assad Regime: From Counterinsurgency to Civil War*. Institute for the Study of War.

¹²⁶ Van Dam, N. (2017). *Destroying a Nation: The Civil War in Syria*. London: I.B. Tauris

¹²⁷ Antoun, R.T. and Quataert, D. (1991). *Syria : society, culture and polity*. Albany (N.Y.): State University Of New York Press.

doctrine¹²⁸. This intricate social structure rendered Syria particularly vulnerable to civil strife once the Arab Spring arrived in 2011. While the regime's security networks were deeply entrenched, so too were the grievances of large portions of the population. What began as peaceful protests in Dar'a in March 2011 quickly escalated into a nationwide revolt, met with brutal repression by the Assad regime. The subsequent militarization of the conflict fractured the country into warring zones, with the Assad regime, opposition groups, Kurdish militias, Islamist factions, and jihadist organizations all vying for control¹²⁹.

3.1.2 Collapse of State Authority and Emergence of Non-State Actors

The progressive collapse of state authority in Syria can be traced to the intricate interplay between sectarian divisions, socio-economic stagnation, and decades of authoritarian rule under the Assad regime. This structural fragility, long concealed by a veneer of centralized control, was dramatically exposed during the Arab Spring of 2011. In contrast to the relatively peaceful transitions in countries such as Tunisia and Egypt, Syria experienced a violent governmental backlash. The regime's immediate response to peaceful demonstrations was ruthless suppression through arrests, torture, and live ammunition, rather than engagement in meaningful reform¹³⁰. This approach marked a critical inflection point, unleashing a legitimacy crisis that catalyzed state fragmentation and opened the gates to civil war. The Assad government, once the uncontested central authority, was quickly reduced to one of many competing factions in a rapidly fracturing political landscape¹³¹.

Exclusionary governance, which privileged the Alawite minority and reinforced authoritarian clientelism, deeply corroded the state's capacity to foster national unity or inclusivity. The regime's power structure, rooted in sectarian favoritism, failed to evolve

¹²⁸ Phillips, C. (2016). *The Battle for Syria: International Rivalry in the New Middle East*. New Haven: Yale University Press

¹²⁹ Mills, C. (2017). *ISIS/Daesh: The Military Response in Iraq and Syria*. House of Commons Library Briefing Paper No. 06995.

¹³⁰ Achcar, G. (2013). *The People Want*. Univ of California Press.

¹³¹ Koolae, E., Zarrinnarges, Y., & Akbari, Z. (2021). Causes of the failure of the state in Syria (2010-2019). *Geopolitics Quarterly*, 16(4).

with the growing demands of a heterogeneous population¹³². This failure was compounded by decades of institutional degradation, corruption, and a lack of accountability. Once popular dissent erupted, these concealed weaknesses became unmistakable. The Ba'athist regime's emphasis on ideological conformity and centralized bureaucracy crumbled under the weight of mass mobilization, leading to swift erosion of both administrative efficacy and territorial integrity¹³³.

By the end of 2011, Syria's institutional framework had all but disintegrated in various regions. Key ministries lost operational capacity, particularly in provinces overtaken by opposition forces. Judicial mechanisms ceased functioning, and the police withdrew or were dismantled in vast swathes of the country. One of the most glaring indicators of institutional collapse was the widespread defection from the Syrian Arab Army. Within two years, more than 60,000 soldiers abandoned their posts, many joining the newly formed Free Syrian Army¹³⁴. The Assad regime, desperate to maintain military dominance, increasingly outsourced violence to loyalist militias, including the shabiha, and leaned heavily on foreign allies such as Iran, Hezbollah, and Russia. This shift away from formal state institutions toward irregular, ideologically aligned forces marked a decisive transition from governance to survival mode. Consequently, essential services such as electricity, healthcare, and public infrastructure disappeared in contested areas, producing a void swiftly filled by an array of emerging actors¹³⁵.

In this vacuum, non-state actors (NSAs) proliferated. Their emergence was rapid, complex, and adaptive. These groups arose from localized efforts to resist regime violence, but quickly matured into sophisticated, diverse entities. They ranged from secular nationalist militias, such as the Free Syrian Army, to Islamist factions including Jabhat al-Nusra and ISIS, and ethnically driven movements like the Kurdish YPG and the

¹³² Baczkowski, A., Gilles Dorronsoro and Quesnay, A. (2013). Building a Syrian State in a Time of Civil War. *Carnegie Endowment for International Peace*.

¹³³ Part, R. and Holliday, J. (2013).

¹³⁴ Ford, C. M. (2018)

¹³⁵ Dekel, U., Boms, N., & Winter, O. (2016).

broader Syrian Democratic Forces (SDF)¹³⁶. Initially formed from community-based defense networks, NSAs expanded their reach and structure by leveraging foreign funding, ideological solidarity, and the urgent need for protection and order. The growth of NSAs was accelerated by regional rivalries and international interventions. Countries such as Turkey, Saudi Arabia, Qatar, and the United States channeled support (financial, logistical, and military) to their preferred factions. In parallel, jihadist groups capitalized on transnational networks to recruit thousands of foreign fighters, creating robust militarized enclaves with governance capacities. Among these, ISIS stood out for its territorial ambitions and its establishment of a proto-state, offering administrative services, imposing taxation, and enforcing a harsh version of Sharia law. These entities did not merely contest the Assad regime militarily; they constructed alternative political orders with varying degrees of durability and legitimacy¹³⁷.

NSAs in Syria exhibit several defining traits. They operate with autonomy from any centralized state structure, maintain control over territory, and often mirror state-like functions. Their ideological compositions span a wide spectrum (from secularism to radical Islamism) making their alliances and rivalries volatile and unpredictable. Their internal dynamics are equally fluid: groups fragment and merge in response to battlefield developments, funding streams, or shifts in foreign policy among sponsors¹³⁸. Many NSAs have transitioned into hybrid organizations, blending conventional military engagement with community governance, propaganda dissemination, and regional diplomacy. These hybrid forms fundamentally challenge traditional understandings of state sovereignty, especially in international law where the state is the primary subject of accountability and legitimacy¹³⁹.

This proliferation of NSAs also sharpened Syria's internal cleavages. Kurdish factions utilized the weakening of the regime to establish autonomous administrations in

¹³⁶ Kaldor, M. (2013). In Defence of New Wars. *Stability: International Journal of Security and Development*, 2(1), pp.1–16. doi:<https://doi.org/10.5334/sta.at>.

¹³⁷ Dekel, U., Boms, N., & Winter, O. (2016).

¹³⁸ Lynch, M. (ed.) (2013) *The Political Science of Syria's War*. POMEPS Briefing No. 22. Project on Middle East Political Science, George Washington University.

¹³⁹ Lehto, M. (2018). The Fight against ISIL in Syria: Comments on the Recent Discussion of the Right of Self-defence against Non-state Actors. *Nordic Journal of International Law*, 87.

the northeast, creating semi-formal governments responsible for justice, education, and internal security. In other parts of the country, Sunni Islamist militias rose to prominence, creating localized emirates or sharia-based courts. These structures did not merely substitute the regime; they competed with each other and often violently clashed, intensifying the conflict's complexity. The result was a mosaic of micro-authorities with differing levels of institutional development, ideological coherence, and military strength¹⁴⁰. NSAs gained traction largely because of their ability to provide stability and essential services. Groups like the SDF and some Islamist factions developed governance institutions to address the vacuum left by the collapsed state. These included health services, education systems, and law enforcement bodies. In many cases, such functionality enabled NSAs to establish a degree of local legitimacy, especially in war-torn zones where survival depended on the presence of any governance at all.¹⁴¹ This practical legitimacy was often more compelling to civilians than ideological alignment, leading to complex relationships between populations and de facto authorities¹⁴².

The deeper roots of the Syrian collapse extended well beyond political mismanagement. Chronic economic stagnation, skyrocketing inequality, and environmental degradation critically undermined the state's resilience. A series of devastating droughts between 2006 and 2010 displaced 1.5 million rural Syrians, placing immense pressure on urban centers already struggling with unemployment and inflation¹⁴³. The regime's neoliberal economic reforms further polarized wealth distribution, enriching regime loyalists while impoverishing vast segments of society. After the outbreak of conflict, Syria's economy went into freefall: over 70% GDP contraction, decimated infrastructure, hyperinflation, and a collapse in trade and investment. By 2017, more than 80% of Syrians were living below the poverty line. Sanctions imposed by Western countries, though aimed at punishing the regime, further

¹⁴⁰ Kaldor, M. (2013)

¹⁴¹ Naumkin, V.V. and Kuznetsov, V.A. (2020). Non-State Actors in the Middle East: Towards a New Typology. *Russia in Global Affairs*, 18(4), pp.192–214. doi:<https://doi.org/10.31278/1810-6374-2020-18-4-192-214>.

¹⁴² Lehto, M. (2018)

¹⁴³ Koolae, E., Zarrinnarges, Y., & Akbari, Z. (2021)

crippled economic recovery by restricting access to capital, resources, and reconstruction funding¹⁴⁴.

Ultimately, Syria transitioned from a centralized authoritarian state into a fragmented territory governed by a patchwork of actors. Some pursued governance with popular support, others ruled through fear and coercion. This post-sovereign condition, wherein statehood is effectively dispersed among non-state actors, presents profound legal and ethical dilemmas for the international community¹⁴⁵. Syria has become a crucible for questions surrounding sovereignty, intervention, and the evolving nature of warfare in the 21st century.

Section 2 : The practice of self-defence in Syria

The Syrian conflict has emerged as a crucible for the reinterpretation of the international legal framework governing the use of force, particularly in relation to non-state actors (NSAs). The multifaceted military interventions by both global and regional powers; including the United States-led coalition and Israel; have tested the traditional constraints of *jus ad bellum* under the UN Charter. These interventions have been largely predicated on the assertion that Syria, either by incapacity or deliberate policy, has failed to suppress threats emanating from within its territory. The result has been a proliferation of legal arguments invoking Article 51, both in its classical form and through the contested “unwilling or unable” doctrine. This section analyses the factual and legal predicates of these actions and examines their implications for the development of customary international law and the interpretation of the Charter.

3.2.1 The Rise of ISIS and the U.S.-Led Coalition’s Legal Justification

The rise of the so-called Islamic State of Iraq and al-Sham (ISIS), also known as Daesh, marked a profound moment in international security and legal discourse. Its emergence blurred the conventional boundaries between state and non-state violence, and posed a uniquely difficult challenge to the legal framework governing the use of force in international law. Beginning in late 2013 and escalating through mid-2014, ISIS rapidly

¹⁴⁴ Ford, C. M. (2018)

¹⁴⁵ Lynch, M. (ed.) (2013)

gained territorial control across the Levant, capitalizing on institutional collapse and political fragmentation in Syria and Iraq¹⁴⁶. Its occupation of key urban centres such as Raqqa and Mosul, alongside its self-proclaimed “caliphate” in June 2014, constituted more than a terrorist threat; it was an entity exercising de facto state functions, controlling populations and infrastructure, levying taxes, and conducting foreign relations¹⁴⁷. ISIS's military campaign was marked by the commission of gross atrocities and widespread violations of international humanitarian law, including genocide against the Yazidis in Sinjar, mass executions of prisoners of war, sexual slavery, and forced displacement. Its propaganda machine encouraged and claimed credit for numerous attacks beyond the region, such as those in Paris (2015), Brussels (2016), and Istanbul (2016)¹⁴⁸. Facing collapse, Iraq invoked Article 51 of the UN Charter and requested urgent international assistance.

The Iraqi government, overwhelmed by the ISIS offensive and suffering existential threats to its territorial integrity, formally requested international assistance¹⁴⁹. This request was pivotal. It provided the legal basis for invoking the doctrine of collective self-defence, as enshrined in Article 51. The United States, acting upon Iraq's request, initiated airstrikes against ISIS targets in Iraq in August 2014. However, within weeks, the campaign was extended into Syria. On 23 September 2014, the United States submitted a formal letter to the UN Security Council affirming that military action in Syria was a measure taken in collective self-defence of Iraq, emphasizing that the Syrian regime was “unwilling or unable” to confront ISIS safe havens on its territory¹⁵⁰. This legal rationale, relying on the “unwilling or unable” doctrine, marked a controversial

¹⁴⁶ Stephan, D.S. and Sweijts, T. (2017). *The Rise and Fall of ISIS: from Evitability to Inevitability*. [online] *Volatility and Friction in the Age of Disintermediation*, Hague Centre for Strategic Studies, pp.155–172. doi:<https://doi.org/10.2307/resrep12618.10>.

¹⁴⁷ BBC News (2018). Islamic State and the crisis in Iraq and Syria in maps. *BBC News*. [online] 28 Mar. Available at: <https://www.bbc.com/news/world-middle-east-27838034>.

¹⁴⁸ Shamieh, L. and Szenes, Z. (2015) “The Rise of Islamic State of Iraq and Syria (ISIS)”, *AARMS – Academic and Applied Research in Military and Public Management Science*. Budapest, 14(4), pp. 363–378. doi: 10.32565/aarms.2015.4.10.

¹⁴⁹ UN Security Council (2014) *Letter dated 25 June 2014 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General*, UN Doc. S/2014/440.

¹⁵⁰ UN Security Council (2014) *Letter dated 23 September 2014 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General*, UN Doc. S/2014/695.

development in jus ad bellum. Although not codified in treaty law, the doctrine has gained traction in certain sectors of state practice and academic thought. The United States' argument was that the Syrian state's failure to suppress ISIS' use of Syrian territory for attacks into Iraq justified cross-border self-defence without the consent of the territorial state. In the U.S. letter to the Security Council, Ambassador Samantha Power stated:

*“The government of the [Syrian] State where the threat is located is **unwilling or unable** to prevent the use of its territory for such attacks. The Syrian regime has shown that it cannot and will not confront these safe havens effectively itself. Accordingly, the United States has initiated **necessary and proportionate** military actions in Syria in order to eliminate the ongoing ISIL threat to Iraq”*¹⁵¹

Australia, France, the United Kingdom, and Canada adopted similar justifications. Australia, in a letter dated 9 September 2015, followed US rationale and affirmed :

*“Article 51 of the Charter of the United Nations recognizes the inherent right of States to act in individual or collective self-defence [...]. States must be able to act in self-defence when the Government of the State where the threat is located is unwilling or unable to prevent attacks originating from its territory. **The Government of Syria has, by its failure to constrain attacks upon Iraqi territory originating from ISIL bases within Syria, demonstrated that it is unwilling or unable to prevent those attacks.**”*¹⁵²

This formulation closely mirrors the U.S. position and underscores a shared interpretation that the right to collective self-defence extends to the use of force against non-state actors operating from a third state, where that state is deemed incapable or unwilling to suppress the threat. Australia's framing highlights the necessity of action against ISIS in Syria as a means of protecting Iraq, while legally grounding the operation in Article 51 without seeking Syrian consent or Security Council authorization.

¹⁵¹ UN Doc. S/2014/695.

¹⁵² UN Security Council (2015) *Letter dated 9 September 2015 from the Permanent Representative of Australia to the United Nations addressed to the President of the Security Council*, UN Doc. S/2015/693.

France's legal justification for its military operations in Syria evolved significantly over the course of 2015, reflecting a shift from a narrow application of collective self-defence to a broader and more assertive invocation of individual self-defence. In its official letter dated 8 September 2015¹⁵³, France aligned itself with the coalition led by the United States, asserting that ISIS attacks originating in Syria against Iraqi territory justified French military action under Article 51 of the UN Charter. The letter cited Iraq's request for assistance and emphasized the transboundary nature of the threat, and relied heavily on the resolutions already adopted by the Security Council but stopped short of explicitly referencing the Syrian government's inability to act; suggesting legal caution and a strict reliance on collective self-defence without full embrace of the "unwilling or unable" doctrine.

However, this posture transformed rapidly following the 13 November 2015 Paris attacks, in which ISIS operatives carried out coordinated assaults across multiple civilian sites, resulting in 130 deaths and 350 injured¹⁵⁴. The scale, organization, and transnational dimension of the attacks placed them squarely within the threshold of an "armed attack" under Article 51. In response, France declared it was "at war" with ISIS¹⁵⁵, signaling a shift not just legally but politically, as the government began treating the threat as a wartime emergency rather than a matter of domestic policing. This rhetoric effectively placed the country under a quasi-martial law mentality, justifying extraordinary security measures domestically while enabling expanded military action abroad. France's legal justification combined two rationales: collective self-defence in support of Iraq's request for assistance, and individual self-defence against ISIS for attacks directly on French territory¹⁵⁶. Although France's letter to the UN Security Council avoided formally citing the "unwilling or unable" doctrine, its reasoning implicitly relied on the claim that Syria

¹⁵³ UN Security Council (2015) *Identical letters dated 8 September 2015 from the Permanent Representative of France to the United Nations addressed to the Secretary-General and the President of the Security Council*, UN Doc. S/2015/745.

¹⁵⁴ AfVT – Association française des Victimes du Terrorisme. (2025). *FRANCE – Attentats coordonnés à Paris et à Saint-Denis*. [online] Available at: <https://www.afvt.org/france-attentats-coordonnes-a-paris-et-a-saint-denis/>.

¹⁵⁵ Hollande, F. (2015) *Speech to the Congress at Versailles, 16 November 2015*. Available at: <https://www.senat.fr/connaitre-le-senat/lhistoire-du-senat/dossiers-dhistoire/article-18-de-la-constitution/les-messages-du-president-hollande-au-parlement.html>

¹⁵⁶ Tesón, F.R. (2016). *The Case for Armed Intervention against the Islamic State of Iraq and Syria*. *The Independent Review*, 21(2), pp.181–197.

was either unwilling or unable to prevent ISIS's use of its territory as a staging ground for international terrorism. France thus contributed to the evolving state practice that interprets Article 51 to permit self-defence against non-state actors in circumstances where territorial states fail to prevent large-scale cross-border violence¹⁵⁷. This marked an important legal and political endorsement of the broader, more security-driven reinterpretation of self-defence that had been advanced by the United States and United Kingdom.

The United Kingdom first set out its legal basis for military action against ISIL in Syria in a letter to the UN Security Council dated 25 November 2014, invoking the right of collective self-defence under Article 51 of the UN Charter. The letter was submitted in response to Iraq's request for international assistance against ISIL attacks originating from both Iraqi and Syrian territory. It stated:

*"The United Kingdom of Great Britain and Northern Ireland is taking measures in support of the **collective self-defence** of Iraq as part of international efforts led by the United States... These measures are in response to the request by the Government of Iraq for assistance in confronting the attack by the Islamic State in Iraq and the Levant (ISIL)... to protect Iraqi citizens and to enable Iraqi forces to regain control of the borders of Iraq by striking ISIL sites and military strongholds in Syria, as **necessary and proportionate measures**"*¹⁵⁸

This formal articulation situates the UK's intervention squarely within the bounds of collective self-defence, without directly invoking the controversial "unwilling or unable" doctrine. However, by acknowledging ISIL's use of Syrian territory to launch cross-border attacks, and by justifying strikes inside Syria in the absence of Syrian consent, the UK implicitly operated within that logic; without expressly stating it.

¹⁵⁷ Tesón, F.R. (2016)

¹⁵⁸ UN Security Council (2014) *Identical letters dated 25 November 2014 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Secretary-General and the President of the Security Council*, UN Doc. S/2014/851.

However, the UK's position was further elaborated in Prime Minister David Cameron's parliamentary address on 2 December 2015¹⁵⁹. In moving the House of Commons motion to authorize airstrikes, Cameron emphasized that "ISIL poses a direct threat to the United Kingdom"¹⁶⁰ and welcomed UN Security Council Resolution 2249, which called on states to take "all necessary measures" against ISIL in Syria and Iraq¹⁶¹. He stated there was a "clear legal basis to defend the UK and our allies in accordance with the UN Charter,"¹⁶² thereby introducing a secondary rationale grounded in the individual self-defence of the UK. Although the Prime Minister did not use the legal language of "unwilling or unable," his repeated assertions that Syria was failing to prevent ISIL from planning and launching attacks, and that the UK must not "wait... to be attacked," reflect an implicit endorsement of that doctrine.

Cameron's remarks, though political, carry significant legal value. Statements made in Parliament by the head of government, particularly when paired with a formal motion passed by the legislature, form part of a state's practice and may contribute to *opinio juris*. Thus, the UK position can be characterized as deliberately cautious in formal documents but substantively aligned with the evolving practice of self-defence against non-state actors under conditions where host states fail to act. This dual-layered approach, one formal and reserved, one political and assertive; mirrors the UK's historical preference for legality grounded in multilateralism while pragmatically acknowledging emerging threats in a decentralized security environment.

Critically, this cluster of state practice appears to stretch and reconfigure the doctrinal boundaries of Article 51, especially when contrasted with established ICJ jurisprudence. In the *Nicaragua* case, the Court held that armed attacks by non-state actors must be attributable to a state through effective control in order for self-defence to be lawfully invoked under the Charter. This interpretation strictly limited Article 51 to inter-state dynamics and rendered self-defence claims against autonomous non-state

¹⁵⁹ UK Parliament (2015) *House of Commons Hansard debate: 2 December 2015*, vol. 603, cols. 337-427.

¹⁶⁰ UK Parliament, 2015, col. 323

¹⁶¹ UN Security Council (2015) *Resolution 2249 (2015)*, UN Doc. S/RES/2249

¹⁶² UK Parliament, 2015, col. 323

actors legally untenable¹⁶³. However, the legal rationale employed by the United States and its allies in Syria departed from this state-centric orthodoxy, focusing instead on the scale, persistence, and origin of attacks as well as the territorial state's unwillingness or inability to prevent them¹⁶⁴.

This shift signals a broader doctrinal evolution toward an effects-based reading of Article 51, where the gravity and consequences of the threat rather than its formal attribution become the operative criteria. From this perspective, the territorial state's failure to exercise control over violent actors within its borders is treated as functionally equivalent to complicity¹⁶⁵. Such an approach reflects the operational demands of responding to transnational terrorism and asymmetrical conflict where non-state actors possess the capability to inflict significant harm without state sponsorship or direction¹⁶⁶.

The evolution from collective to individual self-defence particularly in the responses of France and the United Kingdom further illustrates this doctrinal transition. These cases reflect a gradual erosion of the rigid binary between internal and external threats and with it a loosening of the attribution requirement. But this transformation also reveals the conceptual strain placed on the foundational criteria of self-defence including imminence, necessity, and proportionality. These criteria were historically designed for symmetrical conventional conflict and are increasingly ill-suited for contemporary security environments where threats are diffuse, anticipatory, and sustained¹⁶⁷.

Consequently, there is a growing need to recalibrate these legal concepts. First, the notion of imminence must be updated to reflect the reality of persistent low-visibility threats posed by non-state actors. Rather than requiring a temporally discrete threat, a more functional test would assess the structural and ongoing nature of the danger¹⁶⁸. Second, the requirement of state attribution may need to give way to a failure-to-prevent

¹⁶³ *Nicaragua v. United States of America* (1986)

¹⁶⁴ Ruys, T. (2013). *'Armed attack' and Article 51 of the UN Charter : evolutions in customary law and practice*. Cambridge: Cambridge University Press.

¹⁶⁵ Trapp, K. (2015). 'Can Non-State Actors Mount an Armed Attack?', in Weller, M. (ed.), *The Oxford Handbook of the Use of Force in International Law*. Oxford University Press, pp. 679–696.

¹⁶⁶ Deeks, A. (2012)

¹⁶⁷ Lehto, M. (2018)

¹⁶⁸ Wood, M. (2016). 'The Law on the Use of Force: Current Challenges', in Daudet, Y. (ed.), *Topical Issues in International Law*. Brill, pp. 97–102

model where the territorial state's capacity and willingness to suppress threats becomes the threshold question¹⁶⁹. Third, the scope of necessity and proportionality must be interpreted with regard to the inherent asymmetry in modern warfare allowing defensive actions that target strategic capabilities rather than immediate attackers alone¹⁷⁰.

Together, these shifts suggest the emergence of a new reading of Article 51. This reading does not abandon the Charter framework but reinterprets it through a security-pragmatic lens where sovereignty is no longer an absolute shield but is contingent on the responsible exercise of territorial control. While such developments remain contested and risk normative fragmentation they also reflect the legal system's effort to adapt to evolving patterns of violence. The challenge for international law going forward will be to formalize these emerging norms through codification judicial clarification or authoritative state practice unless legal uncertainty continues to grow in one of the most sensitive areas of the international order¹⁷¹.

This normative shift is not without significant consequences. Critics argue that the adoption of the “unwilling or unable” doctrine risks undermining the foundational prohibition on the use of force under Article 2(4) of the UN Charter by allowing unilateral interventions without Security Council authorization or host-state consent¹⁷². One of the primary legal concerns lies in the absence of a clearly defined threshold for what constitutes “unwillingness” or “inability,” as well as the lack of any enforcement or verification mechanism. This vagueness allows intervening states to engage in subjective and self-judging determinations, thereby increasing the risk of legal abuse and political opportunism¹⁷³.

Moreover, the broad application of this doctrine in Syria has had tangible consequences for the state's sovereignty, governance capacity, and civilian population.

¹⁶⁹ Dinstein, Y. (2017)

¹⁷⁰ Bethlehem, D. (2012). ‘Principles Relevant to the Scope of a State’s Right of Self-defence Against an Imminent or Actual Armed Attack by Nonstate Actors’, *American Journal of International Law*, 106(4), pp. 769–777

¹⁷¹ International Law Commission (2018). *Draft Conclusions on Identification of Customary International Law*, UN Doc. A/73/10

¹⁷² Corten, O., (2010)

¹⁷³ Deeks, A. (2012)

Repeated airstrikes, incursions, and extraterritorial operations, often conducted without the Syrian government's approval, have weakened institutional control, aggravated economic disintegration, and intensified humanitarian suffering. The erosion of Syria's territorial integrity was not merely legal, but deeply practical, as vast areas of the country became contested zones of indirect occupation or proxy control¹⁷⁴. Even in zones where ISIS was removed, basic services have not been restored, and civilians continue to suffer from water shortages, food insecurity, and lack of medical care¹⁷⁵. These harms are not collateral anomalies but systematic results of a prolonged intervention in a legally grey zone. Politically, the Syrian regime leveraged these interventions to claim victimhood on the international stage, rallying support from allies like Russia and Iran, while simultaneously alienating segments of the domestic population. Economically, infrastructure damage caused by coalition bombings, often targeting ISIS-controlled zones, nonetheless disrupted energy grids, transportation, and agricultural production, exacerbating pre-existing crises¹⁷⁶. From a human security perspective, the intensification of external military campaigns coincided with increased civilian displacement, loss of life, and disruption of public services.

Despite these normative and humanitarian concerns, the coalition's military actions did receive a measure of political endorsement. Notably, UN Security Council Resolution 2249, adopted on 20 November 2015 in response to the Paris attacks, condemned ISIS and called on Member States:

“that have the capacity to do so to take all necessary measures, in compliance with international law [...], in the territory under the control of ISIL also known as Da'esh, in Syria and Iraq, to redouble and coordinate their efforts to prevent and suppress terrorist acts [...],

¹⁷⁴ BBC News (2018). Islamic State and the crisis in Iraq and Syria in maps. *BBC News*

¹⁷⁵ Human Rights Watch (2023). *Syria: Events of 2023*. [online] Human Rights Watch. Available at: <https://www.hrw.org/world-report/2024/country-chapters/syria>.

¹⁷⁶ Dorronsoro, G. (2021). 'Le régime syrien et l'effondrement de l'État', *Critique Internationale*, 91(2)

*to eradicate the safe haven they have established [...] and to prevent and suppress terrorist acts.”*¹⁷⁷

Although Resolution 2249 did not provide explicit authorization under Chapter VII, it was widely interpreted as a political signal of support for the ongoing military operations against ISIS in Syria and Iraq. The resolution’s phrasing, particularly the language of “all necessary measures”, mirrored the vocabulary traditionally used in authorizing force, yet its non-binding status and omission of legal mandate meant that it fell short of conferring legal legitimacy. Thus, the coalition’s reliance on evolving self-defence doctrine remained legally autonomous, but politically reinforced by multilateral consensus, however soft or implicit.

In sum, the legal justifications presented by the United States and its allies for military action in Syria without the host state’s consent reflect both continuity and change in the law of self-defence. These justifications operate within an evolving legal framework that seeks to adapt to the challenges posed by non-state actors while testing the outer limits of the UN Charter’s system of collective security.

3.2.2 Israeli Strikes in Syria: Preemptive and Preventive Self-Defence

In parallel with the U.S.-led coalition’s operations against ISIS in Syria and Iraq, the State of Israel has conducted a sustained and expanding campaign of airstrikes within Syrian territory, primarily targeting assets linked to Iran’s Islamic Revolutionary Guard Corps (IRGC) and the Lebanese Shiite militia Hezbollah¹⁷⁸. Since 2013, and particularly from 2017 onward, these strikes have intensified both in frequency and geographic scope, representing one of the most persistent cases of unilateral extraterritorial use of force in the post–Cold War period. According to estimates by Israeli security officials, Israel has carried out over 400 airstrikes on Iranian-linked targets in Syria between 2017 and

¹⁷⁷ UN Security Council (2015). *Resolution 2249 (2015)*, UN Doc. S/RES/2249, adopted 20 November 2015.

¹⁷⁸ International Crisis Group (2018). *Iran’s Priorities in a Turbulent Middle East*. [online] Crisis Group. Available at: <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iran/184-irans-priorities-turbulent-middle-east>.

2022¹⁷⁹. Unlike the coalition's collective defence posture, Israel's actions are framed under the legal doctrine of anticipatory self-defence, rooted in customary international law and shaped by a national security paradigm focused on pre-emption of existential threats¹⁸⁰.

Israel contends that the Iranian military entrenchment in Syria and Hezbollah's increasing access to precision-guided munitions represent an imminent and unacceptable threat to its national security. Israeli military intelligence has repeatedly asserted that the IRGC, operating through its Quds Force, has sought to build permanent military bases and weapons manufacturing sites in proximity to the Golan Heights, and to establish logistical supply chains for Hezbollah via Syrian territory¹⁸¹. According to the International Institute for Strategic Studies (IISS), Iran has systematically expanded its influence by establishing a contiguous corridor of military and political control stretching from Tehran through Iraq and Syria to Lebanon. This network, supported by the IRGC and aligned militias, has allowed Iran to project power directly to the Mediterranean, enhance Hezbollah's strategic capabilities, and embed itself within fragile state structures, thereby reshaping regional balances of power and challenging Israeli and Western strategic interests. These developments are compounded by Hezbollah's historical engagement with Israel in the 2006 Lebanon War and subsequent cross-border operations, which Israel views as evidence of both capability and intent¹⁸².

The Israeli strikes, often described as part of the "campaign between the wars" (*mabam*) doctrine, are explicitly preventive but argued by Israeli officials to meet the criteria of anticipatory self-defence (namely : necessity, imminence, and proportionality)

¹⁷⁹ Schenker, D. (2025). *Avoiding an Israel-Syria Showdown (Part 1): The Risks of 'Occupation'*. [online] The Washington Institute. Available at: <https://www.washingtoninstitute.org/policy-analysis/avoiding-israel-syria-showdown-part-1-risks-occupation>

¹⁸⁰ Bethlehem, D. (2012) 'Self-defence Against an Imminent or Actual Armed Attack By Nonstate Actors', *American Journal of International Law*, 106(4), pp. 770–777.

¹⁸¹ Azizi, H. and Barnes-Dacey, J. (2024). *Beyond proxies: Iran's Deeper Strategy in Syria and Lebanon*. [online] European Council on Foreign Relations. Available at: <https://ecfr.eu/publication/beyond-proxies-irans-deeper-strategy-in-syria-and-lebanon/>.

¹⁸² International Institute for Strategic Studies (2019). *Iran's Networks of Influence in the Middle East*.

due to the direct and material build-up of hostile infrastructure¹⁸³. Mabam reflects a strategic doctrine developed to weaken enemy capabilities incrementally during periods of no formal war, through continuous, low-intensity strikes designed to delay, disrupt, and degrade adversaries' military build-up without escalating into full-scale conflict. While this approach has enabled Israel to maintain a degree of operational freedom and to shape the regional security environment proactively, it also carries significant risks, including the danger of miscalculation, retaliation, and entrenchment of permanent conflict dynamics¹⁸⁴. While these actions have been criticized by Syria and its allies as violations of sovereignty, Israel maintains that it is acting pre-emptively in the absence of viable diplomatic or collective security alternatives.

Israel's legal justification for its military operations in Syria rests on a nuanced and layered interpretation of anticipatory self-defence under Article 51 of the United Nations Charter. Central to Israel's position is the assertion that the threats posed by Iranian forces and Hezbollah operating within Syrian territory represent a form of imminent armed attack that justifies pre-emptive action. Drawing on the historical Caroline formulation, Israel argues that necessity must be understood not merely in terms of temporal proximity, but as a function of the operational reality posed by hostile infrastructure developments, weapons transfers, and command and control capabilities being progressively established across its border¹⁸⁵. Rather than adhering to a rigid temporal notion of imminence, Israel's legal reasoning adopts what has been termed the "accumulation of events" doctrine, whereby a persistent and organized sequence of hostile preparations cumulatively satisfies the threshold for an armed attack under Article 51¹⁸⁶. This theory enables Israel to conceptualize threats as structurally imminent, rooted in material capability and hostile intent, rather than contingent on a single discrete triggering event.

¹⁸³ Ortal, E. (2024). *The Fly on the Elephant's Back: The Campaign between Wars in Israel's Security Doctrine*. [online] Inss.org.il. Available at: https://www.inss.org.il/strategic_assessment/the-fly-on-the-elephants-back-the-campaign-between-wars-in-israels-security-doctrine/.

¹⁸⁴ Kaduri, E. (2025). *The Campaign between the Wars in Syria: What Was, What Is, and What Lies Ahead*. [online] Inss.org.il. Available at: <https://www.inss.org.il/publication/war-between-the-wars-syria/>

¹⁸⁵ Ruys, T. (2013)

¹⁸⁶ Bethlehem, D. (2012)

In parallel, Israel implicitly invokes the “unwilling or unable” doctrine to justify its actions within Syrian territory. Although it does not explicitly accuse the Syrian government of directing Hezbollah or Iranian operations, Israel consistently frames its strikes as responses to the Syrian regime’s failure to prevent the militarization of its territory by hostile actors¹⁸⁷. This approach reflects a functional sovereignty model, where the legal protection normally afforded to a state’s territorial integrity is conditioned on its capacity to exercise effective control and prevent threats to neighbouring states¹⁸⁸. Israel’s operational narrative thus combines anticipatory self-defence against an imminent threat with an implicit claim that Syria’s loss of effective sovereignty over areas dominated by Iranian proxies deprives it of the right to shield such territory from proportionate defensive actions.

Moreover, Israel situates its actions within the classical requirements of necessity and proportionality, albeit interpreted flexibly to accommodate the asymmetrical and persistent nature of the threat. The necessity of action is framed in light of the absence of viable diplomatic remedies, the covert and mobile nature of Iranian military deployments, and the strategic imperative to disrupt hostile capabilities before they can be operationalized¹⁸⁹. Proportionality, in Israel’s view, is satisfied by the targeting of discrete military objectives (weapons convoys, missile depots, and command infrastructure) rather than engaging in generalized punitive attacks against Syrian sovereignty. The cumulative legal framework articulated by Israel ; combining flexible imminence, unwilling or unable justifications, and functional sovereignty ; reflects an adaptive response to the transformed threat environment of transnational non-state actors operating with the toleration or incapacity of host states.

However, Israel’s legal rationale remains deeply contested within the international legal community. The International Court of Justice, in cases such as Nicaragua (1986) and Oil Platforms (2003), has maintained a restrictive interpretation of Article 51, emphasizing that only an actual armed attack; not the mere possibility or gradual preparation of one; can justify the use of force in self-defence. The Court’s cautious

¹⁸⁷ United Nations Security Council (2018). *Meeting Record*, UN Doc. S/PV.8274.

¹⁸⁸ Nollkaemper, A. (2017) *Responsibility*. Amsterdam Law School Legal Studies Research Paper No. 2017-04; Amsterdam Center for International Law Research Paper No. 2017-03.

¹⁸⁹ Ortal, E. (2024)

approach seeks to preserve the distinction between lawful defensive force and unlawful preventive or anticipatory war. Critics argue that Israel's interpretation, by lowering the threshold for armed attack to a cumulative pattern of hostile preparations, risks eroding the fundamental safeguards of the jus ad bellum system¹⁹⁰. Furthermore, the "unwilling or unable" doctrine, while increasingly invoked in state practice, has not yet crystallized into an accepted rule of customary international law and remains controversial for its potential to justify extraterritorial uses of force absent Security Council authorization¹⁹¹.

Diplomatically, Israel's operations have elicited limited public criticism from Western allies, many of whom implicitly recognize Israel's security concerns regarding Iranian entrenchment in Syria. The United States, in particular, has consistently affirmed Israel's right to defend itself, framing Israeli strikes as legitimate responses to Iranian proxy activities that destabilize the region¹⁹². European Union member states have generally adopted a more cautious stance, acknowledging Israel's security interests while emphasizing the need for respect for Syrian sovereignty and the principles of proportionality under international law¹⁹³. This nuanced support reflects an underlying tension between political sympathy for Israel's threat perception and legal unease regarding the erosion of Article 2(4) safeguards. Conversely, Syria, Iran, and Russia have systematically denounced Israeli airstrikes as unlawful acts of aggression and violations of Syrian sovereignty¹⁹⁴. Syria has submitted numerous complaints to the United Nations Security Council, characterizing Israeli actions as breaches of international peace and security, although these efforts have failed to garner sufficient support for binding condemnation¹⁹⁵. Russia, in particular, has positioned itself as a defender of Syrian sovereignty, condemning Israeli strikes while at times engaging in deconfliction

¹⁹⁰ Trapp, K. (2015)

¹⁹¹ Deeks, A. (2012)

¹⁹² U.S. Department of State (2018). 'State Department Press Briefing on Israeli Defensive Operations', 10 May 2018.

¹⁹³ European Council (2023). *EU position on the situation in the Middle East*. [online] Consilium. Available at: <https://www.consilium.europa.eu/en/policies/eu-position-situation-middle-east/>.

¹⁹⁴ Adamson, L. (2025). *Israel's Actions in Syria and the Outer Limits of Self-Defence*. [online] Lieber Institute West Point. Available at: <https://lieber.westpoint.edu/israels-actions-syria-outer-limits-self-defence/>.

¹⁹⁵ UN Audiovisual Library. (2025). *The situation in the Middle East - Security Council, 9896th meeting*. [online] Available at: <https://media.un.org/avlibrary/en/asset/d336/d3360245>

mechanisms to avoid direct confrontation with Israeli forces¹⁹⁶. Iran, whose assets are often targeted by Israeli operations, frames Israel's actions as evidence of Western double standards and uses them rhetorically to justify its own military presence in Syria¹⁹⁷. The resulting diplomatic landscape underscores the contested normative space within which Israel's actions occur, highlighting the asymmetry between political pragmatism and strict legal doctrine in contemporary responses to cross-border uses of force.

Section 3 : Rethinking theory in light of the practice

3.3.1 What Syria teaches us

The Syrian conflict stands as a paradigmatic example of how contemporary warfare disrupts the foundational assumptions of international law governing the use of force. It reveals a growing discrepancy between the textual structure of the UN Charter and the functional imperatives of state self-preservation in the face of asymmetric, transnational threats. While the Charter system was designed for a state-based international order, Syria exemplifies how the rise of non-state actors, state failure, and blurred lines of attribution place significant stress on the coherence and legitimacy of the *jus ad bellum* framework.

3.3.1.1 The Obsolescence of a Purely State-Centric Interpretation

Central to the Charter-based system is the assumption that threats to peace and security originate primarily from states, and that lawful self-defence may only be invoked following an armed attack attributable to another state.

However, the Syrian case clearly demonstrates the limitations of this model. The main threats in this context (ISIS, Hezbollah, and Iranian proxy militias) have launched sustained, organized, and often cross-border attacks without falling neatly into the category of state actors. These groups operate in ungoverned or semi-governed spaces, often within states that lack the capacity or political will to suppress them. In such

¹⁹⁶ The Ministry of Foreign Affairs of the Russian Federation (2017). *Briefing by Foreign Ministry Spokesperson Maria Zakharova, Moscow, February 22, 2017*. [online] www.mid.ru. Available at: https://www.mid.ru/en/foreign_policy/news/1542860/#4

¹⁹⁷ Government of the Islamic Republic of Iran I (2025). *Iran condemns Israeli attacks on Syria, urges swift action by U.N.* [online] [Irangov.ir](http://irangov.ir). Available at: <https://irangov.ir/detail/459240>

environments, the requirement that an armed attack be attributable to a state becomes legally and operationally untenable¹⁹⁸. This has significant consequences for the law of self-defence. When powerful and persistent threats emanate from territory beyond the reach of an effective sovereign, the traditional framework, predicated on attribution and inter-state conflict, fails to accommodate real-world threats. The result is a legal paradox: states are prohibited from using force to defend themselves against attacks simply because the aggressor is a non-state actor acting from a weak or unwilling host state¹⁹⁹.

3.3.1.2 Doctrinal Adaptation and the “Unwilling or Unable” Standard

To circumvent these constraints, several states involved in Syria have invoked the “unwilling or unable” doctrine. Although not codified in treaty law, it has been increasingly referenced in Article 51 notifications to the UN Security Council and invoked to justify cross-border military operations against non-state actors. It shifts focus from who the attacker is to where the attack originates from and whether the territorial state can realistically prevent it²⁰⁰. While this shift addresses practical security needs, it also introduces considerable legal ambiguity. The doctrine lacks universally accepted criteria to assess unwillingness or inability, making its invocation susceptible to unilateral interpretations. Without institutional oversight or legal thresholds, the doctrine risks becoming a political instrument rather than a legal norm²⁰¹. The consequences are profound. A model built to constrain the unilateral use of force may, through this evolving doctrine, allow states to circumvent traditional safeguards. The Syrian conflict illustrates this danger: military operations by multiple states were carried out absent Security Council authorization and without host state consent, yet were legally rationalized under the unwilling or unable standard. The erosion of consent as a foundational principle of

¹⁹⁸ Wijninga, P., Oosterveld, W.T., Galdiga, J.H., & Marten, P. (2014)

¹⁹⁹ Himes, A. and Kim, B. (2022)

²⁰⁰ Deeks, A. (2012)

²⁰¹ Corten, O., (2010)

international law here becomes not merely an exception but increasingly a pattern of behaviour²⁰².

3.3.1.3 Expanding the Meaning of “Imminence” and the Logic of Pre-emption

Syria also brings into sharp relief the changing understanding of imminence in the context of anticipatory self-defence. The Caroline formula, often cited as customary law, requires threats to be “instant, overwhelming, leaving no choice of means and no moment for deliberation”²⁰³. This standard was intended to restrain preventive warfare by imposing a high bar for anticipatory action.

In practice, however, states have moved toward a more flexible and cumulative conception of imminence, especially when confronting actors like ISIS or Hezbollah. Rather than waiting for a specific and immediate attack, self-defence is now invoked based on patterns of behaviour, intelligence assessments, and perceived operational intent²⁰⁴. This more diffuse understanding of imminence; though perhaps inevitable in asymmetric conflict; poses doctrinal risks. It undermines the clarity and restrictiveness that the Charter framework was designed to ensure, and opens the door to permanent pre-emptive defence, where the threshold for action is continually interpreted in subjective terms²⁰⁵. Such a shift could lead to the normalization of low-intensity, open-ended uses of force, justified not by discrete events but by ongoing threat environments. In Syria, this has enabled a model where airstrikes, targeted killings, and cross-border incursions are maintained over time without a defined triggering attack. The implications are systemic: the requirement of necessity is hollowed out, and the prohibition on the use of force becomes contingent, rather than categorical²⁰⁶.

²⁰² Starski, P. (2015). Right to self-defence, attribution and the non-state actor - Birth of the ‘unable or unwilling’ standard? -. *Heidelberg Journal of International Law, HJIL*, 75(3), pp.455–501.

²⁰³ Webster, D. (1841)

²⁰⁴ Bethlehem, D. (2012)

²⁰⁵ Gill, T.D. (2006). The Temporal Dimension of SelfDefence: Anticipation, Preemption, Prevention and Immediacy. *Journal of Conflict & Security Law*, [online] 11(3), pp.361–369.

²⁰⁶ Gray, C.D. (2018).

3.3.2 Is customary law shifting ?

The interventions in Syria have prompted intense debate over whether customary international law governing the use of force is evolving. States increasingly invoked self-defence against non-state actors operating from non-consenting states, presenting legal rationales that test the boundaries of Article 51 of the UN Charter²⁰⁷. Through the sustained submission of Article 51 letters; particularly by the United States, the United Kingdom, France, and Australia; a consistent pattern of invoking self-defence against transnational threats emerged²⁰⁸. This practice, while not yet universally accepted, potentially reflects the formation of *opinio juris* under Article 31(3)(b) of the Vienna Convention on the Law of Treaties.

However, the shift remains incomplete and highly contested. Major powers such as Russia, China, and numerous Global South states have consistently rejected the “unwilling or unable” rationale, reaffirming the primacy of sovereignty and non-intervention under Article 2(4)²⁰⁹. Moreover, the International Court of Justice has not endorsed any expansion of self-defence beyond state-attributable armed attacks, as reaffirmed in *Nicaragua* and *DRC v. Uganda*. Thus, the Syrian case illustrates fragmented practice: while a Western-centric bloc advocates a functional interpretation of self-defence, persistent objectors maintain the traditional doctrine, impeding the crystallization of a new customary rule.

Beyond fragmentation, Syria reveals a more complex and novel phenomenon: the hybridization of legal justifications for the use of force. Increasingly, self-defence is no longer invoked in its classic, narrow form; namely, a response to a discrete, attributable armed attack. Instead, many Article 51 communications blend references to self-defence with humanitarian concerns, regional stability imperatives, and the incapacity of the host state²¹⁰. This hybridization transforms self-defence into a multi-functional legal

²⁰⁷ Ruys, T. (2010)

²⁰⁸ United Nations Security Council (2014–2020). *Article 51 Letters Database*.

²⁰⁹ Schmitt, M. (2015)

²¹⁰ Deeks, A. (2012)

argument: a vessel capable of incorporating rationales traditionally associated with humanitarian intervention, preventive action, or responses to state failure²¹¹.

This development significantly stretches the doctrinal boundaries of Article 51. The result is a layered form of justification where states rely on the protective legitimacy of self-defence, while simultaneously appealing to broader security and humanitarian considerations. Such hybrid legal reasoning, while politically expedient, risks diluting the precision and restrictive character of self-defence. It enables the circumvention of the Charter's strictures, allowing states to bundle multiple justifications under the rubric of self-defence without clear thresholds or procedural safeguards²¹². Ultimately, this undermines the normative clarity of the prohibition on the use of force and threatens to replace legal consensus with competing political narratives.

Critically, this evolution risks substituting subjective necessity assessments for collective authorization, eroding the multilateral architecture designed to regulate the resort to force²¹³. The expansion of self-defence to cover loosely defined threats; based on functional incapacity, unwillingness, or cumulative imminence; leads to normative uncertainty. Instead of a coherent, universally accepted new rule, Syria exposes a legal environment characterized by political improvisation, doctrinal ambiguity, and systemic instability.

If customary law is indeed shifting, Syria demonstrates that the process is deeply contingent: shaped not by genuine consensus, but by asymmetrical power, strategic necessity, and institutional paralysis. The evolution is not the product of universal acceptance through state practice and *opinio juris*, but rather the result of fragmented, interest-driven adaptations by a subset of powerful states. The persistent divisions between supporters and objectors highlight that no stable, universally accepted norm has crystallized. Instead, the law of self-defence risks becoming a patchwork of competing practices, where legal justifications are increasingly molded by geopolitical asymmetry and *ad hoc* necessity rather than grounded in shared principles. Unless these developments are checked by renewed multilateral engagement and judicial clarification,

²¹¹ Gray, C.D. (2018)

²¹² Bethlehem, D. (2012)

²¹³ Trapp, K.N. (2015)

the future of the use of force regime may tilt further toward permissiveness, weakening the very foundation upon which post-1945 international order was built.

3.3.3 Drawing Legal Boundaries: The Challenge of Doctrinal Expansion and Systemic Dysfunction

The expanding interpretations of self-defence evidenced in the Syrian context prompt a fundamental question for international legal theory: at what point does the evolution of doctrine become distortion, and when does adaptation give way to erosion? What Syria has exposed is not merely the difficulty of applying Article 51 in novel security contexts, but the systemic inability of the international legal order, and the institutions that safeguard it, to respond coherently to new patterns of violence, actor types, and operational realities²¹⁴. The permissive interpretations adopted by some states may be defensible as pragmatic, but they threaten to dissolve the normative clarity that gives the Charter system its legal identity and restraining power²¹⁵.

At the heart of this challenge is the collapse of thresholds. In theory, the right to self-defence is conditioned by the occurrence of an armed attack, the requirement of necessity, and the test of proportionality. These conditions are meant to operate as brakes on unilateral action. But what has emerged in Syria is a gradual weakening of each of these filters²¹⁶. Armed attacks are no longer defined by discrete events attributable to a state but by ongoing threat environments. Necessity is no longer tethered to an imminent attack but to broader anticipatory concerns. Proportionality is often assessed not by reference to the particular incident, but by the accumulated strategic posture of the adversary²¹⁷. These shifts are not just doctrinally significant; they are structurally transformative²¹⁸. They turn a defensive exception into an operational doctrine of forward security. In such a model, the right to use force is not exceptional but becomes continuous, invoked as a form of pre-emptive regulation of transnational threats. As Syria has shown,

²¹⁴ Ruys, T. (2010)

²¹⁵ Gray, C. (2018)

²¹⁶ Bethlehem, D. (2012)

²¹⁷ Deeks, A. (2012)

²¹⁸ Trapp, K.N. (2015)

this logic permits long-term, low-intensity operations in foreign territory without the need for repeated triggering events. It alters the nature of self-defence from an episodic legal response into a sustained policy tool, fundamentally altering the balance between restraint and discretion²¹⁹.

Equally problematic is the rise of hybrid legal justifications, a layered framework in which self-defence is fused with humanitarian rationale, the invocation of state failure, and regional stability arguments. This model, increasingly used by states acting in or around Syria, allows actors to straddle multiple justifications simultaneously, thereby obfuscating the legal basis for action²²⁰. While this reflects operational complexity, it creates doctrinal incoherence. Legal categories that were designed to be distinct; self-defence, humanitarian intervention, collective security; are merged in practice, with no clear legal test to govern their combination. As a result, legal review becomes difficult, normative oversight eroded, and accountability diffuse²²¹.

Beneath these developments lies a deeper and more troubling reality: the malfunctioning of the international legal system itself. The UN Charter was built on two key institutional assumptions : that the Security Council would act in the face of threats to peace, and that the ICJ would clarify contested interpretations of law²²². Syria has demonstrated the inadequacy of both mechanisms. The Security Council has been paralyzed by political division, particularly the repeated use of veto powers by permanent members to shield client states or block collective responses. As a result, the system of collective authorization under Chapter VII has atrophied, leaving states to rely increasingly on unilateral interpretations of legality²²³. The International Court of Justice, meanwhile, has been silent on the critical questions raised by Syria: Can a state lawfully use force against a non-state actor operating from a non-consenting state? What is the

²¹⁹ Schmitt, M. (2015)

²²⁰ Gill, T.D. (2015).

²²¹ Tladi, D. (2022). *Extraterritorial Use of Force against Non-State Actors*. The Pocket Books of The Hague Academy of International Law, vol. 50. Leiden: Brill Nijhoff.

²²² Murphy, S.D. (2002)

²²³ Chesterman, S. (2001). *Just war or just peace? : humanitarian intervention and international law*. Oxford ; New York: Oxford University Press.

legal threshold for state inability or unwillingness? Does the repetition of state practice suffice to change the meaning of Article 51? In the absence of judicial clarification, customary law is being shaped by political practice rather than legal adjudication, leading to fragmentation, inconsistent application, and opportunistic interpretation.

This institutional vacuum enables what might be termed asymmetric legal evolution: the powerful innovate, the weak object, and the international system lacks the capacity to arbitrate between them. This is not evolution through principled reinterpretation; it is adaptive drift, whereby the constraints of law give way to the expediency of policy. Syria represents not only the test case for this drift but also the space in which it has been normalized²²⁴. In such a landscape, the legal line between defence and aggression becomes increasingly difficult to discern. The Charter's binary between lawful self-defence and unlawful force is replaced by a spectrum of legal plausibility, modulated by state capacity, strategic interests, and diplomatic cover²²⁵.

What emerges, then, is a pressing need to redraw legal boundaries with renewed clarity. The principle of self-defence must be reaffirmed as a legal exception, not a policy instrument. This requires clear legal thresholds: what counts as an armed attack by a non-state actor, what constitutes unwillingness or inability, and when imminence can be reasonably claimed²²⁶. These concepts must not remain in the interpretive discretion of states; they must be codified, reviewed, and constrained. Equally urgent is the restoration of institutional credibility. The Security Council must not be allowed to recede into dysfunction without replacement. Mechanisms for temporary authorization of defensive action, pending multilateral review, might be imagined. Likewise, advisory opinions from the ICJ; perhaps initiated through General Assembly mechanisms, could help clarify the limits of evolving doctrines²²⁷. Absent such measures, the legal system will continue to cede interpretive control to power, rather than principle.

²²⁴ Weller, M. (2017). *The Oxford handbook of the use of force in international law*. Oxford: Oxford University Press.

²²⁵ Trapp, K.N. (2015)

²²⁶ Gray, C. (2018)

²²⁷ Gowlland-Debbas, V. (1990). *Collective Responses to Illegal Acts in International Law*. Martinus Nijhoff Publishers.

The Syrian conflict is not merely a crisis of sovereignty, self-defence, or counterterrorism; it is a crisis of legal order. It reveals the slow unraveling of the Charter framework from within, not through open rejection, but through gradual reinterpretation, layered justifications, and institutional silence. The line must be redrawn not merely to protect the sovereignty of states but to preserve the legitimacy of international law itself²²⁸. If the law cannot constrain the use of force; if its rules are endlessly malleable to meet strategic ends; then it risks becoming what it was designed to prevent: a mask for might, rather than a shield for right.

Conclusion :

The Syrian conflict provides a critical lens through which the contemporary challenges and transformations of the law of self-defence can be assessed. The practices of various states intervening in Syria, including those invoking self-defence against non-state actors operating transnationally, illustrate the profound tension between operational necessity and the structural safeguards embedded in Article 51 of the United Nations Charter. These interventions have demonstrated a clear trend toward expanding the concept of self-defence beyond its classical confines, particularly through the invocation of the “unwilling or unable” doctrine, the broadening of the imminence requirement, and the acceptance of cumulative threat assessments as sufficient grounds for the use of force.

Yet this expansion has not occurred in a structured or consensual manner. Rather, it has emerged from a fragmented, asymmetrical process in which powerful states have adapted legal interpretations to fit strategic needs, while objections from other states and the absence of authoritative judicial guidance have left the international legal framework increasingly ambiguous. The erosion of clear thresholds for armed attack, necessity, and proportionality has weakened the discipline that traditionally constrained unilateral uses of force. In this new paradigm, self-defence risks becoming an ongoing justification for preventive security policies rather than a legally exceptional response to discrete acts of aggression.

²²⁸ Klabbers, J. (2009).

The Syrian context further reveals the rise of hybrid justifications for the use of force, blending self-defence with humanitarian concerns, regional security arguments, and assertions of state failure. This doctrinal fusion, while reflecting the complex realities of modern conflict, undermines the clarity and predictability that are essential for the maintenance of the Charter system. Legal categories that were once distinct have been merged without clear tests to govern their application, making legal oversight difficult and weakening the mechanisms of accountability.

The institutional dimension is equally troubling. The paralysis of the Security Council and the silence of the International Court of Justice have deprived the international system of the mechanisms designed to channel the evolution of the use of force within principled limits. In their absence, the interpretation of self-defence has drifted towards a model where power and expediency shape the law, rather than principled adjudication or multilateral consensus.

In light of these findings, Syria does not merely illustrate the challenges of applying Article 51 to non-state actor threats; it also demonstrates how easily the legal legitimacy of self-defence can be eroded when institutional and doctrinal safeguards are weakened. The practices observed suggest that the law of self-defence is at a crossroads. On the one hand, there is a pragmatic impulse to adapt the law to new forms of violence that transcend traditional inter-state conflict. On the other hand, there is a serious risk that without clearer boundaries and renewed institutional oversight, the very concept of self-defence will lose its legal specificity and constraint, becoming a flexible instrument for unilateral policy objectives.

This analysis leads to a critical conclusion regarding the overarching question of this thesis: rethinking self-defence against non-state actors under Article 51 is both necessary and fraught with danger. The Syrian case study shows that while legal adaptation is unavoidable in the face of new threats, the legitimacy of self-defence depends on maintaining strict conditions for its invocation, reinforcing the procedural and substantive safeguards originally intended by the Charter. Without these safeguards, the expansion of self-defence threatens not only the integrity of Article 51 but the stability and credibility of the entire international legal order regulating the use of force.

Conclusion

The legal framework enshrined in the United Nations Charter, and particularly within the carefully drafted lines of Article 51, was born from the ashes of total war and nourished by the hope of a more stable and restrained international order. It reflected the conviction that force should be the last resort, that sovereignty must be sacrosanct, and that aggression could only be lawfully met with self-defence when its source was clear, its scale grave, and its perpetrator a state. In this vision, international law was both shield and compass, restraining violence through rules while guiding states toward peaceful resolution. But law, like the world it seeks to regulate, cannot remain frozen in time.

This thesis has explored how the once-settled contours of self-defence have begun to blur in the face of a rapidly evolving security landscape. In the age of global terror networks, crumbling state structures, and hybrid threats that cross borders without permission or warning, the notion of an “armed attack” has grown more difficult to define. Non-state actors, operating from failed or fragile states, have challenged the central premise upon which Article 51 was built: that aggression begins with states and is directed against states. The legal categories have not kept pace with the operational realities. As a result, the application of Article 51 today no longer sits neatly within the boundaries of its original drafting. It is not merely that the law is being stretched; it is that the actors, threats, and strategic imperatives it must confront have changed beyond recognition. The international community now faces the difficult question of whether to remain restrained to a strict textualism that risks irrelevance, or to embrace a more pragmatic, yet principled, evolution of legal meaning.

The rise of doctrines such as “unwilling or unable” reveals a deeper transformation underway. States have begun to assert that their right to self-defence does not end at another state's border when that state has lost either the capacity or the will to control hostile armed groups. This shift is not merely rhetorical. It has been operationalized, justified before the United Nations Security Council, and invoked in real-time conflicts such as Syria and Iraq. It has reshaped the meaning of necessity, redefined proportionality, and called into question whether attribution to a state remains a necessary precondition for lawful self-defence. While the underlying objective remains the same;

protecting populations from deadly violence; the legal pathway to that protection has become far more complex.

What emerges is a paradox. On the one hand, these legal reinterpretations may serve to preserve the spirit of the Charter in an age it could not have predicted. On the other, they threaten to unravel the very prohibitions that were meant to constrain unilateral uses of force. There is a fine line between evolution and erosion, and the stakes for crossing it are extraordinarily high. If self-defence becomes too elastic, too open to subjective interpretation, it risks transforming from a shield into a sword; from an exception grounded in law into a justification grounded in politics. The Syrian conflict exemplifies this legal and ethical dilemma. It has become the proving ground for new interpretations of Article 51, where arguments of collective and individual self-defence have been asserted against non-state actors, in a territory marked by sovereignty collapse. Yet even in this exceptional context, the danger of precedent looms large. Once legal norms are expanded in one context, they seldom contract in the next. The erosion of state consent as a barrier to intervention, if left unchecked, could destabilize the foundational principles of the international order. Sovereignty, after all, is not just a legal fiction; it is a practical necessity for peace in a plural world.

Ultimately, the international legal community must address a pressing question: Should Article 51 be interpreted to reflect the realities of modern conflict, especially when threats come from non-state actors in unstable states? Can the principles of necessity, proportionality, and last resort still apply in these cases? Or does a strict reading of the Charter risk making the law ineffective against today's security threats?

This is not a question that permits simplistic answers, nor one that can be deferred. The central conclusion of this thesis is that inaction is not a sustainable legal position. For international law to maintain its authority, it must be capable of addressing contemporary forms of violence, including those posed by non-state actors. This requires an interpretative approach that is cautious, consistent, and firmly rooted in existing legal norms. The right of self-defence may be subject to evolution, but that evolution must be accompanied by a parallel commitment to preserving the coherence and integrity of the legal framework within which it operates.

The evolving application of Article 51, as seen through theoretical debates and crystallized in practice by the interventions in Syria, does not merely signal a legal grey zone. It exposes a deeper truth: that the international legal system is experiencing a moment of doctrinal fragmentation. States increasingly act on divergent interpretations of core principles, while international courts remain hesitant to provide clear guidance. The result is a growing disconnect between legal ideals and the actual security strategies adopted by states confronted with non-state violence. Yet this fragmentation will not necessarily lead to collapse. If carefully managed, it may instead serve as the catalyst for legal maturation. International law has always developed through a dialogue between text, practice, and principle. The reinterpretation of Article 51 must now follow that same path; not through unilateral action, but through multilateral deliberation, judicial clarification, and doctrinal refinement. The task ahead is not to rewrite the Charter, but to reaffirm its relevance by grounding modern interpretations in coherent legal reasoning and consistent state practice.

This thesis has argued that such reinterpretation is both possible and necessary. It can be done by relying on established tools such as Article 31 of the Vienna Convention on the Law of Treaties, which permits interpretation in light of the treaty's object and purpose, and by reference to subsequent practice and *opinio juris*. Moreover, legal mechanisms such as the "unwilling or unable" test, when applied with genuine procedural diligence and evidentiary transparency, can provide a pragmatic response to threats from non-state actors without tearing at the fabric of sovereignty or opening the door to abuse. But for this path to hold normative legitimacy, it must remain disciplined. It must not become an escape hatch for unchecked power. The principles of necessity and proportionality must be rigorously upheld, not rhetorically invoked. The burden of proof for invoking self-defence against a non-state actor must remain high, supported by clear evidence and framed within a transparent legal rationale. Host state consent cannot be bypassed casually. Sovereignty is not a mere technicality; it is a core value of the international system and a practical guarantee of global stability. Legal evolution, if it is to serve justice and peace, must move cautiously and deliberately; not through declarations made in letters to the Security Council alone, but through a broader, collective reengagement with the foundational principles of the Charter.

In the absence of such collective stewardship, the risk is clear. Without clearer rules, legal ambiguity becomes a strategic asset. Powerful states will continue to stretch legal justifications to fit political convenience, while weaker states bear the brunt of external action carried out in the name of international security. In this scenario, the legitimacy of international law itself begins to corrode, and the international community is left not with a system of rules, but a battlefield of rationalizations. The case study of Syria reveals what is at stake. It offers not only a glimpse into the operational dilemmas of modern conflict but also a mirror to our normative disarray. Syria is more than a battlefield; it is a legal crucible, one in which the future shape of the *jus ad bellum* is being forged. If the lessons of Syria are to be taken seriously, they must move us beyond improvisation and toward institutional reflection. It is time for a renewed conversation between practice and principle, one that recognizes both the limits of formalism and the dangers of unchecked flexibility.

What remains, then, is a decisive recognition: the right of self-defence under Article 51 can, and must, extend to non-state actors, provided that its exercise is subject to strict legal constraints. The Charter's silence on non-state threats does not preclude interpretation; it demands it. A coherent and disciplined application of the principles of necessity, proportionality, and immediacy; together with a procedurally rigorous standard such as the "unwilling or unable" test; offers a lawful path forward that does not abandon the Charter's foundational logic. To insist on rigid attribution in the face of sustained, transnational violence by actors operating beyond state control is to render the law indifferent to the very threats it was meant to address. The answer does not lie in abandoning the structure of the Charter but in interpreting it with consistency and legal integrity in light of the realities of contemporary conflict. Article 51 does not require rewriting. It requires application that is precise, principled, and firmly grounded in the established constraints of international law. Only through such disciplined interpretation can the law on the use of force remain credible, legitimate, and capable of responding to the demands of the twenty-first century.

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