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**REVISITING ARTICLE 51 IN THE AGE OF ASYMMETRIC THREATS:
RETHINKING SELF-DEFENCE UNDER INTERNATIONAL LAW
AGAINST NON-STATE ACTORS**

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Abstract

Article 51 of the United Nations Charter enshrines the inherent right of states to self-defence in response to an armed attack. However, its traditional framework, designed for inter-state warfare, has been increasingly challenged by the rise of asymmetric threats posed by non-state actors such as terrorist groups and insurgent militias. This paper critically examines how the application of Article 51 has evolved—sometimes dangerously—beyond its original scope, especially when invoked to justify cross-border military actions against non-state actors operating from the territory of other sovereign states. Through a detailed analysis of state practices and case studies—including Israel’s operations in Gaza and Lebanon, Turkey’s repeated incursions into Syria and Iraq, and the U.S.-led coalition strikes in Syria—this research highlights the legal, ethical, and humanitarian consequences of expanding the doctrine of self-defence. It explores contentious developments such as the “unwilling or unable” doctrine, the lack of a defined threshold for “armed attack,” and the growing reliance on anticipatory self-defence, all of which contribute to a troubling erosion of core principles like sovereignty, necessity, and proportionality. The paper identifies key gaps within Article 51 that have enabled states to justify unilateral force without proper accountability or Security Council oversight. It concludes with a set of recommendations aimed at clarifying the legal thresholds, enhancing procedural safeguards, and integrating customary international principles to ensure the lawful and restrained use of force. Ultimately, this study argues that Article 51 must evolve to address the realities of modern conflict without

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undermining the foundational norms of international law it was designed to uphold.

Introduction:

In an age where wars are being waged not only by armies but by networks, militias and ideology, the traditional right of self-defence is being stretched to their breaking point. After the global massacre of what was the devastating World War II, the world leaders advocated for lasting world peace and the United Nations was born through the establishment of UN Charter. Since then, many years has passed and this international organization has tackled many pressing issues over the years. Global tension has risen exponentially ever since the arms race kicked off between the first world countries. As a result, clashes and armed conflicts also has risen since the second world war. There has been a total of 285 distinct armed conflicts since World War II.² The formation of armed conflicts has also changed drastically. The foundational framework of international law governing the use of force, according to Article 2(4) and the exception of it, Article 51 of the United Nations Charter, was crafted in an era when armed conflict was largely conceived as a matter between sovereign states. However, the emergence and proliferation of non-state armed groups—ranging from transnational terrorist organizations to insurgent militias—have significantly disrupted this traditional paradigm. In recent decades, countries have increasingly applied military force across borders in the name of self-defence against non-state actors operating from the territory of other sovereign states, often without the latter's consent. Moreover, there has been a total disregard to laws of armed conflict as significant civilian casualties have been a common by product of these armed conflicts in the name of self-defence. This shift has generated intense legal controversy. While some argue that customary international law has evolved to accommodate such practices, others maintain that these actions violate core principles of state sovereignty, non-intervention, and collective security. The invocation of doctrines such as "unwilling or unable" to justify these uses of force further complicates the legal landscape, raising fundamental questions about the boundaries of self-defence and the risk of unilateralism under the facade of security.

This paper examines whether and to what extent the use of force is permitted under international law in self-defence against non-state actors. It critically analyses the emerging state practices, while applying qualitative research methodology with relevant jurisprudence,

² 'Major Military Operations Since World War II | Infoplease' <<https://www.infoplease.com/history/us/major-military-operations-since-world-war-ii>> accessed 27 July 2025.

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and doctrinal developments, with a view to determining whether current interpretations of Article 51 represent a necessary evolution or a dangerous expansion. While exploring such dimensions, this paper will dive into contemporary instances such as Israel's war with Hezbollah and Hamas, Turkey's operations against Kurdish groups in Syria and Iraq; finally the armed attack by the coalition of US, UK and France against ISIS on Syrian territory. By exploring the legal, ethical, and practical dimensions of this issue, the study aims to clarify whether international law is keeping pace with the realities of modern conflict—or merely being stretched to accommodate political convenience.

1. Traditional Understanding of Article 51:

Since the inception of human society, war has been seen as an inevitable part of international politics. However, Schrijver has stated that, “unregulated warfare deteriorated into cruelties, as the First and Second World Wars proved to be too cruel and too bloody for soldiers and indiscriminate for civilians.”³ As a response, the world leaders came together and formulated the UN Charter in 1945, in which Article 51 stated,

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.⁴

Through this provision, the UN has recognized an inherent right of individuals and state actors to defend in the event of such an attack, which marks the sole explicit exception to the principle prohibiting use of force under Article 2(4) of the UN Charter.⁵ Traditionally, an “armed attack” referred to an attack or use of force orchestrated by a

³ Shakespear Hamauswa, ‘A Critique of United States’ Application of Article 51 of the United Nations Charter in Iraq and Afghanistan’ 219.

⁴ United Nations, ‘United Nations Charter (Full Text)’ (*United Nations*) <<https://www.un.org/en/about-us/un-charter/full-text>> accessed 27 July 2025.

⁵ Jan Arno Hessbruegge, *Human Rights and Personal Self-Defense in International Law* (Oxford University Press 2017) 2 <<https://academic.oup.com/book/25556>> accessed 27 July 2025.

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state against another state.⁶ But there are distinctions on the term “use of force” as well. The ICJ in the Nicaragua case, distinguished between “the most grave forms of the use of force (those constituting an armed attack) from other less grave forms,” requiring a certain “scale and effect” to trigger Article 51.⁷ Apart from these aspects, certain customary international principles have always had their place in Article 51, although not explicitly stated. These are the principles of necessity and proportionality. Working as complimentary to Article 51, states have always maintained these principles while applying Article 51 to ensure lawful exercise of self-defence. A landmark example can be found in the *Caroline incident*. The then US Secretary of State, Webster, was responding to a British claim that it had a legal right to conduct an attack within American waters against an American Ship called the Caroline, because it contained armed men who intended to support the Canadian Rebellion of 1837.⁸ In response Webster argued that, “to admit that claim Britain must show a necessity of self-defence, instant, overwhelming leaving no choice of means and no moment for deliberation.”⁹ This exercise of necessity is later reflected and upheld in another dispute called the 1956 Suez Crisis, where Derek Bowett stated customary international law grants the use of armed force in situations of ‘necessity’.¹⁰ But since then, the practice of this provision has gone through significant evolution over the years.

2. Expansion Beyond Article 51 and Rise of the Non-state Actors:

Ever since the Caroline incident, the scope of the meaning of Article 51 has gone through some rigorous expansion. Just like the Suez Crisis of 1956, there are other instances where state members have stretched the meaning of Article 51 to new limits in order to gain political advantage over rival countries. For example, during the cold war era, the USSR and the USA have disregarded the principles of international law in many instances while the USSR focused on spreading Soviet influence, and the USA resisted

⁶ Mary Ellen O’Connell, Christian J Tams and Dire Tladi, *Self-Defence against Non-State Actors* (1st edn, Cambridge University Press 2019) 55
<<https://www.cambridge.org/core/product/identifier/9781108120173/type/book>> accessed 27 July 2025.

⁷ Andrew Clapham, ‘The Use of Force after the UN Charter’ in Andrew Clapham, *War* (1st edn, Oxford University Press 2021) 125 <<https://academic.oup.com/book/57867/chapter/471842578>> accessed 27 July 2025.

⁸ Hamauswa (n 2) 223.

⁹ *ibid*

¹⁰ O’Connell, Tams and Tladi (n 5) 214.

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communist expansion.¹¹ In another instance, the US invoked Article 51 when they attacked Libya and Iraq after accusing them of trying to kill US nationals despite the targets having official status. In 1986, the USA conducted air strikes in Tripoli and justified it as self-defence in response to past terrorist attacks by Libyans against US nationals, as well as to deter future terrorist action.¹² Again in 1993, the USA tried to justify its missile attack at the Iraqi intelligence headquarters located in Baghdad, which was a response to an assassination attempt on the former US President Bush, carried out in Kuwait two months before.¹³ A rather controversial interpretation of Article 51 came from the United Kingdom, when they tried to reclaim the Falklands islands under the mentioned provision. The UK applied a rather unique interpretation of Article 51 where they found that the intention behind Article 51 was to allow the use of force “in the heat of the moment”.¹⁴ These were just states trying to justify their actions to gain advantage in international power politics, but a different shift came altogether in 2001, after the 9/11 attack in the USA. It is when the first time in the definition of “armed attack” terrorist attack got included.¹⁵ Subsequently, the UN Security Council responded through resolution 1368 and 1373 which respectively affirmed the right of the member states to respond to terrorist attacks and forbade funding/aiding of terrorist groups.¹⁶ This was one of the first instances where a non-state actor came into the ambit of the scope of Article 51. A global war on terror kickstarted and as a result the US invaded two countries back-to-back, Afghanistan and Iraq. The invasion of Afghanistan was deemed as self-defence and war against terror which established a very broad interpretation of Article 51.¹⁷ In the case of Iraq, the justification of the invasion was mainly that Iraq was a threat to the national interest of the US and as a result the US

¹¹ Hamauswa (n 2) 222.

¹² ‘A Critical Study of Legitimization of Preemptive Self-Defense as a Counter-Terrorism Measure Under International Law – WMO’ (16 November 2023) <<https://worldmediation.org/a-critical-study-of-legitimization-of-preemptive-self-defense-as-a-counter-terrorism-measure-under-international-law/>> accessed 28 July 2025.

¹³ ibid

¹⁴ Mulwa Mwende Valentine, ‘Re-Assessing the Right to Self Defence in International Law: Revisiting Article 51 of the Charter of the United Nations’ 100.

¹⁵ Hamauswa (n 2) 223.

¹⁶ ‘A Critical Study of Legitimization of Preemptive Self-Defense as a Counter-Terrorism Measure Under International Law – WMO’ (15 April 2020) <<https://worldmediation.org/a-critical-study-of-legitimization-of-preemptive-self-defense-as-a-counter-terrorism-measure-under-international-law/>> accessed 28 July 2025.

¹⁷ Valentine (n 13) 204.

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invoked Article 51.¹⁸ Since then, both the US and the UK has tried to establish through various means that military force against non-state aggressors like the Al-Qaeda is permissible under Article 51.¹⁹ The US has since then developed the "unwilling or unable" doctrine as a justification for unilateral intervention, which basically elaborates that self-defence can be invoked when a host state is considered to be "reluctant or incapable" to deal with the non-state actors who are conducting armed attacks from their territory.²⁰ Although this principle has been endorsed by prominent figures in global politics like the US, countries like Mexico and Brazil has rejected this principle for its vagueness and for the fear of being misused in a broader context.²¹ However, in modern times we can see the increasing flexibility of Article 51, like the Turkey's incursion on Syria in 2019 invoking Article 51 and citing "imminent terrorist threat"²²; or, the 2022 attack on Ukraine by Russia where Russia pursued their right to "collective self-defence" for eastern Ukrainian regions²³. All of the more recent incidents are heavily debated and it has increasingly come into focus that the interpretation of Article 51 might have been stretched too far by some countries in order to justify their actions.

3. Violation of State Sovereignty Using Article 51:

There have been instances where countries that have been aggrieved by terror attacks often in response has orchestrated an attack so devastating that it has violated the sovereignty of the host states. The most recent incidents include Israel's destructive streak on Palestine and Lebanon ever since 1982, Turkey's operations against Kurdish groups in Syria/Iraq and the US, UK and France coalition striking on Syria without Syrian consent in 2018. These are the most notable instances in recent history where states have resort to armed aggression under Article 51 but without the consent of the receiving state. A complete analyzation of these incidents will portray a detailed picture as to how modern-day states have stretched the meaning and operation of Article

¹⁸ Hamauswa (n 2) 230.

¹⁹ Oona A Hathaway, 'How the Expansion of "Self-Defense" Has Undermined Constraints on the Use of Force' (*Just Security*, 18 September 2023) <<https://www.justsecurity.org/88346/the-expansion-of-self-defense/>> accessed 28 July 2025.

²⁰ Carina Gouvêa, 'Unilateral Humanitarian Interventions and the Legitimate Use of Force: Article 51 of the United Nations Charter and North American Interpretations' [2020] SSRN Electronic Journal 7 <<https://www.ssrn.com/abstract=3679241>> accessed 28 July 2025.

²¹ Clapham (n 6) 79.

²² Hathaway (n 18).

²³ *ibid.*

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51. Also, a comprehensive portrayal of the response of international community is essential to understand as to how other countries view these actions as.

I. Israel's Aggression Against Hezbollah and Hamas:

The conflict between Israel and Hezbollah is the culmination of previous altercation between Israel and the Palestine Liberation Organization (PLO), which dates back to 1960s.²⁴ Hezbollah came to rise in the mid-1980s and slowly rose into power in 1992 when they officially entered into politics, winning eight seats in Lebanon's 128 seat national assembly.²⁵ Between 1993 and 1996 there have been multiple back and forth of attacks between Hezbollah and Israel, most notably including "Operation Accountability" by the Israeli army in 1993²⁶ and "Operation Grapes of Wrath" which displaced thousands of civilians towards Beirut and it was a desperate attempt by Israel to pressure the Lebanese government to disarm Hezbollah.²⁷ During this gross attempt, the Israeli pilots carried out 600 air raids by using fixed-wing aircrafts and helicopters, and artillery units fired approximately 25,000 shells into Lebanese territory which resulted in the death of some 154 Lebanese civilians and another 351 injured.²⁸ There was no official record of Israeli civilian deaths. As Israel's blood-soaked attempt towards occupation continued, Hezbollah conducted another military operation in 2006 into Israeli territory which killed eight Israeli soldiers and abducted two.²⁹ Israel used this opportunity to constitute it as an armed attack and kick started the July war in the southern part of Lebanon which racked up a death toll of about 1100 in Lebanon and 43 in Israel.³⁰ Although Israel maintained that their war was declared against Hezbollah and not against Lebanon, as a result, Israel's conduct within Lebanese territory and the

²⁴ 'Fatah Launches Its First Terrorist Strike on Israel | EBSCO Research Starters' <<https://www.ebsco.com/research-starters/history/fatah-launches-its-first-terrorist-strike-israel>> accessed 28 July 2025.

²⁵ Al Jazeera Staff, 'The History of Conflict between Hezbollah and Israel' (*Al Jazeera*) <<https://www.aljazeera.com/news/2024/9/18/hezbollah-and-israel-a-timeline-of-conflict>> accessed 28 July 2025.

²⁶ 'Israel vs. Hezbollah in Lebanon: A Timeline – DW – 10/01/2024' (*dw.com*) <<https://www.dw.com/en/israel-vs-hezbollah-in-lebanon-a-timeline/a-69880525>> accessed 28 July 2025.

²⁷ *ibid.*

²⁸ 'Operation Grapes of Wrath' [1997] Human Rights Watch <<https://www.hrw.org/report/1997/09/01/operation-grapes-wrath/civilian-victims>> accessed 28 July 2025.

²⁹ Noam Lubell, *Extraterritorial Use of Force Against Non-State Actors* (Oxford University Press, Incorporated 2010) 36.

³⁰ 'Lebanon/Israel: Fears for Safety of Civilians Grow as Devastating Death Toll in Lebanon Continues to Rise' (*Amnesty International*, 25 September 2024) <<https://www.amnesty.org/en/latest/news/2024/09/lebanon-israel-fears-for-safety-of-civilians-grow-as-devastating-death-toll-in-lebanon-continues-to-rise/>> accessed 28 July 2025.

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unrepairable damages caused by them in the Lebanese territory has long since been a matter of debate in the international community as many countries have criticized the attacks as “excessive”³¹ and “disproportionate”³². Since then, Israel’s actions have only escalated through the years and today their actions in Gaza have become a huge matter of debate in the international community. Israel’s main argument to justify their actions in Gaza is the Hamas led attack in Israeli territory on October 7 2023 which killed 1200 people and more than 250 people were taken hostages.³³ But since then, Israel’s response to the attacks of October 7th has been described as “utterly disproportionate” and “well exceeded the limits of any interpretation of Article 51 of the UN Charter”.³⁴ In a shocking study by Michael Spagat, a researcher of war and armed conflict at the University of London, revealed that military operations by the Israeli army has caused 75,200 violent deaths between October 7, 2023 and January 5, 2005.³⁵ This response by Israel breaks any notion of proportionality that has ever existed in international legal study and it goes to show to what extent Article 51 can be grossly misused. The actions of Israel set a dangerous precedent in a global context which can enable future governments to conduct senseless armed aggression against non-state actors with a total disregard to other country’s sovereignty.

II. Turkish Aggression Against Kurdish Groups in Syria and Iraq:

Since 1990s, Turkey has repeatedly invoked their right to apply force against Kurdish Workers Party(PKK) bases located in northern Iraq.³⁶ The tussle between Turkey and the PKK dates back to the ‘80s. The Kurdish people always pursued their own unique identity among the Turkish people, but the Turkish government has always pursued

³¹ Larissa J Herik and Nico Schrijver, *Counter-Terrorism Strategies in a Fragmented International Legal Order* (Cambridge University Press 2013) 414.

³² Chris O’Meara, *Necessity and Proportionality and the Right of Self-Defence in International Law* (1st edn, Oxford University Press Oxford 2021) 114 <<https://academic.oup.com/book/39468>> accessed 28 July 2025.

³³ ‘What Is Hamas and Why Is It Fighting with Israel in Gaza?’ (7 October 2023) <<https://www.bbc.com/news/world-middle-east-67039975>> accessed 28 July 2025.

³⁴ Russell Buchan, ‘Self-Defence as an Exception to the Principle of Non-Use of Force: Debunking the Myth’ (*EJIL: Talk!*, 29 November 2023) <<https://www.ejiltalk.org/self-defence-as-an-exception-to-the-principle-of-non-use-of-force-debunking-the-myth/>> accessed 28 July 2025.

³⁵ Michael Spagat and others, ‘Violent and Nonviolent Death Tolls for the Gaza War: New Primary Evidence’ (medRxiv, 23 June 2025) <<https://www.medrxiv.org/content/10.1101/2025.06.19.25329797v3>> accessed 28 July 2025.

³⁶ Ibid (n 30) 395

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policies which aimed to assimilate the Kurdish population to Turkish identity.³⁷ This conflict regarding political identity eventually resulted in an armed insurgency by the PKK in 1984 in Turkey.³⁸ The PKK were declared as a foreign terrorist organization by Turkey in 1997.³⁹ In 1999, following the arrest of Abdullah Ocalan, one of the founders of PKK, a ceasefire was called⁴⁰, which eventually lasted till 2004 after continuous Turkish aggression.⁴¹ The last nail on the coffin for Turkey was when the PKK killed 13 Turkish soldiers in an ambush⁴², which later led Turkey to carry out “Operation Sun” in 2008 within the territory of northern Iraq.⁴³ The Turkish military deployed thousands of ground troops supported by heavy artillery and aircrafts which resulted in the death of 240 PKK militants.⁴⁴ But even though Turkey actively invaded the borders of Iraq to tackle non-state actors, a different phenomenon can be seen here. The international response was largely acceptable of the incident because the Northern Iraqi authorities adopted a passive attitude.⁴⁵ Later on Turkey conducted multiple military missions both in Iraq and Syria. Most notably missions like Operations Olive Branch (2018) and Peace Spring (2019). In its letter to the Security Council while justifying Operation Olive Branch, Turkey used the “threat of terrorism from Syria targeting our borders” as an excuse and invoked Article 51 of the UN Charter.⁴⁶ Interestingly enough here Turkey resorted to a more pre-emptive form of action based on Article 51, which is already disputed because the wording in Article 51 states that there must be an armed attack, which was missing in Turkey’s letter. On the other hand, Operation Peace Spring has

³⁷ ‘Conflict Between Turkey and Armed Kurdish Groups | Global Conflict Tracker’ <<https://www.cfr.org/global-conflict-tracker/conflict/conflict-between-turkey-and-armed-kurdish-groups>> accessed 28 July 2025.

³⁸ ‘Turkey (Türkiye), the PKK, and U.S. Involvement: Chronology’ <<https://www.congress.gov/crs-product/IF11380>> accessed 29 July 2025.

³⁹ David Phillips and Kelly Berkell, ‘The Case for Delisting the PKK as a Foreign Terrorist Organization’ [2023] Lawfare <<https://www.lawfaremedia.org/article/case-delisting-pkk-foreign-terrorist-organization>> accessed 29 July 2025.

⁴⁰ ‘Turkey (Türkiye), the PKK, and U.S. Involvement: Chronology’ (n 37).

⁴¹ ‘Kurdish Rebels to End Turkey Truce’ (*Al Jazeera*) <<https://www.aljazeera.com/news/2004/5/28/kurdish-rebels-to-end-turkey-truce>> accessed 29 July 2025.

⁴² ‘13 Turkish Soldiers Killed near Iraq Border’ *ABC News* (8 October 2007) <<https://www.abc.net.au/news/2007-10-08/13-turkish-soldiers-killed-near-iraq-border/692326>> accessed 29 July 2025.

⁴³ Tom Ruys, ‘Quo Vadit Jus Ad Bellum?: A Legal Analysis of Turkey’s Military Operations Against the Pkk in Northern Iraq’ [2008] *Melbourne Journal of International Law* <<https://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/MelbJIL/2008/12.html#fn22>> accessed 29 July 2025.

⁴⁴ *ibid.*

⁴⁵ ‘Counter-Terrorism Strategies in a Fragmented International Legal Order’ (n 30) 404.

⁴⁶ ‘S/2018/53’ (*Security Council Report*) <<https://www.securitycouncilreport.org/un-documents/document/s201853.php>> accessed 29 July 2025.

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backfired on Turkey considering the purpose it initially had. Turkey initiated these operations as an armed response to the militant threat that non state actors like the PKK and YPG poses. But since the inception of operation peace spring nearly 300,000 people were forcibly displaced from their places.⁴⁷The Security Council hascondemned Turkey ever since, for escalating problems like explosive contamination, humanitarian crisis in an already dire crisis.⁴⁸Certainly this large number of displacements has posed a major threat of a new refugee crisis, especially when Turkey is already hosting a large number of Syrian refugees themselves. Therefore, we can see a very unique phenomena as to how unnecessary armed aggression can create problems not only for the victims of the aggression, but for the aggressors as well. What started at first as calculated military operations against non-state actors, slowly evolved in continued military aggression while destabilizing multiple territorial sovereignty. As a result, the European Union⁴⁹ has been urging the Turkey for a more peaceful approach. But despite international pressure, Turkey has been continuing armed violence against the PKK and YPG till this day. Very recently in March 2025, Abdullah Ocalan, the founder of PKK, called for a ceasefire which many anticipated as a major step towards ending the 40-year conflict with the Turkish state.⁵⁰ But despite this positive approach, the Turkish government has continued their protracted armed violence against Kurdish soldiers for the “survival and national security” of their country.⁵¹ One of the main objectives of Article 51 was to enable the right of self-defence so that international peace and security are restored as soon as possible. But this senseless violence and justification through the cracks of Article 51 has been creating humanitarian crisis in the Syrian region.

⁴⁷ amar, ‘Turkish Military Operation East Euphrates Kills More than 70 Civilians so Far and Forces Nearly 300 Thousand People to Displace from Their Areas - The Syrian Observatory For Human Rights’ (16 October 2019)<<https://www.syriahr.com/en/144078/>> accessed 29 July 2025.

⁴⁸ ‘Turkey’s Military Operation Has Displaced Thousands of Civilians, Worsened Syria’s Dire Humanitarian Crisis, Top Official Warns Security Council | Meetings Coverage and Press Releases’ <<https://press.un.org/en/2019/sc13994.doc.htm>> accessed 29 July 2025.

⁴⁹ ‘Turkey’s Military Operation in Syria and Its Impact on Relations with the EU | Think Tank | European Parliament’ <[https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA\(2019\)642284](https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2019)642284)> accessed 29 July 2025.

⁵⁰ ‘PKK Declares Ceasefire in 40-Year Conflict with Turkiye’ (*Al Jazeera*) <<https://www.aljazeera.com/news/2025/3/1/pkk-declares-ceasefire-in-40-year-conflict-with-turkiye-kurdish-media>> accessed 30 July 2025.

⁵¹ ‘Turkey Continues Operations on PKK in Iraq, Syria despite Ocalan Call’ *Reuters* (6 March 2025) <<https://www.reuters.com/world/middle-east/turkey-continues-strikes-pkk-iraq-syria-despite-ocalan-call-2025-03-06/>> accessed 30 July 2025.

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III. US Led Coalition Strikes on Syria:

In September, 2014 a U.S. led global coalition was created to tackle the rise of the global threat which was ISIS.⁵² Countries like UK, Canada, Australia, France joined with USA and cited their right to self-defence according to Article 51 of the UN Charter.⁵³ Since then, this coalition has been conducting countless air strikes and ground missions in Syria. Some has termed it as one of the attempts of the global war on terror, but the then US President, Barack Obama, has maintained since the beginning that it was a pre-emptive self defence because ISIS were posing a national security threat against the United States and dangers posed to “US personnel and facilities, including the USEmbassy in Baghdad.”⁵⁴ But the main point of dilemma comes in the form of the lack of an authorization from the security council. The US led coalition force has attacked the ISIS in Iraq as well, but Iraq gave their full expressive consent and requested the coalition to conduct military operations to deal with ISIS since they posed a major threat to their national security.⁵⁵ That was not the case with Syria. There was never any expressive consent taken from the Syrian government to conduct military operations within their territory. In fact, the US has gone out of its way to specify that it had not obtain the consent of Assad or did not coordinate with his government in any sort of way.⁵⁶ Rather, the US invoked the “unable or unwilling” principle to justify their action by stating that Syria was the safe haven of ISIS and “[t]he Syrian regime has shown that it cannot and will not confront these safe havens effectively itself.”⁵⁷ This unable or unwilling test is still a debateable matter in the legal arena and other states have rejected this justification by the US in this case. But a greater matter of concern has arose since then. Even though the US led coalition was met with widespread condonation, even the Security Council adopted resolution no. 2170 where they voiced their implied support

⁵² Ashley Fantz, ‘Who’s Doing What in the Coalition Battle against ISIS’ (CNN, 9 October 2014) <<https://www.cnn.com/2014/10/09/world/meast/isis-coalition-nations>> accessed 30 July 2025.

⁵³ Raphael Van Steenberghe, ‘From Passive Consent to Self-Defence after the Syrian Protest against the US-Led Coalition’ (EJIL: Talk!, 23 October 2015) <<https://www.ejiltalk.org/13758-2/>> accessed 30 July 2025.

⁵⁴ Olivia Gonzalez, ‘The Pen and the Sword: Legal Justifications for the United States’ Engagement against the Islamic State of Iraq and Syria (ISIS)’ (2015) 39 Fordham international law journal 149 <<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2406&context=ilj>> accessed 30 July 2025.

⁵⁵ ‘Non-International Armed Conflicts in Iraq | Rulac’ <<https://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-iraq>> accessed 30 July 2025.

⁵⁶ Monica Hakimi, Defensive Force against Non-State Actors: The State of Play, 91 INT’L L. STUD. SER. US NAVAL WAR COL. 1 (2015) 27.

⁵⁷ United States (ed), *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 23) <<https://digitallibrary.un.org/record/779957>> accessed 30 July 2025.

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and urged other countries to take a stand against ISIS⁵⁸, there was a visible vacuum of legal justification in support of the attacks in Syria. A lot of states had their strategic reasonings to support this attack, but they did not offer any legal justification for that operation.⁵⁹ Without any proper legal basis, the US led coalition conducted 34,502 strikes between 2014-2019 killing 1300 civilians “unintentionally”.⁶⁰ In another report, the number of civilians killed by the coalition attacks is slightly higher hitting 1454, but there is an estimation civilian death up to more than 13,000.⁶¹ In 2017, between March 19 and May 10, the Human Rights Watch published a report with a statistic that informed about 145 civilian deaths including 38 women and 58 children due to multiple air strikes in Taqba town.⁶² Amnesty International examined 11 coalition attacks which appeared to have caused the death of 300 civilians during the two years of strikes which was intended for ISIS.⁶³ Since then, Amnesty International has urged USA multiple times to provide them a complete report about the damages that were caused by the coalition attacks, but the US never responded with neither an apology nor an executive order nor a commitment of compensation, showing a total disregard to the destructions caused by the unlawful coalition attacks.⁶⁴ This is another instance after Turkey, when a state or states have invoked Article 51 to corner a non-state actor in order to bring international peace, but instead paid a heavy toll with human lives and inhuman struggles. Even though Article 51 was invoked, but there is a definite legal vacuum which is unfulfilled, because primarily the coalition led attacks were pre-emptory in nature and the countries that joined in was never a victim of a direct armed aggression construed by the non-state actor in question. There was no expressive consent by the host state in the case of Syria, moreover, principle of proportionality and precautionary measures were totally disregarded before the attacks were conducted. Which resulted in

⁵⁸ UN. Security Council (69th year: 2014) (ed), *Resolution 2170 (2014)* (UN 15) 4 <<https://digitallibrary.un.org/record/777420>> accessed 30 July 2025.

⁵⁹ Hakimi (n 54) 30.

⁶⁰ ‘IS Fight: US-Led Coalition Says It Killed 1,300 Civilians in Syria and Iraq’ (31 May 2019) <<https://www.bbc.com/news/world-middle-east-48473979>> accessed 30 July 2025.

⁶¹ ‘U.S.-Led Coalition in Iraq & Syria’ <<https://airwars.org/conflict/coalition-in-iraq-and-syria/>> accessed 30 July 2025.

⁶² Ole Solvang, ‘All Feasible Precautions?’ [2017] Human Rights Watch <<https://www.hrw.org/report/2017/09/25/all-feasible-precautions/civilian-casualties-anti-isis-coalition-airstrikes-syria>> accessed 30 July 2025.

⁶³ ‘USA must come clean about civilian deaths caused by Coalition air strikes in Syria’ (*Amnesty International*) <<https://www.amnesty.nl/actueel/usa-must-come-clean-about-civilian-deaths-caused-by-coalition-air-strikes-in-syria>> accessed 30 July 2025.

⁶⁴ *ibid.*

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heavy civilian casualties including both women and children. Although there has been widespread of international support in favour of these operations, it really sets a dangerous precedent in motion. As the current global landscape is going through rapid shifts, military coalitions and attacks like these without any justification will increase which will result in more unnecessary casualties. But the worst part is that there will be no mechanism that will hold these coalitions accountable and sooner or later it will become a practice fulfilling the requirements of customary international law. Therefore, there is a definite gap within the black letters of Article 51 which over the time has aged and it has caused states to act without any consequences which resulted in heavy casualties of human lives. It needs some addressing now more than ever, otherwise the law that was made to ensure protect international peace is the very thing that will destroy international peace in the first place.

4. Identifying the Gaps Within Article 51:

As it is already apparent, there are some glaring inadequacies within Article 51 which has enabled states to take unilateral actions against non-state actors in the name of self-defence without any accountability. Especially when these inadequacies fail to bridge any gap between a situation and the law itself, states generally resort to customary international law and state practices, even state recognitions, which often do not bring out lawful outcomes and is subjected to different interpretations. For example, the military operations by the coalition against ISIS under the justification of Article 51 have received positive reception among international community, but it has no proper legal basis and unchecked unilateral power has led this coalition to impose heavy toll on casualty of Syrian citizens.

I. A Dated Definition of "Armed Attack"

The term “armed attack” included in Article 51 was meant as a state vs. state affair where one state is the victim of an armed aggression by another state. But over the years, the definition of armed attack has evolved where now a non-state actor poses a threat to a state. The ICJ has differentiated between an armed attack and other forms of force which indicates that indeed any amount of use of force do not automatically constitute an armed attack under article 51 but rather it depends on factual circumstances and the

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gravity of the force that has been used.⁶⁵ But still this term remains vague and a lot of times, states do not consider the amount of gravity of the force that has been used against them. For example, the displacement of thousands of Syrian people is caused because of the armed aggression conducted by the Turkish military against the PKK. Although there has been instances where the PKK has operated multiple military operations against the state of Turkey, still Turkey did not consider the factual circumstances and the gravity of the force that has been used which eventually resulted in a huge refugee and humanitarian crisis.

II. Scale and Gravity

Countries like the United States have always rejected the notion of “threshold of attack” which is needed to invoke self-defence. According to the US, any illegal use of force is an armed attack that triggers the right of self-defence under article 51.⁶⁶ But this does not provide a proper justification as we know all states are not the same. Any act that amounts to a minor incident to a first world country, it can be overwhelming for countries that are smaller in comparison. Moreover, some countries like the US, UK and France are very advanced when it comes to military technologies, but other countries are not on the same level. US, UK and France might have the domestic and economic means to conduct advanced military operations whenever there is a terrorist threat, other states might not have the means and methods to resort to such options. Some countries may also consider their domestic political situation and ignore such military aggressions which other countries cannot let go. So, there are a lot of moving pieces when it comes to determining whether an attack can be considered as an illegal use of force or not. But article 51 lacks the defining of such thresholds. It is important that at least a general notion of “Necessity” is defined when threshold is concerned. This lack of necessity has turned a US led armed coalition into the casualties of 13000 people. It is hard to justify the killings just because the US thought the ISIS was a threat to their embassy in Baghdad. A crying need for the definition of scale and gravity coupled with necessity exists when it comes to defining the threshold of illegal use of force which will trigger self-defence under article 51.

⁶⁵ Nick Van Der Steenhoven, ‘Conduct and Subsequent Practice by States in the Application of the Requirement to Report under UN Charter Article 51’ (2019) 6 Journal on the Use of Force and International Law 242, 263.

⁶⁶ ‘Counter-Terrorism Strategies in a Fragmented International Legal Order’ (n 30) 340.

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III. Source of Attack (State vs. Non-State Actors)

In this current day and age, Article 51 has come under scrutiny much more for non-state actors rather than states. It was already a matter of debate regarding the attribution of states when a non-state actor has used illegal use of force against another state. Such can be seen in the Nicaragua case. But after the incident of 9/11, activities of non-state actors became more of a matter of concern to which even the ICJ has no clear and concrete answer. As a result, the first world countries (US and UK) have always maintained that military force against non-state aggressors are permissible under Article 51.⁶⁷ The US also has implemented controversial principles like the “unwilling or unable” test that is too broad and multiple countries have denied the validity of this test. Mainly, the powerful countries have always maintained a disregard to the consent of the states on which the non-state actors are residing. Mere assumption on a state’s unwillingness of dealing with a terrorist threat is an alarming demonstration of unchecked unilateral power which is not being monitored by Article 51. Countries like US, Turkey, Russia, France have already used this test to justify their actions multiple times, to a point where it is slowly garnering state practice which is one of the requirements of a customary international law. If a principle like “unwilling or unable” test becomes a customary international law then the whole purpose of Article 2(4) of the UN Charter will be defeated. In fact, the mode of accountability is absent to a point where the states who applies armed aggression against non-state actors and invoke right of self-defence under article 51 offers little to no justification for acting on the territory of another state.⁶⁸ These actions disguised as “humanitarian interventions” is violating the principle of non-intervention and has become a matter of concern for other states that others might interfere in their internal affairs much easily now.

IV. Temporal Elements (Imminence, Anticipatory, and Preventive Self-defence)

Anticipatory self defence is another matter where Article 51 has left unaddressed and as a result it has been a matter of controversy for a long time. The dispute that has left opinions divided is that there is an inherent right that article 51 offers which is a pre-

⁶⁷ Hathaway (n 18).

⁶⁸ Lauren Sukin and Allen S Weiner, ‘War and Words: The International Use of Force in the United Nations Charter Era’ (Social Science Research Network, 7 June 2021) 26 <<https://papers.ssrn.com/abstract=3862024>> accessed 30 July 2025.

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existing customary law right to anticipatory self-defence for imminent threats.⁶⁹ Some have stated that it is “impractical” to await an attack before defence is permitted.⁷⁰ Other interpretation of the “inherent” portion of article 51 has focused on whether the threat is “imminent” in nature or not. If the threat is already impending over the defending state and where there is concrete evidence of not only threats but of an actual attack being mounted, then an armed attack maybe said to have begun to take place even if it has not left the frontier.⁷¹ On the contrary, others have cited the Caroline formula and stated that it does not broaden the scope of right of self-defence in Article 51, because the customary right of self-defence was replaced by article 51 itself and prevails over it as “*lex specialis*”.⁷² This school of thought has also pointed out the fact that they denied the pre-existing customary law and accept the 1945 revolution in favour of collective action in order to maintain international peace and security which can be threatened by the abuse of anticipatory self-defence since it lacks the possibility of testing the reality of its need when there is no attack itself that has taken place.⁷³ The latter concern has turned into reality as we have seen from the case studies that we have made that the justification of anticipatory self-defence by the US while attacking Syria to take down ISIS, heavy casualties occurred and later, despite Amnesty International’s constant urging the US has refused to show any kind of report of the coalition of attacks that it led. This behaviour of US goes on to show why the anticipatory self-defence, which is considered by many an “inherent” right of states, can endanger international peace and security.

V. *Role of the Security Council and Reporting Requirements*

The security council’s position regarding incidents like the Turkish aggression on northern Iraq, or the Israeli demolition of Gaza and Lebanon, or the US led coalition attack on Syrian territory has been dormant to say the least. The security council never questioned the legitimacy of the attacks, neither they questioned regarding the heavy civilian casualties, nor they held countries accountable for conducting attacks without the consent of the host state or the authorization from the security council itself. Moreover, the security council urged the members of UN to join the fight against ISIS

⁶⁹ O’Connell, Tams and Tladi (n 5) 44.

⁷⁰ ‘Counter-Terrorism Strategies in a Fragmented International Legal Order’ (n 30) 357.

⁷¹ Clapham (n 6) 133.

⁷² V Upeniece, ‘Conditions for the Lawful Exercise of the Right of Self-Defence in International Law’ (2018) 40 SHS Web of Conferences 01008, 4.

⁷³ Ibid (n 69)

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and later adopted UNSC resolution 2249 which deemed the ISIS as a “global threat to peace and security”, implying an invisible support to the activities of the coalition offering no legal basis.⁷⁴ As an international organization dedicated towards protecting international peace and security, the UNSC certainly has more responsibility than what they have been doing. The requirement of the UNSC report that was included in article 51 to take actions that it deems fit, but there are no codified rules regarding what should states report or how they should report it or when they should report it. There is no immediacy of reporting to the UNSC. Whereas for the UNSC to assert its supervening authority, it needs to be informed in a timely manner before it is too late for them to do anything. Although it might not seem necessary but these reports work as the accountability mechanism which has been lacking. Moreover, the reports that are submitted by states that are pre-emptive in nature, they lack substantial and factual description of the measures that will be taken and the possible implications and none of these reports are followed by a report on the measures ex post facto.⁷⁵ As a provision that is an exception to one of the cardinal rules of the UN Charter, it should contain procedural provisions that act as a guide for states to hold themselves accountable for actions they have taken as measures of self-defence and for the UNSC to operate as an organization which is sworn to protect international peace.

VI. *Relationship with Customary International Law and Other Concepts*

Article 51 does not include important principles of customary international law like the principle of necessity and principle of proportionality. These are core principles that governs state actors during a situation of armed conflict. The ICJ confirmed in its 1996 advisory opinion on the Nuclear Weapons Case about a specific rule where proportionate and necessary measures are the way to go regarding self-defence.⁷⁶ Article 51 talks about armed aggression or armed conflict, thus it is necessary for this provision to contain that state aggressors must align their military objective distinctly with the aggressors that wronged them and not against innocent civilian. This provision also lacks the necessity of attacking state or non-state actors and maintain the proportionality of attacks that are

⁷⁴ ‘Security Council “Unequivocally” Condemns ISIL Terrorist Attacks, Unanimously Adopting Text That Determines Extremist Group Poses “Unprecedented” Threat | Meetings Coverage and Press Releases’ <<https://press.un.org/en/2015/sc12132.doc.htm>> accessed 30 July 2025.

⁷⁵ Steenhoven (n 64) 262.

⁷⁶ Jean Allain, ‘The True Challenge to the United Nations System of the Use of Force: The Failures of Kosovo and Iraq and the Emergence of the African Union’ 243.

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being conducted. Israel has been invoking Article 51 since the beginning of its conflict with Hezbollah and Hamas. But they have committed flagrant violations of principle of distinction, necessity and proportionality; which they are continuing to do so till this day. Regardless of the presence of Hamas and Hezbollah in a territory they are bombing it out of existence, unnecessary taking countless civilian lives including women and children. Not only Israel, but the US led coalition also set the same dangerous precedent with incidents like when they directly conducted air strikes in a market filled with civilians in Taqba town killing dozens of civilians. No wonder that countries could not legally justify these coalition led attacks despite expressing their positive support.

5. Future Prospect of Self-Defence through Article 51:

The future of the right of self-defence through article 51 depends on whether the course of events will steer it through the evolutionary view or the erosion view. So far it has been adapting to the erosion view where the law has become so outdated that it is being subjected to abuse and it has been undermining sovereignty. As a result, one of the main purposes of Article 51 which was to ensure international peace and stability is being hampered. Article 51 must evolve and adapt to the asymmetrical nature of threats that has been arising lately. In order to do that certain changes must come:

- a) A proper definition of armed attack must be introduced where threat of non-state actors is also included.
- b) The threshold of an armed aggression must be specified as a standard for countries to refer to whenever there is a claim of self-defence.
- c) If the non-state actors are operating from the territory of a third state, consent(not of an implied form) of the territorial state must be taken before the commencement of any kind of military operations.
- d) Principles like the “unwilling or unable” test must be condemned and no state can conduct unilateral military operations based on assumptions.
- e) Pre-emptive or anticipatory self defence must go through the formal recognition of the security council beforehand.
- f) Every state must submit a proper report before conducting any armed aggression for the approval of the security council. Especially if it’s a pre-emptive measure of self-defence.

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- g) In the case of pre-emptive measures, ex post report of the self-defence must be submitted by the member state with total transparency regarding the damages that was caused during the course of the mission to ensure it maintained the principle of necessity and proportionality.
- h) A format of report with necessary information and exact timeline of submission of said report must be included in Article 51.
- i) Member states who do not follow up their self-defence measure with a proper report must be held accountable in the security council.
- j) Member states who do not follow up with the measures described in their report must be held accountable.
- k) Imminent threats must be dealt with utmost urgency by the security council. A rapid timeline must be specified to avoid undue delay in a situation of emergency.
- l) Customary international principles like the principle of proportionality and necessity must be included within Article 51.
- m) Member states who do not maintain customary international principles that are included in Article 51 and cause heavy casualties or cause other humanitarian crisis, must compensate the territorial state upon which it conducted the military mission.
- n) In the case of interpretation of Article 51, the security council will consider the advisory opinion of the ICJ as the final binding provision, rather than resorting to interpretation by member states.

These are some recommendations which can be implemented within the framework of Article 51 to ensure that it is not being subjected to abuse or to gain undue political advantage against any state. The most important aspect of these changes is that it will prevent creating dangerous precedent and safeguard the interests of less powerful countries. Changes like these will evolve the outdated Article 51 which is now just a provision in the books of international law into an institution itself which will govern the use of self-defence against any illegal use of force and at the same time act as a mechanism that ensures accountability of modern states.

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6. Conclusion:

As states increasingly invoke self-defence to justify cross-border military aggression towards non-state actors, the danger grows that this exception is slowly swallowing the rule itself. The evolution of warfare in the 21st century, especially with the rise of transnational non-state actors posing asymmetrical threats, has exposed vacuums in the legal architecture of the United Nations Charter—particularly within Article 51. Originally meant for state vs. state conflicts, Article 51 has become increasingly strained as states invoke the right to self-defence in response to threats posed by terrorist organizations and armed groups operating across borders. From Israel's disproportionate response to Hamas and Hezbollah, to Turkey's prolonged military operations against Kurdish factions, and the U.S.-led coalition's interventions in Syria—each case study reveals how the boundaries of lawful self-defence have been blurred, often to the detriment of civilian populations and the principle of state sovereignty. The repeated invocation of controversial doctrines such as the "unwilling or unable" test, coupled with the growing reliance on anticipatory and pre-emptive self-defence without Security Council oversight, illustrates a dangerous trend of unilateralism that risks undermining the collective security framework envisioned by the UN Charter. The absence of clear thresholds for what constitutes an "armed attack," the vague treatment of temporal elements like imminence, and the lack of enforceable reporting requirements have created a legal vacuum, one that powerful states increasingly exploit to justify aggressive military campaigns. Unless urgently reformed, Article 51 risks becoming a tool for unchecked military intervention rather than a safeguard of international peace. To preserve the integrity of international law and to prevent the normalization of disproportionate and unilateral uses of force, it is essential that the international community clarify and modernize the provisions of Article 51 by incorporating binding definitions, procedural requirements, and principles of necessity and proportionality, which will not only restore balance to the self-defence regime but also protect weaker states from arbitrary aggression under the guise of legality. Ultimately, if Article 51 is to remain relevant in an era of asymmetric threats, it must evolve—through legal reform, institutional accountability, and principled state practice—into a mechanism that enables legitimate self-defence while upholding the core values of international peace, state sovereignty, and human dignity.

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