



GOING BEYOND THE LIMITS OF TRADITIONAL RIGHT OF SELF DEFENCE: PREEMPTIVE USE OF MILITARY FORCE IN INTERNATIONAL LAW

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Abstract

States are prohibited in their relations from the threat or exercise of armed force against each other which is introduced as one of the fundamental principles of the international legal system. Yet, this general principle is subject to some certain exceptions. Exercise of the right of traditional self-defense and the controversial right of anticipatory self-defense which goes one step further, have to be used in terms of some clear cut criteria. Recently, states' conflicts not only have negative repercussions on the sides of the conflict, but also on the other countries of the whole region since states are very largely interdependent on each other in a globalized world system. This was revealed in the case of Russia's invasion of Ukraine in 2022 when global food security was seriously threatened by the blockade of Ukraine's agricultural exports such as wheat and corns. Yet, threat of environmental hazards due military raids remain to be an issue of concern considering soil, air and water pollution. This study aims to clarify the limits of the use of preemptive force and anticipatory self-defense right through analyzing the theoretical framework and by focusing on some selected states' practices.

Keywords: International legal system, traditional self-defense, conflict, environmental hazards, states' practices

Introduction

International law is a consent-based system relying on the principle of sovereign equality of states. States are sovereign and independent entities before the eyes of the law no matter how developed some of them might be in terms of their advanced economic, political and military capacities. Yet, this is closely associated with another significant principle of international law which is formulated under Article 2(4) of the United Nations (UN) Charter. States are prohibited in their relations from the threat or exercise of armed force against each other which is established as one of the fundamental principles of the international legal system. Prohibition of resort to force for solving international disputes was initially laid down under Kellogg-Briand Pact by the signatory state parties in 1928.

However, this general prohibition is subject to two exceptions, namely the situations in which states are allowed to use armed force against one another. These exceptions legitimize using force and the relevant state conduct becomes lawful in that sense. One of these exceptional circumstances is the situation where a state can rely on the "right of self-defense" as formulated under Article 51 of the UN Charter. Reliance on Article 51 by any attacked state is also subject to the fulfillment

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of some certain criteria such as the existence of an armed attack (an act of aggression), the necessity to invoke force as a last resort and respecting the principle of proportionality.

Exercise of the right of self-defense becomes a more complicated matter to legitimize when it is invoked by some states even before the occurrence of an armed attack which is often referred to as “preemptive force” or “anticipatory self-defense” in the literature. It is noteworthy that the doctrine of “just war” is very old stemming from the Roman legal system and still preserves its significance though. The concepts of preemptive force and anticipatory self-defense under international law are still controversial concepts in terms of their full meaning and accordingly might be used differently by some scholars (O’Connell, 2002) in the literature. However, in this study, we participate to the approach taken by scholars such as Sofaer (2003) that “preemptive force” is also referred to as “anticipatory self defence” and that these concepts might be invoked interchangeably.

International system has been witnessing several conflicts and crisis situations within the last decade. Russia’s invasion of Ukraine in 2022 and the ongoing war have once more revealed the need for revisiting this crucial doctrine. The so-called right of self-defense invoked by Russia and the war that had started not only had affected the parties of the war, but the countries of the region as a whole. It had serious repercussions on Ukraine’s agricultural sector which was targeted by Russia as well as global food security. Ukraine has been one of the significant producers of agricultural products such as wheat and corn among Russia. The ongoing war had blockaded Ukraine from fully exporting its grains to the rest of the world. Although some temporary measures were taken to solve the food crisis, still Ukraine was not able to return to the same or similar maritime export levels it had possessed before the Russian aggression for its agricultural products.

Hence, in times when conflicts between states do not only affect the parties but the whole region and might even amount to a food crisis and jeopardize food security due to the high interdependence of the countries in a globalized world, this study seeks to clarify and revisit the concepts of anticipatory self-defense and preemptive force under international law. In that regard, the study will start by providing a brief analysis of the preemptive force referred to initially as anticipatory self-defense and its emergence within the pre-UN Framework. Secondly, the focus will be put on the UN Charter’s Framework and how the traditional right of self-defense is formulated and interpreted under the Charter. Last but not least, some selected state practices which cover the exercise of preemptive force will be analyzed through the lenses of whether or not these were justified to the international community under the relevant criteria introduced by international law.

Preemptive use of Force in the pre-UN Charter Era

States are bound with bilateral and multilateral treaties in terms of their practices within their relations. In addition to the legally binding written texts signed between states, their actual practice and even code of conduct in bilateral or multilateral relations may end up as the norm of universal applications in time and be classified under customary international law (American Society of International Law, 2006; Malanczuk, 1997). More precisely from a historical perspective, states’ interaction with each other either in terms of political relations

or armed confrontations have the capacity to establish shared norms and rules in interstate relations.

In the 19th Century when the UN Charter’s legal constraints were not present in the global governance system, preemptive use of force was widely considered as a legitimate way of self-defense by the states. There was an understanding that under specific conditions states may appeal to preemptive use of force in line with the norms and rules set by customary international law. Moreover, this right of law was referred to as the principle of “anticipatory self-defense” mostly cited in the literature with the Caroline Incident of 1837 (Kelly, 2003). The affair took place when the British armed forces attacked an American vessel in United States (US) sovereign area in order to prevent it deliver military equipment to the anti-British rebels in Canada. The operation was a successful military move on behalf of the British authorities however it ended up with the death of two American citizens. Accordingly, US Secretary of State Daniel Webster submitted an explanation stating that; “(...), necessity of self-defense was instant, overwhelming, leaving no choice of means, and no moment for deliberation (...), and that the British force even supposing the necessity of the moment authorized them to enter into the territories of the United States at all, did nothing unreasonable or excessive; since the act justified by the necessity of self-defense, must be limited by that necessity, and kept clearly within it.” (Yoo, 2003; Sapiro, 2003)

The Caroline Incident Case has led to two significant conclusions in the literature. Firstly, the responding state has to ensure that there is an imminent threat and no means for a diplomatic choice. Secondly, the response must be properly proportional with respect to the threat directed against the responding state. Although there is no consensus on the precise definition of an imminent threat, it does not only cover temporal closeness but also includes a strong probability that threat will materialize (Yoo, 2003). Moreover, in cases of ongoing armed attacks, the aggrieved state may not need to wait for new attacks to be carried out against it before giving any response relying on true evidences. In spite of these conclusions, states have generally approached the legality of anticipatory self-defense doctrine with reluctance. Gray (2004) argues that states’ intention have mostly been on restricting the right of self-defense to cases where a military attack has taken place and there is no other choice left. The reason for this unwillingness to exercise anticipatory self-defense is closely linked with the uncertainty on the legal status of the right for use of force. Mostly states do not have tendency to initiate a military move that may be unacceptable by the large majority of other members of the international community. However as Sapiro (2003) concludes the views in the literature, imminence of a military move by another state brings together a necessity for preemptive action and when accompanied by a proportionate response then it would be permissible.

UN Charter Era and the Interpretation of the Article 51 of the Charter

Until the end of Second World War, military conflicts between states were guided by customary international law providing the broad limits of warfare. However, customs, norms and principles did not prove to be effective in preventing wars. This has become a widely shared perception among the states especially after the destruction caused by the two world wars. The coalition of 26

countries composed of signatory states of the Declaration by the UN in 1942 intensified efforts in order to create a global system that will deter states from devastating military confrontations. The UN Charter was initially signed by 50 states in 1945 setting the rules for legitimate self-defense with the aim of ending warfare under a collective security framework (Brownlie, 1991).

Within the foundation of the UN, states' right to use military force was limited to a great extent. More precisely, the UN Charter provides that members of the Organization should approach and solve all disputed issues between each other peacefully. Article 2(4) of the Charter formulates that, *"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"* (UN Charter, 1945).

There are two exceptions to the Article 2(4) of the UN Charter that paves the way for legitimizing states' referral to military power. One of these exceptions requires the specific authorization of the United Nations Security Council (UNSC) under Chapter VII while the other one refers to actions and practice being conducted within the limits of self-defense responding to attacks directed to the territory of a UN member state. Within this framework provided by the Charter, the UNSC has been given the competence to specify threats against peace and belligerent moves of states (Ackerman, 2003).

On the other hand, the Article 51 of the UN Charter provides as follows: *"Nothing in the present Charter shall impair the inherent right of individual or collective self-defense 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-defense 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"* (UN Charter, 1945).

Article 51 provides a potential authorization for resorting to armed force which is prohibited in general terms, merely for self-defense in case of a military offensive. The interpretation of the Article is controversial. However, it is generally accepted that the attack has to be about to start or already started to be considered as a legitimate case for self-defense of the state in danger. Otherwise, an earlier preemptive reaction has to necessitate the UNSC's approval relating to the particular affair. States have not been given the right to attack other states' sovereign area due to the fact that the state concerned has been developing plans or weapons that is thought to be used in an imaginary operation (O'Connell, 2002). In other words, the general acceptance on the Article 51 rules out preemptive practices (Brownlie, 1991).

According to Byers (2003) a strict interpretation of the Article 51 might amount to the view that any right of preemptive self-defense is prohibited under the framework of UN. A more tolerant interpretation might be built upon the fact that the Article 51 makes a reference to the "inherent right of individual self-defense" leading to the argument that states' right of self-defense that used to exist within the framework of customary international law still exists during the UN era (Gray, 2004; Chayes, 1991).

The Nicaragua vs. US Case of 1986 is a reflection of the widely shared perception towards the legitimacy of preemptive actions in international law. Upon Nicaragua's application to the International Court of Justice (ICJ) against the US due to its military acts in Nicaragua, the Court ruled that the US should immediately end its military activities and use or threat of force (The ICJ, 1984). The ICJ held that using military force would be legitimate only if there is an armed aggression. In case of an escalation where there is no armed attack, the attacked party has to reply with less harmful measures other than military acts or ask the UNSC's permission for use of armed force. Hence the ICJ's statement limits the utilization of force in self-defense merely in cases where a military aggression has already taken place (Alexandrow, 1996). Mullerson (1991) and Bothe (2003) emphasize that according to the Court an armed aggression may also be realized through *"the sending by or on behalf of a state of armed bands, groups, irregulars which carry out acts of armed force against another state of such gravity as to amount to an actual armed attack"* on an indirect basis.

Several critical questions have been put forward in the literature about the actual meaning of the wording "beginning of an armed aggression". Does the party in danger has to wait until the armed attack takes place even if there has been a high possibility for the occurrence of the attack? What would happen if there is a strong possibility that the state will no more be able to respond after the potential attack? Within this perspective, the argument of preemptive strike relies on the fact that states facing a potentially imminent attack, shall be provided with the opportunity to take relevant and proportional actions. It's seen that anticipatory self-defense is accepted to some degree under international law that a state may initiate preemptive self-defense if there exist sufficient supporting proof of potential threats and an intensified attack as well. Hence a military attack might have been considered to take place although it has not yet reached the sovereign area of the state in danger (Gray, 2004).

An Overview of Selected Preemptive use of Force Practices during the UN Era

States' consent is a *sine qua non* for the formation of international law. As sovereign and independent entities, states are only bound with rules and norms when they opt for it (Malanczuk, 1997). As Arend (2003), quoted from the Lotus Case: *"International law governs relations between independent states. This, consent based conception of international law has an important significance for an examination of post-UN Charter practice regarding the preemptive use of force. If states are sovereign, under the logic of the Lotus Case, they can do as they choose unless they have consented to a rule restricting their behavior."*

The literature includes two different perspectives on the limitations brought forward by the Article 51. On the one hand, there is a view defending that the Article 51 explicitly limits referral to military force only in cases where an armed attack took place. This perspective labels preemptive acts as unlawful unless the state in danger has become attacked. On the other edge of this argument, there is a rejection of the restrictive and narrow interpretation. Accordingly, it is advocated that, the Article 51 enables states in danger, to take some conditional measures before the actual aggression takes place and does not remove the

anticipatory self-defense right inherent in customary international law (Sofaer, 2003). In the remaining part of the article, selected relevant acts during the UN era will be exemplified.

The Cuban Missile Crisis

In 1962, the US Government faced the fact that the Soviet Union (SU) was providing offensive weaponry to Cuba. The US perceived it as a threat against the existing *status quo* and decided to prevent the SU from transporting the military equipment to Cuba through a naval blockade. The American President Kennedy declared that, the US Government was defending their national security along with North and South Americas (Kelly, 2003).

Sauer (2004) describes the American quarantine as a violation of the Article 2(4) of the UN Charter. The Cuban affair was discussed in the UNSC without any objection to the classification of anticipatory self-defense. Members of the UNSC decided not to impose any coercive measures on the US decision of naval blockade. US policy during the Cuban Crisis was criticized by several states but they certainly did not take any legal or diplomatic actions against it. These developments would lead to a conclusion that the doctrine of anticipatory self-defense had witnessed considerable acceptance (Sauer, 2004). The US's policy of not allowing Soviet military installments in Cuba have succeeded without use of military force but rather through a diplomatic peaceful solution.

The Six-Day War

Israel erupted war against the United Arab Republic (UAR) in 1967, which had an ephemeral life span founded by Egyptian and Syrian states. Israeli attacks were also directed at Jordan and Iraq at the same time. The attacks succeeded in defeating the target Arab countries. Israel's military campaign was based on the argument that those states had been planning to invade Israel and there was a necessity for anticipatory self-defense. On the contrary, the defeated Arab states and the SU argued that Israel acted as the first side to use military force and initiate the armed attacks and first referral to military force was not legal. Even the US, a country that is more sympathetic to Israel's objectionable policies, abstained itself from debating anticipatory self-defense (Sauer, 2004).

Israeli Attack on Osirak Reactor

Iraqi state's nuclear program and the progress achieved at the end of 1970's caused a deep concern for Israeli governments. In 1981 Israeli Air Force destroyed the Iraqi Osirak nuclear reactor in Baghdad being constructed by French and Italian corporations. The Iraqi Government considered the attack as an act of aggression. On the contrary, Israeli Ambassador declared that, *"Israel was exercising its inherent and natural right of self-defense, as understood in general international law and within the scope of Article 51 of the UN Charter."* The Ambassador also justified Israel's actions by stating that Israel resorted to force, only when all the diplomatic channels failed. Despite the official statements from Israeli state, every representative at the UNSC condemned the bombing. The majority of the representatives refuted the argument that the attack would be considered as a preemptive strike and

perceived it as an act diminishing the UNSC's competence (Kelly, 2003).

Moreover, even the minority of the representatives who supported the legitimacy of Israeli act as an anticipatory operation concluded that Israeli state had not met the necessity criteria for an attack to be justified as preemptive self-defense. The UNSC representative from Sierra Leone defended the view that *"the plea of self-defense is untenable where no armed attack has taken place or is imminent."* He continued as; *"The Israeli action, was carried out in pursuance of policies long considered and prepared and was plainly an act of aggression."* Britain's delegate at the UNSC raised their perspective by the following declaration; *"It has been argued that the Israeli attack was an act of self-defense. But it was not a response to an armed attack on Israel by Iraq. There was no instant or overwhelming necessity for self-defense. The Israeli intervention amounted to a use of force which cannot find a place in international law or in the Charter and which violated the sovereignty of Iraq"* (Arend, 2003). The bombing of the nuclear facility even before it became operational did not find international support.

Preemption in the Bush Doctrine

The terror attacks on September 11, 2001 targeted at the World Trade Center in New York and the Pentagon building in Washington, DC. caused 3.000 deaths. The US Government immediately declared that the Iraqi State should be disarmed due to doubts on further threat and the Taliban regime in Afghanistan should be annihilated since they were hold responsible for the terror attacks. There were some doubts that Iraq under Saddam administration was producing nuclear weapons. The Iraqi War that took place between 2003 and 2011 was the first manifestation of the concept declared by the US President George W. Bush and labelled as "preemptive strike doctrine". The doctrine was announced in the 5th chapter of the US National Security Strategy (NSS) released in 2002. As it was laid out in this strategy, the main idea of the framework was to stop potential enemies before they pose a threat or use weapons of mass destruction against the US and allied states. Instead of acting in a reactive way, the strategy prioritized anticipatory action (US NSS, 2002). The most significant feature of the US NSS was the preemptive strike approach aiming at the initial referral to force before the enemy. Within the framework of an already controversial self-defense norm in international law, the US Government's approach of initial strike policy and ignorance towards the imminence criteria paved the way for more complexity.

There were two options for the Bush Administration; the first one was seeking for a solution within the UN framework and the second one was acting unilaterally. The American government followed both of the options by utilizing the UNSC in the search for Iraqi nuclear weapons, but at the same time acting preemptively in Afghanistan and Iraq (Sauer, 2004). The US approved the UN Convention of 1999 on the suppression of financing terrorism obliging signatory states to control and prevent funding of terror organizations (Murphy, 2003).

The UNSC pointed out the right to invoke self-defense in the context of the terror attacks against the US (UNSC 2000; 2001). Moreover, NATO member states had the opinion that the terrorist attacks provoked the provisions relating to the collective self-defense mechanism of the Alliance. Therefore, the Organization

applied the Article 5 of its Treaty meaning that an attack against the US was an attack against the all member states (Gray, 2004). The US demanded from the Afghan regime to give in the leader of the terrorist *Al-Qaeda* Organization and requested permission to conduct investigations in Afghanistan. However, when Taliban refused the US demand, the US by the coalition and military support of the UK, France, Germany, Canada and Australia initialized the operation in Afghanistan on October 7, 2001 (Gray, 2004). The US and the coalition forces showed evidences to the UNSC to the connection of *Al-Qaeda* Organization with the terrorist attacks. Here, it is noteworthy to remember that, as the strikes and the armed operation of the Allies continued in 2002, massive amount of damage were given to the civil society of Afghanistan being either killed or injured under the heavy aerial bombings.

The UNSC Resolutions regarding the terrorist attacks can be considered as a support of anticipatory cases where after the occurrence of an armed attack, there is still strong evidence that more threat is imminent and other attacks are being planned (O'Connell, 2002). States mostly refrain from making arguments that can lead to doctrinal controversy while declaring their claims on the necessity of self-defense. But rather, they put forward arguments which will attract approval from the widest possible range of world states. (Gray, 2004) However, in the recent decades, the international community witnessed that the US, has used anticipatory self-defense against Libya, Panama, Iraq, Afghanistan and the Sudan. In 1986, the US for justifying its strike against Libya, relied on the need to prevent the possible future terrorist acts. At that time, several countries criticized the US for acting against the UN Resolution which declared the military act as a violation of the UN Charter with the exception of the British, French and Australian governments. They had preferred to support the American stance by withstanding the UN Resolution. The US and its allies in 1989, acted in a similar way in case of the American military operation in Panama against the UNSC's draft Resolution stating the act to be in violation with international law (Yoo, 2003).

Moreover, the US in its letter which it had submitted to the UNSC before the raid against Afghanistan, had stated that the inquiry it had been conducting was in early stages and that they might have been finding out in future that their self-defense could require some further actions regarding other organizations and other states. In 2002, President Bush in one of his statements declared that the war against terrorism was just starting by putting emphasis on the 'Axis of Evil' including Iraq, Iran and North Korea. The US put forward an argument that those three states were developing weapons of mass destruction (WMD) which brings together the possibility of being used either by themselves or supplying to terrorist formations (Gray, 2004). This argument was supported in the 2002 NSS of the US, with a focus on preemptive acts (Gardner, 2003). According to the US approach to preemptive self-defense; the UNSC approval or actual realization of a military offensive from another party are not prerequisites along with the dismissal of the proportionality rule (Yoo, 2003).

On the other hand, although indirectly related, Iraq's invasion of Kuwait in 1990 was a violation of international law. The UNSC had adopted Resolution 660 mentioning its disapproval of Iraq's actions demanding withdrawal from Kuwait. In other relevant resolutions, the UNSC particularly demanded the reestablishment of regional peace and security. Consequently, Iraqi government's resistance

against compliance with the UNSC Resolutions had paved the way for military involvement of the allied states. (Taft IV and Buchwald, 2003; Yoo, 2003; Dienststein, 2001) On April 1991, Iraq officially accepted the conditions of the UNSC Resolution 687 that constituted the terms for ending the skirmish in the Gulf region. Following this, Iraq had resisted the inspections carried out by the UN Special Commission regarding its nuclear weapons materials. Hence in the Resolution 1441 of the UNSC, it was stated that Iraq was in material breach of earlier resolutions (Yoo, 2003). These incidents facilitated the US putting forward new arguments in which it was seeking some kind of legal grounds to rely on. The American representative to the UNSC announced that Iraqi Government's continuing violations with the UNSC Resolutions would end up with other states' defensive actions against the threat (Gray, 2004).

At that time, there had been separate and several attitudes between the states on the international stage concerning referral to military force in the Iraqi case and whether or not there were any legal grounds for an operation. The NATO members were divided into two. France and Germany were opposing the military operation choice while the UK, Spain and some Eastern European states were in favor of a military operation. Russia and China were also rejecting the use of force. The US relied on the so called authorization of the UNSC Resolutions and self-defense while the UK and Australia ever abstained from using the wording of preemptive self-defense for legal justification of the invasion of Iraq. They chose to rely on the UNSC Resolutions reflecting their doubt considering the preemptive self-defense approach. Otherwise they would first need to prove that there was an imminent threat of an attack against the US and allies but also that had been caused by Iraq's alleged nuclear arsenal (Gray, 2004). Eventually, the coalition states drove Saddam Hussein from power but they have not found any WMD in Iraq which they had relied the biggest percentage of their claims on. The UN inspectors found nothing in Iraq that constituted an imminent threat (Franck, 2003).

In 2003 the UN Secretary General Kofi Annan put forward his evaluation on problematic issues concerning the preemptive self-defense concept; *"Article 51 of the Charter prescribes that all States, if attacked, retain the inherent right of self-defense. But until now it has been understood that when States go beyond that, and decide to use force to deal with broader threats to international peace and security, they need the unique legitimacy provided by the UN. Now, some say this understanding is no longer tenable, since an "armed attack" with weapons of mass destruction could be launched at any time, without warning, or by a clandestine group. Rather than wait for that to happen, they argue, States have the right and obligation to use force preemptively, even on the territory of other States, and even while weapons systems that might be used to attack them are still being developed. According to this argument, States are not obliged to wait until there is agreement in the Security Council. Instead, they reserve the right to act unilaterally, or in ad hoc coalitions. This logic represents a fundamental challenge to the principles on which, however imperfectly, world peace and stability have rested for the last 58 years. My concern is that, if it were to be adopted, it could set precedents that resulted in a proliferation of the unilateral and lawless use of force, with or without justification. But it is not enough to denounce unilateralism, unless we also face up squarely to the concerns*

that make some States feel uniquely vulnerable, since it is those concerns that drive them to take unilateral action. We must show that those concerns can, and will, be addressed effectively through collective action” (UN, 2003).

Russian Invasion of Ukraine

In 2013 Ukraine witnessed civilian protests against the government’s rejection of establishing further economic ties and an association agreement with the European Union (EU). The pro-Russian Ukrainian President had to leave his country following the increasing tension between his supporters and the pro-reformers. In 2014 following the domestic political unrest in Ukraine, Russia annexed the Crimean region. Russian military intervention and annexation of Crimea was defended by the Russian President Vladimir Putin with reference to the protection needs of the Russian speaking population in Crimea and southeastern part of Ukraine. There were a series of referendums first in Crimea then in Donetsk and Luhansk regions in which they decided to become independent entities and be recognized by Russia. These developments were followed by armed clashes between the Ukrainian army and separatist military forces within Ukraine (Council on Foreign Relations (CFR), 2024).

It has to be noted that, one of the factors that Russian political leadership manipulated for justifying Ukrainian war was recognition of the so-called Donetsk and Luhansk Republics by Russia on February 21, 2022. The recognition decision was followed by the annexation of four Ukrainian regions namely Donetsk, Luhansk, Zaporizhzhia and Kherson (BBC, 2022). The United Nations General Assembly (UNGA) condemned Russian annexation of Ukrainian sovereign territory on October 2022 (UN, 2022). The Secretary General of the UN announced that President Putin’s act to recognize independence of Donetsk and Luhansk is in violation of Ukrainian sovereignty (UN Press Release, 2022).

After the government change in 2019 and the election of President Zelensky in Ukraine, the country’s NATO membership goal was reiterated. Ukraine’s NATO membership desire was unacceptable for the Russian Government based on the fact that, two countries share a common history and an economic or political move towards the West would eventually lead to Ukraine’s integration with transatlantic security architecture led by the US. In addition to that, NATO’s potential existence in the geographic proximity was perceived as a security threat for Russia. On February 2022, Russian government decided to start a large scale invasion of Ukrainian sovereign territory and named the military move as a special operation. Ukraine has received financial and military equipment support from the Western countries in general and the US in particular whereas Russia had to face strict financial restrictions and embargoes due to the invasion. According to the UN estimate, more than 10,000 Ukrainians including civilians have lost their lives and around 8 million people had to leave Ukraine along with the internally displaced citizens counting to 4 million (Ray, 2024).

Russia’s argument that there were secret Ukrainian plans for an armed attack against the Donbas region were publicized with the purpose of fulfilling the imminence criteria for self-defense (Allison, 2023). Russian President Vladimir Putin qualified the invasion of Ukraine as *“a preemptive move against potential*

aggression” emphasizing that his country was facing threat posed by NATO (Aljazeera, 2022). Putin further blamed the Western countries and defended that; *“(…) they have always been seeking the dissolution of our country. This is very true. It is unfortunate that at some point they decided to use Ukraine for these purposes. (…)* We launched our special military operation to prevent events from taking this turn. This is what some US-led Western countries have always been seeking. To create an anti-Russia enclave and rock the boat, threaten Russia from this direction. In essence, our main goal is to prevent such developments” (President of the Russian Federation, 2022). It has to be emphasized that, at the time when the Russian military offensive to Ukraine was launched, there were not any armed attacks towards Russia from the Ukrainian side. This invalidates Russian arguments of a preemptive military campaign (Alanur, 2023). Allison (2023) similarly argues that Russia’s military invasion of Ukraine is a violation of the UN Charter and its Article 2(4).

Russia applied military blockades to Ukraine’s national ports and prevented exportation of food as well. Since Ukraine was one of the two major grain producers and exporters in the world along with Russia, this had resulted in the deepening of global food crisis that has been taking place due to changing climate conditions (Lin et al., 2023). In 2023, shelling between the parties has caused the bombing of Europe’s biggest nuclear facility namely the *Zaporizhzhia*. International Atomic Energy Agency (IAEA) had to invite parties to establish a *“nuclear safety and security protection zone”* in order to prevent a nuclear environmental disaster (CFR, 2024).

The war between Russia and Ukraine led to economic, social, humanitarian and environmental costs for both states. Although the influence on the natural environment cannot be determined exactly due to the ongoing war and the threats posed, according to one of the rare field studies conducted, soil, water and air have been polluted as a result of the armed conflict. Bombings have caused increased amounts of heavy metal in the environment whereas vegetation was diminished due to abandoning of agricultural fields (Solokha, 2023).

Conclusion

All states are sovereign equals and are prohibited from threat or exercise of use of armed force in their relations and interactions. The international system expects the states to initially solve their disputes through every possible peaceful means. Hence, resort to force is limited only to certain situations and is allowed to be invoked as a last resort. Accordingly, the use of the traditional right of self-defense and going a step further, the right of the use of anticipatory self-defense which is still controversial in the literature even in terms of its existence, are subject to the fulfillment of certain criteria as revealed in the above-mentioned cases.

However, as the examined states’ practices had put forward, states use preemptive force and tend to rely on the exercise of anticipatory self-defense right when they are invading other countries’ territories. It is quite interesting to note that some of these states such as the US and Russia are among the permanent members of the UNSC. One has to note that each case has to be decided on its own merits. Yet, one also has to underline that the

fulfillment of the criteria of anticipatory self-defense on behalf of the state making the first move and relying on the said right, is not a very easy task to prove to the international community. This might still keep its controversy and mystery in terms of whether or not the relevant state conduct was fully accepted to be lawful by the majority of other countries before the eyes of international law even if much time has passed by.

Globalized world system reveals the fact states in the 21st century, have largely and significantly become interdependent on one another. This means that currently, a conflict does not negatively affect merely its sides, but also might have accompanying serious repercussions on the countries of the whole region. That was revealed strongly by Russia's invasion of Ukraine in 2022 which led to the blockage of most of Ukraine's agricultural exports in the form of grains such as wheat and corn. Yet it is seen that the lawful or unlawful exercises of the right of self-defense might eventually have serious consequences on jeopardizing the global food security and bring forward a negative impact for the rest of the world countries. So that the states are expected to cautiously calculate the whole criteria in terms of the fulfillment of the self-defense right when they do rely on it since otherwise might affect the whole world's security and order.

Data availability statement

The original contributions presented in the study are included in the article/supplementary material, further inquiries can be directed to the corresponding author.

Author contributions

The authors confirm being the sole contributor of this work and have approved it for publication.

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