



A Critical Analysis of the Contemporary State Practice of Self Defence in International Law

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ABSTRACT:

Self Defence is an inherent right of the State to protect itself from the attack or aggression of another state or non-state actors. It is governed by both customary and modern international law. The customary international law relating to the usage and extent of application of self-defence can be analyzed through State Practices. It is pertinent to mention that self defence has its own limitations that cannot be exceeded. This research predominantly focuses on the contemporary state practice of self defence rising from pre- and post-Nicaragua. This research focuses on the practical perception of the usage of self-defence, it analyses the state's action, conduct, and behavior in the exercise of self defence. This research limits its focus to the practical aspects of self-defence and provides a vast exploration on the contemporary practices of states in exercising their self-defence. This research contributes to the understanding of self-defence in a practical manner.

Keywords: Self Defence, State Practice, Nicaragua, Customary International Law and Use of Force.

I. Introduction:

"Self-defence is a use of force to protect one state from the attack of another"¹. The use of force and self-defence are the different sides of the same coin in international law. Self-defence has existed even before the times of civilization and can be witnessed on each page of history. It is something that has formed its shape from the law of nature and can never be overlooked. It is presumed to be "God given rights"² or "rights from the law of nature". It has its roots in customary international law, and it is a fundamental right of any state or individual. For survival, every state or individual must use force to defend itself from a potential attack or imminent threat. A state must defend its territory and secure its freedom from attacks to secure peace and security. It is the inherent nature of humans to protect themselves from the dangers and threats that surround them³.

According to Hugo Grotius, the "right of self-defence is a *sine qua non* for civilization"⁴ as without self-defence, a state cannot exist, hence, it is viewed as an essential power for the existence of the state. Self-defence is justified in the eyes of the law; however, the unlawful use of force can never be justified. Though self-defence has been a part of nature, however, its usage has always been controversial and debatable in international law. As self-defence directly goes against the principles of non- use of force, its status and usage have been highly debated and questioned in the international arena. Even before the UN charter came into existence, the principle of self-defence had been a part of customary law and state practice. Further, self-defence has been the most fundamental part of international law, as it is one of the most predominant factors that gives a peaceful existence to a state by ways of defending against attack or imminent threats. Without this, the conceptualisation of international relations or the peaceful existence of the state would have been in jeopardy.

As self-defence is a part of customary international law, it is predominantly crucial to analyze it from state practice. The changes in the state practices, the transformation in the perception of self-defence by the international community convey one particular correspondence that every concept, no matter how historical or ancient, undergoes befitting change to adapt itself to the pressing needs of the society. Under this lens, self-defence has been analyzed from cases and state practice arising from pre- and post-Nicaragua.

The **objective** of this research is to analyze the self defence under the contemporary state practice to understand its usage and extent of application by the state.

This research relies on both primary and secondary sources.

¹ Collins dictionary, (last visited on 15.04.2025)

² Jonathan Ross, *The Right of Self-Defence*, The Yale Law Journal, (1902)

³ Udai Pratap Singh, *Evaluation of United Nations Charter Principles on Use of Force and State Practices: A Critical Legal Study with special reference to Israel, Russia, and USA*, Dr. Ram Manohar Lohiya National Law University, Lucknow, (2021)

⁴ Jonathan Ross (n 2)

II. State Practice and Self Defence Pre Nicaragua

1. Caroline Incident 1837

After the conceptualization of Article 51 and rulings of the International Court of Justice in Nicaragua, “armed attack” was considered a fundamental aspect for determining the legality of self-defence. However, in the traditional view, customary international law laid down the foundation for the evolution of self-defence. The Caroline incident remains a fundamental incident that took place during the 1830s. It gave foundation to the core principles concerning self-defence. It is a correspondence exchanged between the United Kingdom and the United States on the dispute concerning the sinking of the Caroline Vessel in 1837⁵. Based on this diplomatic correspondence, the requirement of “necessity”, “proportionality,” and imminence” in self-defence and their importance were recognised by the international community, and these principles forever shaped the way self-defence was justified and perceived.

The facts of this case are as follows: The United Kingdom was facing a rebellion in Canada in 1837. It is pertinent to mention that Canada was still under the control of the British at that time. The rebel forces supporting Canada were supplied with munitions by the Caroline, a US steamer vessel. The British–Canadian forces attacked the Caroline, which was stationed in the US territory. The Caroline was set afire and towed over Niagara Falls. One US citizen was killed during this incident. The territorial violation and death of an American national intensified the dispute. A brief exchange of letters between the US Secretary John Forsyth and the British Minister Henry as a means of diplomatic response took place. Between such diplomatic correspondence, the US demanded redress from the UK for its violations. In response, the UK argued that, based on the necessity of self-defence and self-preservation, the Caroline vessel was destroyed. It was stated that they had sufficiently established the self-defence. However, this was opposed by the US, that the destroyed vessel did not pose any imminent danger to the UK forces, and this claim of self-defence was not accepted. Following this event, a British Canadian, Alexander McLeod, was arrested in 1840 by the US. This arrest rekindled the burning flames. The UK opposed this arrest as the burning of the vessel was deemed to be committed as a part of an official action. Later, McLeod was found not guilty⁶.

The diplomatic correspondence between the US Secretary Daniel Webster and the UK Special Representative Lord Ashburton gave rise to the “*Caroline Formula*.” The principles embodied in this formula govern the lawfulness of self-defence to date. The most important part of this formula was based on the letter sent by Webster to Ashburton on 27th July 1842. The US severely condemned the actions of the UK and asked them to defend their self-defence based on this, “*to show a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation*”⁷. The US stated, under the pretext of self-defence, “*nothing unreasonable or excessive must be done*” and further, “*the act justified by the necessity of self-defence must be limited by that necessity, and kept clearly within it*”⁸. The UK was demanded to show, what was the necessity to attack the vessel in the darkness, stowing it to Niagara and setting it on fire, without seizing and detaining the vessel. The US government stated that there existed no necessity for the violations committed by the UK in the name of self-defence. Though there was disagreement between the states on the incident but they both agreed on the Webster’s Formula on self-defence.

The Caroline doctrine states that “*the use of force by one nation against another is permissible as a self-defence action only if force is both necessary and proportionate*”⁹.

2. The Sinai Campaign 1956

It is also known as the Suez Canal Crisis. It is pertinent to mention that the Middle East is one of the war-torn regions in the world. There have been several instances in which self-defence was invoked by the states located in this region. There has been continuous conflict between Arab states and Israel after its independence in May 1948. This rift caused one of the most horrifying geo-political tensions in history and which is persistent to date. Several times, minor conflicts escalated into lethal wars. Both states at war invoke the right to self-defence to justify their actions. This incident took place due to the nationalisation of the Suez Canal by Egypt. To block the Israeli ships, the Egyptian government nationalised this canal. The Suez Canal was considered very crucial and economically important at that time due to it carrying two-thirds of Europe’s supply of oil through that route. This not only ended up affecting Israel but also the UK and France. On 29th October 1956, the Israeli army forced into Egyptian territory, which was the starting point of the Suez crisis. Israel was also supported by British and French forces. This invasion was condemned by the Security Council, and a ceasefire resolution was negotiated, however, this attempt went in vain due to vetoes cast by the British and French. Israel justified its action as self-defence before the UN General Assembly. It stated that “*long and uninterrupted series of encroachments constitute in its totality the essence and reality of an armed attack*”¹⁰. However, this was rejected by the majority of the member states. The nationalization of the Suez Canal did not amount to serious aggravation and did not constitute an armed attack. It was stated that Israel failed to establish the existence of “*an instant and overwhelming danger of such attack*.” Further, for an attack to be considered as an armed attack, “*it must threaten the territory, official agencies, or the lives of the citizens of the state*”¹¹, whereas violation of the right of transit through a canal or stoppage of merchant vessels was not considered as an armed attack. Israel further stated that the Egyptian government was involved in sponsoring guerrilla attacks against Israel apart from that it was also building arms race which pose a significant

⁵ Jonathan Ross (n 2)

⁶ *Ibid*

⁷ Letter dated 27 July 1842 from Daniel Webster to Lord Ashburton, British and Foreign State Papers, vol (1841–1842) 193–94, extract taken from Webster’s earlier letter to Henry S Fox dated 24 April 1841, British and Foreign State Papers, vol XXIX (1840–1841) 1137–38.

⁸ *Ibid*

⁹ Jonathan Ross (n 2), 63 to 68

¹⁰ Udai Pratap Singh, (n 3)

¹¹ *Ibid*

security threat to Israel. Though they seem grave in nature, Israel had no conclusive proof on proving its claim. It was stated that though blocking a naval passage is unlawful, it did not amount to an armed attack. It was further stated that, after the commencement of the attack, the Egyptian government was willing to negotiate and solve the matters amicably, however, Israel used force despite it not being a last resort. Since the Israel self-defence did not meet the requirements of necessity and proportionality, its attacks were not accepted as lawful by the international community¹².

3. The Cuban Missile Crisis 1962

It was a 13-day political and military standoff between the US and the Soviet Union in October 1962. It eventually began when the Soviets were secretly installing nuclear missiles in Cuba, which sparked a nuclear conflict. In order to prevent the Soviet Union's arms shipment to Cuba, the US chose naval quarantine to prevent any further weapon deliveries and potential future nuclear attack. President John F. Kennedy imposed a naval blockade or quarantine around Cuba to stop further missile deliveries and demanded the removal of the existing ones. After intense negotiations Soviets agreed to withdraw the missiles in exchange for the US's promise never to invade Cuba and a secret agreement to remove US missiles from Turkey. Though this crisis was on the verge of becoming a full-scale nuclear war, it was resolved peacefully through diplomacy. The legal justification for the quarantine was debated as some viewed it as self-defence under Article 51, and others viewed it as a violation due to lack of actual or imminent armed attack. It was also argued that a pre-emptive quarantine could not be justified, as anticipatory self-defence must involve an imminent threat, which was not present at that time. However, the US defended the quarantine as a lawful action taken as a regional security measure under regional agreements such as the Rio Treaty and UN Charter Chapter VIII. It was the US stand that it did not act unlawfully by resorting to force, but it instead used a non-forceful measure such as a blockade, which was justified under international law. However, it's predominant to mention that this the situation never met the legal threshold for anticipatory self-defence, as there was no imminent armed attack¹³.

4. The UK Bombing of Yemeni Fort 1964

In a counter force operation to tackle the attack of Yemeni forces, the UK exercised its self defence against the Yemen. It was contented by the UK that *"a deliberate and increasing attack by Yemen against the Federation was under way"*¹⁴. According to the UK, this attack was justified as self-defence as it was exercised for the protection of its territory, the state interest, and the integrity of the country. It was also stated that before the attack, leaflets were dropped in all areas near the fort warning people to leave immediately, and all possible measures were taken to minimise the loss of life and property. However, several member states viewed this attack as a reprisal and not a defensive action. The British contended that this action was taken in response to the urgent request received from the federation to protect the interests and integrity of their country. Furthermore, the British explained a clear distinction between reprisal and self-defence, where the former was retributive or punitive and the latter was authorised by the Charter against an armed attack. It was contented by the British Delegate that the use of armed force to repel or prevent an attack that is, legitimate action of a defensive nature may sometimes have to take the form of a counter-attack. Furthermore, the territory of the UK was subjected to series of attacks over a significant period of time, hence the UK contented that it had sovereign right to defend against such attacks. However, it is pertinent to mention that these claims were rejected by the Security Council; this act was not considered as self-defence as it was lacking necessity and proportionality, and this was constituted as reprisal. One of the major reasons why the UK's action was not considered as an armed attack was that the attack by Yemeni forces was not taken serious enough to be considered as an armed attack.

5. The Gulf of Tonkin Incident 1964

On 2nd August 1964, the US ship *Destroyer Maddox* was sailing the coast of North Vietnam, in the Gulf of Tonkin. Maddox was authorised to gain intelligence on North Vietnam and to maintain communications with South Vietnam. As the ship was patrolling inside the 12-mile limit, as claimed by North Vietnam, it was attacked by the three North Vietnamese torpedo boats. These three vessels fired a machine gun at the Maddox. When torpedoes were fired at the Maddox, it evaded the same by changing course. After these incidents of attack, the US ship was in international waters. This incident was perceived as a *"clearly deliberate armed attack against a naval unit of the US on patrol on the high seas"* by the US. Two days later, the officers of the US believed that, North Vietnamese torpedo boat was launching another attack against the US ship as suggested by the sonar readings, and they launched an air attack against four torpedo-boat bases and a major oil storage facility inside the territory of North Vietnam. The US justified its act as a defensive response against the repeated acts of violence from the North Vietnamese boats. The same argument was made by the US before the Security Council. It was stated that the North Vietnamese boats carried out several attacks against the US Naval unit, and the US had no other choice but to invoke self-defence to protect its ship. Defensive action was used to justify the US air attacks against the North Vietnamese boat bases and major oil storage facilities. The US further contended that, to prevent further potential aggression, it was necessary to carry out such a defensive operation. This stance was supported by the UK, which further stated that, US acted in accordance with the right of self-defence under international law by using defensive force to prevent the recurrence of attacks. However, several states opposed the US claims and stated that it exceeded the limits of self-defence as the air attacks against naval bases and major oil storage facilities in North Vietnam were beyond necessity and proportionality and this would not connote as self-defence but reprisal from the side of the US. The Security Council rejected the US claim by stating that it exceeded its self-defence. However, no resolution was adopted due to Veto powers¹⁵.

6. The Six-Day War 1967

¹² Kinga Tibori Szabo, *Anticipatory Action in Self Defence – Essence and Limits under International Law, Part 1 – Pre Charter Customary Law on Self Defence*, (TMC Asser Press, Netherlands, 2011), 142-144

¹³ *Ibid* at 174-179

¹⁴ *Ibid* at 156-157

¹⁵ *Ibid*

The Six-Day War during 5th to 10th June 1967, had served as a great example for the use of anticipatory self-defence. It is a well-known fact that, after Israel's independence, there was an escalation of conflicts between the Arabs and Israel. This devastating event took place due to dangerous developments of hostilities in the Syrian-Israeli border and Egypt. The rise of the Ba'ath party in Syria significantly contributed to the increase of tensions, which followed as regular clashes between Syria and Israel. Syria's government organised guerrilla attacks against Israel and also took measures to reduce the amount of water entering Israel through the Jordan river. Even the hostilities by Egypt against Israel were developing at that time. Due to increasing tensions and from information received from the Soviet Union to Egypt that Israel troops were marching to Syrian-Israeli border and from the pressure received from other Arab countries, Egypt was pressured to mobilise its troops in Suez. Further, Egypt evicted the UNEF stationed in its territory and closed the Straits of Tiran. All these rising tensions increased Israel's fear of aerial or land attack by Egypt. Though Israel was reluctant to start hostilities due to a diplomatic solution being aimed by the US, such a solution never came.

Two weeks before the outbreak of war, a complaint was initiated by Israel in the Security Council on the "massive troop concentrations" by Egypt. Israel was of the view that an armed attack was inevitable due to the impending acts of Egypt in evicting the UNEF and closing the straits, and these incidents were of utmost gravity that an armed attack was sure to occur. Furthermore, the Egyptian government issued several declarations on the existence of the state of war with Israel and expressed its intention to launch an assault against Israel. This being the case, Israel resorted to anticipatory action and initiated a pre-emptive strike against Egypt due to the dangerous escalation of events. Israel attacked Egyptian warplanes and subsequently captured the Jordanian border and a few other territories, including the West Bank. Due to Israel's succession, Arab countries accepted cease fire initiated by the Security Council. After the incidents, both states, Egypt and Israel, claimed self-defence for justifying the action. Israel stated that, existing situation made an armed attack seem inevitable, and the eviction of UNEF by Egypt, along with blocking the straits and declaration of state of war by Egypt, made it act in anticipation to prevent the potential armed attack. In the words of Dinstein, "*the legality of defensive action must be weighed on the ground of the information available and on the basis of a reasonable interpretation at the moment of action.*"¹⁶ The Security Council was of the view that though Israel's self-defence meets the requirements of necessity and proportionality but its occupation of other territories falls behind the scope of self-defence. Hence, it demanded Israel to withdraw its forces from other territories to respect the sovereignty, territorial integrity, and political independence of every State in that area¹⁷.

7. The 'Yom Kippur War' 1973

After the Six-Day War or 1967 war, several series of smaller clashes took place between Israel and Egypt. Egypt waged the "War of Attrition" against Israel to recapture the Sinai Peninsula. In 1973, the Israeli intelligence received numerous threats from Arab countries and saw the occurrence of war as inevitable. Though Israel received urgent information of a potential attack against it by Egypt, it was sure not to start the hostilities or start another pre-emptive attack, and hence, it waited for Egypt to strike first. Another reason why Israel did not act in haste was not to provoke the US. However, Israel mobilized its forces to prepare for a potential attack. The Egyptian and Syrian forces from Sinai and Golan respectively attacked Israel, and this was called as Yom Kippur War. Though Israel was affected in the beginning but it succeeded in the end. Another main reason why Israel did not act in anticipation was because it did not secure credible information about the attack and had no conclusive proof of its imminence. Though Israel perceived the threat of an armed attack but it chose to wait for the other states to begin the offensive operation. This was accepted as a lawful exercise of self-defence, meeting all the requirements of necessity and proportionality. It is pertinent to mention that "*the Israeli decision not to act pre-emptively is an example of state practice in which resort to self-defence was contemplated, but not pursued*"¹⁸.

8. The Iran-Iraq War 1980

Iran and Iraq had always been war-torn zones. There have been several incidents of escalation of conflict between them. The starting point of this 1980 war was due to a long border dispute between these two states. In 1975, an accord was reached between them known as the Algiers agreement. However, due to impending Islamic revolutions, other subversive campaigns between two states, an escalation of events took place. Apart from this, Iran was accused of sponsoring several terrorist groups against Iraq, and similar accusations were also made against Iraq by Iran. All these incidents, along with the border dispute at the Shatt al Arab border, elevated the matter into a huge conflict¹⁹.

On 7th September 1980, Iran was accused of shelling the Iraqi border, and according to the Algiers agreement, this border belonged to Iraq. Due to this, Iraq deployed its troops to the border, and this agreement was denounced by both states. After such a denouncement, Iraq launched a full-scale invasion against Iran on 22nd September 1980, and it justified the same based on preventive self-defence to defend its people and territories against the Iranian shelling. Iraq also stationed its forces inside Iranian territories for defensive purposes. Despite casualties on both sides, they relentlessly carried out further attacks. Though Iran seemed weakened in the beginning but it regained its momentum and started its offensive operation against Iraq. This war extended for 8 years and included missile attacks, deployment of chemical weapons from both sides. The Security Council condemned the act of aggression on both states and tried to stop the war by imposing a ceasefire. The UN Secretary General perceived the Iraqi invasion as aggression and stated it as a violation of the prohibition to use of force. According to the UN Secretary General, Iraq's actions could not be justified as self-defence under the UN Charter because even if Iran was responsible for encroaching some of Iraq's territory, organising or supporting the subversive campaigns and sponsoring the terrorist attacks and shelling bomb on Iraq's boarder, but such threats did not pose a gravity to justify a full-scale invasion. Furthermore, there was no conclusive evidence that Iran was preparing for an armed attack against Iraq, and its subversive acts never overturned the Iraqi government.

¹⁶ *Ibid*

¹⁷ *Ibid*

¹⁸ *Ibid* at 149-150

¹⁹ *Ibid* at 150-152

These events did not amount to an armed attack, and further, they did not pose any imminent threat to Iraq. Hence, the preventive self-defence of Iraq did not justify its full-scale invasion of Iran. However, Iran's right to invoke self-defence during the beginning of the war was supported by the UN Secretary-General because withdrawing Iraqi forces from its territory and putting an end to the threats posed by Iraq was seen to fall within the limits of self-defence. Hence the Iran's action was justifiable under Article 51 of the UN Charter. As opposing to Iraq's self-defence, it was stated that the subversive activities and cross-border shelling never reached the threshold of imminence. Furthermore, Iraq's self-defence did not meet the limits of self-defence, such as necessity, proportionality, and immediacy. It is pertinent to mention that both states exceeded the limits of self-defence with respect to proportionality.

9. The Israeli Bombing of the Iraqi Reactor 1981

After the Second World War and the Cold War, several states started to develop nuclear weapons, and a few states achieved the same. At that time, in the 1980's Israel developed nuclear weapons and was afraid that Iraq was on its way to developing the same. Due to the impending hostilities between Iraq and Israel, Israel destroyed Iraq's nuclear reactor. According to Israeli intelligence, it was stated the Osirak reactor was to be fully made operational in July or September 1981, and any attack after that time would have caused extensive civilian casualties, hence, Israel used its preventive self-defence against Iraq to destroy its nuclear reactor. The justification given by Israel to the Security Council was that once Iraq possessed nuclear weapons, it would surely deploy the same against Israel, as at that time attitude of Iraq against Israel has always been to destroy it. However, this self-defence was not accepted by the Security Council or the international community because Iraq's future attack on Israel was only a mere possibility, and it did not attract the essence of self-defence as expressed in the Webster formula. Furthermore, it was stated that possessing nuclear weapons was only a threat and not an imminent possibility that it will be used against Israel. Furthermore, at the time of the attack, the Iraq nuclear reactor was not even functional, and this being the scenario, Israel's act of carrying out a surgical strike on the reactor cannot be justified as self-defence, and Israel's claim of preventive self-defence was rejected by the UN Security Council. Several member states were of the view that Israel's action went beyond the limits of pre-emptive or anticipatory self-defence. The Israeli airstrike was coined as a '*preventive war*²⁰', and the legality of the same was abolished by the UN Charter. The Security Council condemned the Israel act and stated that it violated the charter and the principles of international law because Israel acted even before the threat was materialized. Furthermore, the necessity and immediacy of the self-defence were not met. Though the gravity of the danger could be perceived as a serious concern, it could not be justified for carrying out this attack.²¹

10. The Falklands War 1982

There was a significant conflict between Argentina and the United Kingdom over the sovereignty of Falkland Islands in the time period of 1982. This island was also referred to as Las Malvinas in Argentina. This dispute followed from a deep historical context concerning the Island's discovery and ownership. According to the UK, it had exercised full control over this territory since 1833; however, according to Argentina, this territory lawfully belonged to it and was unlawfully occupied by the British. The conflict escalated when Argentine scrap-metal workers landed illegally on South Georgia and hoisted the Argentine flag in 1982. To this, the UK responded by sending the HMS Endurance to remove the intruders. However, the situation worsened as Argentina started to mobilize its naval forces. Though the British tried to solve the issue through diplomatic means, Argentina rejected the same and launched Operation Rosario, thereby invading the Island. The British deployed its warship anticipating the invasion through its intelligence. Further, it requested an emergency meeting at the UN Security Council, raising its concern that Argentina had refused diplomatic resolutions and was carrying out an unprovoked invasion. After the invasion, the Security Council and the international community were against the action of Argentina for its unlawful invasion, and the Security Council demanded immediate withdrawal of Argentina forces and stated that it had violated international law. In response to the invasion, the UK launched a large-scale military operation to retake the Falklands, however, the full deployment of forces took 3 to 5 weeks due to the geographical distance between the UK and the Island. However, this delay did not affect the British right to use self-defence as the British decision to exercise self-defence was taken immediately after the invasion, and further, the delay in exercising the same could be justified as it was reasonable. As a matter of fact, both states claimed self-defence under Article 51 of the UN Charter. However, the self-defence of Argentina was not accepted by the Security Council as it was the one which commenced an unprovoked invasion, and its stand on using lawful self-defence against illegal British occupation was rejected. On the contrary, British self-defence was accepted as remedial self-defence as its key aim was to repel and reverse the aggression, and it was not a retaliatory strike. The invasion of the Island by Argentina was seen as an armed attack by the UK, and its subsequent unprovoked invasion legalised the exercise of self-defence by the UK.

III. State Practice and Self-Defence Post Nicaragua

1. US Bombing of Libya 1986

The matters concerning non-state actors are not new as they occurred prior to the 9/11 attacks. In this incident, the United States launched airstrikes in self-defence against Libya in 1986, which was in response to a series of terrorist attacks targeting U.S. citizens and property globally during 1985 and early 1986. The US believed that Libya was supporting and harbouring terrorist groups, particularly Palestinian and other armed groups involved in attacks across Western nations. Several terrorist attacks on the US and provoking public statement by Libya's leader Colonel Muammar Qadhafi on "*exporting revolution*" and "*making America fight on a hundred fronts*²²" and subsequent bombings in West Berlin in 1986 made the US use defensive force. The US justified its military action by stating that it invoked self-defence as guaranteed under the UN Charter. According to the US, its pre-emptive

²⁰ *Ibid* at 180

²¹ *Ibid* at 179-181

²² *Ibid* at 159-161

self-defence was aimed at destroying terrorist infrastructure in Libya, to prevent future attacks and force Qadhafi to stop supporting international terrorism. The US defended its action before the Security Council by stating that its airstrikes were carefully planned and directed only at terrorist-related military targets, whereas these targets were part of Libya's command, control, intelligence, and training infrastructure that was used to coordinate terrorism and the West Berlin bombing was part of a broader pattern of Libyan-sponsored violence, and intelligence showed Libya was planning future attacks. The US stated that it had resorted to force only as a last measure as it had exhausted all other non-forceful measures such as negotiation and economic sanction. Though the US stated that this operation was necessary and that this course of action met necessity and proportionality, the UN Security Council rejected the same and condemned the US airstrike.

This incident raised important issues regarding self-defence against non-traditional threats. In a traditional sense, self-defence was justified only when it was carried out against invasion or occupation by states; however, hit-and-run attacks by state-backed actors were not clearly perceived as "armed attacks" under Article 51 because of the controversial position of the non-state actors in international law. Though there was no explicit rule in pre-Charter international law that barred self-defence against non-state actors, the majority of states did not accept this at that time²³.

2. US Missile Attack Against Iraqi Intelligence Headquarters 1993

After the 1991 Persian Gulf War, tensions between the United States and Iraq remained high. On 14th April 1993, during a visit to Kuwait City by former U.S. President George H. W. Bush, Kuwaiti authorities uncovered an assassination plot. 14 men were arrested for smuggling plastic explosives intended to kill Bush. Investigations by the FBI and CIA concluded that it was highly likely the plot was orchestrated by the Iraqi government, possibly directed by Saddam Hussein himself. On June 1993, President Bill Clinton ordered a retaliatory airstrike against the Iraqi Intelligence Service (IIS) headquarters in Baghdad. Several cruise missiles were launched by U.S. naval forces. The U.S. reported the action to the UN Security Council. It invoked Article 51 of the UN Charter, which allows self-defence in response to an armed attack. U.S. Ambassador Madeleine explained that all diplomatic and economic measures had failed or had no reasonable chance of success. Hence strike was carried out, and the target was specifically selected to minimize civilian harm. Furthermore, the strike was necessary to prevent further attacks on U.S. citizens. The international community accepted this self-defence, but China was the only country that questioned the legality of this strike before the Security Council. The attack was considered an instance of self-defence against a hit-and-run tactic or assassination attempt. This self-defence fulfilled necessity and proportionality by preventing future attacks. According to the U.S., the attempted assassination of a former head of state constituted an armed attack, and as the action was ongoing or at risk of being repeated, it justified a preventive defensive response. This incident illustrates self-defence against indirect, covert armed attacks like assassination attempts rather than traditional military invasions. It reflects the evolving interpretation of self-defence to include pre-emptive responses to imminent threats, especially when the attacking state's involvement is established²⁴.

3. The Attacks of 9/11 2001

On 11th September 2001, hijacked planes crashed into the North and South Towers of the World Trade Centre, New York; the Pentagon, Washington, D.C.; and Pennsylvania. There were more than 5000 casualties. The FBI identified 19 hijackers were linked to Al-Qaeda and Osama bin Laden. Though the same was initially denied by Bin Laden, he later claimed responsibility in 2004. In response, NATO invoked Article 5, where an attack against the US was perceived as an attack against all other member states. Several countries like Russia, China, Iran, and Libya expressed their support. The UN Security Council adopted Resolution 1368/2001, thereby condemning attacks and recognizing the right to self-defence. Later, Resolution 1373/2001 was passed, which called for international cooperation against terrorism. The US justified its military response as self-defence. According to President George W. Bush's Statement, it was conveyed that Al-Qaeda was behind the attacks and it was operating in over 60 countries, supported by the Taliban in Afghanistan. Later, US demanded Taliban to hand over Al-Qaeda leaders, release all unjustly detained foreign nationals, close all terrorist camps, and allow U.S. access to these camps. However, these demands were rejected by the Taliban, and they offered to try Bin Laden under Islamic law, but the same was rejected by the U.S. Later, on 7th October 2001, Operation enduring freedom was carried out, where both US and UK military forces carried out this operation to destroy Al-Qaeda camps. They targeted the Taliban's military infrastructure with the intention of preventing future terrorist attacks. Both the US and UK justified their acts as self-defence under Article 51 and stated that the Taliban provided safe haven to terrorists. Further, there was clear and compelling evidence of Al-Qaeda's involvement in the 9/11 attack, and these strikes aimed to prevent further attacks. The notion of self-defence underwent a significant change as, after this incident, it also applied to non-state actors. The attack by non-state actors was perceived to be an armed attack under Article 51 if they met certain gravity. This incident revolutionized self-defence law by recognizing non-state actors as capable of launching an "armed attack" and justifying cross-border use of force against a territorial state harbouring terrorists, but it blurred the line between counter-terrorism and armed conflict.²⁵

4. The War Against Iraq 2003

Immediately following the 9/11 attacks, U.S. President George W. Bush directed officials to investigate any potential involvement of Iraq, under Saddam Hussein, in the attacks. A report delivered to the National Security Advisor on 18th September 2001 concluded that there was no compelling evidence linking Iraq to the planning or execution of the attacks. Given the lack of evidence against Iraq, Bush chose to concentrate U.S. efforts on Afghanistan, where the Taliban was harbouring Al-Qaeda. However, he also instructed the Defense Department to remain prepared in case Iraq acted against U.S. interests. The U.S. invasion of Afghanistan received approval from the United Nations Security Council under Chapter VII and was justified by the right of self-defence. The military operation successfully ousted the Taliban government, inflicted heavy damage on terrorist infrastructure, and led to the

²³ *Ibid*

²⁴ Kinga Tibori Szabo, (n 12), 222

²⁵ *Ibid* at 222-225

capture or killing of numerous Al-Qaeda members. Despite the focus on Afghanistan, the Bush administration began to widen its "war on terror," turning its attention to Iraq. A key justification for considering military action was Iraq's alleged support for terrorism. On 12th September 2002, President Bush addressed the UN General Assembly, accusing Iraq of violating UN Security Council Resolution 1373 by supporting terrorist groups, targeting dissidents, attempting past assassinations, praising the 9/11 attacks, and harbouring Al-Qaeda members. These claims were reiterated in a national address, where Bush asserted that Iraq had aided, trained, and sheltered terrorists and posed a threat by potentially providing terrorists with weapons of mass destruction. Despite these assertions, the U.S. failed to provide clear evidence linking Iraq to the 9/11 attacks or Al-Qaeda. The war on Iraq lacked the international legal backing that the Afghan war had. The Security Council did not authorize the Iraq invasion, nor did it recognize any legitimate right of self-defence. The main criticism against the Iraq invasion was that Iraq was not shown to have been involved in planning, supporting, or facilitating the 9/11 attacks. There was also no proof that any 9/11 perpetrators found refuge in Iraq. Further No solid evidence was provided to demonstrate that Iraq hosted or supported Al-Qaeda or similar terrorist organizations planning future attacks on the U.S., and the U.S. could not establish a credible or imminent terrorist threat from Iraq. Furthermore, the war did not meet the requirements of necessity or proportionality, both of which are essential under international law for a legitimate self-defence claim. Unlike the Afghanistan war, the Iraq war could not be justified under the theory of "accumulation of events" or as a response to any actual armed attack. The 2003 U.S.-led invasion of Iraq stands in stark contrast to the Afghan war. It lacked international endorsement, clear evidence of a threat, or a legal basis under self-defence doctrines. The invasion was, therefore, widely considered unjustified under international law.²⁶

5. Israeli Invasion of Lebanon 2006

Between 2000 and 2006, the UN Security Council repeatedly urged Lebanon to reassert control over its southern territory, an area marked by conflict between Israel and Hezbollah throughout the 1990s. In May 2000, Israel withdrew its troops from southern Lebanon, and the UN established the "Blue Line" as a provisional border. Despite the withdrawal, hostilities continued. Hezbollah routinely launched rockets into Israeli territory, engaged in cross-border shootings, and kidnapped Israeli soldiers and civilians. Israel retaliated with airstrikes, including a notable one in September 2003 in response to Hezbollah firing anti-aircraft missiles at Israeli aircraft. In 2004, the Security Council adopted Resolution 1559, expressing concern over armed militias in Lebanon, including Hezbollah, and called for their disarmament. On July 2006, Hezbollah launched a major attack, firing rockets into northern Israel and ambushing an Israeli patrol across the Blue Line. This attack, known as Operation True Promise, resulted in the death of a few Israeli soldiers, civilians, and the capture of two Israeli soldiers, who were taken into Lebanon. In response, Israel initiated Operation Change Direction the following day. It imposed a naval blockade, launched airstrikes, and by July, Israeli ground forces entered Lebanon. Hezbollah responded with a massive barrage of rockets into northern Israel, targeting cities like Haifa. The war lasted over a month and led to destruction on both sides. Israel's UN representative immediately blamed Hezbollah, Lebanon's government for inaction, and Iran and Syria for their support towards this. Israel justified its actions as self-defence under Article 51 of the UN Charter, citing years of restraint and persistent attacks. Lebanon, however, labeled Israel's retaliation as aggression, asserting it had no control over or responsibility for Hezbollah's actions. Many Security Council members including the US, UK, and several European and Latin American states recognized Israel's right to self-defence. UN Secretary-General Kofi Annan also supported Israel's right to defend itself but emphasized the need for proportionality. A key legal debate centred on whether Israel's actions were proportionate. Critics pointed out that Israel's strikes included civilian and government infrastructure, raising questions about excessive force. Israel justified its actions using the 'needle-prick' theory that a series of small attacks could cumulatively justify armed self-defence. For the first time, the Security Council implicitly recognized this 'accumulation of events' theory, suggesting a shift in post-9/11 international legal thinking. Legal scholars offered varied opinions and few viewed Israel's actions as legitimate self-defence and proportional when considering both past and potential future attacks. The 2006 Israeli invasion of Lebanon became a test case for post-9/11 self-defence claims against non-state actors. While Israel's use of the 'accumulation of events' theory marked a shift in global legal interpretations, its military response was widely criticized for exceeding the limits of proportionality. The necessity requirement for self-defence could arguably be met due to the pattern of attacks and the likelihood of future aggression, but the proportionality of Israel's operations, especially those affecting civilians and non-Hezbollah infrastructure, remains highly contested.²⁷

6. Turkish Incursion into Northern Iraq 2007

The Turkey-PKK conflict dates back to the late 1970s. The PKK (Kurdistan Workers' Party), a Kurdish militant group, has long pursued secessionist aims, including claims based on the principle of self-determination. Turkey considers the PKK a terrorist organization and has faced continuous cross-border attacks by the group. In 2007, violence between Turkish forces and the PKK intensified, particularly due to cross-border attacks. The PKK killed several Turkey soldiers and citizens, and in response, Turkey deployed around 100,000 troops along its border with Iraq, and Aerial bombardments began in December 2007, targeting PKK bases in Northern Iraq. In February 2008, Turkey launched a major ground offensive into Iraq aimed at eliminating PKK positions. Although Turkey never formally invoked self-defence or referred to Article 51 of the UN Charter, its actions displayed characteristics consistent with claims of self-defence against non-state actors. Turkey did not report its actions to the UN Security Council, missing the opportunity to frame its actions legally. Despite this, the international community focused on the conduct of hostilities, not the legality. The EU acknowledged Turkey's right to protect itself while urging restraint, proportionality, and respect for human rights and international law. The UN Secretary-General echoed these concerns, recognizing Turkey's security needs but stressing respect for Iraq's sovereignty. Several countries did not question Turkey's justification for the attack but emphasized the need for moderation. Several legal concerns were raised regarding the Turkish incursion. Turkey did not officially invoke self-defence, nor did it submit a Security Council notification. This weakened its legal position and prevented clarification of the legal basis. The long series of PKK attacks arguably satisfied the criteria for an armed attack under the 'accumulation of events' or 'needle-prick' theory. This view was

²⁶ Kinga Tibori Szabo, (n 12), 233

²⁷ Kinga Tibori Szabo, (n 12), 237

implicitly supported by the EU, the UN Secretary-General, and the Dutch Foreign Minister. Although Iraq took some measures to limit PKK activity, it refused to extradite rebels or take military action against them. This left Turkey in a difficult position, but it remains unclear if there was a present and inevitable need for a full military incursion. The scale of the Turkish offensive, including aerial bombardments and ground operations, led to international warnings about excessive force. Proportionality remains questionable, especially without clear evidence that such force was absolutely necessary to neutralize the PKK threat. The 2007–2008 Turkish military operations in Northern Iraq represent another state practice where armed force was used against non-state actors without formal invocation of self-defence. Despite lacking a clear legal claim, the pattern of violence, the failure of Iraq to stop PKK attacks, and the implicit support by international actors show a shift in post-9/11 international norms. This case, much like the 2006 Israeli invasion of Lebanon, reflects growing state acceptance of using force against non-state actors across borders, particularly under the ‘accumulation of events’ theory. However, serious questions persist regarding the necessity and especially the proportionality of such operations.²⁸

7. The Russian Invasion of Georgia 2008

Russia and Georgia have a long and complex history. After the collapse of the Soviet Union in 1991, Georgia became independent. The regions of South Ossetia and Abkhazia, formerly autonomous areas within Soviet Georgia, sought independence from Georgia, leading to conflict. In the 1990s and 2000s, Georgia fought separatist movements in both regions. Russia gradually supported these movements, including granting Russian citizenship to many residents of South Ossetia and Abkhazia. In early August 2008, South Ossetian militias, allegedly backed by Russian forces, attacked ethnic Georgian villages. On August 2008, Georgia launched a military operation in South Ossetia to restore order and protect its peacekeepers. Russia responded with a full-scale invasion, claiming to defend its nationals and peacekeepers. Russia bombed Georgian targets, invaded undisputed Georgian territory, and occupied cities like Poti, Gori, Senaki, and Zugdidi. It conducted cyberattacks, destroyed infrastructure, and imposed a naval blockade. A ceasefire was reached in August 2008. Russia withdrew from uncontested Georgian territory but remained in South Ossetia and Abkhazia. It recognized both regions as independent states and signed bilateral agreements with them. The war caused civilian casualties, widespread destruction, and mass displacement of ethnic Georgians. The central legal question is whether Russia's invasion of Georgia was lawful under international law, specifically under the doctrine of protection of nationals abroad and Article 51 of the UN Charter, which permits self-defence in response to an armed attack. Russia claimed a legal obligation to protect its nationals in South Ossetia, asserting that Georgian forces were committing genocide and grave atrocities against Russian citizens in the region. Russian officials, including its UN representative and Chief Justice, argued the invasion was a form of self-defence under Article 51. They invoked Russian domestic law, allowing military force to defend Russian expatriates where international law is violated. There were several challenges to Russia's legal claim, such as the population of “Russian nationals” in South Ossetia was not organic but manufactured through mass distribution of Russian passports to ethnic Georgians in separatist areas, and the citizenship was granted easily and strategically before the war, likely to justify future intervention. These actions undermined the legitimacy of Russia's protection claim. Russia's actions amounted to interference in Georgia's internal affairs and subsequently violation of its territorial sovereignty. The so-called Russian nationals were originally Georgian citizens, involved in secessionist activities. Russia lifted CIS sanctions on Abkhazia and South Ossetia, boosting their economies and strengthening their de facto independence. Russia had acknowledged South Ossetia as part of Georgia before the war, so Georgia had the right to deploy troops in its own territory (e.g., Tskhinvali). Russia also cited the need to protect its peacekeepers in South Ossetia. However, international law provides no specific right to use unilateral force to defend peacekeepers abroad. Article 51 only permits the use of force in response to an armed attack, not for pre-emptive or humanitarian reasons. The “protection of nationals abroad” doctrine is not a recognized exception under Article 51.²⁹ The invasion did not follow the UN Security Council process, violating Article 2(4) of the UN Charter, which prohibits the use of force against the territorial integrity or political independence of any state. Russia failed to establish Necessity and proportionality as there was no clear imminent threat, and diplomatic or international options were not exhausted. The Russian invasion of Georgia was unlawful under international law. It violated Article 2(4) and Article 51 of the UN Charter and the principles of sovereignty and non-intervention. The use of force lacked legal justification, as it did not meet necessity and proportionality. Therefore, this invasion was perceived as aggression and an illegal use of force.³⁰

8. The Gaza Crisis 2008

In June 2008, Egypt brokered a 6-month ceasefire between Israel and Hamas. Under this agreement, Israel was stated cease its military operations in Gaza and ease its blockade, and Hamas was to cease its rocket attacks from Gaza into Israel. Despite the agreement, violations occurred on both sides; Palestinian armed groups continued to fire rockets into Israel. Israel conducted raids and airstrikes, killing militants and some civilians. In November 2008, Israel entered Gaza to destroy a tunnel it claimed was meant for kidnapping Israeli soldiers. In retaliation, Hamas launched several rockets into Israel, and this officially ended the ceasefire, leading to intensified rocket attacks. In December 2008, Israel began a major military operation with air and missile strikes, killing around 225 people on the first day. The operation lasted until January 2009, involved a full air and ground offensive. Toward the end of the operation, Israeli forces demolished structures systematically, including homes and water tanks, and conducted intense strikes causing structural damage and devastation. They were accused of intentionally targeting civilian infrastructure. Israel claimed self-defence under Article 51 of the UN Charter, stating that Hamas rocket attacks justified Israel's defensive response. Several UN members accepted Israel's self-defence claim. However, other members called for the cessation of hostilities while still acknowledging Israel's right to self-defence. And few states rejected the self-defence claim and criticized Israel's actions as aggression. UN Secretary-General Ban Ki-moon condemned both Hamas attacks and Israel's excessive use of force. Human rights groups and the UN Human Rights Council, based on its 2009 Goldstone Report, criticized Israel's operation. The report alleged that Israel targeted the population of Gaza, not just Hamas fighters. It questioned whether the Israeli response was proportionate or necessary under international law. While

²⁸ Kinga Tibori Szabo, (n 12), 239

²⁹ Kinga Tibori Szabo, (n 12), 231

³⁰ *Ibid*

Israel's right to self-defence against non-state actors was widely recognized, the scale and manner of its military response drew international criticism. The operation highlighted ongoing legal and ethical debates about self-defence, proportionality, and the use of force against non-state actors.³¹

9. The Crisis in Ukraine 2014

After the Cold War, Ukraine's strategic position between Russia and the European Union (EU) made it a focal point of geopolitical tension. Russia viewed Ukraine's alliance with the EU and NATO as a threat to its influence in Eastern Europe. Crimea is crucial to Russia due to its access to the Black Sea Fleet. Ukraine, in turn, is economically dependent on Russia, especially for gas supplies and trade. Eastern Ukraine leans pro-Russian, with a large Russian-speaking population, whereas Western Ukraine is more oriented toward the EU. In November 2013, mass protests erupted after President Yanukovich refused to sign an association agreement with the EU. The protests turned violent, resulting in over 100 deaths and widespread injuries. Western leaders expressed support for the protesters, which Russia saw as foreign interference. In February 2014, Ukraine's parliament removed Yanukovich from office and formed an interim government. This was followed by pro-Russian forces taking control of Crimea, initiating its secession from Ukraine. In March 2014, Russia authorized military intervention in Crimea. Russian forces surrounded Ukrainian military bases and forced them to surrender or withdraw. Russian justification for Intervention was that it claimed it acted to protect Russian-speaking citizens in Ukraine who were allegedly under threat. It stated that it acted in self-defence as authorised by Article 51 of the UN Charter. However, under international law, self-defence is generally justified only when an armed attack occurs. It's unclear whether threats to civilians abroad qualify as such. The practice among states is inconsistent, and most scholars oppose broad interpretations of this right. The "Responsibility to Protect" doctrine typically requires UN Security Council approval. Russia also argued that Yanukovich invited military intervention to counter the unrest. Yanukovich later confirmed this but regretted it. Under customary international law, military intervention is legal if requested by a government in control. But by the time of the request, Yanukovich had lost control of Ukraine. He had fled the country and lost support from key institutions like the police and military. Thus, he lacked legal authority to invite foreign intervention. Russia's intervention served its strategic and political interests, particularly the annexation of Crimea. The use of force and occupation of Crimea by Russian troops constituted a violation of Ukraine's sovereignty. Breached international law, specifically Article 2(4) of the UN Charter, which prohibits the use of force against the territorial integrity of another state.³²

10. Russia Ukraine 2021

On 24th February 2022, Russia launched a full-scale invasion of Ukraine, escalating the conflict that began in 2014 with the annexation of Crimea. This invasion was widely condemned as a violation of international law and Ukraine's sovereignty and territorial integrity. Russia claimed that the invasion was a legal use of force under the right of self-defence under Article 51 of the UN Charter, stating that it was exercised for the Protection of Russian nationals in Donbas. Russia alleged that Ukraine was committing genocide against Russian-speaking populations in Luhansk and Donetsk. It recognized these regions as independent republics and signed mutual defence treaties with them. Russia then claimed it was acting in collective self-defence of these entities. This Pre-emptive Self-Defence of Russia also hinted that NATO's expansion and Ukraine's possible future membership posed a threat to Russian security, framing its actions as preventive self-defence. However, Russia's claims were rejected because no armed attack occurred against Russia or Russian troops that would justify self-defence under Article 51 of the UN Charter. The International Court of Justice (ICJ) in 2022 stated there was no evidence of genocide in Eastern Ukraine. Preventive or anticipatory self-defence is not accepted under international law unless there is an imminent threat, which was not proven. Russia's recognition of Donetsk and Luhansk as independent states was not accepted by the UN. Most legal scholars and states view Russia's invasion as a violation of Article 2(4) of the UN Charter, which prohibits the use of force against the territorial integrity or political independence of any state. Ukraine is the victim of an armed attack by Russia. This gives it the inherent right of individual and collective self-defence to Ukraine under Article 51 of the UN Charter. It has been stated that Ukraine has lawfully used force to repel the Russian invasion, defend its territorial integrity, and seek support from allies, e.g., NATO countries, EU in the form of weapons and training. Other countries like the US, the UK, and EU members are providing military aid to Ukraine, this has been legally justified as part of collective self-defence under Article 51. The UN General Assembly and other bodies have reaffirmed Ukraine's right to sovereignty and self-defence. Russia's use of force does not qualify as lawful self-defence. It is widely considered an act of aggression, violating Article 2(4) of the UN Charter, which prohibits the use of force against the territorial integrity or political independence of another state.³³

11. Israel – Gaza 2023

In October 2023, a major conflict broke out between Israel and Hamas, the governing group in Gaza. The fighting began on October 7, when Hamas launched a large-scale surprise attack on Israel. This attack involved fighters crossing into Israeli territory, using rockets, and targeting civilians. It was one of the deadliest days in Israel's history, with over 1,200 Israelis killed, many of them civilians. In response, Israel launched a military operation targeting Hamas in Gaza. This included airstrikes, ground troops, and blockades. Israel said its goal was to destroy Hamas's ability to attack and protect its citizens. Israel argued that it had a legal right to defend itself based on Article 51 of the UN Charter, which allows countries to use force in self-defence if they are attacked. Since Hamas attacked Israeli towns and civilians, Israel said it had every right to fight back. Many countries supported Israel's right to protect itself from such attacks. But at the same time, there was a lot of criticism about how far Israel went in its military response. The conflict caused massive destruction in Gaza. By 2025, more than 50,000 Palestinians had been killed, and many homes, hospitals, and schools were destroyed. This raised serious concerns about whether Israel's actions were proportionate, meaning whether the level of force used was reasonable compared to the threat

³¹ Christine Chinkin, *"Self Defence as a justification of war"*, Cambridge University Press, United Kingdom, 2017

³² James. A Green, *"The rationale temporis elements of self defence"*, Journal on the use of force and international law, 2015

³³ *Ibid*

faced. Some international experts believe Israel went beyond what is allowed under international law. The main concerns are the disproportionate number of civilian casualties and the destruction of basic infrastructure. Even though self-defence is a recognized right but its limits were exceeded by Israel³⁴.

IV. Conclusion:

It is evident from the state practices that theory is different from practice and that states have always gone to extreme lengths to protect their own interest, even at the cost of violating international law. After analyzing and examining the contemporary state practices it is crystal clear that states exceed self-defence limitations when their state sovereignty, state interest, political independence, and territorial integrity have been violated or are on the verge of being violated. In other words, states intent on preserving or protecting their rights and interests have always been their superior concern. Until the threat to their peace and security is eliminated, they continue to use force under the guise of self-defence, showing little or no regard to the limits established by international law.

Furthermore, due to the emerging trends in self-defence, such as pre-emptive self defence, it is interpreted by several international scholars that the usage of self-defence by states is developing and growing beyond the boundaries established by customary laws and the states are adapting and changing the age-old concept of self defence to suit their present needs and circumstances. With the modernization of lethal weapons, cyber-attacks, and horrendous growth of non-state actors, a new kind of self-defence has emerged, i.e., pre-emptive self-defence, though it tends to exceed the limits established by international law, it is viewed as an essential byproduct of defensive rights of the states.

³⁴ Gayathri. U, *A Study on the Problems faced by the International Court of Justice in exercising its jurisdiction against the prosecution of International Humanitarian Crime with special reference to the Israel–Gaza War*, (Lex Lumen Research Journal, Vol 1- Issue 2, 2024)