The Preventive and Anticipatory Dimension of the Right to Self-Defense of States

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Abstract: The right to self-defense of states, as well as any other right, has to be regulated in order to be applicable and to have the consequences of a right. Known over time in terms of value and principle of national self-determination, the right to self-defense of states was necessary, especially after World War II, to become an international norm established by common consensus between the signatories parties of the UN Charter. In addition to the internal regulations that may exist in the fundamental or special laws of the States, this international regulation comes to establish the general guidelines that governments must note in taking action in cases that entail the self-defense of a state. An important aspect of this right to self-defense is that of its preventive and anticipatory dimension, which some states invoke for their own interest.

Keywords: self-defense; anticipatory; preventive; right; arming; war

The dynamics of international relations require states to take all necessary measures to survive. Over time, the armed conflict has played an important role in redefining and reshaping the relations between states. Protective measures are part of the means by which a state ensures its existence. Protective measures include a wide range of actions or inactions, from preventive and diplomatic, to attack and coercive. Any attack and defense measures are governed by international law, even if some are interpretable and incomplete. With the completion of the Cold War, the multipolarity power centers has led to the reorganization of the international system. More and more actors want to have the ability to emancipate and impose their interactions, often invoking the need for self-defense. And this need

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embodied in a right can often be considered too discretionary, so that the right to self-defense is interpreted *lato sensu*.

In this article, I would like to examine from a legal point of view the right to self-defense of states, with particular emphasis on the anticipatory or preventive aspects of self-defense. Mainly established in the intervention in Iraq, this anticipation or prevention of the self-defense can be categorized as a far too wide interpretation, which is why its legitimacy is questioned. In order to analyze in concrete terms the way in which a state can invoke preventive or anticipatory self-defense measures, I will take into consideration the case of North Korea in this article, where I want to analyze to what extent continuous and complex arming can be based on a preventive and anticipatory right to self-defense. For a better understanding of the theme, I chose to structure the work in four parts. In the first part I will present the general aspects of the right to self-defense, followed by the legitimacy conferred by Article 51 of the UN Charter. The third part of the paper deals with aspects of anticipatory and preventive character, which will allow me to further analyze the case of North Korea. The assumption from which I start is that the right to self-defense also requires a "*not to do*" obligation. The main objective is to demonstrate whether anticipatory and preventive self-defense measures can also be active (attack), or only passive (arming) in order to be grounded on Article 51 of the UN Charter. The second objective is to determine to what extent the North Korean state's arming can ever be grounded on such a right.

1. General Aspects

Seen as a right against military action of a state, this right leaves room for interpretations and can sometimes be ignored or interpreted far too widely by states to benefit the presumption of innocence and good faith. Aspects under the UN Charter on States' Self-Defense Right are completed by decisions and resolutions of UN bodies that clarify the limits of interpretations of this right, but also bring in void in its application. Even if its applicability in the current international context is temporally, materially or geographically restricted,

the fact that there are "hot areas" that are about to break into new armed conflicts, determines that this right is taken into account by involved parties.

The right to self-defense has been used in the past in armed conflicts as a reason to trigger, carry or end a war, being established as bilateral conventions or quasi-known general principles. For most of the period, these principles were part of the *right of war* between states or medieval entities, characterized by the doctrine of *bellum justum* (Sloane, 2013, pp. 57-59), but which lost its importance because it was far too objective. Subsequently, other principles were developed that laid the foundations and generally governed how war can be triggered, unfolded or ended. They have redefined the rules on *war law*, setting criteria to follow, in order to combat the disproportionality or unfair cause. Thus, the *jus ad bellum* principle has in mind the following aspects: there is (i) a just cause, (ii) a right intention, (iii) supervised and approved by a legitimate authority, there is (iv) a formal declaration of war, (v) exhausted all other peaceful solutions, there must be (vi) proportionality between purposes and forces, and it must not be (vii) a reasonable expectation of defeat or victory (Parcero, 2001, pp. 282-283).

The *jus in bello* principle establishes new criteria on the principle of non-discrimination or immunity (which would also represent the declared states of neutrality) and, in particular, restates the issues of proportionality. These principles refer to a limited concept of war, contrary to the idea of total warfare. Among these principles, as part of *jus ad bellum* and *jus bello*, they distinguish between *aggression theory* and *isolation theory*. The first contains those principles by which it intends to apply the subject of action only to go to war, from a moral point of view, the source being armed violence or aggression. The second is to avoid unnecessary suffering, and the principles of this theory attempt to regulate and limit the actions of a war that has been launched, and must include at least proportionality and non-discrimination (Parcero, 2001, p. 284). This comparison is important because it distinguishes with the simple action (decision) of war and quality (good or bad) to qualify military actions. Even though these are war criteria, they have a particular importance in terms of the right to self-defense, in relation to the rules of war. Thus, by qualifying the legal limits of a state's military action, the right to

self-defense of the aggrieved state is in some form, stable. In addition, they later led to the evolution of these principles, gradually establishing the normative criteria for the right of self-defense.

Following these principles, it was possible for the League of Nations to establish and supervise the right to war and conflict between states (Stahn & Kleffner, 2008, pp. 11-12). In accordance with Article 12 of the Convention of League of Nations, there were four special situations: (i) a war or conflict started without a mediation or prior arbitration; (ii) before the end of the three-month period following the completion of mediation or arbitration, (iii) attacking a non-aggressive member of the League of Nations Council, or (iv) against a non-member League (Sobel, 1994, pp. 175-177).

Moreover, the General Treaty for the Waiver of War (also known as the Kellog-Briand Covenant or the Paris Pact, 1928) stipulated and normalized the possibility of resorting to war for any international controversy so as to give up war as a state policy. This principle is also found in Article 2 of the Charter of the United Nations. The concept of *jus ad bellum* is closely linked to the state's right to self-defense, as the latter was seen as a response to the incitement of a war. With time passing and the adoption of new international regulations, the right to self-defense has become a principle of its own, in that it was not just a matter of war, but it has become a basis for relations between states. Following this idea, I will examine the issues covered by the UN Charter in Article 51 on the right to self-defense, its limits and conditions in its application, but also the additions made by the resolutions of the UN General Assembly or the Security Council.

2. Article 51 UN Charter

The Second World War also brought the need to regulate in the international law principles regarding the launching and carrying on of a war. Thus, until then the rules were limited, but since the adoption of the UN Charter, they've become restrictive. The principle of the right to self-defense is no longer seen as an element of war, but of peace. States undertake not only to ensure the proper conduct of a war and the right to challenge it legitimately, but to oblige

states to protect the right of states to self-defense. This is basically regulated in the UN Charter, in Article 51, as a basis for the right to self-defense of states, sustained and criticized, both because of its necessity and its vague character. The right to self-defense of states also entails the principle of responsibility. This principle takes into account the conduct of states on the international stage and in relation to other states, which establishes obligations of states under international rules (Gonzales, 2010, pp. 13-14). In this way, the right to self-defense of states is protected by the conduct of states which, under the pressure of regulating the rules of behavior towards other states or in international relations, are compelled to behave to protect their general interests, implicitly to obtain the protection of their own interests.

But this force, which the right to self-defense has gained, is in contrast to the aggression, a relationship that can be established as two sides of the same coin, and the difference between the two would be represented by the functions and purpose of the two. Aggression is to cause a body of the United Nations to take action and ultimately to determine responsibility, and the right to self-defense is such as to enable a state to take appropriate action against unlawful acts committed without the approval of superior / international bodies (Bowett, 1960, p. 199). However, the use of force by either a State or an international organization is only possible with a significant limitation. This refers to a self-defense case that is not identical to self-help, being rather a "special case of self-help". It is self-help against the illegal use of force, not against other violations of the law. Self-defense is the use of force by a state illegally attacked by another. The attack against the use of force as an act of self-defense is permissible but must have been or must be forcible (Kelsen, 1948, pp. 784-795). The right to self-defense is at least a self-help which, even within a system of collective security forces based on a centralized community monopoly, must be allowed. As such, it is recognized by national law, as well as by international law, within the State and within the international community.

Between the moment when the unlawful attacks begin and the moment when the centralized collective security mechanism is put into action, there is, even if the prompt operation is perfect, a space, an interval that can be disastrous

for the victim. In a collective security system organized on the basis of a complete centralization of the legitimate use of the self-defense force, is the case where the central body takes a penalty against the illegal use of force (Kelsen, 1948, pp. 784-795). The case in which the attack takes place on a member who, until the central body's response, suffers until the decision to counteract or issue provisions on how to defend or resolve the armed intervention. The right to self-defense, although conclusive in the case to collective security communities, has a natural loophole, so the subject matter of the attack without subjectively attributing that right runs the risk of remaining in conflict until the decision of the supreme bodies. However, the Charter of the Nations United, regulates a collective security system with a Security Council to decide on the issues of this kind, being the only one who has the ability to decide in the armed interventions or the answers to the given challenges. However, the question remains to what extent are states, subject to armed attacks by others, willing to wait for the Security Council's decision or to respond to the challenge of its own initiative? It is worth mentioning in this case that of the US military interventions, the North Atlantic Alliance and allies in Afghanistan and Iraq. If for the first case the approval of the Security Council came in favor, in the second case there was a negative answer. But the United States continued its efforts towards Iraq, building on both self-defense, preventive and collective, without taking into account the resolution of the Security Council. Thus, the right to self-defense can also be used for aggression, but only by highly developed states with military capabilities.

The dilemma of the right to self-defense in a security community is whether this right rests upon a state as a member of that community and becomes a matter of principle and charismatics of the community, or becomes by the fact that this right is an assignment and a prerogative of each state to maintain its independence and intergeneration? In a world that carries on interdependence, both individually and collectively, the necessary measures must be taken, proportionate whenever necessary to eliminate international threats to peace and security, and implicitly to protect its members. This interdependence creates the optimal solution so that, in order to protect its own interests, the state, member of an international community, must take care to protect them collectively. However, in order to preserve the security of their interests, the

collectivity is obliged to resort to the protection of the constituent elements. In this case, the right to self-defense is reciprocal, since personal security is collective security, and vice versa (Alexandrov, 1996, pp. 29-34).

The United Nations Charter establishes the legal framework for States' conduct on the international scene, with each other or with other organizations. The right to self-defense of states is specified in Article 51 of the Charter, adopted on 26 June 1946 in San Francisco. Article 51 therefore sets out the basic rules on self-defense. However, it can not be denied that the right to self-defense is, at least to a certain extent, an international customary law. Crucial and universally accepted are the legal criteria that appear in the international convention but are not all provided in Article 51, especially the requirements of necessity and proportionality. For the present, however, it is simply necessary to take into account that self-defense derives from two different "sources" (Green: 2009, p. 9). UN members introduced Article 51 of the Charter not for the purpose of defining the individual right to self-defense of states but for the purpose of clarifying the situation with regard to collective self-defense arrangements (Kunz, 1947, pp. 872-873). The right to self-defense is still in domestic and international law, clearly distinct from the so-called "state of necessity". The right to self-defense is a complete justification, it is a right, not just an excuse. But this is a right, established by positive law. As in domestic law, self-defense under art. 51 is not a law enforcement procedure, it is not designed to punish the aggressor, it is not a sanction of the United Nations, but serves primarily to reject an illegal armed attack.

UN members have developed Article 51 to clarify this issue, especially in terms of defense against foreign aggression, so it was natural for the article to be linked to collective defense against an armed attack. The delegations initially considered that Article 51 would limit the right to collective self-defense of regional organizations and would require the prior approval of the UN Security Council to exercise its right to self-defense (den Hole, 2002, p. 77). In the debate that followed, the delegates clearly opted for the customary right of self-defense to be unaltered and, in particular, to prevent a single permanent member of the UN Security Council from being able to stop a

regional organization take any measures, using his right of veto (Kunz, 1947, p. 874).

As a result, delegates have placed in Article 51 that "the use of the weapon in legitimate defense remains admissible and intact." The only exceptions set out in Articles 42 and 51 of the UN Charter, in connection with measures taken by the Security Council and the right to self-defense, it is the fact that neither of these two elements would be in connection with the provisions of an international treaty providing a guarantee of a violation of the use of force. On the other hand, it was underlined that, even from the entry into force, compliance with existing standards in international law and, in particular, with the Charter of the United Nations, it always depends on the circumstances and purposes for which the actors are engaged. It has been undisputed that even the Charter conditions the legitimate use of force in certain circumstances, pursuant to Article 51. (den Hole, 2002, p. 78)

Article 51 of the UN Charter clearly recognizes "the right inherent to individual or collective self-defense in the event of an armed attack against a member of the United Nations" by anyone. The content of Article 51 does not identify or prescribe the type of aggressor or aggressors against whom this right to self-defense can be exercised (Hertz, 2010, pp. 1-2) and certainly does not limit the right to self-defense against attacks. It remains to be investigated to what extent Article 51 can be applied to attacks from non-state entities that may result in the application of this regulation. For example, terrorist groups located on the territory of a state, which endanger the safety and security of another state. This can be easily exemplified by the position of the United States of America, which grounded their action in the Afghan War on one of these principles. Thus, the actions of the Al Qaeda terrorist group have been minimized as a result of US intervention in Afghanistan. This operation was also based on some of the provisions of Article 51 for the US self-defense right following 9/11 terrorist actions protected from non-UN entities or states but taking action against its members United Nations.

So the starting point can be found in Article 51 of the UN Charter, in conjunction with Article 2 (4), although it is important to recognize that all conditions and requirements for exercise are vague. While Article 2 (4)

prohibits “the threat or use of force”, Article 51 provides for an "armed attack” and not a threat of attack, giving rise to tendentious interpretations of this concept (Rodriguez, 2005, pp. 277-278). Moreover, the way in which the Charter was drafted in 1945 falls into a historical context in which the concept of “armed attack” be conceived apart from the regular armed forces of a state confronted with the army of another state. The right to self-defense is associated with two schools of thought: the first is the one who considers the state has the first instinct to preserve and maintain its integrity, and in order to achieve this, it is necessary to preserve its interests, security and safety. The struggle against a nation must be countered, and this is not just a right but an obligation, although its status is international, that of a right and not an obligation (Rodriguez, 2005, pp. 277-278). But the major problem with the right of self-defense is that there is no consensus on which the rights or interests of the state can be protected by self-defense.

The second school of thought advances the idea that the right can not legitimize self-defense, because the power of a state is superior when it comes to state protection. In this case, each state must choose which measures are necessary to protect its interests and self-defense. It divides states into two categories: those who have a broad view of the right to self-defense, such as the case of the United States of America, and those who have a restrictive vision such as France (Anand, 2009, p. 30). Thus, US intervention in Panama in 1989 was justified by the need to protect the interests of American citizens in the area, rather than claiming the true reason for restoring democracy in the area.

The right to self-defense is a controversial issue because its exercise is paradoxical and can undermine or combat the very purpose of the international mechanism of protecting order of international relations. The right to self-defense, as it is regulated and codified in the UN Charter, is of major importance for ensuring the integrity and independence of states when collective security measures fail. In an anarchic and decentralized international system, there will inevitably be circumstances in which states will have to secure protection when legal action fails. Since it is difficult to create a legal system that does not contain exceptions to the use of force in

the form of the right to self-defense, they should be closely supervised by an organization to determine more carefully the discriminatory or non-discriminatory way of using this right. The right to self-defense tends to be transformed into a way of exerting violence, and in the form of regulations designed to prevent the use of aggression, they can be turned into aggressive actions (Anand, 2009, pp. 25-28).

The application of the conditions that must be met to attract the incidence of the provisions of Article 51 can not be left to the discretion of States which can claim their own interpretations and applications. Thus, if analyzed in a restrictive way, they tend to omit unforeseen situations, and thus states or other entities can find resources to avoid the application of the provisions of Article 51. If they are interpreted too broadly, one can create an advantage for some parties. In order to determine the right to self-defense, States may also take into account or should also take into account regulatory issues provided by international bodies or the provisions of bilateral or multilateral agreements. One of the regulations that may arise in invoking the right to self-defense is the resolutions provided by the UN Security Council or the General Assembly. The regulation of the right to self-defense has led to its being subjected to an analysis by the International Court of Justice as a superior forum for interpretation and judgment in cases where the conditions established and imposed by Article 51 of the Charter of the United Nations are breached. One of the main issues concerning the right to self-defense, which has generated interpretations both at the level of states and international bodies, is the invocation of the preventive and anticipatory nature that it may have.

3. Preventive/Anticipatory *right* to Self-Defense

One of the most important aspects of the right to self-defense of states has recently been linked to the possibility, legitimacy and ability of states to take anticipatory or preventive measures of self-defense. These issues come about as a result of the need and wishes of states to ensure as effectively as possible the possible threats to them by invoking anticipatory or preventive measures of the right to self-defense. To begin with, I want to establish that there is a

difference between anticipatory measures and preventative self-defense measures.

Claiming preventive self-defense is a possibility to use unilaterally, without prior international authorization, a high level of violence to counteract a potentially threatening development at an early stage that is not yet operational or a direct danger, but if it is allowed to mature, could be seen by potential danger with unacceptable consequences for that part. Preventive self-defense law differs from the anticipatory measures to self-defense in the sense that the latter may indicate a palpable and imminent threat. Thus, the right of self-defense (which was not contemplated by the authors of the UN Charter, though supported by many in later practice) is at least similar to the armed attack requirement in the Article 51 Charter, as it could be tangible evidence of an imminent attack. A request for self-defense preventive measure may only be a possibility among a number of other possibilities or may be an emergency. The threshold of preventive self-defense is interpretative, unilaterally attributed, therefore, the nature and amount of evidence that can satisfy the burden of proof being unilateral, being difficult to define, rather extrapolate and speculative (Reisman, 2006, pp. 525- 526). The major difference between preventive and anticipatory measures is the imminence of the danger, but in my view both raises the same signs of legitimacy in relation to the provisions of Article 51 of the UN Charter. Such preventive measures are to halt a possible attack, which is not even outlined, and the anticipatory measures are those that prevent an attack whose chances are greatest. However, the similarity between the two is the fact that in none of the cases the attack took place, so the conditions of Article 51 on the right to self-defense are not fully met. It is of interest for the present paper to find out under what conditions the measures to stop the attack, whether preventive or anticipatory, can be invoked on Article 51. Therefore, in the the paper I will refer both to preventive measures and to those anticipated on the incidence of the right to self-defense.

The preventive or anticipatory *right* to self-defense, represented by the adoption of measures, so that there is no surprise to an attack, is not provided by international regulations. Article 51 of the UN Charter, as mentioned

above, refers to the adoption of self-defense measures only after an armed attack has taken place. However, these measures are not new, but have been practiced over time by states, in stabilizing situations that can become dangerous. Thus, we can equally comment that the US attitude towards the Nicaraguan conflict is not just about the right to collective self-defense, but also a preventive and anticipatory one that there is no fear that this situation in Nicaragua, may worsen, and thus harm the interests of the United States of America.

In this way, one can easily ask the question: To what extent can the self-defense preventive/anticipative measures be based on the provisions of Article 51 of the UN Charter? Although there is the case of Caroline, the jurists of the UN Charter, they seem to have wanted to omit the regulation of this *right*, and that is simply because they can be neglected. If, under Article 51, abuse can be made, then certainly a regulation on preventive/anticipatory self-defense would create chaos, as each State could adopt measures against another (s) on their own conviction, that measures are being prepared to destabilize or jeopardize the comfort of that state.

In this respect, over time, states have adopted measures that were preventive/anticipatory in self-defense, especially since the entire Cold War period was based on such a conviction. In this regard, the states have adopted regulated measures (National Security Strategy for a New Century, USA, 1998), which from the point of view of the domestic law constitute the legal basis to act in the application of the preventive/anticipatory right to self-defense. In 2000, however, the Clinton administration issued a new security document (National Security Strategy for a Global Age, USA, 2000), in which the focus was more explicit on terrorism. Concerning possible nuclear attacks from an asymmetric opponent, being a strategic reaction, preventive or anticipatory action being considered as a means of combating asymmetric enemies using terrorist techniques. If these measures are implemented, wishing to eliminate the dangers without there being an armed attack that would draw the foundation on the basis of Article 51 of the UN Charter, but only the principles regarding the right to self-defense and preventive/anticipative measures, in this case , who would be obliged to prove

the evidence? In a brief analysis, it would surely be established that the person making the allegation, as in the case of Article 51, is to prove the actions of the other/others in order to legitimize his actions.

Another point that should be highlighted is that if the State invoking the right to self-defense and preventive/anticipatory measures use these to annihilate the possibilities of dangers, even if they have not occurred, the attacking State may invoke the right to self-defense on the basis of the foundations laid down in Article 51. The legitimacy of this principle of preventive/anticipatory self-defense, although it seems a little forced, is not fantastic in the relationship between states. These may behave differently and surprisingly to other states, and with military equipment in the times of today, such an important aspect can not be neglected. States, in order to maintain their integrity, must use different means to suppress any possible threat to them. But it is dangerous an event that has not happened, but there is a belief that it would happen in order to be eliminated from the start? Can Article 51 be interpreted strictly so that the steps can not be taken until the attack has been established? If we are referring to respect for international law, then the answer would be no. However, the right of legitimate defense as well as in criminal law must be ensured. In this case, as in the case of other types of attacks (made in the case of individuals or those created as rights of defense), certain conditions in this respect should be established. There is no recognition of this right in itself, but there is an acknowledgment of the dangers that may arise and which if the possibility should be avoided.

One of the most important cases of anticipatory and even preventive measures is that of measures taken by the United States after the attacks of 9/11. Measures have been adopted to re-address the terrorism. Thus, the adoption of strategies on the right to self-defense, considering the perturbation and destruction of terrorist organizations even through *preventive* measures (National Security Strategy of the United Sates, 2002) as well as in the National Strategy for Combating Weapons of Mass Destruction, issued in December 2002 (National Strategy to combat Weapons of Mass Destruction, USA, 2002)

The war in Iraq was one of the cases where the right to self-defense preventive/anticipatory measures was invoked. The initiators of the military interventions were grounded in the fact that the Iraqi state would hold weapons of mass destruction that would represent a future potential threat to regional or international security. The war in Iraq has had several announced objectives, including the implementation of UN resolutions and international law, as well as helping the people of Iraq, partly by eliminating Saddam Hussein and introducing democracy. It has also been agreed that one of the main declared objectives of the war in Iraq was to prevent or reduce the terrorist attacks in the future by the United States and its allies, and also to prevent weapons of mass destruction (Sinnott- Armstrong, 2007). However, these measures have remained unconstitutional at both national and international level.

Also, Franklin Eric Wester establishes the ethical criteria that have the right to start a rebellious war and the right to self-defense. Thus, first of all, (i) the legitimate authority that such a measure must have, (ii) the public declaration of war, (iii) the intention and determination, (iv) the proportionality, v) to represent the last measure and (vi) a reasonable hope of success. I consider whether the conditions for the legitimacy of anticipatory or preventive self-defense measures are met, should be taken into account if they take the active form of an intervention or remain in passive, armed rather than attacking form. If they remain passive, the provisions of the right to self-defense are met and respect the provisions of Article 51 of the UN Charter. The discussion is in the context in which the anticipatory or preventive measures take the active form of aggression. In this sense, I believe that they are implicitly a right to self-defense only on condition that they meet the criteria of the *just war* listed above.

4. North Korea's Problem

As we have shown in our work, the right to self-defense, anticipatory and preventive measures are mechanisms that states tend to use not only to defend themselves but also to strengthen their regional and global position vis-à-vis other states or entities that can address the dangers to its own security.

Preventive and anticipatory measures to remove possible threats are increasingly used by states in the context of military capabilities and threats on the international scene. The case of the United States as an "international guardian" of security and stability is not easily overlooked by other states that do not always share US doctrine and who want or claim the need of invoking anticipatory and preventive self-defense measures.

North Korea is one of the problem states but, like any other state, its sovereignty gives it the right to take the necessary steps to defend itself. Thus, over the course of decades, North Korea has resorted to arming to prepare for possible attacks against it. The Korean War has left room for interpretations and mutual claims between the two Korean states are leading a bilateral position. Looking at the historical and political context of the division of the Korean state, is North Korea able to claim the same rights as South Korea? Being two states with a common root and a common purpose, to reunite the state of Korea but also in relation to the sovereign character of the state, each of the two may have similar claims.

Thus, by analyzing in an objective manner without taking into account the regimes governing the two states, from an international point of view, they are equal in terms of independence, sovereignty and different evolution. If, in this context, some states support the cause of South Korea, it is justifiable for his communist *brother* to take the necessary steps to ensure *his* existence. Moreover, the right to self-defense is also an obligation of the state towards its components (population, territory, etc.) and North Korea is no exception just because it chooses to pursue another state policy. Regarding this case, where North Korea resorts to an isolationist policy with very little support from the international community, it must, from its point of view, resort to violation of international norms. This only creates the same sense of necessity of invoking the preventive and anticipatory measures of self-defense of the other states. This is a poor race in which everyone has the right to defend themselves.

The lack of balance of forces, North Korea versus the international community inevitably raises the question of the extent to which North Korea is legitimate to violate the rules imposed by the adversary? From the folklore

of other interventions, the use of force, and the invocation of the right to self-defense, and in particular the Bush doctrine, on the preventive attack, we can see that the North Korean state abuses to some extent the use of the right to self-defense. Nuclear arming is the main reason why there would be an action based on the right to self-defense on or by North Korea. Here is the question of both sides, North Korea or the international community must invoke preventive or anticipatory measures of self-defense(?) Let's first see how much the US and its allies can resort to anticipatory or preventive self-defense measures. To begin with, the main concern for the US and its allies is North Korea's nuclear arsenal. Is nuclear facilities and the development of such a weapon a reason to attract such interventions? Is it illegal to develop nuclear capabilities? In such a situation, the International Court of Justice has also ruled, stating a slightly interpretable position.

The opinion on the lawfulness of the threat or use of nuclear weapons was pronounced on 8 July 1996 following a request made by the UN General Assembly in December 1994. The General Assembly asked the IJC to issue an advisory opinion on the question is it the threat or use of nuclear weapons in any situation permitted by international law? A number of States have made observations, both in writing and orally, before the Court's deliberations on the question. I Court issued an opinion on this issue, after examining a number of areas of international law in the context of nuclear weapons. Following a discussion on human rights, the ban on genocide and international environmental law The Court found that "the relevant applicable law regulates the problem is the one on the use of force and the law applicable to armed conflict governing the conduct of hostilities" together with any specific treaties on nuclear weapons (Hefferman, 1998, pp. 134-135).

With regard to the ban on the threat or use of force, the Court found that neither Article 2(4) of the Charter of the United Nations nor customary international law expressly prohibits the use of nuclear weapons but that the threat or use of nuclear weapons constitute an infringement of Article 2(4). However, the Court has also applied the right to self-defense in this context. It concluded that the threat or use of nuclear weapons could become legal action in self-defense. However, the Court has stated that this would only be

the case if such a threat or the use of nuclear weapons meet the criteria relevant to any self-defense. A threat or use of force should also be compatible with international requirements on the law applicable to armed conflicts, in particular those of the principles and rules of international humanitarian law, as well as specific obligations under the Treaties and other undertakings dealing with express way with nuclear weapons (ICJ, 1996, pp. 96-98). Thus, it was concluded that the threat or use of nuclear weapons "would generally be contrary to international law", but the Court does not rule out the possibility that such threats or use may be lawful in extreme circumstances.

Since there is currently no resolution of the Security Council authorizing the use of force in response to North Korea's nuclear status, and any military action against North Korea should be justified as an act of self-defense in international customary law or the Charter UN (Sabel, 2012, pp. 2-3). There are three reasoning that the United States or other states could use the self-defense principle to justify the use of preventive or anticipatory force against North Korea. First, the attempt to develop or acquire additional weapons of mass destruction that could disrupt the nuclear balance in northeast Asia, thus constituting an "imminent threat" to international security.

Secondly, North Korea's actions could be an imminent threat, as North Korea could sell arms to terrorist organizations. Finally, threats or use of force may be necessary to ensure North Korea's compliance with its obligations. These justifications for anticipatory/preventive measures do not meet internationally acceptable self-defense reasons. First, they do not meet the standards of necessity and proportionality established in accordance with the Caroline Doctrine and customary international law. Secondly, it would be inappropriate to consider even military action in the case of North Korea, given the requirement for states to exhaust all peaceful ways of recourse before resorting to the use of force, a principle that was confirmed by the collective security structure established in the UN Charter. The third is that the use of force in self-defense was limited in accordance with Article 51 to respond to an "armed attack", "which, by definition, would not allow preventive or anticipatory measures against North Korea or its alleged nuclear development" (Alexandrov, 1996, pp. 96-102).

Under customary international law, any preventive attack by the United States against alleged nuclear installations in North Korea should meet the necessity and proportionality requirements set forth in the Caroline Doctrine. A preventive attack would not be justified solely by North Korea's possession of nuclear weapons or violations of arms control agreements due to lack of necessity. One of the main difficulties in implementing preventive doctrine lies in satisfying the requirement that North Korea acts as an imminent threat to US security. As established in the Caroline Doctrine, the need for self-defense must be "instant, overwhelming, leaving no choice of middle, and no time for deliberation" (Donaldson, 2013, pp. 538-539).

The sale of nuclear weapons to terrorists is a possibility, especially following the events of 11 September 2001. Despite these reasonable concerns, simple speculation that North Korea could offer weapons of mass destruction to terrorist organizations does not justify the use of force under international law. There is currently no established connection between North Korea and A-Qaeda or any other terrorist organization. Moreover, the use of preventive force in North Korea in response to breaches of arms control agreements would not be justified by lack of necessity (Maloney, pp. 882-885). Violations of arms control agreements are of international interest, however, this behavior is actually fairly common among states. In fact, North Korea has consistently accused the United States of violating its commitments in the debates. The same criteria can be formulated against North Korea, unlawful to invoke preventive and anticipatory self-defense measures to the detriment of the US and its allies. Unlike the case of Iraq, where the US could invoke preventive self-defense measures by invoking the involvement of the Iraqi state in terrorist affairs, North Korean isolation does not justify such measures, which may take the form of a right to self-defense.

5. Conclusions

Since ancient times the right to self-defense has been one that has led to the evolution of international relations and, implicitly, to international public law. Whether it is a natural right, in which states as well as men seek to protect their existence and interests, or their obligation to take all necessary measures

to survive, the right to self-defense, has become from a reserved principle the law of war, a source of the way in which it is triggered, unfolded or ended. With time passing, the right to self-defense has evolved since the determination of the *just or unjust* character of a war in the ancient period, continuing with principles of proportionality to the situation when, after the adoption of the UN Charter, it is regulated as a possibility of protection, and one of the only reasons why armed violence can be exercised. The right to self-defense is a controversial issue because its exercise is paradoxical and can undermine or combat the very purpose of the international mechanism of protecting order on the stage of international relations. The right to self-defense, as it is regulated and codified in the UN Charter, is of major importance for ensuring the integrity and independence of states when collective security measures fail. In an anarchic and decentralized international system, there will inevitably be circumstances in which states will have to secure protection when legal action fails.

The key issue is to delimitate cases where the right to self-defense can be invoked so that it does not become a way for states to trigger actions to divert attention from their true intent. The evolution of the right to self-defense is important for the current collective security system, because without it, the anarchic system of today would trigger chaotic initiatives. As a matter of strategic practice, any attacking state is likely to make an enormous effort to demonstrate the culpability of its opponent, limited only by inhibitions in terms of the operational effect of information sharing methods. As a matter of law, however, there is no requirement for a state to receive the *blessing* of the Security Council before responding to an armed attack.

The right to self-defense, as well as any other right, may be subject to unusual circumstances, testing its applicability, legitimacy, and especially the possibility of filling new cases appearing on the international scene. From the application of the conditions laid down in the custom and regulations to the interpretations given by the International Court of Justice, which are fully supported by a body such as the UN General Assembly or the Security Council, the right to self-defense is one of the most important rights may have a state. Although global actors, capable of playing a role as important as

states, a state's own defense, appear as a right, but also an obligation to its own elements, but also to the collective the security it is part of.

Another dilemma that arises is the difficulty in assessing proportionality, making it difficult to speculate on the appropriateness of the potential for action, particularly in view of the uncertainty of the threat to US security. Although not quoted as often as other aspects of the Caroline doctrine, the exhaustion of peaceful remedies is an important principle in international law, which was reinforced by Article 51 of the UN Charter, which provides for self-defense in the event of an "armed attack".

This standard has not been met with regard to the Korean nuclear crisis, given the US's refusal to engage until now in any talks with North Korea until it meets certain conditions. In addition, preventive and anticipatory force use is not justified under the UN Charter's self-defense requirement if an armed attack did not take place, nor does such an attack appear to be planned. The possession or sale of nuclear weapons and violations of the Non-proliferation Treaty obligations are not suitable areas for unilateral military action. If the United States has asserted and exercised the expansive right of self-defense based on its individual determination of "threat," which is not really imminent, a dangerous precedent would be established. One of the great dilemmas in the enforcement of the right to preventive self-defense is linked to the difficulty in assessing proportionality, making it difficult to speculate on the appropriateness of the potential for action, especially in the light of the uncertainty of the threat to US security.

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