"The Essence of Self Defense under Article 51 of UN Charter" - a Privilege or Priority

Sindhu VIJAYA KUMAR[1]

Abstract: While article 2, Para. 4 of UN Charter refrain all member states from threat or use of force against the territorial integrity or political independence of any states, or in any other manner inconsistent with the purpose of the United Nation, it is forbidding the state from indulging in war. Article 51 gives the right of self-defense and collective self-defense against aggression. Both the Article seems to have a diametrical approach with regard to the use of force, however there is consensus with regard to the concept of aggression. What the Article intent to prohibit is the aggressive war. Though war is a peremptory right of the state and is closely associated with the right to existence it is not absolutely an unconditional right. It is a last resort for existence; perhaps the right to wage war has undergone a dramatic change with the development and advancement of civilization among the nations and that's why art. 51 gives them the right of self defense as a exceptional right under exceptional circumstance and as an eternal right for existence, so it's clear that war do existence as a legal affirmation under UN Charter but with restriction. Hence the rights to self-defense can be exercised to protect states eternal right to existence. So let me put it in this way, self-defense is a right eventually exerted by almost all living creature, perhaps it would not be wrong to admit that it is the part of those eternal source which admits the right to existence. As such, it is the fundamental law, the first law of the nature to which all other law are subordinate. A state as a subject under international law has absolute right of self-defense. The act of self-defense is justified not only under customary international law but also under UN Charter. With the change in nature of international politics and the method of waging war whether the state practice of self-defense has become a privilege or a priority? With every action of negligence in battle field the states credibility of exercising the right to self-defense has become a debatable issue. However the practical approach of the executing the right of self-defense seems to be without any limitation and thereby raises objection on this right of the state. The interpretation of the act of self defense becomes extremely challenging when this right is executed practically without delimiting its scope, which is an issue of enquiry.

Keyword: international laws; sovereign right; reprisal; act against aggression

[1] Senior Lecturer, PhD, Research Scholar in Law, University of Mysore, Oriental Research Insitutions, D C Office, Mysore, Karnataka 570005, India. Tel.: +91 821 241 9336. Corresponding author: Sindh_vk@yahoo.co.in.

1. Introduction

Self-defense is not a novel concept; it is an act exercised as a matter of right against aggression. To view the two phenomenal terms, self-defense and aggression, necessarily the right of self defense originates due to the opposite act of aggression. Aggression is a violent action which is hostile and usually unprovoked and that is an unjust part of war. To this pretext the point is clear that the act of self defense is a reciprocal act against aggression for a just reason and that is exercised exactly for the right to existence.[1]

We know that, International law is a body of rules determining the relation of the international community; it recognizes and confers upon the state certain fundamental right. Indeed the primary right of the state is its independence. According to Fenwick state has absolute right of independence and the right of independence goes with the right of existence, so the existence of the state is the necessary condition of any other right, as such an independent state would not tolerate any kind of interference with its sovereignty and whenever the sovereignty is in question the state has absolute right of self-defense (Bowett, 2009, pp. 35-78). In general, the term self defense operates to protect essential rights from irreparable harm in circumstance in which alternative means of protection are unavailable.

In the words of Bowett "*The function of self defense would be to preserve or restore the legal status quo and not to take on a remedial or repressive character in order to enforce the legal right*."

Though municipal system lays down precise rules for the application of the doctrine of self-defense, no precise formulation of the concept can be traced under international law neither there is much likely hood of judicial determination on the issue whether the plea of self-defense is rightly raised. However Art 51 of the UN Charter preserves the term inherent right of individual or collective self-defense if an armed attack occurred against members of the united nation.[2] But then it is the responsibility of the international community as a whole to ensure that the plea of self-defense is not advanced as an excuse for illegal use of force, *for instance* aggressive *war against the union of soviet socialist Republic*. UN Charter also

[1]Fenwick. C. on National Existence comments "*Primary right of the state is its integrity and for this reason the science of international law concentrates upon the right of national existence*". (Fenwick, 1948, pp. 271-295).

[2] Article 51 of U.N Charter.

defines planning, waging of war or legal use of force as international crime.[1] The international community equally condemned aggressive war. In 1939 almost all non aggressive treaty including 1928 Pact of Paris treaty also known as kellong-Briand Pact were signed between the nation's though not practically abided, was more binding on all the 63 nations including Germany, Italy and Japan at the outbreak of war in 1939 (Dinstein, 2001, pp. 45-208). Unfortunately the treaties were discarded during the Second World War by the same countries. This was just the beginning of legal interpretation of self-defense; the countries indulged in war had to proof their action

It was seen in international scenario the frequent conclusion of treaty and at the same time its infraction, also the interpretation of the provision of the treaty by the state committing the breaches was frequent in their favour. For instance during the trail of Nazis before Nuremberg tribunal the German defense counsel specified that states were entitle to determine conclusively whether their action had been in self defense. But then this contention was empathically rejected by the Nuremberg tribunal and held that under kellong-Briand Pact the right of self defense does not confer upon the state the right to resort to war nor the authority to make final determination upon the justification of the action. (Stekel & Gutheil, 1943, pp. 75-256) The tribunal rightly interpreted the treaty provision and up held the principal of "Pacta sunt servanda"; very clear to understand from this interpretation is that self-defense can never be justified in the light of aggressive war or illegal force.

So it's beyond debate that the act of self-defense has its own delimitation, it is indeed not the act of war but a reply for aggressive war. Exactly to be specific with this hypothesis let's analyze the customary and contemporary sources which throws light on rule of self-defense.

2. The Right of Self-Defense under Customary Law

Custom is one of the sources of international law generally it grows out from international practice. International practice of the state largely includes positive and negative attitude of state taking action in certain situation and abstaining from

[1] UN Charter Article 2, Para. 4 declare, "*All Members shall refrain from the threat or use of force against the territorial integrity or political independence of any states, or in any other manner inconsistent with the purpose of the United Nation*."

the same[1]. For instance duty on the part of the state to abide by the terms of the treaty concluded, to respect the sovereignty and integrity of other states, to refrain from any action constituting interference in internal affair of another state. Any treaty concluded between the states with regard to territorial integrity shall give equal status to them, as a matter of right; in case of breach of this treaty by any one party the other will have absolute right of self defense in the interest of its nationals. (Brownlie, 1963, p. 46)

Thus customary norms of international law grants to state wide variety of right but then the state is not absolutely free to use force to safeguard each and every right. The late middle age also witnessed the act of self-defense in the light of state sovereignty. Many writers of this era including Hugo Grotius had made an attempt to distinguish between just and unjust war. To them all the war waged in the name of state sovereignty and territorial integrity was just. So the right to wage war was inherent in the concept of sovereignty. Nevertheless 18th and 19th century had given a different attitude to war. Isolated use of force was not recognized as just war, self-defense was also not recognized as identical to just war, for the reason that many war were illegally fought in the name of self-defense. This resulted in incorporation of several national doctrines on self-defense, among these one such doctrine is the Monroe doctrine of U.S.A. (Huskisson, 2007, pp. 123-143)

The Alliance intervention in Naples and Spain passed without protest. But when the Alliance proceeded to support Spain war to conquer her colonies in America, which had declared independence, saw that their own interest were deeply involved. Monroe doctrine invoked by president Monroe declared that American continent were no longer open to colonization by European power and any attempt on the part of the Allied power to extend their system to the western hemisphere, was dangerous to its peace and safety.[2] This has lay down a foundation for the development of a regional system within the large community of nation.[3] The Kellong-Briand Pact had also reserved the right of self-defense, though Kellogg's

[1] *"In China during the Ch'unch'u period (722-481 B.c) war had become a legal institution which could exist only between equal states and not between a feudal states and barbarians."* Also see Brownlie on Customary Law of the period 1815-1914 Ch. II pp. 333, International law and use of force by the states, 1963.

[2] On December 2nd 1823 President Monroe delivered the message in which American continent were marked off a field within which distinct principle of international law were hence forth to apply. Also see (Fenwick, 2009, p. 19).

[3] Doctrine of self-defense parallel to the Monroe Doctrine was to be found in the foreign policy of number of the leading states.

original conception was complete renunciation of war but Pact was agreed by the interested states on reservation of the right of self-defense.[1] On April 1928 French government submitted a draft treaty to the government of Great Britain, Germany, Italy, Japan and the United States as an instrument of national policy. Similarly Great Britain had also reserved the right of self-defense. In a note sent to the U.S government, Britain specified thus "*There are certain regions of the world, the welfare and integrity of which constitutes a special and vital interest, any interference with the region cannot be suffered and protection against such attack is to the British Empire a measure of self-defense*." (Miller, 1928, p. 196) However it was suggested by number of jurist that reservation to Kellong-Briand Pact was to be understood in the sense of customary law. But then the concept of self-defense and the ultimate right of the state to take action against the act of aggression seems to be more superfluous and the same concept of self-defense cannot be accepted today.

3. Covenant of League of Nation and the UN Charter

With the creation of League of Nation in 1919 attempt were made to regulate the illegal use of force, despite the fact that covenant had failed to abolish the war as a whole and despite the fact that the members resorted to aggressive war which resulted in collapse of the League, the League had made an attempt to declare any war between the states as a matter of international concern; war was no longer to have the aspect of a private dual but a breach of peace, which affected the whole community.[2] Though, right to resort force was restricted, the right of self-defense was also reserved against the act of aggression or threat of peace.[3] Thus article 10 of the Covenant declares that members of the League undertake to respect and preserve their right against external aggression, territorial integrity, and existing political independence. Point to be noted here is the denial of the use of the term war. The terminology war involved several controversial issues and any attempt to classify the term war as just and unjust would be challenging though all act of aggression and force are very much a part of unjust war. Hence even in League

[1] On 1st March 1928 kellong assured French ambassador that renunciation of war however would not deprive the signatories of the right of legitimate defense.
[2]Art 11 of the Covenant of league of nation provide that any war, threat to war was a matter of concern to the whole nation.
[3]Art 15 para 7 of the Covenant of league recognizes the right of the members to take such action, as they shall consider necessary for the maintenance of right of justice.

committee members avoided the term to be used in any provision of the Covenant. Very similar step was taken by the Charter of United Nations Organization, which deliberately avoided the term war, but used the expression such as threat, use of force, threat to peace, or breach of peace, these entire acts were recognized as international crime. Eventually the members of UN under article 51 of the charter preserve the right of self-defense as, the inherent right of individual or collective self-defense incase of armed attack against the member of United Nations. Not far from truth, conscientious application of the term self defense was equally challenging and requiring the term to be defined more precisely. It was only after kellong-Briand Pact, by restricting the right to wage war, increased the importance of achieving an adequate definition of self-defense.[1] Much wider prescription contained in the Charter made it further necessary to distinguish self-defense with other form of coercion. (Detter, 2000, pp. 315-336)

There seem two opposite version of right and duties endowed upon the states. Regarding the matter of dispute the Charter obligates the states to rely upon the peaceful method of settling the dispute, thereby refraining from use of force, at the same time reserving the right of self-defense. So the acts of self-defense not necessarily constitute illicit force, but a force for just cause. What are illegal forces and what constitute justifiable act of self-defense? Definitely the act of force or threat requires a special enquiry.[2] In fact there were several circumstances were the Security Council pointed out the different form of illicit force like aggression, reprisal or retaliation. However what acts constitute to be reprisal when exercised in the light of self-defense, perceptually the degree of reprisal exercised and consequence of such retaliatory action on the enemy is equally challenging to be determined. (Taulbee, 2001, pp. 27-39)

For instance in 1964 when British aircraft undertook an attack against a small fort situated in Yemeni territory just across the border from south Arabian Federation for the defense of which the Britain had treaty obligation. The Yemenis had constantly violated the territorial integrity of south Arabian Federation on several occasions by permitting its forces and aircrafts to intervene, severe damage to life and property had occurred. Britain target was the small fort situated in Yemeni, which they believed to be the military installation and a center for aggressive

[1] Brownile comments that literature of law categories self preservation, intervention and necessity have a similar context in relation to justification of use of force, only with the League of Nation and Kellong-Briand Pact it was felt that doctrine of 19th century still exercised considerable influence.
[2] Art. 2 para 4 & art. 15 of the UN Charter.

action against the federation with only a small civilian population who were warned from the impending attack by dropping pamphlets from air so that they could evacuate from the place if they wished (Greig, 1978, pp. 888- 891). Britain's action was severally criticized on the allegation that it was essentially a retaliation or reprisal. Britain on its behalf denied the allegation and contended before Security Council that a clear distinction has to be drawn between two forms of self-defense. The one, which is of retributive or punitive nature, know as retaliation and the other that is contemplated and authorized by the charter "self defense against armed attack". Britain further contended that legitimate action of a defensive nature may sometime have to take the form of counter-attack as such destruction of the fort was necessary to prevent the Yemeni from further act of aggression and in sequence Britain had used minimum force as defensive measure which was proportionate and confined to the necessity of the case.[1]

Security Council did not accept the United Kingdom's view keeping in mind the resolution adopted by the members of the UN condemning the act of reprisal as incompatible with the purpose of the UN charter. Thus on several occasions the Security Council was made to repeat that states shall not be entitled to act upon its own qualification. The task endowed to Security Council for maintaining the international peace and order was difficult to be accomplished, whenever the territorial integrity of a state was violated and the same act was suppressed with a counter attack, with a justification that the action was much to deter future attack as to punish in respect of past misdeed[2]. To perceive, any act of counter-attack in the form of vengeance is condemned by the Security Council. Nowhere the act of reprisal is justified under the Charter, but the state practice has accredited the act of reprisal and many a time the sate act of reprisal is justified as self-defense. In all this circumstance council found it difficult either to define the scope of the act of self-defense or to suppress the increasing violence. Hence it confined the criticism to more extreme act of vengeance. Thus this perception gives good stand point to the Bowett definition that act of self defense should not be to punish or restore ones right over another, to him relevant distinction would not be between self defense and reprisal but between the reprisal which are likely to be condemned and which may not be due to the existence of reasonableness. Bowett concept of reasonable

[1] According to Wilhem preventive action in foreign territory is available when the case is of instance and overwhelming, necessity of self-defense leaving no choice of means and no moment of deliberation. The interpretation of Dreams and New Development and Techniques p. 709.
[2] Vietnam War also see (Kaushik, 1992).

reprisal find support both in theory and practice and is very correspondent to international customary law which recognizes reprisal against prior illegality as lawful, provided the force used was proportionate to the original illegal act. (Bowett, 1958, p. 117)
Therefore it is clear that counter attack against illegal use of force is justifiable if:

a) Firstly reprisal is reasonable

b) Secondly force used is proportionate to the original illegal act

Any attempt to exceed the force causing excessive destruction would be strictly condemned by the Security Council. In Beirut Raid case Israel attack on Beirut airport of Lebanon, was severely criticized which resulted in destruction of 13 aircraft belonging to various Arab airlines. Israel justified the attack as reasonable which in fact was not, on number of ground the major ground was that the attack took place on the territory of a state which had hardly a possibility to pin responsibility for the prior illegality which also resulted in attack against civilian air craft and against the property of the number of states, directly involved in prior illegality thus reprisal was out of all proportion to the incident which had actuated such action.[1] However the conduct with less reprehension is considered consistent with the principal that not all reprisal are illegal, despite the existence of the declaration on the principal of international law that "states shall refrain from act of reprisal involving the use of force" was accepted by Security Council and General Assembly equally upon a genuine belief that any force falling outside the ambit of self-defense is illegal under UN Charter.

Nevertheless the acceptance of the reasonable reprisal is one aspect and it practical application is another, to be more logical a legal yardstick to trace the exact degree of reasonable force is difficult unless there is full knowledge of the circumstance of the cases. Further it would be impossible to find out the fact of the situation because neither council is an exact body to undertake a fact-finding function nor will those involved in the act allow the truth to be known. In order to regulate such act states are called upon to decide how it should react to the prior illegality.[2]

19th century witnessed unlimited use of right to wage war; often plea of self-defense was not necessary to justify one state waging war against another. Meanwhile illegal use of force was condemned and in every circumstance law

[1] 28th December 1968.
[2]For example the Vietnam War.

recognized different excuse for limited use of force. For instance, act of reprisal has to be necessary, overwhelming and instant. Most states which had involved in reprisal and blockade[1] continued their relation publicly legal and in due course of use of force plea of self-defense and necessity obtained priority.[2] Thus degree of force would otherwise be justified only where the necessity for such action was instance and overwhelming, though both the term has a nexus to each other it would be little sure to say firstly, whether the plea of self defense and necessity will arise in the same situation?

Secondly which of them would be more appropriate? Both the term instance and overwhelming signifies that the party exercising force must be in such a situation where it would not have another option to defend its territorial sovereignty and its population except then reprisal. These terms in fact were often exaggerated and a striking illustration to this would be the Caroline incident.[3] War for independence against colonial system followed a strong pressure within United States demanding termination of British rule in Canada. US government had made an attempt to avoid all sort of rebellion within state but then there were still certain groups operating within United States and Canada whose object was to instigate these rebellions against the crown. USA in fact had made its best possible attempt to eradicate events taking places in US bordering in Canada to the extent of even arresting those parties involving in any act of hostile nature against the foreign power in cordiality with United States. Meanwhile a Caroline which was engaged in ferrying recruits, supplies arms to the 1,000 men established on Canadian territory was destroyed by a British force which crossed the border and set the Caroline on fire by casting the vessel adrift so that it may fell to its destruction over the Niagara Falls. During the attack two USA citizens were killed, subsequently one of the British subjects who took part in raid was arrested in US and was charged with murder and fire-raising.

Britain strongly condemned the arrest on the ground that individual participated against hostile expedition emanating from American territory and the attack was justifiable one. On the contrary U.S secretary contended that such an action could be justified if the British government shows the necessity of the self-defense, instant, overwhelming, leaving no choice of means and no moment for

[1] Blockading may be defined as an act of war carried out by the warship of the belligerent detained prevent access to or deported from a defined port of the enemy coast.
[2] For example the relationship between USA and UK after the Caroline incident, also see infra.
[3] Moore Digest vol. II p. 271, Caroline Case.

deliberation. "This necessity did exist" was the statement made by the British minister Lord Ash Burton but in spirit of compromise he added the British government's apologies. To this effect US secretary council replied that though the parties agreed to this principal of law but differed as to their application to the incidents, and this incident would be no more a topic for discussion following the apology of U.K government. The incident of Caroline has raised several unanswered issues both in national and international sphere, firstly whether UK had a situation of necessity of self defense, because to this end UK had never claimed that US authorities were in any way responsible either by positive act of encouragement or omission to prevent the activities of the Caroline. Secondly on international plane whether UK justifies its incursion on to American territory? And could individual taking part in the raid plead the purpose and circumstance of the operation as a defense to the criminal proceeding in American court? A plea of self-defense will be available when there is an actual breach of international duties. Such was not the case with British authorities. However they could argue that exigencies of the situation demanded immediate and extraordinary action, the necessity of instant overwhelming, leaving no choice of means could not be taken as a defense by the British authorities. Thus it is not easy to violate the territory of innocent states except on the ground of necessity. As such any act of self-defense must be instant, necessary, overwhelming and leaving no alternative, the term alternative restrict the scope of exercising the right of self defense in other words overwhelming act of self defense should have nexuses with object sought to be achieved, for instance leaving no alternative but to lose one's life or the life of another.[1]

Any action based on Self defense or necessity will be justified if the degree of force is proportionate to the harm threatened. In Caroline case the British authority failed to prove the necessity to be instant and overwhelming In fact any act justified by the necessity of self-defense must be limited by that necessity. Generally it is argued that use of force in self-defense must be proximate to the degree of force employed by the aggressor, any excessive use of force would harm the principal concept of self-defense. The principal of self-defense under municipal law is more precise. For instance under municipal system a rule could possible develop a legalistic distinction between the degrees of force. Thus in R v Duffy English court established that "*fist might be answered with fist but not with deadly weapon*". But such is not the case under international law. The concept of

[1] U.S. v Holmes.

proportionality seem to be more imprecise in international law, nevertheless in international scenario the act of self defense is more sorted out through general community responses, indeed this responses fails to provide an abstract rule of law or precedent on which principal of proportionality may be based. On other hand any abstract rule of proportionality will also not serve the purpose, probably if the degree of force used is coextensive to the objective sought to be achieved the state might reasonable be entitled for the plea of self defense. In case of continues threat harassment or aggression[1] the state would have an absolute right of reprisal, in such situation any attack on base camp or centre of organization instigating the activities will be justified when the objective is prevention of the raids in future. Sometime even this test may be incomplete because strategy to reduce the degree of force when the objective is prevention of the any further raids is in fact, difficult to be drawn. In other words it may be out of proportion; perhaps it would be better if the state concern settle for an operation of smaller scale such as targeting supplying dumps, or training camps etc.

4. Sovereign Right and Self- Defense

Right of self-defense is predominant when the sovereignty of a state is in question. A sovereign state is one, which has both internal and external sovereignty; any kind of interference will naturally be intolerable by a state. The concept of sovereignty is preponderant under international law and it is on this base the customary international law expects certain commitment from the world community such as the treaty obligation should be honored; the nationals and the property of each other should be respected etc. These are some of the right coupled with other basic rights. (Oppenheim, 1955) Truly not all this right can be protected by the state but then there are certain essential right that needs to be protected, perhaps here the state can exercises the right of self-defense against aggression. A state is entitled to protect *its territorial integrity, political independence, freedom of navigation* for its ships, *states economical welfare, protection of nationals and right of humanitarian intervention.* However it is little sure whether plea of self-defense can be extended to the protection of economic welfare of a state.

[1] The term aggression acquired particular international significance soon after First World War, the League Covenant in fact made no attempt to define aggression, at every point of time international body failed to define aggression, they argue that definition would prove a trap for the innocent and signpost for the guilty. Also see “The question of defining aggression” Ch. XIX, (Brownile, 1963).

Territorial integrity and political independence are paramount to every state; the covenant and the charter strictly condemn any interference with the territorial integrity and political independence of any state and to this end the members of the UN has absolute right of self defense against the aggression.[1] Many time it so happens that any attack against the former result in attack against latter, any kind of encouragement or promotion of political agitation resulting menace to political independence of a state is prohibited. Infringement of this right has always been considered as perceptible justification for a state to exercises the right of self-defense.

Similarly a ship of a sovereign state having a flying flag over it is entitled to move freely over the high sea. This *freedom of navigation* can be protected, whenever the ship exercising the lawful right of passage is illegally attacked, a reciprocal act of defense can be exercised.[2] Thus in Fisheries Jurisdiction case, International Court of Justice held that United Kingdom was entitled to take measures to protect British trawlers against the use of force by the Iceland patrol vessel in pursuance of legislation, establishing an exclusive fisheries zone.

Sometime the *state's economical rights* are vitally affected by trading policy of the other state. Although no states are legally obliged to have trading relation with each other but refusal to trade and imposition of unreasonable restriction is prohibited.[3] It is little sure whether the injured state on this ground has right to complain because the law in this area is incipient. Even the charter of economical right and duties does not express anything on economical discrimination but yes it do refer in various places the need to promote economical co-operation irrespective of economical, political, social deviation and liberalize the international trade. Article 5 forbids any kind of economical and political measure that would violate the right of primary commodity producer. Today trade and economical aid are used as weapon to advance the political interest and in such circumstance it would be difficult to say anything more on right to trade, at the same time difficult to neglect the economical discrimination as aggression.

[1]Article 1of the UN Charter states that "*primary purpose of the United Nation, is to maintain International peace and security, by taking effective collective measure against the breaches of peace and suppression of the act of aggression*".

[2] L.C Green International law through the cases p. 228.

[3] Article 4 of the Charter of Economical right and duties preserves the right of the state to engage in international trade and other form of economical co-operation irrespective of any difference in political, Economical social system.

5. Intervention Whether Necessarily an Act of Self-Defense

Nineteenth and the early age of twenty century witnessed humanitarian intervention on foreign territory whenever the nationals of a state were attacked, in many circumstance states have used force to *protect the life of their nationals*. Act of self-defense is justified if there is imminent danger to the state, in most cases threat to the national were considered threat to the state. Thus in Havana conference of 1928 the opinion of the U.S delegate was that in case of breakdown of law and order in foreign country resulting danger to the life's of U.S national, the U.S government is justified in taking action of temporary character.

In Anglo-French operation against Egypt the British view reveals the fact that intervention on foreign territory is an excuse if such intervention is to protect the life of their nationals. In all this circumstance the general requirement is that the action must be proportionate to the harm done, this criteria is equally applicable to the situation were the state claim to protect not only its nationals but also those of other. Humanitarian intervention cannot be justified within it nor can be condemned unless and until the action taken is in interest of law and justice.[1] According Moore all act of self-defense is justified if the action taken is in existence of:

1. Immediate and extensive threat to fundamental human right or widespread loss of human life;
2. Force used is proportionate to the harm done and does not result in greater destruction of values than the human right at stake;
3. The effect should be less on authority structure;[2]
4. Any action taken must be immediately reported to Security Council and appropriate regional organization.[3]

However act of intervention should be judged with high degree of accuracy not all intervention can be justified as part of self-defense. If the intervention is with the purpose in recruiting, training, arming, equipping, financing, supplying and otherwise encouraging, supporting, aiding, and directing military and paramilitary actions in and against any state with the object of intervening in the administration of territorial integrity of the country certainly it is a condemnable act of war falling

[1] In 1827 the Great power jointly intervened to secure the independence of Greece and the Battle of Navarino, may fairly be looked upon as the use of force, by the Community of nation through intervening power in the interest of justice. Also see Fenwick, International Law.
[2] By which it meant non-interference in the political make up of the government of the state.
[3] For example the International committee of Red Cross.

under article 2 (4) of the United Nations Charter;[1] this criterion is equally applicable to present day realities of self defense but it is hardly brought into practice.

6. Conclusion

The right of self-defense reserved under art. 51 of UN Charter is a predominant one since the peace loving country whatever the reason be, would exercise this right even in absence of such a reservation under UN Charter due to the reason that the right is correlated to the right to existence. Thus the right of self- defense can only be exercised if the inherent right of once existence is in question. However it should be realized the right should be exercised heedfully to mitigate the need of situation and if the degree of force exceed to its limitation then it would be condemned as aggressive war. Some commentators believe that the effect of article 51 is only to preserve this right when an armed attack occurs, and that other acts of self-defense are banned by article 2(4). The more widely held opinion is that article 51 acknowledges this general right, and proceeds to lay down procedures for the specific situation when an armed attack does occur. Under the latter interpretation, the legitimate use of self-defense in situations when an armed attack has not actually occurred is still permitted. It is also to be noted that not every act of violence will constitute an armed attack.

7. References

Bowett, D. (2009). *Self Defense in international law, the Law book Exchange.* Ltd.

Brownlie, I. (1963). *International law and the use of force by the states.* Oxford: Oxford University Press.

Chimini, B.S. (1993). *International Law and World Order- A Critique of Contemporary Approach*. USA: Sage Publication.

Collins, Edward P. (1962). *War Politic and Power*. Chicago .

Detter, I. (2000). *The law of war.* Second edition. Cambridge University Press.

Dinstein, Y. (2001). *War, aggression and self-defence. 3rd edition.* Cambridge: Cambridge University Press.

Greig, D. W. (1976). *International law.* Second edition. London: Butter worth London.

[1] See Nicaragua v/s United states.

Huskisson, Daren (2007). Protecting the Space network and the future of self-defense in *Astropolitics*, 5: pp. 123-143, Routledge. Taylor & Francis Group, LLC.

Khare Subhas, C. (1985). *Use of Force under U.N. Charter*. New Delhi: Metropolitan Book Co. (P) Ltd.

Miller, H. (1928). *The Peace Pact of Paris.* New York: G.P. Putnam' Sons.

Stekel, W. & Gutheil, E. A. (1943). *The interpretation of Dreams and New Development and Techniques.* Vol 1. Liveright Publishing Corporation.

Taulbee, James L. (2001). Governing the Use of Force: Does the UN Charter Matter Anymore? in *Civil Wars*, Vol. 4, no. 2, pp. 1-58. London: Frank Cass Publishers.

Wilhelm, S. (1978). *The interpretation of Dreams and New Development and Techniques.* The Car swell Co. Ltd, University of Albert.