

Summary

Limitations of the Prohibition of the Use of Force in International Law

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1. The prohibition of use of force by the United Nations Charter was never understood in state practice as excluding any use of force in disputes between states except in the case of self-defence against an armed attack.
2. The United Nations Charter is ambiguous with regard to the question of whether the use of limited force is admissible for "non-aggressive purposes" in defence against a severe interference by a state with legally protected interests of another state.
3. For the protection of their respective interests various groups of states have taken advantage in different ways of the margin of interpretation left by the United Nations Charter especially with regard to the terms "force", "use of force against territorial integrity and political independence", "international relations" and "inherent right of self-defence".
4. The community of states ultimately defines the scope and the limits of the prohibition of use of force. There is evidence of an *opinio juris* about the essential characteristics of the prohibition of use of force. An *opinio juris*, however, does not exist about those cases where limited force is used for "non-aggressive purposes".
5. As far as an *opinio juris* about the prohibition of use of force cannot be derived from the United Nations Charter by taking into account its interpretation in state practice, limited use of force is still admissible in order to stop interference with material interests protected under international law provided the following conditions are met:
 - a) The claim to limited use of force has been raised and carried through before and after the prohibition of use of force became effective.
 - b) A substantial part of the community of states considers the claim to be in accordance with the text and spirit of the United Nations Charter.
 - c) The reference to a settlement of the dispute by peaceful means would lead to an unreasonable interference with legally protected interests.
6. Taking into consideration international public policy this concept makes more sense than a postulate of strict prohibition of use of force which allows self-defence only in the unambiguous case of an armed attack. The prohibition of use of force will be strengthened when the limited use of force is declared admissible under fairly restricted conditions which should be defined

as exactly as possible. A divergence of morals and law weakens the authority of international law.

7. The traditional and general claim to use, if need be, force for the implementation of vital state interests (self-help, self-preservation, necessity) is not supported by state practice.

8. Organised and state boundaries crossing infiltration and subversion can – depending on its intensity – equal an armed attack and justify the exercise of the right to individual and collective self-defence. Delivery of arms to and financial support of insurgents can not. Depending on the circumstances of the particular case military assistance to a government can be considered as an inadmissible interference, but it does not justify the exercise of the right to collective military defence by other states in favour of insurgents.

9. Under narrowly defined conditions military defence is admissible against an imminent armed attack, but “preventive war“ is not.

10. Special rights of great powers in areas of their influence are not sufficiently supported by the community of states. The prohibition of use of force is, therefore, in its unaltered form effective within regional reference alliances and political alliances.

11. Humanitarian intervention for protection against or removal of severe violation of human rights or for the purpose of installation of a democratic and constitutional state is not claimed and recognized in state practise as a sufficient reason for unilateral military intervention. In the case of the systematic extermination of an ethnic group (genocide) there is, however, no satisfactory demarcation to the rights of defence and of emergency measures which are claimed by many states for the purpose of enforcing the right of self-determination.

12. The protection of own citizens by force in case of great and imminent danger to live and limb is still considered by a substantial part of the international community of states as compatible with the United Nations Charter, if

- a) the intervention is strictly limited to the purpose of protection,
- b) the foreign state does not want or is not able to provide protection,
- c) the settlement of dispute by peaceful means promises no success,
- d) the intervention does not according to its kind and extent interfere unproportionally with legally protected interests of another state.