

Summary

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

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A. General Remarks

1. The prevailing interpretation of the prohibition to use force

a) Article 2, paragraph 4, of the U.N. Charter prohibits every threat or use of *military* force against the territorial *inviolability* or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

b) The prohibition to use force does not embrace the use of force inside a state's own territory, such as the use of force against insurgents, against aircraft or persons entering from another country and against foreign nationals or diplomatic missions.

c) The right of individual or collective self-defence may be invoked only in case of an armed attack against the territory of another state. The first use of armed force is not necessarily the decisive criterion for the determination of the aggressor. The expression "inherent right of self-defense" does not imply that a wider right of self-defence according to former customary law may be invoked.

2. Problems brought about by developments since 1945

Several developments since 1945 raise the issue of the limits of the prohibition to use force.

a) Failure of the collective security system of the United Nations

The failure of the collective security system of the United Nations has instigated states to use force more frequently. It cannot, however, be considered as a fundamental change of circumstances which could justify the application of the *clausula rebus sic stantibus*.

b) New threats to the security of states and new forms of warfare

The following problems have been caused by new threats:

- preventive self-defence
- use of force against economic strangulation

- use of force in order to rescue nationals abroad and to repel attacks on objects not protected by the prohibition to use force
- humanitarian intervention
- use of force against indirect aggression
- use of force against armistice lines
- use of force in spheres of influence of great powers and in the framework of regional peacekeeping
- use of force against third states which, in case of an armed conflict, render military assistance to a party to the conflict

c) New conceptions of the legitimacy of the use of force

New conceptions of the legitimacy of the use of force have developed in a large part of the international community with regard to the struggle of dependent peoples in the exercise of their right of self-determination.

3. Criteria for judging the limits of the prohibition to use force

a) The problems concerning the limits of the prohibition to use force are partly problems of interpreting the applicable Charter provisions; partly they lead to the questions whether new norms supplementing or modifying the Charter have developed and whether alterations would be desirable *de lege ferenda*.

b) Reactions of states or international organizations in cases of use of force are often influenced by states' political interests or ties; they are therefore not necessarily conclusive for the development of an *opinio juris*.

B. Special Cases

4. Use of force by dependent peoples in the exercise of their right of self-determination

a) It is controversial whether Article 2, paragraph 4, of the Charter applies to the relations between an administering power and a dependent people struggling for self-determination. However, a legal duty of administering powers to decolonize dependent peoples has developed. No force may therefore be used to prevent such peoples from exercising their right of self-determination.

b) Use of force by dependent peoples against the administering power, if considered as internal use of force, is not covered by Article 2, paragraph 4, of the Charter and therefore permissible.

c) No *opinio juris* has developed which would confirm a right of third States to render military assistance to dependent peoples struggling for self-determination.

d) Use of force by a state in order to liberate a territory from colonial domination and to incorporate it into its own territory violates Art. 2, paragraph 4, of the Charter.

5. Use of force against armistice lines

The prohibition to use force applies also to armistice lines and to territories in which a pacified situation has come into existence after *de facto* termination of hostilities, even if they are still occupied by the opposite party to the conflict.

6. Use of force against indirect aggression

a) Infiltration of armed bands, groups etc. from one state into another one with the purpose of carrying out acts of armed force of such gravity as to amount to an aggression by armed forces of a state qualifies as an armed attack in the sense of Article 51 of the Charter.

b) The qualification as an armed attack does not depend on whether or not the state from whose territory the armed bands operate, is involved in their activities.

c) Armed counter-measures against indirect aggression must conform with the principle of proportionality and should be limited to combat the infiltrated bands and their bases on foreign territory.

d) The principles mentioned in letters b) and c) above also apply if in the course of an armed conflict the territory of a state not participating in the conflict is used by a party to the conflict to commit acts of aggression against the other party.

e) The sending of military instructors, the supply of arms or economic assistance to opposing groups in another state do not qualify as armed attack.

7. Use of force against third states which put contingents of armed forces at the disposal of a party to a conflict

If, in case of an armed conflict, a third state puts contingents of armed forces at the disposal of a party to the conflict the opposing party may use force against the territory of the third state in the exercise of its right of self-defence only if acts of aggression are committed against it directly from that territory.