



RichMUN '21
Study Guide

United Nations General Assembly 1.



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Introduction to the General Assembly

The General Assembly, established in 1945, is the democratic heart of the United Nations. Comprising of all 193 member states, each has an equal voice in decision making.

The First Committee deals with disarmament, global challenges and threats to peace that affect the international community and seeks out solutions to the challenges in the international security regime. It considers all disarmament and international security matters within the scope of the Charter or relating to the powers and functions of any other organ of the United Nations; the general principles of cooperation in the maintenance of international peace and security, as well as principles governing disarmament and the regulation of armaments; promotion of cooperative arrangements and measures aimed at strengthening stability through lower levels of armaments.

Topic: ADDRESSING THE NECESSITY OF PRE-EMPTIVE SELF DEFENSES UNDER ARTICLE 51 OF THE UN CHARTER, IN THE CASES OF CYBER ATTACKS AND WMDS.

Article 51

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and Security.”

- Article 51 of the UN charter provides for the right of countries to engage in self-defense, including collective defence against an armed attack. (Including cyber-attacks)



- Enduring freedom is an exercise of individual and collective self-defence in compliance with the terms of United Nations charter article 51 which permits the use of force in self-defense against an armed attack.

Self-defense in International law

Self-defense is commonly any act in response to an imminent threat of death or grave harm to a person, property or an organization. Nevertheless, this right is not just limited to individuals and is also available to States.

According to customary international law self-defense are of 3 types,

- *Actual Armed Attack*
- *Anticipatory Self-defense*
- *Pre-emptive Self-defense*

The 'Caroline' Affair in the Laws of Evolving International Self-defense.

The Caroline incident as briefly explained below, is for comprehensive understanding of self-defense in international law.

The Caroline was a small ship used by Americans in order to support Canadians rebelling against the British, This American vessel was boarded by a group of armed British men in an American port, who set it on fire and sent it over the Niagara Falls. Following the incident, Alexander McLeod was found and apprehended in a tavern in New York, for his part in the lethal attack.

Conclusion of the Caroline Case

“Under the laws of nations, Self-defense is a right but the necessity of self-defense must be instant, overwhelming and leave no choice of means and no moment of deliberation “

The Scope of the right of Self-defense under Article 51.

Neither the Security Council nor the General Assembly has taken a decision which could be construed as a general definition on the scope of the provisions in Article 51 concerning the right of individual or collective self-defense. The two decisions of the Security Council which are briefly reviewed below, may however throw a light on the concrete aspects of the right of self-defense which were considered by the SC in connection with the particular problems involved in the questions submitted to it. The



first resolution is related to the Palestinian question, and the other to the first report submitted to the SC by the Atomic Energy Commission.

<https://legal.un.org/repertory/art51.shtml>

Article 51: Self-Defense and its Limits in the UN Charter

Even though the United States has claimed that its entire unilateral war in Afghanistan was authorized per Article 51 of the UN Charter, by allowing a nation to use self-defense, Article 51 is quite limited in its authority. It allows the use of military force by a nation that has been attacked only until the Security Council has taken measures necessary to deal with the problem. If, for example, the Pentagon had been able to put together a jet to shoot down the second plane before it hit the World Trade Centre, that would have been a legal use of military force for self-defense. In terms of gaining the Security Council authorization for the use of force beyond the immediate emergency force required, the US did indeed convene an emergency meeting of the SC within 24 hours of the 11 September attacks, and could have requested for authorization at that time.

The US claim of what amounts to a new concept of "pre-emptive self-defense" is not a concept within the UN Charter or the international laws. Such a claim may indeed apply to collaborative law enforcement operations to prevent future crimes, but does not fall within the deliberately restrictive confines of the legal use of military force.

<https://www.tni.org/es/node/5769>

Pre-emptive Self-defense

THE CLAIM TO PRE-EMPTIVE SELF-DEFENSE IS A CLAIM TO ENTITLEMENT TO USE UNILATERALLY, WITHOUT PRIOR INTERNATIONAL AUTHORIZATION, HIGH LEVELS OF VIOLENCE TO ARREST AN INCIPIENT DEVELOPMENT THAT IS NOT YET OPERATIONAL OR DIRECTLY THREATENING, BUT THAT, IF PERMITTED TO MATURE, COULD BE SEEN BY THE POTENTIAL PRE EMPTOR AS SUSCEPTIBLE TO NEUTRALIZATION ONLY AT A HIGHER AND POSSIBLY UNACCEPTABLE COST TO ITSELF.

Unlike a claim of anticipatory self-defense, whereby an imminent threat of attack clearly exists—like that described in the Caroline doctrine, pre-emptive self-defense relies instead on the mere possibility of an attack at some unspecified, future period of time. While the UN Charter does restrict the use of military force to resolve inter-state disputes, it nevertheless recognizes the “inherent right” of states to act in self-defense, proclaiming, “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs



against a Member of the United Nations” (Charter of the United Nations, art. 51). This kind of reactive self-defense, however, is markedly different from pre-emptive self-defense, where preventative action occurs against a non-imminent threat. Nonetheless, some argue that pre-emptive self-defense is fully consistent with Article 51 in asymmetrical warfare—especially when combating non-state actors using terrorism.

The Necessity of Pre-emptive Self-defenses

Two principles underlay the resort to self-defence under international law;

- Necessity
- Proportionality.

Necessity requires that the force being used is needed to successfully repel an imminent armed attack or defeat one that is underway. In other words, other options would not be sufficient.

Proportionality addresses the level of force that can be used to respond, once a right to the resort to force is determined. It limits the scale, scope, duration, and intensity of the defensive response to that required to end the situation that has given rise to the right to act in self-defence.

Therefore, a State must determine the necessity of acting in self-defence, and only then, may respond proportionally to the nature of the threat it is faced with.

For anticipatory and pre-emptive self-defence, the key to the determination of necessity is imminence. While both anticipatory and pre-emptive self-defence reference imminence, pre-emptive self-defence has the more expansive view of the concept. This imminence criterion is met when an adversary State is clearly committed to launching an armed attack and the victim State will lose its opportunity to effectively defend itself unless it acts. Which means, it may act anticipatorily only during the last window of opportunity.

This window may present itself immediately before the attack in question, or, in some cases, long before it occurs. The critical question is not the temporal proximity of the anticipatory defensive action to the prospective armed attack, but whether a failure to act at that moment would reasonably be expected to result in the State being unable to defend itself effectively when that attack actually starts.

Maturation of the right to self-defence is relative. For instance, as defensive options narrow or become less likely to succeed with the passage of time, the acceptability of pre-emptive action grows. Any action in self-defence first requires that it be



against an action rising to the level of an armed attack. It must be necessary to take such defensive action, and the means used to respond must be proportionate to the threat. Further, for self-defence of an anticipatory or pre-emptive nature, the armed attack need not be underway or have already struck, but it must be imminent.

Pre-attack Strikes that Relied on Explicit or Implied Self-defense Reasoning: A Timeline.

- 1962 - The Cuban Missile Crisis.
- June 5, 1967- The Six-Day War
- June 7, 1981- Operation Opera (Osirak Bombing)
- 1988- Operation Infinite Reach (Al Shifa Bombing)
- 2003- Invasion of Iraq
- 2007- Operation Orchard (Al Kibar Bombing)

Consequences of Establishing Pre-emptive Self-defenses

There is a real danger that introducing a right of pre-emptive self-defence could lead to a return to the nineteenth century days of 'self-help', in which a state of near anarchy prevailed in international relations. By increasing the scope for unilateral action pre-emptive self-defence would weaken international law's general prohibition on the use of force, perhaps to the extent of rendering the charter framework virtually worthless. In practice, there would no longer be a meaningful distinction between defensive and offensive force. Recognising pre-emptive self-defence would mean granting states the right to use force unilaterally against other states or non-state actors based on their own perception of a threat. Unlike self-defence under article 51, which requires an armed attack, with pre-emptive self-defence there is no means of objectively verifying the existence of an alleged threat. As a result, there is great potential for states to abuse such a right. Instead of being used for defensive purposes pre-emptive self-defence could be used as a pretext for the removal of unfriendly governments or the pursuit of strategic goals. Once it has promulgated such a policy other states will inevitably seek to rely on it where it furthers their interests.

To support this broad right of pre-emptive self-defence, this could be taken as legitimising the aggressive use of force by other, less law-abiding states. This is particularly worrying given the existing tensions in some parts of the world. In situations like this pre-emption could raise the expectation of violence and lead to a



belief by both sides that a first strike is necessary. In effect it would be a rush to pre-empt the pre-emptor. The value of a military standoff would disappear. This is not to say that states will automatically exercise any new right of pre-emptive self-defence. The decision to use force is influenced by a variety of factors, legality being only one consideration. Comments like these undermine norms of restraint and promote the dangerous notion that states are free to act outside the UN framework whenever they feel threatened. Rather than making the world a safer place, pre-emptive self-defence would be likely to increase international conflict and create a far more unstable, unpredictable international system.

The threat of a rogue state with WMDs casts a degree of unpredictability on how states, fearful but constrained, will react. While in some cases they may be more likely to support a pre-attack strike, in others they could worry about the target state's response and the potential of an illegitimate and poorly timed pre-attack strike to spiral into broader regional or global chaos.

These strategic ramifications and the potential for long-term conflict appear especially concerning when decision makers may base their actions on non-public intelligence that, if one day revealed, could bolster or damage claims to legitimacy.

An Introduction to WMDs

The definition of Weapons of Mass Destruction is affirmed as “[...] atomic explosive weapons, radioactive material weapons, lethal chemical and biological weapons, and any weapons developed in the future which might have characteristics comparable in destructive effect to those of the atomic bomb or other weapons mentioned above.”

Weapons of mass destruction (WMDs) constitute a class of weaponry with the potential to:

- Produce in a single moment an enormous destructive effect capable to kill millions of civilians, jeopardize the natural environment, and fundamentally alter the lives of future generations through their catastrophic effects;
- Cause death or serious injury of people through toxic or poisonous chemicals;
- Disseminate disease-causing organisms or toxins to harm or kill humans, animals or plants;
- Deliver nuclear explosive devices, chemical, biological or toxin agents to use them for hostile purposes or in armed conflict.

An introduction to Cyber Attacks



The concept of cyber-attack can be defined as deliberate exploitation of computer systems, technology dependent enterprises and networks. Cyber-attacks use malicious code to alter computer codes, logic or data, resulting in destructive consequences that can compromise data and lead to cyber-crimes. Cyber attacks can also be associated with cyber warfare or cyber terrorism significantly in instances when the attackers are state actors, groups or affiliated organizations.

Treaty on the Non-Proliferation of Nuclear Weapons (NPT)

The NPT is a landmark international treaty whose objective is to prevent the spread of nuclear weapons and weapons technology, to promote co-operation in the peaceful uses of nuclear energy and to further the goal of achieving nuclear disarmament and general and complete disarmament. The treaty presents the only binding commitment in a multilateral treaty to the goal of disarmament by the nuclear-weapon States. Opened for signature in 1968, the Treaty entered into force in 1970. On 11 May 1995, the treaty was extended indefinitely. A total of 191 States have joined the treaty, including the five nuclear weapon States. More countries have ratified the NPT than any other Arms limitation and Disarmament agreement, a testament to the NPT's significance. It's regarded as the cornerstone of the global nuclear non-proliferation regime and an essential foundation for the pursuit of nuclear disarmament.

General Assembly Resolutions.

- A/RES/66/33 (2011)
- A/RES/61/70 (2006)
- A/RES/56/24 (2001)

<https://www.un.org/disarmament/wmd/nuclear/npt/>



❖ Important

- Delegates are advised to focus on the third aspect of self-defense. There are several components and evolutions of pre-emptive self-defense.
- Delegates should be very well aware of the respective foreign policies that they are representing in the committee.
- Delegates are advised to do an extensive research and have a comprehensive understanding on these multilateral treaties.
- Delegates are advised to approach the issue of cyber-attacks and see if your nation or any other ally has been a victim of the cyber-attacks in the past or recent years, further bringing out effective frameworks to tackle the aforementioned issue.
- Delegates should be aware of Article 51 of the UN Charter and investigate on the judgement of the Security Council.
- This study guide is an introduction into the topic and sets you on an active and accurate path to research. Delegates are expected to have a comprehensive knowledge on the topic to sustain a sterling level of debate.

Good Luck for the Conference!

Your Head Table,

**Pranesh Fernando
Kushlani Nagahawatte
Nafha Zain**