

Research on the Interpretation and Application of Self-Defense Rights: A Comprehensive Analysis

Xinyi Tan^{1,a,*}

¹*Department of International Law, Southwest University of Political Science and Law, Chongqing, China*

a. 2780423003@qq.com

**corresponding author*

Abstract: This study delves deeply into the fundamental right of self-defense within the context of international law, emphasizing its expansive scope, the specific conditions under which it may be exercised, and the potential conflicts it may pose with other internationally recognized principles. By conducting a rigorous qualitative analysis of international legal provisions, judicial decisions rendered by courts, and diverse national practices, the research reveals a multitude of trends and interpretations surrounding this right. It also highlights the discrepancies and varying interpretations that exist among different countries and international organizations. The study shows that the conditions for exercising the right of self-defense in international law, its scope, and its relationship with other international principles are complex and multifaceted. In order to better understand and apply the right of self-defense, the international community should strengthen communication and cooperation, reduce misunderstandings and conflicts, and jointly maintain international peace and security.

Keywords: Self-Defense, International Law, Countermeasures

1. Introduction

Self-defense, as a fundamental right enshrined in the United Nations Charter, permits states to use force in response to armed attacks, yet the interpretation and application of this right have raised numerous questions in various contexts. This study will delve into core issues such as the delineation of the scope of the right of self-defense, the specific conditions for its exercise, and potential conflicts with other principles of international law during its exercise. Using qualitative analysis as the primary research method, we will conduct in-depth analysis of international law literature, judgments of international courts, and state practices, striving to comprehensively and accurately reveal the essential characteristics and conditions for the exercise of the right of self-defense. These findings are important because they help develop and improve research on the right to self-defense and give the field of international law a lot of theoretical and empirical support. These results are also important because they give clear legal advice to states that are under armed attack, protecting their national sovereignty. Furthermore, this study will provide valuable insights for the international community in maintaining international peace and security, promoting cooperation among states in addressing global challenges on the basis of respect for international law.

2. Literature Review

2.1. Historical Evolution of Self-Defense Rights

The right of self-defense, as a core concept in international law, has undergone a lengthy historical evolution from ancient laws of war to the codification of modern international law. In ancient times, self-defense was generally regarded as a natural and unproven right, entitling states to retaliate when attacked[1]. However, as time passed, the right of self-defense was gradually incorporated into a more systematic legal framework, evolving into the principle of self-defense in international law as we understand it today[2].

Several key treaties and agreements played crucial roles in the historical evolution of the right of self-defense. Firstly, the Peace of Westphalia in 1648 marked the beginning of modern international relations and established the fundamental principles of the sovereign equality of states and territorial integrity[3]. Although this treaty did not directly address detailed provisions on the right of self-defense, it laid the foundation for the standardization of interstate relations, indirectly influencing the subsequent development of the right of self-defense. Subsequently, the Charter of the United Nations, adopted in 1945, provided a clearer regulation on the right of self-defense.

The historical evolution of the right of self-defense has also been vividly illustrated through a series of cases. For example, during the Kosovo crisis, NATO conducted air strikes on the Federal Republic of Yugoslavia on the pretext of "humanitarian intervention," sparking widespread discussions on the boundaries between the right of self-defense and humanitarian intervention[4]. Although NATO's actions were not authorized by the United Nations Security Council, it claimed to be exercising the right of self-defense to protect Albanian ethnic groups in Kosovo. This case highlighted the complexity and controversy that the right of self-defense may face in practice. Another typical case is the military actions launched by the United States against Afghanistan and Iraq after the September 11, 2001, attacks, citing self-defense[5]. These actions triggered extensive discussions in the international community on the distinction between the right of self-defense and preventive self-defense (or preemptive strikes). Some countries believed that the US actions exceeded the scope of the right of self-defense and constituted violations of other countries' sovereignty, while the US insisted that its actions were exercising the right of self-defense to combat terrorism[6].

2.2. Legal Framework and Interpretation

Article 51 of the Charter of the United Nations stands as a pivotal clause in international law concerning the right of self-defense. In interpreting and applying Article 51, academia and practitioners generally focus on the following questions: Firstly, how to define the scope of "armed attack"? Does it include non-military means or economic sanctions as forms of attack? Secondly, must self-defense actions be strictly limited to retaliation against the attacker? Can they be extended to other related countries or organizations? Thirdly, is the exercise of the right of self-defense subject to other principles and rules of international law, such as the principles of proportionality, necessity, and distinction[7]? Some scholars argue that the right of self-defense under Article 51 should be strictly interpreted and limited to responses to direct armed attacks, while others advocate for a broader interpretation, contending that the right of self-defense can encompass responses to non-traditional threats such as cyberattacks and terrorist activities[8].

Regional organizations also play a significant role in interpreting and applying the right of self-defense. Taking the North Atlantic Treaty Organization (NATO) as an example, Article 5 of its charter stipulates a collective defense clause, stating that "an armed attack on one or more of its Member States in Europe or North America shall be considered an attack against them all." This clause embodies the collective security commitments and common defense obligations among NATO

member states. However, NATO member states are divided on whether to include non-traditional threats such as cyberattacks and terrorist activities within the scope of the right of self-defense. Some member states advocate for including such threats in the collective defense category, while others remain reserved[9]. Additionally, regional organizations must consider the compatibility of their interpretations and applications of the right of self-defense with international law and the Charter of the United Nations[10].

As non-traditional threats such as cyberattacks and terrorist activities become increasingly prominent, the international community's ability to use force in response to these threats and how to use it have become controversial issues[11]. On the one hand, some countries argue for including non-traditional threats within the scope of the right of self-defense, contending that these threats pose serious challenges to national security and necessitate necessary measures in response[12].

2.3. Contemporary Challenges and Responses

In recent years, the right of self-defense has been frequently invoked in multiple international conflicts, sparking widespread discussions about its legality, proportionality, and necessity. These conflicts include, but are not limited to, regional military conflicts, counter-terrorism operations, and new security threats such as cyberattacks. For instance, when certain countries respond to non-military attacks with military countermeasures, there are differing views in the international community on whether such actions constitute a right of self-defense[13].

In terms of proportionality, the scale and intensity of self-defense actions must be commensurate with the degree of the attack to avoid causing unnecessary collateral damage. However, in practical operations, accurately assessing the severity of the attack and the necessity of self-defense actions, as well as finding a balance between self-defense and overreaction, pose significant challenges for countries. As for necessity, the right of self-defense is generally regarded as a last resort, to be considered only when peaceful means fail to resolve conflicts. However, with the increasing number of non-traditional security threats, some countries may be more inclined to adopt military means to address these threats, sparking widespread discussions about the necessity of the right of self-defense[14].

International courts and tribunals play a crucial role in adjudicating disputes related to self-defense. In disputes related to self-defense, the ICJ typically examines the claims of both parties based on international law principles and provisions and issues legally binding rulings[15]. However, due to the complexity and sensitivity of the right of self-defense, the ICJ often faces significant challenges in adjudicating such disputes[16]. The ICC, on the other hand, may need to scrutinize individuals involved in self-defense actions to determine whether their conduct constitutes an international crime. This helps maintain the authority and impartiality of international law but may also spark further controversy over the exercise of the right of self-defense[17].

Facing the challenges posed by self-defense disputes, the international community has been exploring ways and means to address these issues. Proposed reforms and alternative mechanisms include mediation, arbitration, and regional cooperation.

3. Results

3.1. Key Trends and Patterns in the Invocation and Interpretation of the Right of Self-Defense

Numerous legal documents, treaties, and case studies have undergone in-depth analysis, revealing several key trends and patterns in the invocation and interpretation of the right of self-defense. Firstly, in terms of the invocation of the right of self-defense, countries tend to exercise this right when faced with direct military threats or attacks. However, with the increase in non-traditional security threats,

such as terrorism and cyberattacks, some countries have begun to attempt to extend the scope of application of the right of self-defense to these emerging areas. This trend reflects the flexibility and adaptability of the right of self-defense in addressing diverse security challenges.

Secondly, in terms of the interpretation of the right of self-defense, there are certain differences and disagreements among countries and international organizations. Some countries emphasize the absoluteness and necessity of the right of self-defense, believing that all necessary measures can be taken to counter threats. On the other hand, other countries focus more on the relativity and restrictiveness of the right of self-defense, arguing that self-defense actions must comply with international law principles and avoid causing unnecessary harm.

These differences in interpretation have led to complexity and controversy in the practical application of the right of self-defense.

3.2. Strengths and Weaknesses of the Existing Legal Framework on the Right of Self-Defense

The existing legal framework on the right of self-defense is primarily composed of Article 51 of the United Nations Charter and related international laws and treaties. This framework has played an important role in maintaining international peace and security, but it also has certain strengths and weaknesses.

In terms of strengths, the existing legal framework provides a clear legal basis and restrictions for the exercise of the right of self-defense. It emphasizes that self-defense actions must be taken after an armed attack has occurred and must follow principles of necessity, proportionality, and proportional response. These provisions help prevent the abuse and misuse of the right of self-defense and maintain the authority and stability of international law.

Regarding weaknesses, the current legal framework exhibits certain lags and limitations when it comes to addressing new types of security threats. As non-traditional security threats increase and become more complex, some countries have begun to attempt to extend the scope of application of the right of self-defense to these areas, but the existing legal framework does not provide clear regulations and interpretations for this. Additionally, some countries are concerned that the existing legal framework places too much emphasis on the restrictive conditions of self-defense actions, which may hinder their freedom of action in emergency situations.

3.3. Contemporary Challenges and Effectiveness Assessment of Responses in Resolving Self-Defense Disputes

Faced with controversies and disputes arising from the right of self-defense, the international community has taken a series of challenges and response measures, including diplomatic negotiations, international legal procedures, and regional cooperation. However, the effectiveness of these measures in resolving self-defense disputes varies.

Diplomatic negotiations, as one of the important means of resolving disputes, are usually flexible and pragmatic. Through direct dialogue and consultation, the disputing parties can enhance mutual understanding and trust and seek common ground and solutions. However, the success of diplomatic negotiations often depends on the sincerity and willingness of both parties, as well as the support and recognition of the international community. In some complex self-defense disputes, diplomatic negotiations may find it difficult to achieve substantial progress.

International legal procedures, such as the rulings of the International Court of Justice and the International Criminal Court, have legal binding force and authority. They can review and adjudicate the claims of the disputing parties based on international law principles and regulations. However, international legal procedures are often time-consuming and procedurally complex, making it

difficult to respond timely to self-defense disputes in emergency situations. Additionally, some countries may doubt the fairness and independence of international legal procedures, making it difficult for their rulings to be accepted and executed.

Regional cooperation plays an important role in resolving self-defense disputes. By strengthening cooperation and coordination among regional countries, they can jointly address security threats and challenges and reduce the occurrence of self-defense disputes. However, regional cooperation also faces political, economic, and security challenges and obstacles. Some countries may find it difficult to reach consensus and cooperation due to conflicts of interest or political disagreements. Additionally, regional cooperation requires the establishment of effective mechanisms and platforms to ensure its smooth implementation and sustainable development.

4. Discussion

4.1. Impact of Research Findings on International Law and Practice, and Potential Legal Framework Reform

The research findings have had profound impacts on international law and practice, particularly in the legal framework concerning the right of self-defense. These findings have revealed the flexibility and adaptability of the right of self-defense in addressing diverse security challenges, while also pointing out the lag and limitations of the current legal framework in dealing with new types of security threats.

Firstly, these findings emphasize the significant status and role of the right of self-defense in international law. As one of the basic rights granted to states by international law, self-defense is a crucial means to safeguard national security and interests. As the international security situation constantly changes, the scope of application and interpretation of the right of self-defense must also adapt to new security challenges. Therefore, the international community needs to strengthen research and discussion on the right of self-defense to promote the improvement and development of relevant international law.

Secondly, these findings provide useful references for potential legal framework reforms. In response to the shortcomings and limitations of the current legal framework, the international community can consider adopting a series of reform measures to better adapt to the challenges posed by new security threats. For example, it can strengthen research and assessment of non-traditional security threats and incorporate them into the scope of application of the right of self-defense. At the same time, it can also strengthen research and formulation of restrictive conditions for self-defense actions to avoid abuse and misuse of the right. These reform measures will help enhance the authority and stability of international law and provide stronger legal protection for the international community.

4.2. Potential Tensions Between the Right of Self-Defense and Other Principles of International Law

As one of the basic rights granted to states by international law, the right of self-defense has certain tensions with other principles of international law, particularly with the principles of sovereignty and non-intervention in internal affairs.

Firstly, the tension between the right of self-defense and the principle of sovereignty mainly manifests in the legality and necessity of self-defense actions. Although the right of self-defense is an important means to safeguard national security and interests, in some cases, self-defense actions may infringe upon the sovereignty of other countries. Therefore, the international community needs to strengthen the review and assessment of the legality and necessity of self-defense actions while

safeguarding the right of self-defense to ensure their compliance with the principles and spirit of international law.

Secondly, the tension between the right of self-defense and the principle of non-intervention in internal affairs mainly manifests in the scope and extent of self-defense actions. Some countries may interfere in the internal affairs and territorial integrity of other countries on the pretext of self-defense. Such behavior not only violates the principles and spirit of international law but may also trigger international disputes and conflicts. Therefore, the international community needs to strengthen restrictions and supervision on the scope and extent of self-defense actions to ensure their compliance with relevant provisions and norms of international law.

To alleviate these tensions, the international community needs to strengthen communication and cooperation to jointly promote the improvement and development of relevant international law. At the same time, countries also need to respect each other's sovereignty and territorial integrity, abide by the principles and spirit of international law, and maintain international peace and security.

4.3. The Impact of Technology and Globalization on the Future Forms of the Right of Self-Defense

Technology and globalization, as significant characteristics of the current era, have profoundly influenced the future forms of the right of self-defense. In particular, the emergence of new threats and technologies has posed new challenges and opportunities for the exercise of this right.

Firstly, emerging threats such as cyberattacks and terrorism have raised new demands for the scope of application and interpretation of the right of self-defense. These threats are characterized by transnationality, concealment, and destructiveness, making traditional self-defense means and methods ineffective in addressing them. Therefore, the international community needs to strengthen research and assessment of these emerging threats and explore new self-defense means and methods to better safeguard national security and interests.

Secondly, the rapid development of technology has also provided new opportunities and platforms for the exercise of the right of self-defense. For instance, the application of artificial intelligence and big data technology can enhance the precision and efficiency of self-defense actions. Meanwhile, advancements in network technology have facilitated more convenient and efficient communication and command means for self-defense operations. However, the application of these technologies also brings new risks and challenges, such as data security and privacy protection issues. Therefore, the international community needs to strengthen research and regulation of related technologies to ensure their legal and secure application in self-defense actions.

5. Conclusion

This study delves into the exercise of the right of self-defense and finds that it is particularly crucial when faced with direct military threats. Additionally, with the increase of non-traditional security threats, the scope of application of the right of self-defense has also expanded. However, interpretations of the right of self-defense vary internationally, leading to complexity and controversy in its practical application. The existing legal framework provides a legal basis and restrictions for the exercise of the right of self-defense but still has issues such as incomplete coverage of non-traditional security threats and unclear specific conditions and limitations. The international community has taken various measures to resolve disputes over the right of self-defense, but challenges such as implementation difficulties and obstacles to regional cooperation remain.

Future research will focus on further refining the legal definition of the right of self-defense, clarifying its specific scope of application and conditions when dealing with non-traditional security threats, and exploring the establishment of more effective international cooperation mechanisms to

facilitate the reasonable and lawful exercise of the right of self-defense, thereby jointly maintaining international peace and security.

References

- [1] Dapo Akande, Antonios Tzanakopoulos, *Legal: Use of Force in Self-Defence to Recover Occupied Territory*, *European Journal of International Law*, Volume 32, Issue 4, November 2021, Pages 1299–1307, <https://doi.org/10.1093/ejil/chab109>
- [2] Buchan, R. (2023). NON-FORCIBLE MEASURES AND THE LAW OF SELF-DEFENCE. *International and Comparative Law Quarterly*, 72(1), 1–33. doi:10.1017/S0020589322000471
- [3] Benjamin Mueser, *Why Westphalia Still Matters: Territorial Rights under Empire*, *International Studies Review*, Volume 26, Issue 2, June 2024, viae024, <https://doi.org/10.1093/isr/viae024>
- [4] Lefteratos, A. (2022). Contested statehood, complex sovereignty and the European Union's role in Kosovo. *European Security*, 32(2), 294–313. <https://doi.org/10.1080/09662839.2022.2138350>
- [5] Tahir Mehmood. (2022). *The Global War on Terror (GWOT) in Afghanistan and its Socio-economic Impacts on Pakistan*. *Humanities and academic*, 8, 43-70.
- [6] Pomarède, J. (2021). Imagining (in)security: NATO's collective self-defence and post-9/11 military policing in the Mediterranean Sea. *Review of International Studies*, 47(2), 192–210. doi:10.1017/S0260210521000024
- [7] Niccolò Zugliani, *The Supply of Weapons to a Victim of Aggression: The Law of Neutrality in Light of the Conflict in Ukraine*, *European Journal of International Law*, Volume 35, Issue 2, May 2024, Pages 389–410, <https://doi.org/10.1093/ejil/chae019>
- [8] Perot, E. (2023). The European Union's nascent role in the field of collective defense: between deliberate and emergent strategy. *Journal of European Integration*, 46(1), 1–23. <https://doi.org/10.1080/07036337.2023.2237653>
- [9] Jeppe T Jacobsen, *Cyber offense in NATO: challenges and opportunities*, *International Affairs*, Volume 97, Issue 3, May 2021, Pages 703–720, <https://doi.org/10.1093/ia/iiab010>
- [10] Dany, C. *Between aid and rights: Humanitarian international NGOs responding to the crisis of European refugee protection*. *Z Politikwiss* 34, 355–372 (2024). <https://doi.org/10.1007/s41358-024-00376-8>
- [11] Afsah Qazi, Muhammad Shoaib, Muhammad Faisal, *Russia–Ukraine War and the Indo-Pacific: A Perspective from Pakistan*, *Journal of Asian and African Studies*, 10.1177/00219096231176743, (002190962311767), (2023).
- [12] Adam Saud, Muaz Ullah Khan, *Geo-Politics of Afghanistan under Taliban Regime*, *Central Asia*, 10.54418/ca-91.181, 91, Winter, (39-63), (2023).
- [13] Sjullie, A. N. (2022). *The Impact of Regional Organizations on Conflict Recurrence in Post-Conflict States: A Case Study of West Africa* (Order No. 29210883). . (2676944219). <https://www.proquest.com/dissertations-theses/impact-regional-organizations-on-conflict/docview/2676944219/se-2>
- [14] Dill, J. (2023). Threats to state survival as emergencies in international law. *International Theory*, 15(2), 155–183. doi:10.1017/S1752971923000015
- [15] Yishai Beer, *When Should a Lawful War of Self-Defence End?*, *European Journal of International Law*, Volume 33, Issue 3, August 2022, Pages 889–915, <https://doi.org/10.1093/ejil/chac046>
- [16] Verma, R. (2020). Domestic Political Drivers and Chinese Diplomacy: Xinjiang and Counter-Terrorism in South Asia. *Asian Perspective* 44(4), 561-586. <https://dx.doi.org/10.1353/apr.2020.0025>
- [17] Hea yeung Lee. (2021). *The effectiveness of amnesty in the International Criminal Court — The focus is on the basis of exercising jurisdiction and the possibility of fighting against amnesty under the establishment rules*. *Comments on International Law*, 60, 125-166. (Amnesties in International Criminal Courts/Tribunals—Jurisdictional Bases of Courts/Tribunals and the Opposability of Amnesties—)