**American Journal of Humanities and Social Sciences Research (AJHSSR)**
e-ISSN :2378-703X
Volume-08, Issue-06, pp-292-301
www.ajhssr.com
Research Paper Open Access

# CONFLICT MANAGEMENT IN INTENATIONAL LAW: RESTRICTING THE USE OF FORCE IN CONFLICT RESOLUTIONS

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**ABSTRACT :**The advantages of universal quest for peace and stability outweigh the advantages of any war. Wars generally result from the heterogeneity of actors in the international scene and a diversity of interests. Wars have brought untold sufferings to societies, lives have been lost, property destroyed, people displaced, and a steady increase in refugee related problems amidst a global food crisis.The use of force in international law leads to other crises such as financial (much money being spent on the military), straining diplomatic relations, etc. In an effort to avoid these wars and promote international peace and security, various media have been employed. Given that the world has evolved from signing of international agreements to refraining from use of force in their relations, organs have been established charged with ensuring that states refrain from the use of force by implementing sanctions to punish those who engage in using force to settle disputes.Force has frequently been applied in resolution of conflicts, certainly, there are other methods of solving problems at the international level before resorting to the use of force. Today, states are encouraged to use force in exceptional cases only and to employ alternative dispute measures, which, if fully exploited, would greatly reduce the use of force, which still remains an imminent threat to the international community. Despite international organs and institutions put in place to ensure the prohibition of the use of force in international relations and the availability of alternative dispute resolution methods, force continues to be used by states for various reasons. The paper attempts to review the use of force in international law, its prohibition and current methods of dispute resolution. A general review of use of force, its prohibition, use of force as an exception and alternative methods of dispute resolutions.

## I. INTRODUCTION

Generally viewed as a hostile contention by means of armed forces carried on between nations, rulers, or even between citizens in the same nation, war is a state of fighting between nations or groups within a nation using military force.War is a word which lends itself to many uses; it may be an expression suitable for an allusion to any serious strife, struggle or campaign e.g., war against terrorism, war on drugs, war against corruption, etc. The most frequently quoted definition of war in international law is that "*war is a contention between two or more states through their armed forces for the purpose of overpowering the other and imposing such conditions of peace as the victor pleases".*[2]International law recognizes two types of wars; inter-state wars, between two or more states and intra-state wars, civil war, between two or more parties within the same state. International law regulates inter-state wars although it has been involved in regulating civil wars, albeit, to a limited extent until recently, with increased frequent internal armed conflicts.

The use of force by states in their international politics has long been prohibited and has evolved over time.3 A number of factors facilitated the move towards the prohibition of use of force by states. The first is the industrial revolution which led to massive development in transportation, communication and commerce. This led to international relations, which in turn led to international cooperation. With establishment of organs whose mission was to maintain world peace, the new conditions created brought about a conducive atmosphere for the propagation of peace. Public opinion was thus diverted towards prohibition of the use of force. A positive

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[2] L. Oppenheimer's Classical Treaties on International Law.
3JaroslvZourek, *L'Interdiction de L'emploi de la force en droit International,* A.W. Sigthotf-Leiden, Institute Henry Dunant-Geneve 1974, pg.17

result in this effort was the establishment of the *Convention on the Peaceful Settlement of International Disputes*, adopted in 1899 and revised in 1907, and the *Convention on the Limitation of the Use of Force for the Recovery of Debts* adopted in 1907.

## II. CURRENT METHODS OF DISPUTE SETTLEMENT IN INTERNATIONAL LAW

### 2.1 THE PRINCIPLE OF PEACEFUL SETTLEMENTS

The fact that states are prohibited from threats of use of force in resolving disputes implies that they are called upon to use other means to settle their disputes. These are peaceful means because no blood is shed, there is no fighting and consequently no war. The *raison d'etre* of the U.N is clearly stated in the preamble of its Charter.4 Chapter IV of the same Charter strengthens this obligation with regards to disputes likely to endanger the maintenance of peace and security. Article 33(1) of the UN Charter is to the effect that; the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall first of all, seek a solution by negotiation, inquiring, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangementsand/or other peaceful means of their own choice. In the event of failure to reach a solution by one of the procedures outlined in Art. 33(1), states are legally bound to continue to seek other peaceful means agreed upon by them.5 Another document, 6 clearly states that in the event of failure of the parties to a dispute to reach an early solution, they should continue to seek peaceful means to settle the dispute, by referring to the Security Council in accordance with the Charter of the United Nations and without prejudice to the functions and powers of the Council set forth in the relevant provisions of the Charter.

States must try to settle disputes peacefully, by refraining from any action that might aggravate the situation and endanger the maintenance of international peace and security. The Hague Convention for the Peaceful Settlement of International Disputes also supports this principle. It further states in its Art. 1, that, with a view to obviating as far as possible, recourse to force in the relations between states, the contracting powers agree to use their best efforts to ensure the pacific settlement of international differences. When a state refuses to resort to any of the procedures, refuses to seek peaceful means to settle the dispute, or takes actions which may likely aggravate the problem, the principle is breached.

### 2.2 NEGOTIATION

Negotiation includes consultation and exchange of views. It is the principal means of peaceful settlement of international disputes. This method is widely used by states; it involves submission and consideration of terms until a suitable solution is reached. The existence of active negotiations does not preclude resort to other settlement procedures, including judicial settlement.

#### 2.2.1.1 Forms of Negotiation

Negotiation can be done in different ways; through normal diplomatic channels, through joint or mixed commissions or through established machinery. The public aspect of negotiation is prominent in international organisations. In the United Nations General Assembly, states can, if they choose, conduct diplomatic exchanges, by so doing, they will be letting out steam and engaging the attention of outside states which may have something to contribute. But whether the discussion of a dispute in an international organisation can be regarded the same as the traditional diplomatic negotiation is an issue which may have legal implications.

#### 2.2.1.2 Limitations of Negotiations

Negotiation is plainly impossible if the parties to a dispute refuse to have any dealings with each other. Serious disputes oftentimes lead states concerned to sever diplomatic relations, a step that is especially common when force has already been used.7 Negotiations usually will be ineffective where the parties are far apart and there are no reasons to negotiate.8 Disagreements on the agenda for discussions may mean that negotiations never get beyond the stage of *talks*, for example,the reluctance of the United Kingdom to place the issue of sovereignty on the agenda of its discussions with Spain on the subject of Gibraltar, is a clear indication of unwillingness to yield on the crucial issue of legal title.A setback appears when the possibility to resolve a dispute by negotiation is unsuccessful even though the parties may be brought together in the process, they

4 UN Charter, Art. 2(3)

5 Principle 2, paragraph 3 of the UN Declaration on Friendly Relations, 1970.

6 Paragraph 7 of the Manila Declaration on the Peaceful Settlement of Disputes between States.

7For example, the severance of relations between the U.S. and Iran following the seizure of the US Embassy in Teheran in 1979.

8 This is demonstrated by the Arab – Israeli situation where quite recently the refusal to acknowledge the Palestinian Liberation Organisation has prevented direct negotiations.

could actually be separated by the dispute. A state can bind itself to negotiate by a treaty or where the situation arises creating an obligation to do so under general principles of law. The duty to negotiate usually exists even before the occurrence of a dispute. When a dispute arises between state parties, concerning the interpretation or application of [a] convention, parties to the dispute should proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.9

### 2.2.2 MEDIATION

When parties to an international dispute are unable to resolve the dispute through negotiation, third parties may come in to assist in finding a solution. The third party may intervene in different ways; it may simply encourage the parties to resume negotiations, or may investigate the matter and present proposals for its resolution. Mediation is a private informal dispute resolution process, involving the participation of a third state or states, uninterested in the dispute but with intent to reconcile the claims of the contending parties.It is a process in which a neutral third party, the mediator, helps disputing parties to reach an agreement. Mediation can be sought by the parties or it can be offered spontaneously by outsiders, although the mediator has no power to impose any decision on the parties.

#### 2.2.2.1 Mediators

Mediation can be done by international organisations, states or by individuals. The settlement of disputes is a basic institutional objective for the UN. Different concerns may induce a mediation officer; concern for peaceful resolution and safeguard of other interests. In the dispute between Britain and Argentina over the invasion of the Falkland Islands in 1982, the United States of America offered mediation to avoid war between a North Atlantic Treaty Organisation, (NATO) ally and a leading member of the Organisation of American States,(OAS). The UN tendered its good office because Argentina's invasion had been condemned by the Security Council and members were anxious for new initiative to prevent further bloodshed.10 Many reasons account for why mediation could be resorted to, including religious disputes,11political, as when the dispute arose between India and Pakistan over Kashmir in 1965, the mediation of the Soviet Union was instrumental in bringing about a cease fire. Mediation can therefore be seen as an opportunity for improving relations between stateswhile preserving peace and stability.

#### 2.2.2.2 Functions of Mediation and Mediators

It is important to realise that mediation cannot be forced on parties to an international dispute. Thus, it could be solicited or offered and when this happens, the states concerned have to give their consent to it. A number of functions are attributed to mediation and mediators; to promote a solution from which both can derive a measure of satisfaction, to create a conducive atmosphere for negotiations, and finally, the mediator's report may also be important in encouraging a realistic assessment of the situation and inducing a conciliatory frame of mind.

#### 2.2.2.3 Limitations of Mediation

Once mediation has begun, its prospects of success rests on the parties; they can limit or prevent it. A state which believes that it can win in a dispute or that it is not yet ready to make concessions is likely to oppose mediation. Another limitation is that where there are no guarantees that information brought by the mediator is credible, its presence will nevertheless discourage those with interest in settling the dispute. Mediation will fail where for example both parties regard themselves as relatively strong and their aims truly compatible. Finally, mediation will fail if a dispute has become an issue of domestic politics in one or all of the states in disagreement.

### 2.2.3 INQUIRY AND FACT FINDING

A dispute may be serious that it becomes difficult to reconcile the views of the parties. When this happens, either one or both parties may refuse to negotiate. Negotiations can go on for long until one party abandons its claim or looses patience and resorts to use of force. Inquiry broadly speaking, is the process performed whenever a court or other body endeavours to resolve a disputed issue of fact out of court. Inquiry also refers to specific institutional arrangements which states may select in preference to arbitration or other techniques because they desire to have some disputed issue independently investigated. In this institutional

9 Art. 283(1) of the United Nations Convention on the Law of the Sea is illustrative here.

10 The UN. Secretary General, Perez de Cueller, January 1982-December 1991

11 The war between Chile and Argentina seemed imminent over the implementation of the Beagle Channel Award, to prevent war between two Catholic states, the Pope offered the services of Cardinal Antonis Samore as mediator.

sense, inquiry refers to a particular type of international tribunal, known as the commission of inquiry. Fact finding is another activity designed to obtain detailed knowledge of the relevant facts of any dispute or solution which the competent organ needs, in order to effectively exercise their functions in relation to the maintenance of international peace and security.12Art. 9 of the Hague Convention for the Pacific Settlement of Disputes is to the effect that in disputes of an international nature, involving neither honour nor vital interests and arising from a difference of opinion on points of facts, the contracting powers deem it expedient and desirable that the parties who have not been able to come to an agreement by means of diplomacy, should as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.13

When inquiry and fact finding were given recognizance in international law, many smaller states became apprehensive and because of this, an international inquiry commission was subject to some conditions; the inquiry commission had to be used only for disputes not involving honour or essential interest, handle only questions of fact and law, and finally, implementation of its findings not obligatory.

### 2.2.4 CONCILIATION

Conciliation is another method of settling disputes which combines characteristics of inquiry and mediation. Conciliation has been defined as a method of settlement of international disputes of any nature, according to which, a commission set up by the parties either on a permanent basis to deal with a dispute, proceeds to the impartial examination of the dispute and attempts to define the terms of the settlement, susceptible of being accepted by them or of affording the parties a view to its settlement. The end result of conciliation does not have the binding character of an award or judgment.14Conciliation is a notion that has evolved over time. In 1921, conciliation and arbitration were laid down as alternative dispute settlement mechanisms in a treaty between Germany and Switzerland. In 1925, a treaty between France and Switzerland defined the functions of a permanent conciliation commission which later became the model for subsequent treaties. Germany later agreed with Belgium, France, Czechoslovakia and Poland that except where the parties agreed to refer a legal dispute to judicial settlement or arbitration, all disputes between them were to be subjected to conciliation. Whatever the type of commission, the functions were the same; to investigate the dispute and suggest possible terms for settlement. The conciliation had *inter alia*, the duty to encourage and structure the parties' dialogue while providing them with all necessary assistance to bring it to a successful conclusion. Then the commission also had a duty to provide information and advice as to the merits of the parties' position and suggest settlement that corresponded with their desire not necessarily what they had claimed. Finally, a conciliation commission had the duty to examine the nature and background of the dispute and was therefore equipped with wide powers of investigation, its objective being the parties' conciliation.

### 2.2.5 ARBITRATION AND ADJUDICATION

These are treated together because they make up the other aspect of dispute resolution. Methods explained this far, can be referred to as diplomatic means of dispute settlement. Arbitration and adjudication are legal means of dispute settlement where, both the arbitral award and court judgment are binding.

#### 2.2.5.1 ARBITRATION

Arbitration is the determination of a difference between states or between a state and a non-state entity through a legal decision of one or more arbitrators and an umpire. Arbitration may further be defined as a process of dispute settlement in which a neutral third party, the arbitrator, renders a decision after a hearing at which both parties have an opportunity to be heard. The rules of arbitration are usually drafted considering the fact that this may be a potentially lengthy operation. Many institutions have drafted sets of rules for the conduct of arbitration procedures. Examples of such include; the American Arbitration Association, the Euro-Arab Chamber of Commerce, the London Court of International Arbitration, the International Chamber of Commerce(ICC) rules and the United Nations Commission on International Trade Law, (UNICTRAL) rules.

Founded in 1916 with headquarters in Paris, the ICC is an arbitration process whereby parties may agree to ICC arbitration by the inclusion of a submission clause in its contract to the effect that all disputes arising out of the said contract be settled under the rules of ICC by one or more arbitrators appointed in accordance with said rules. UNCITRAL was set up in 1966 to harmonise and unify the laws of international trade. It drafted a set of rules which could be adopted in *ad hoc* arbitration to provide a round procedure and

12 UN, Declaration on the Prevention and Removal of Disputes and Situations which may Threaten International Peace and Security, 1988.

13 Art. 9 of the Hague Convention on the Pacific Settlement of Disputes, 1907

14 Art. 1, Resolutions on the Procedure of International Conciliation adopted by the Institute of International Law, 1961.

ensure that the arbitral award would meet the conditions prescribed in courts where the recognition or enforcement of the award might be sought. Another important aspect is national arbitration rules; arbitration rules which resolve questions concerning the conduct of arbitration as between the parties and the tribunal. These rules do not bind state courts, hence to integrate arbitration into the regular legal scheme, it is necessary for there to be domestic legislation governing the relationship between the arbitral tribunals and the courts. One such issue which the legislation may deal with, is the stipulation of circumstances under which courts may refuse to hear cases which the parties have validly contracted to submit to arbitration.

In the absence of agreement between the parties establishing the conduct of the arbitration, rules are prescribed by legislation. The desire to harmonise national laws on arbitration especially with regards to the award, led to the drafting of the UNCITRAL Model Law on International Commercial Transactions in 1985. The model law requires that every national court should refuse to hear proceedings covered by written arbitration agreements and should refer the parties to arbitration, unless it finds that the agreement was null and void, inoperative or incapable of being performed. The national court on the other hand, may intervene to support and supervise the arbitral process in certain circumstance.15For arbitral wards to be recognised internationally as mechanisms for dispute settlements, states need to enter into international agreements, for example, the 1923 Geneva Protocol, which laid down certain principles of application. Some relevant provisions include;

1. The parties agree to recognise the validity of agreements to submit present or future disputes to arbitration.
2. The arbitral procedure to be governed by the will of the parties and by the law of the country in which arbitration is taking place.
3. The parties agree to ensure that arbitral awards rendered in their territory be enforceable abroad.
4. The parties agree that their courts decline to exercise jurisdiction in cases where the disputing parties had agreed to refer to arbitration. Another significant international agreement is the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927. This agreement ensures enforcement of foreign arbitral awards in the courts of the contracting states. However, this is subject to some conditions;
5. That the award is rendered under a valid agreement.
6. That the subject matter was arbitrable.
7. That the tribunal complied with the procedures prescribed by the agreement and the *lex arbitri.*
8. That the award is final and not open to challenges.
9. And that the recognition and enforcement should not be contrary to public policy.

After the rejection of the ICC proposal on arbitral awards, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, offered a more streamlined system based on the same basic principles as the 1927 Geneva Convention.16

Some arbitral bodies are the Permanent Court of Arbitration, (PCA) with its seat at The Hague. The court has an international bureau which functions as registry for arbitral tribunal, created on an *ad hoc* basis by the parties and a Permanent Administrative Council which exercises administrative control over the bureau. The court is competent for all arbitration cases unless the parties agree to institute a special tribunal.17ICSID was set up by the World Bank in 1964 to voluntarily handle settlement of investment disputes between contracting states through arbitration or conciliation, with its seat in Washington, DC. It employed the services ofhigh level personnel with high moral character, and recognised competence in the fields of law, industry and finance, the court handled many cases of repute. Also the *Cour Commune de Justice et d'Arbitrage,* with its seat in Abidjan, Ivory Coast, is composed of seven judges appointed for a period of seven years by the Council of Ministers.

Procedures for rendering awards are important because failure to respect prescribed rules of procedure, may render an award unenforceable. In some cases, for example, under the UNCINTRAL rules, a simple majority will suffice. The award must give the reasons on which it is based, contain the names of the arbitrators and signed by the president or registrar or secretary acting as registrar.

### 2.2.5.2 ADJUDICATION

Parties to a dispute may submit their disputes to the court for a binding decision. The court is a permanent body charged with applying rules of judicial settlement, the main organ here being the ICJ, created in

15 Article 6 of UNICTRAL MODEL LAW, 1985.

16 Consideration of the decollected awards, i.e. awards not controlled by any national legal system but deriving their authority from the concern of the parties and entitled to recognition and enforcement in the courts of all the states on that basis.

17 Art. 42 Hague Convention for the Settlement of International Disputes, 1907.

1945 to replace the PCIJ. It consists of fifteen members; no two of whom may be nationals of the same state.18 The court's jurisdiction is upon the consent of the disputants. Only states may be parties in cases before the court.19 The jurisdiction of the court comprises all cases which the parties refer to it and all matters specially provided for, in the Charter of the UN or in treaties and Conventions in force. The decision of the court is binding only on the parties to the particular case. The enforcement of the judgment of the court has the backing of the UN Charter.

Apart from the ICJ, matters can also be referred to the International Tribunal for Law of the Seas (ITLOS), established by Annex VI of the 1982 Convention and seats at Hamburg. It has twelve judges elected by the parties to the convention for a period of nine years through secret ballot. A dispute may be referred to it when both parties have made a declaration accepting its jurisdiction. Mention should also be made here of the African Court of Justice,(ACJ), which is the sole judicial organ specified in the original act of the African Union. It has jurisdiction over matters under the act, AU treaties and instruments promulgated thereunder, as well as any question of international law. Efforts are underway to merge the African Court of Justice and the African Court of Human Rights, to become the African Court of Justice and Human Rights, with a proposed seat in Mauritius. To the above can be added the European Court of Justice, a court of the European Union.

So far, the various alternative methods available to states involved in a dispute with each other have been reviewed. If states could only respect these procedures laid down and handle their disputes amicably, future generations can escape the consequences of war which are not pleasant at all. However, there may be certain situations where a state may need to act fast to protect its integrity, in which case, the state may declare its action as a state of necessity, if justified. Art. 51 of the UN Charter gives states the power to use force in the event of an armed attack from another state. This is the only instance in which a state is permitted to use force in the resolution of inter-state conflicts.

## III. EXCEPTIONS TO THE PRINCIPLE OF PROHIBITION OF THREAT OR USE OF FORCE IN INTERNATIONAL LAW.

States went to war for various reasons. Considering the fact that such wars caused untold effects on property and human lives, the international community saw the need to prohibit the use of force by states in resolving disputes.20 This is a principle with an exception; the UN has given states the liberty to use force in order to counteract unlawful use of force by another state; the right to retaliate, also referred to as self-defense.The use of force here is a step, which, when taken, is to safeguard the sovereignty and territorial integrity of a state which has suffered armed attack from another state. The question that is usually posed is; when can self-defense be considered? The simple answer is this, there is self-defense when a member of the international community is threatened, in life or property and it reacts through force against this threat.21In this case, the use of force is sanctioned. States as well as natural persons have the right to existence and from this flows the right of conservation of liberty, such right surrounded by the right of defense and security.

### 3.1 MOTIVES FOR RESORTING TO FORCE IN INTERNATIONAL LAW

The use of force is a natural instinct as a means of resolving disputes. Many states and statesmen have never thought of another way to resolve disputes but to retaliate. Many states have however gone to war because they were unjustly provoked but the main reasons some have resorted to use of force is for the protection of their territorial integrity. The reliance on self-defense as a remedy available to states when their rights are violated is one of the hallmarks of international law.

### 3.2 The Concept of Self Defense

In its 1966 Advisory opinion on the Legality of the Threat or Use of Nuclear Weapons in Armed Conflicts, the ICJ stated that furthermore, the court cannot lose sight of the fundamental right of every state to survival and thus the right to resort to self-defense in accordance with Art. 51of the Charter when its survival is at stake. A state may unilaterally or in association with other countries, respond with lawful force to unlawful force or the threat of unlawful force. The concept of self-defense was applied to inter-state relations in connection with the just war doctrine. However, with the prohibition of the threat or use of force in the resolution of disputes, self-defense emerged as a right in international law.22 By including self-defense in the UN Charter, the draftsmen wanted to avoid a repetition of what led to the failure of the League of Nations. The consecration of self-defense can thus be seen as a response to a preoccupation; this preoccupation renders the

18 Statue of the ICJ
19 Art. 34(1)
20Art.2 (4) of the UN Charter.
21 Jean Delivanis, *La LegitimeDefense en Droit International Public Modern*. Paris, 1971.pg.3
22 Art. 51 of the UN Charter.

Charter compatible with accords of regional nature and the worry of some, faced with the veto power of certain super states, risk paralyzing the functioning of the Security Council in certain cases of violations of the prohibition to resort to force. In other words, these states wanted a situation where they could resort to individual self-defense, because if matters were left entirely in the hands of the Security Council, the super-states could use their veto power to disrupt the functioning of the Security Council.

At first glance, self-defense is a right which states possess. The Charter makes mention of an *inherent right* which means that the state is exonerated from the duty of non-recourse to the threat of war or use of force. Use of force by a state under this banner becomes legal because it is considered as an employment of lawful force against unlawful force. Article 51 of the Charter is clear on this issue even though it has its limitations. The second aspect that can be deduced from the reading of Art. 51 is that self, defense should be in response to an armed attack. This in itself, is a limitation, meaning that resort to force out of a response to an armed attack, is not taken into consideration. What then is an armed attack?

### 3.2.1 Self Defense as a Response to an Armed Attack

According to article 51, self-defense will arise when an armed attack occurs; it thus becomes necessary to demonstrate that an armed attack has actually taken place. The burden is on the state justifying the use of force in self-defense. An armed attack should come from another state, that is, across the frontier, although it can also come from a non-state actor. An armed attack by a state means intervention by means of armed forces on another state. It is important to know the exact time at which the attack occurred; it is upon the determination of this, that self-defense can be justified and thus considered legitimate. When a state sends armed forces across an international frontier without the consent of the local government, it is deemed to have triggered an armed attack therefore the opening of fire by a state whose territory has been violated is regarded as a legitimate measure of self-defense when that state reacts. There is also interceptive self-defense; which is seen as a timely response to intercept an armed attack which is in progress, an attack imminent and practically unavoidable.

## IV. VARIOUS METHODS THROUGH WHICH LEGITIMATE FORCE CAN BE USED IN INTERNATIONAL LAW.

The only legitimate use of force in international law is in the exercise of the right to self-defense. Self-defense may be independent; where a state under armed attack responds to it by itself and collective, where the state under attack, demands aid from other states in order to respond effectively to the attack. Be it an armed attack from a state or non-state actor, the victim state has a right to respond in self-defense. An example of a non-state actor is the Somali pirates who attack ships on the Aegean Sea, irrespective of nationality and without the approval of their government.

### 4.1 INDIVIDUAL SELF DEFENSE

The exercise of individual self-defense may assume more than one form; the state may employ measures short of war or war itself. *Measures short of war* include instances where counter force (legitimate) is used by those under attack. On- the-spot reaction can be seen as an act of defending elements of a defined unit. In the Nicaraguan case, the ICJ attempted to distinguish an armed attack from a mere frontier accident. Another example may be when a state through her destroyer on the high seas, drops charges upon the submarine of another state and the submarine responds by firing torpedoes against the destroyer. Vessels on the high seas may use force to repel attacks by other vessels, for on- the- spot reaction to be legitimized as self-defense, it must be in harmony with the three conditions of necessity, proportionality and immediacy. Other measures short of war include defensive armed reprisals; like the use of force, armed reprisals are prohibited unless they qualify as an exercise of self-defense under Article 51. Only defensive armed reprisals are allowed and they must come in response to an armed attack as opposed to other violations of international law. It is noteworthy here to distinguish between armed reprisals and on- the-spot reaction. While the two are similar in that, the use of counter force is limited to measures short of war, the difference is that on-the-spot reaction takes place at the point of the armed attack while defensive armed reprisals occur at the time and place different from that of the original armed attack. In defensive armed reprisals, the operations of the state are guided by the basic norms of *jus in Bello* and this applies to all uses of force even measures short of war. The four Geneva Conventions for the Protection of War Victims, prohibit certain acts of reprisals against protected persons such as prisoners of war, and objects.23Protocol 1 of the 1977 additional Protocol to the Geneva Convention further prohibits a range of reprisals. Moreover, the Geneva Convention on the Law of Treaties, makes it clear that provisions prohibiting any form of reprisals against protected persons contained in treaties of a humanitarian character, are

23 Art. 46, Geneva Convention, 1946, Convention 1 for the amelioration of the condition of the wounded and sick in armed forces in the field.

not subject to the application of the general rules enabling termination or suspension of a treaty as a consequence of its material breach by another party.24

Self-defense can also be used to protect nationals abroad. A state may exercise individual self-defense when her nationals in the aggressor state are under armed attack. This is acceptable provided the conditions of necessity, proportionality and immediacy are met. Apart from measures short of war, a state can fully engage in war, in exercise of her right to self-defense. War, as an act of self-defense, denotes comprehensive use of counter force in response to an armed attack. It is difficult to perceive that war could be a legitimate measure but there is no doubt that in certain circumstances, the right to self-defense is the right to resort to war. Once a war is properly stamped with the legal seal of self-defense, the legal character of that war remains, regardless of the magnitude of hostilities.25 A state can equally wage a war of self-defense against another state in response to an armed attack originally carried out by a non-state actor but subsequently endorsed by the state.26 After the attacks on the World Trade Center, the President, George Bush emphatically stated in his resolution of the issue by declaring war on the perpetrators of Sept. 11when he stated that *"…we will make no distinction between the terrorists who committed these acts and those who harbour them. He continued by stating that America will pursue nations that provide safe havens to terrorism; every nation in every region now has a decision to make. Either you are with us or you are with the terrorists. From this day forward, any nation that continues to harbour or support terrorism will be regarded by the United States as a hostile regime".*27

### 4.2 EXTRATERRITORIAL APPLICATION OF THE LAW

Another way of using individual self-defense is recourse to cross border counter force against terrorists and armed bands. An example is the Israeli incursion into Lebanon in 1982, to destroy vast complexes of Palestinian bases from which multiple armed attacks across the international frontier originated. Realising that the government of Lebanon was unable to deal with the situation, Israel sent troops in Lebanon to handle the incursion. While there were no clashes between the Israeli and Lebanese forces, the problem was resolved without further attacks. A state may solicit help from another state[s] in the exercise of self-defense.

### 4.3 COLLECTIVE SELF DEFENSE

Collective self-defense is when a state, under attack, is aided by others although it may not have been attack. The situation of this occurred when in 1990 the U.S. led a coalition to free Kuwait from Iraq. The question therefore posed was, could the action brought by a third party be qualified as self-defense? It could well be argued that, if the safety and independence of the state under attack is deemed to be vital to the safety and independence of another (third) party, then such help can be seen as self-defense and by so doing, such a state is depending on it. Collective self-defense may be exercised spontaneouslyor after thorough preparation, for example, the U.S. led coalition against Iraq in support of Kuwait with the backing of the Security Council, shows that any state may come to the aid of one that is illegally attacked. The ICJ was of the opinion that collective self-defense is well established not only in Art. 51 but also in customary international law.28 States having same interests in activities relating to maintenance of international peace and security, may conclude treaties to pave the way for collective self-defense. This is also true in situations of anticipated future armed attacks. These treaties could be in the form of mutual assistance, military alliances, and/or treaties of guarantee. The exercise of collective self-defense is limited. In the past, states concluded treaties of military alliances and mutual assistance of an offensive and defensive nature, to come to the aid of one another whenever there was war, not caring who started the war. Today, it is limited by the UN Charter in its art. 103 which states that conflicts between obligations assumed by members of the UN and under the Charter and other international agreements, the obligations under the Charter will prevail. Hence mutual assistance agreements and/or military alliances are to be expressly subject to the provisions of the UN Charter.

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24 Art. 47 of the Geneva Convention, Convention II, for the amelioration of the condition of the wounded, sick, and ship wrecked members of armed conflicts at sea.

25 An example, is the Iraq-Kuwait war, the moment when Iraq invaded Kuwait in 1990, after suspension of hostilities in 1991, the status of belligerents still continued in the final phase of the war in 2003.

26 This was the case with the U.S. against Afghanistan following the atrocities of September 11 in the U.S. The war which started on 7th Oct. 2001, was waged against Afghanistan for sheltering Al-Qaeda terrorists headed by Osama Bin Ladin.

27 George W. Bush. September 11 2001, statement by the president in his address to the nation, The White House, 2001. The Bush Doctrine developed after the September 11 attacks on the World Trade Center, in New York.

28 States may, in order to ensure sufficient help in times of attack, conclude collective self defense treaties.

### *4.4* RESPECTING THE LAWS OF WAR; *JUS IN BELLO*

With the advent of international humanitarian law, hereinafter, referred to as IHL, a new line of ideas emerged; international rules were to be respected and once war has begun, irrespective of the type of war, a war based onself defense is supposed to be fought with respect of these rules. The purpose of IHL is to limit the suffering caused by war, and by protecting and assisting its victims as far as possible. What is important here is not that of condemnation, whether the war was legal or not but rather, it is concerned with how the war evolves. The rules of *jus in Bello*or justice in war, serve as guidelines for fighting once war has begun. Supporters of the war doctrine maintain that morality does not exist in warfare and that one is entitled to do whatever is necessary to ensure victory for one's side. Just war theory on the other hand, sets forth a moral framework for warfare and rejects the notion that anything goes during time of war. Belligerent armies are entitled to try to win but they cannot do anything that is or seems necessary to achieve victory.29 There are restraints on the extent of harm, if any, that can be done on noncombatants, and restraints on the weapons of war.30 The principles of IHL are thought to apply in conflicts and to regulate the conduct of military forces. The rules of warfare aim to safeguard human life, which is a fundamental human right principle, to ensure that war is limited in its scope and level of violence. War should be avoided at all cost. *Jus in Bello* also requires that the agents of war be held responsible for their actions when soldiers attack civilians, pursue their enemies beyond what is reasonable or violate other rules of fair conduct, such acts are considered acts of murder.31Guidelines governing *jus in Bello* are different from those of *jus ad dellum*. Even if a nation lacks just cause for war, it may fight justly once war has begun. Conversely, a nation with just cause may fight a war unjustly. The main guidelines of *jus in Bello* remain principles of discrimination, proportionality and military necessity.

Because just war conduct is governed by the principle of proportionality, an attack cannot be launched on a military objective with knowledge that the incidental injuries to civilians would be clearly excessive in relation to the anticipated military advantage. Therefore, just war conduct, being governed by the principle of minimum force, an attack or action must be intended to help in the military defeat of the enemy. It must be an attack on a military objective with view to limit the effect on civilians, therefore, failure to respect these guidelines amounts to war crimes sanctionable by the International War Crimes Tribunals.

## V. CONCLUSION

The frequency with which force has been resorted to, gives a rather erroneous impression that the use of force is the best and only way through which disputes can be resolved. War brings about untold misery and much suffering and as such, the resort to use of force in the resolution of inter-state disputes should not be encouraged. Within the framework of interstate relations, disputes are bound to arise due to the heterogeneity of actors and diversity of interests in the international sphere. The question therefore should be that how should disputes be resolved in international law without the use of force? There are a number of mechanisms which states can resort to in the event of a dispute and the use of force is not one of them. The advantages of the universal quest for international peace and security outweigh the advantages if any, of war.

Generally, the use of force is out rightly prohibited in international law, therefore, it is not an alternative to dispute resolution. However, to be able to completely eradicate the possibility of states resorting to use of force whenever a dispute arises, effective mechanisms have to be put in place to counter such acts as well as attaching binding force to these mechanisms so that states will not be able to adhere to the rules of international law relating to aspects of war. States have to be bound by certain commitments not to breach these rules hence sanctions should be attached therewith.

The ICJ, as an auxiliary organ in the maintenance of world peace and security, should try to hasten proceedings whenever necessary. From the time of inception of a case to the point of judgment is usually too long, taking several years and this duration may push impatient statesmen to resort to use of force.

Arbitration is another means of resolving international disputes. This method is too expensive because of this poor states will not want to resort to it for a solution of their disputes. To avoid this problem, the cost of arbitration should be made cheaper, by it being subsidized by the U.N.

Actual use of pre-emptive war should be subject to conditions of prior notice to the Security Council, for instance, states that suspect an imminent attack from another, should inform the Security Council before striking and not when the action has already started.

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29 Michael Walzer, *Just and Unjust Wars, A moral argument with historical illustrations*. New York Basic Books 2nd ed. 1997, p.129

30 James Turner Johnson, *Just War Tradition and the Restraint of War. A Moral and Historical Inquiry*. New Jersey, Princeton University Press, 1981 xxiii.

31 Alex Mosely, Just War Theory, (article online) available at http:/www.utm.edu/research/iep/j/justwar.hcm, retrieved Dec. 8th 2012.

On the issue of preventive war, although preventive war is not allowed in international law at the moment, care should be taken. However, with the evolutions in communication technology and the increased terrorist activities around the world, such as option may be gaining grounds. If this option were to be exploited by states, it should be well scrutinized, defined and subjected to stringent measures and conditions.
Furthermore, measures should be taken to ensure that states respect the dispositions of the UN Charter,defaulters should be dealt with seriously. If measures are not taken to ensure stricter respect of the Charter, then the international community should be prepared for another global confrontation, the third world war, which I'm afraid, will be more disastrous than the previous two.

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