Critically assess the limitations of ‘self-defence’ in international

Critically assess the limitations of’self-defence’ in International conflict, with reference to the influence ofnon-state actorsFollowing the terrorist attacks in TheUnited States on September 11 2001, there was an increased demand for thenecessity of a state to be able to use force in an act of self-defence whenfaced with acts of aggression. However, some states were considered to be moreinterested in the use of pre-emptive force than merely acting in self-defenceof threats. This raises the question: how is it possible to distinguish betweenpre-emptive use of force and self-defence? Under international law, the use offorce should be in response to an armed attack, this is defined as “ Actionby regular State armed forces across an international border” 1or “ Armed groups, irregular forces and mercenaries” 2 This is relevant when establishing thelimitations of self-defence in international conflict as it outlines there areonly specific types of attack that warrant acts of self-defence to be carried outby a state. This can prove to be both beneficial and a hindrance, subject tointerpretation.

Whilst having a set definition for the requirements to allow anact to be carried in self-defence is beneficial as it allows those who actclaiming self-defence without legitimacy to be held accountable, it can beperceived as a hindrance if an armed attack does not fit the requirementsestablished in the definition. There are number of internationallegislative guidelines towards the use of self-defence in conflict such as Article51 under the United Nations Charter and The UN Security Council Resolution 1368on the situation in Afghanistan3. Resolution 1368 was adopted on the 12th September 2001, just one dayafter the Twin Towers attack. The Resolution outlined the right of a state toself-defence when the victim of an armed attack. This reiterated

the positionof the United Nations as expressed in Article 514. When considering the Resolution with regard to the limitations of self-defence, it is possible to argue that the Resolution sought to stop the United States reactingto the attacks with disproportionate force. Additionally, it can be argued thatthe Resolution look to postpone the United States from responding to the attackwith unjustifiable force towards another state as at the time the resolutionwas passed those responsible for the attacks were unknown. 5 This essay will evaluate thedifference between self-defence and the use of pre-emptive force in conflicts.

Whilstpre-emptive force is not typically regarded as an acceptable use of force ininternational conflict, it is necessary to question whether this is becoming aredundant concept. In recent years there has been an increase in attackscarried out by non-state actors, such as Islamic State. This throws intoquestion the relevancy of current legislative approaches monitoringself-defence in international law, and whether there needs to be a changetowards a more pre-emptive method of attack carried out in internationalconflict. However, it can be argued that allowing states a use of forceencourages abuse of the system for the gain of the individual state. NatasjaDuhem claims: “ Many states have routinely called in their right to self-defenceas justification for their use of force in the war on terror.” 6 Consequently, it is necessary to evaluate a number of other factors, such as the methods ofregulation for use of force, prior to establishing a conclusion towards thebest use of force by a state in the current climate.

The purpose of this essay is to criticallyassess the current approach to self-defence in conflict in international law, both through its legislative

approaches and the attitudes of internationalbodies such as the International Court of Justice. This essay will analyse theengagement of states in the use of force both in self-defence and inpre-emptive attacks, whilst evaluating the influence of non-state actors on theattitudes of states. Finally, this essay will conclude by assessing thelimitations of self-defence in International conflict. HistoryIn order to understand the currentinternational response to the use of force through both self-defence andpre-emptive action, it is necessary to establish the legal grounding forcurrent legislation. At the end of the First World War, the League of Nations7 wascreated through the Versailles Peace Conference8.

Under Article 10 of the League of Nations, it was intended that member stateswere “ to respect and preserve as against external aggression the territorialintegrity and existing political independence of all members of the League” 9. Atits height, the League of Nations had 58 member states. However, a number offactors contributed to its failure to prevent conflict prior to the SecondWorld War.

For example, the Leagues’ failure to include states such as theSoviet Union owing to its status as a Communist regime, combined with theunwillingness of its member states to provide force for the League meant thatwas not possible for the League of Nations to adequately police the use ofaggression and force. 10Subsequently, this resulted in a lack of confidence in the organisation. Consequently, the League of Nations can be seen to have collapsed pre-WW2, with itssubsequent disbandment in 1946. However, despite its disbandment, the legislationestablished in their precedent was carried forward. For example, Article 2 ofthe League of Nations stated that

members agreed “ in no case to resort to war” 11 analyse However, Article 2of the League of Nations was never instigated, therefore, the agreement to notresort to war only came into effect in 1928 through the creation of theKellogg-Briand Pact12.

Whilstthe League of Nations did not adequately address the concept of self-defence, it did provide a structure through which international forces were able tooverlook the use of force internationally across states. The Kellogg-Briand Pact was introducedin 1928. As previously mentioned, the Pact contained some shared concepts withthe League of Nations.

Article 1 of the Pact demands member states: “ condemn recourse to war for the solution ofinternational controversies, and renounce it as an instrument of nationalpolicy in their relations with one another” 13. The purpose of this, as explained by Humphrey Waldock was “ to forbid allunilateral resort to war for purely national objects whether on just or unjust grounds but to permit war as a collectivesanction either under the Covenant or the Pact itself” 14 explain” Internationallaw progressed from jus ad bellum to jus contra bellum” 15During the creation of the treaty, itwas stated that: “ Nothing in the new treaty restrains or compromises in anymanner whatsoever the right to self-defence. Each nation in this respect willalways remain free to defend its territory against attack of invasion” 16 Byallowing some degree of freedom to States to defend their own territory throughself-defence, it reduces the strain on the Security Council to oversee allprocedures carried out by States.

In turn, this allows greater focus to be hadon issues elsewhere, such as instances where this freedom is abused. Conversely, by not providing any statutorylimitations to the action taken under self-defence, the Kellogg-Briand Pact didnot provide a standard for acceptable limit of force used through self-defence, whether to be considered proportionate or legal. Subsequently, the use ofself-defence by States can be considered The end of the Second World War sawthe creation of the United Nations Security Charter. Under chapter 7 of theCharter, Articles 39 and 24. exploreThe introduction of both the League of Nations and the United Nations Chartermark a significant moment when assessing the use of self-defence inInternational Law as they mark the first legislative guidelines provided on thetopic in international law. Article 51 Article 51 first states the UnitedNations’ position on acts of self-defence prior to any action having been takenby a country: “ Nothing in the present Charter shall impair the inherent rightof individual or collective self-defence if an armed attack occurs against aMember of the United Nations, until the Security Council has taken measuresnecessary to maintain international peace and security.” 17When this is given greater scrutiny, the “ inherent right” of the member statesdemonstrates the acknowledgement of the individual states’ right to defendthemselves against armed attacks. However, it is also clear in specifying theactions taken by the state are in response to an armed attack that hasoccurred.

Subsequently, it is possible to establish that Article 51 does notrecognise pre-emptive use of force as a measure of self-defence to be taken byUnited Nation member states.- Security Council- Purpose: Maintain

international peace andsecurityFollowing this, Article 51 outlinesthe Security Councils’ response to action taken in self-defence by memberstates: “ Measures taken by Members in the exercise of this right ofself-defence shall be immediately reported to the Security Council and shallnot in any way affect the authority and responsibility of the Security Councilunder the present Charter to take at any time such action as it deems necessaryin order to maintain or restore international peace and security.”

18- Immediately reported- Authority of the Security Council- Such action it deems necessary- Purpose: Restoration of peacePros/Cons of Article 51Criticisms of article 512002 Bush Doctrine – no distinction between terrorists andthose who harbour them post 9/11 self defence – proportionality and necessity. NicaraguaThe end ofthe Second World War witnessed the introduction of the United Nations Charter19.

Article 2 (4) under the United Nations Charter outlined the prohibition of theuse of force: “ the provision in the UN charter prohibits the use of force, whether it amount to war or not” 20This is significant because it demonstrates the attitude of the United Nations, showing that violence against another state should not be considered when facedwith conflict unless in an act of self-defence. Therefore, violations of thisarticle would be demonstrated through a use of force that was not consideredself-defence. The implications of Article 2 (4) were demonstrated through theirviolation in the Nicaragua case. United States breached the use of forceunder art 2(4)In order toanalyse the use of self-defence in international conflict, it is necessary toestablish the criteria for self-defence to be claimed following a display ofaggressions. The criteria for self-defence areas follows: the state

must be victim to an armed attack, and subsequently declareitself a victim; the state must request assistance from other state/states ifengaging in collective self-defence. Additionally, the state must (under treatylaw) and preferable (under customary law) report to the Security Council21. If these requirements are not met, it is possible for the offending state to bebrought before the Security Council.

In this instance, The United States weredeemed to have failed to meet the requirements for an act of self-defence. Firstly, the United States were not victims of an armed attack in thisinstance, subsequently they could not declare itself a victim. Secondly, The U. S. did not have enoughresponsibility for intervention despite role in the conflict. Additionally, there was no request from the involved parties for the U. Sto intervene.

“ For the United States to be legally responsible, it would haveto be proved that that State had effective control of the operations in thecourse of which the alleged violations were committed” 22. Subsequently, the United States can be seen to violate the UN Security Councils’terms for the claim of self-defence. This is further demonstrated by an unlawfuluse of force, as the United States’ response was not proportional to the threatagainst it. Another reason the United States could not rely on self-defence is as aconsequence of a violation of customary international law. The Declarationon Principles of International Law Concerning Friendly Relations andCo-operation among States explains: “ every State has the dutyto refrain from organizing or encouraging the organization of irregular forcesand armed bands... for incursion into the territory of another state” 23″The use of force maynot be

used to support terrorist acts and civil strife carried out againstother states” 24 U. S.

went against customary international lawand Article 2(4) through its use of force and violation of article 51 –conclusion/ summary – lessons learnt? Impact on non-state actors. SelfDefence vs Pre-emptive attacks – 182/It is necessary to analyse the extentto which self-defence can be used as a justification for the actions of astate. In some instances, the conduct of a state may be considered apre-emptive strike rather than the act of self-defence. Why? However, pre-emption is not considered in the same regard under international law. Forexample, example.

This demonstrates explain. Therefore, ConcludeDuhem states: “ The threat posed byterrorism today has become much bigger following the immense technologicaldevelopments and increasingly globalized environment” 25. An increase in presence of Non State Actors in the international communityArticle 2 (4) – Can be used to allowstate actors to tackle NSA’s internally through pre-emptive force but does notallow for international responseOne example of the use of pre-emptiveforce was demonstrated by Japan example, explain, conclusionIn other instances, such as (United Kingdom) example, explain, conclusion Point to consider – location ofnon-state actors – state location where there is no govt to hold accountability– absurd that “ international law prohibits us from capturing terroristsin international waters or airspace; from attacking them on the soil of othernations, even for the purpose of rescuing hostages; or from using force againststates that support, train and harbor terrorists or guerrillas” 26 ‘ ratione personae.’Recent events – Prior to 9/11, few individual terrorist

attacks were serious enough to meet the ICJ’s highthreshold for an ‘ armed attack27Conclusion – 500 wordsConclusion – how is pre-emptive attacks different to self-defence, does the lawview them differently? How are they monitored? Pros and Cons – Shouldpre-emption be 1 https://www. scribd. com/document/294477619/Green-James-The-International-Court-of-Justice-and-Self-Defence-in-International-Law2ibid3Resolution 1368 fulltitle4Article 51 full title5https://books. google. co.

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