

TENTH COMMISSION
Present Problems of the Use of Armed Force in International Law

A. Self-defence

Rapporteur: M. Emmanuel Roucouas

RESOLUTION

The Institute,

Mindful of the problems raised by the use of force in international relations;

Convinced that the system of collective security established by the United Nations Charter strengthens international peace and security;

Acknowledging the fundamental importance of individual and collective self-defence as a response of States to the unlawful use of force;

Mindful that the problems of self-defence of States facing armed attacks by non-State actors, as well as those of the relationship between self-defence and international organizations, require further study by the Institute;

Adopts the following resolution:

1. Article 51 of the United Nations Charter as supplemented by customary international law adequately governs the exercise of the right of individual and collective self-defence.
2. Necessity and proportionality are essential components of the normative framework of self-defence.
3. The right of self-defence arises for the target State in case of an actual or manifestly imminent armed attack. It may be exercised only when there is no lawful alternative in practice in order to forestall, stop or repel the armed attack, until the Security Council takes effective measures necessary to maintain or restore international peace and security.

4. The target State is under the obligation immediately to report to the Security Council actions taken in self-defence.
5. An armed attack triggering the right of self-defence must be of a certain degree of gravity. Acts involving the use of force of lesser intensity may give rise to counter-measures in conformity with international law. In case of an attack of lesser intensity the target State may also take strictly necessary police measures to repel the attack. It is understood that the Security Council may take measures referred to in paragraph 3.
6. There is no basis in international law for the doctrines of “preventive” self-defence (in the absence of an actual or manifestly imminent armed attack).
7. In case of threat of an armed attack against a State, only the Security Council is entitled to decide or authorize the use of force.
8. Collective self-defence may be exercised only at the request of the target State.
9. When the Security Council decides, within the framework of collective security, on measures required for the maintenance or restoration of international peace and security, it may determine the conditions under which the target State is entitled to continue to use armed force.
10. In the event of an armed attack against a State by non-State actors, Article 51 of the Charter as supplemented by customary international law applies as a matter of principle.

A number of situations of armed attack by non-State actors have been raised, and some preliminary responses to the complex problems arising out of them may be as follows:

- (i) If non-State actors launch an armed attack at the instructions, direction or control of a State, the latter can become the object of action in self-defence by the target State.
- (ii) If an armed attack by non-State actors is launched from an area beyond the jurisdiction of any State, the target State may exercise its right of self-defence in that area against those non-State actors.

The State from which the armed attack by non-State actors is launched has the obligation to cooperate with the target State.