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The Right to Individual or Collective Self-Defense. Preventive Attack According to the Provisions of the UN Charter

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Abstract: *Geo-political interests have always played a significant role in the ongoing struggle for power, supremacy and leadership, especially among the leading states such as the US, China, Russia, etc. Since the creation of the first social communities and, to this day, with progress, only the method of struggle has changed, not the purpose. As long as money, prosperity and the desire to dominate rule this world, as long as there is tension and competition between states. Therefore, in order not to go beyond the extremes of this confrontation, which can lead to disastrous consequences for humanity, it is necessary to have a proper organization of nations, where under the control of diplomacy and security, the interests of the state are protected. Thus, in compliance with the provisions based on the peaceful conduct of international relations, it is ensured the dignity and protection of the State, which in the event of an act of aggression on the part of another State, which is the guilty state. The collective union of states, in compliance with these provisions, is a guarantor of international security and peace. We try to discuss in this study the correct method of conducting the right of self-defense according to the provisions of the UN Charter, in case of an armed conflict, frequently encountered at present, taking into account the emphasis on the misinterpretation of the without the authorization of the United Nations, which appeared after the terrorist act of September 11, 2001, in the USA.*

Keywords: *individual self-defense; collective self-defense; provisions of the UN Charter; international relations.*

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I. The essence of the international conflict

Humanity has known conflicts since the beginning of its appearance. They were born out of religious, ideological, ethnic, territorial and other contradictions. Modern conflicts have become one of the leading factors and instability on the planet. Being almost uncontrollable, they show a growing trend, connecting more and more participants, which is a serious threat not only to those directly involved in the conflict, but also to all those living on earth. Moreover, it can be assumed that they will continue as long as there are political doctrines that express and illuminate the interests of the various participants in political relations. The struggle for power can be productive and counterproductive, destructive and creative, it can open new horizons for society or it can push it into the abyss.

In addition to the horrors in which a conflict may erupt, we must note that a controllable conflict can bear fruit. We can compare electrical voltage - it is dangerous for human life, but without a minimum voltage, the electrical system can not work. In the same way the tension between societies works, if the structure in which it operates is destroyed, the high social tension can lead to violence or war or even destroy social structures (Sandu, 2021). However, societies do not develop without a certain tension between them. The tension between the various initiatives makes it difficult to choose and achieve a goal (Apostu, 2020; 2021). Tension is the cause of the war, but it is also the cause of the decline (Anitei, 2011). Tension can exist in the minds of people, within social groups and in societies of different levels. In the world community, there is tension between nations and groups of nations. Political conflict is used to regulate and manage tensions in both areas.

According to the analysis of Russian scientists, international (and not domestic) conflicts and crises are often the reason for the change of government and a good incentive for state policy reform. As examples, this refers to the changes in England, Israel, USA, which took place after the international conflicts experienced. However, it is not difficult to give examples to the contrary, when internal political conflicts cause serious changes not only in a country's foreign policy, but also in the broad system of international relations. A good example is the Islamic world, which, according to its religious beliefs and different interpretations of these doctrines, resort to violence. Usually, in the beginning, the participation of a certain country, nation, social group in an international conflict leads to the increase of their internal cohesion, the consolidation of moral and political

unity, the suppression or postponement of internal conflicts. Indeed, this effect is often achieved by polarizing the social community, dividing it into those who support international activities and the goals of "their" side in this international conflict, as well as those who do not support and, as a result, " they are indirect or even direct accomplices of an external enemy and, consequently, internal enemies (Năstase & Aurescu, 2018, pp. 308-317).

Whether or not the objectives pursued by the conflicting parties have been achieved or not, both sides have not only obtained a very complete picture of each other's strengths and capabilities in the face of an open but convincing confrontation for their countries and all humanity. Of course, it would be not only inhuman but also unconscious to ignore the destructive consequences for the humanity of the seas and small, global and local, as well as all other conflicts and wars. It has been estimated that in the last five and a half thousand years, humans have fought each other in about 14,500 wars, during which 3.6 billion people have died and enough values have been destroyed for the modern world, for several thousand years. Throughout history, we have noticed that some states, such as the United States, have built their strategy based on armed implications in resolving contradictions. This explains the expenditures in the 1980s, armed actions against Libya, Panama, Jamaica, Iran, etc. Hence their desire to demonstrate to potential adversaries on the world stage the effectiveness and superiority of their forces; desire to show determination in the country and adherence to national interests. As the basis of the international conflict is a contradiction in the interest of the various states or their associations, the functional purpose of the conflict is to resolve that contradiction. What is certain is that, in some cases, especially during the armed struggle, no balance of interests can be spoken of, but rather, the suppression of the interests of one of the parties is rather worse. But in this case, the international conflict does not resolve itself, but only enters the latent phase, which is full of exacerbations at the first opportunity (Onica-Jarka, 2016). The most acceptable form of conflict resolution is the realization of a balance of interests of its parties, which ultimately eliminates the very cause of the conflict. If such a balance cannot be achieved, then the interests of one of the parties are suppressed due to military defeat, then the conflict enters a latent form, which, at any time, under appropriate conditions, can renew the conflict.

The international conflict between states is primarily associated with the concept of "aggression", which, in accordance with the UN definition of aggression adopted by the UN General Assembly in 1974, is "the use of armed force by the According to A. Rifaat (1979), a specialist at Stockholm

University, in commenting on this wording, "aggression, according to this definition, exists only when the state (Rifaat, 1979, pp. 121-122). If the actions of a state in an international conflict are classified as aggression, then the response of another state or other states is appreciated that the self-defense or international sanctions in common: it justifies violence through defense" (Walzer, 1984, p.16).

Traditional military research has ignored the revolutions and wars that have taken place in individual states, because they have gone beyond interstate wars and international relations. It is believed that the principle of non-interference in internal affairs seemed to separate the international sphere from the internal one, leaving civil strife outside the scope of international scrutiny. And just after World War II, scientists began to pay much more attention to civil war, realizing that "they have replaced international warfare as a war for the nuclear age" (Walzer, 1984).

II. The right to self-defense under ART. 51 of the UN Charter

Established in 1873, the Institute of International Law, from the very beginning, has set itself the goal of multilateral development of international law. The Institute has as its primary objective the maintenance of world peace and also the anticipation, settlement and settlement of emerging interstate conflicts. It is important to note that in 1904 he was awarded the Noble Prize, and after the terrorist act of September 11, following the destruction of the twin towers, the US implemented a new strategy, inspired by the doctrine. The pre-emptive strike has thus led to some changes in the use of force in international law. Post facto, a ten-point resolution was adopted, based on the most important aspects of the right to defense, in order to increase world security and peace. The nature and attributes of the institution of self-defense in modern international law are discerned from Art. 51 and from paragraph 4 of art. 2 excerpts from the UN Charter (1945). Therefore, ART. 51 states: "The Charter shall in no way affect the inalienable right to self-defense unless there is an armed attack on a member of the Organization until the Security Council has taken the necessary measures and measures." The provisions of the above article clarify the meaning of the rule set out in paragraph 4 of Art. 2, which provides that: '... all members of the United Nations shall abide in their international relations by threatening or using force against the territorial integrity or political independence of any State, or in any other manner Unite" (1945).

Self-defense cannot be a means of combating armed aggression, since, according to art. 39 of the UN Charter, in the power of the Security

Council is established or refuted the occurrence of a case of aggression, and the existence of an armed attack is determined by the state, which has assigned its status as a victim (51). Consequently, self-defense is one of the means of combating an armed attack, not the actual aggression.

According to the UN Charter, any armed attack by a State is illegal, as it is contrary to the rules and principles of international law, for example, Article 4, paragraph 4, of the UN Charter, recalls that all Members of the to use the threat or use of such threats, either contrary to the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. " Thus, we will consider that self-defense should be understood as the right of the state to respond to an armed attack, carried out in accordance with international law, which aims to ensure the integrity of its territorial and political integrity. Article 51 of the UN Charter establishes the right to appeal to individual and collective self-defense only in the event of an armed attack. The diplomatic dictionary defines individual self-defense as the actions taken by the state to protect or to restore its political independence and territorial integrity, in the event that it is violated by the state. In this order of ideas, we conclude by saying that the right to self-defense, of any state, arises by virtue of an attack on oneself (Onica-Jarka, 2016, pp. 205-216).

If we return to the subject of collective self-defense, then it is important to point out that more and more researchers consider the most correct form of the notion presented to be that of collective defense. However, D. Kunz (1974) notes that the term collective self-defense is not the correct form, stating that: "[...] this is not self-defense, but the defense of another state", and H. Kelsen (1948), but it only helps the state to attack against aggression, it is not a self-defense, although, of course, these actions are part of a kind of collective defense, but they cannot be called self-defense actions. Moreover, the right to collective defense of states which are not directly affected by an armed attack reflects the essence of Art. 51 and the entire UN Charter according to which, the fight against aggression is a common affair of all states (Onica-Jarka, 2016).

In the literature dedicated to the study of international law, there are distinct contractual and non-contractual forms of realization of the law of collective defense, which have a significant impact on the relationship between the nature and internal relations. The simplest form of exercising the right to collective defense (non-contractual) is to address the victim-state to the friendly states, with a request for assistance in protecting it against the aggression against it. The UN International Court of Justice, following the disclosure of the content of the right to collective defense, has ruled that the

state, in favor of which this right is used, must itself declare itself the victim of an attack on a weapon. Current international law does not allow another state to exercise the right to collective defense on the basis of its own assessment of the situation. Subsequently, an additional requirement was imposed, which consists in requesting a state, which considers itself the victim of an armed attack, to another state to provide assistance. This request is based on the appearance only of the law and not of the legal obligation of a third state to participate in the collective defense of a victim of the armed attack. The most typical form of exercising the right to collective defense is represented by actions based on reciprocal, bilateral and regional assistance agreements previously concluded by states in the event of an armed attack. Each state has the right to carry out self-defense with other states, but not every state wishes to become a party to the mutual assistance agreement, that is, to undertake to participate in the collective bargaining agreement. States that have adopted a policy of traditional neutrality, as well as permanent neutrality status, limit their international legal personality by refusing to participate in any reciprocal treatment.

Regardless of the form in which the right to collective defense is organized, the realization of this depends on the capacity of a state to repel an armed attack (Florea, 2017). Thus, only the state of individual self-defense, which appears to be the result of an armed attack, creates a sufficiently solid reason for the third state to enter into an armed conflict directly with the aggressor. Self-defense actions may be militarily offensive and may extend to the territory of the aggressor state to the extent necessary to eliminate the consequences of the armed attack.

III. From pre-emptive war crimes

The notion of "preventive self-defense" has been the subject of much debate and controversy in the last two decades to the present day, due to tensions between states that can evolve overnight. The problems that have arisen in connection with the new interpretation of the rules on the use of force (the concept of preventive attack, armed intervention, preventive use of force) and the search for possible solutions to increase the effectiveness of the UN Council should be carefully considered. In the current century, the concept of "preventive attack" as an additional piece of the right of defense is formed. According to it, the essence of a pre-emptive strike is, as its initiators interpret it, not to avoid but to eliminate the conflict. The terrorist attacks of 11 September 2001 have changed the landscape of international law, leading to many of the rules and institutions of

international security being violated. As a result, the theory and practice of international law have faced new challenges (Winston & Craig, 2004). The danger of international terrorism, especially in the case of the threat of weapons of mass destruction, is a good justification for the pre-emptive strike. In numerous UN Security Council resolutions (resolutions 1368 (2001a), 1373 (2001b), 1438 (2002a), 1440 (2002), 1456 (2003), 1611 (2005) etc.), terrorism is defined as a threat to peace and international security (Saul, 2012).

Preventive war (French for "preventive", from the Latin "pravevio" - foretells, warns) - the beginning of a war, with the belief that conflict is inevitable, the main goal being to overcome the enemy in his plans - this is the only way to prevent it. In English, the term "preemptive" is translated as "preventive", the pre-eminent is considered the elimination of an immediate or appropriate threat. From the last point of view, preventive warfare is very close to proactive self-defense against the intentions of the adversary. Today, in the case of the United States, whose 2002 national security strategy (version updated in 2006) provides for military operations outside its borders, including without the authorization of the UN Security Council, the United Nations set by the UN. In my opinion, non-compliance with these provisions, especially from a state with a huge and economically developed armed force, is a challenge against other states, which could support them. The concept of preventive self-defense (formerly known as the "Bush doctrine") provides for unilateral actions that preventive self-defense against potential danger.

Following the events of September 11, 2001, the US Congress passed Resolution JR 23, "on the Authorization of the Use of U.S. Forces," (https://www.congress.gov/bill/107th-congress/senate-joint-resolution/23) which has the force of law, according to which the President of the United States has the right to use all military force. who planned and carried out acts of terrorism and also offered refuge to terrorists. This decision has virtually eliminated all legal restrictions on the scope and use of US armed forces by the President's authority. Moreover, under the U.S. Code of Laws (Title 10, Section 1453, p. 167 - https://www.law.cornell.edu/uscode/text), the U.S. Armed Forces is granted the right to conduct "retaliatory raids" against states that support international terrorism for their country. The UN Security Council, in its resolutions of September 1368 and 1373 of 2001 (a;b), equated an international terrorist act with an armed attack on a state within the meaning of Art. 51 of the UN Charter, thus confirming, as many believe, the right to self-defense in the attack of a non-state entity. The UN Charter does not exclude, we emphasize once again, the possibility of

implementing preventive measures, the implementation being possible only on the basis of the decisions of the UN Security Council, which determines the existence of a threat and measures.

From the point of view of classical international law developed in the second half of the twentieth century, states, in accordance with the principle of non-use of force or threat of force, have the right to use force to prevent an attack. The principle of self-defense, which has a long history, is the right to retaliate against the use of armed force by another state (Gray, 2008). In general, the right to self-defense in response to an attack is a well-established institution under international law, which appeared long before the adoption of the UN Charter. The creation of the UN has been a major breakthrough in the development of cooperation between states in the field of ensuring international security. Today, the non-use of force or the threat of force remains one of the basic principles of international law enshrined in law in the UN Charter, as well as in other international legal acts and acts. The UN Charter has introduced into modern international law the imperative principle of the prohibition of the use and threat of the use of force, which covers all forms of violence, enshrining the law prohibiting the use of force in international relations, except for Security. In accordance with current international law, the UN is the main guarantor of the international security system under whose jurisdiction offensive military decisions are taken against the guilty state.

In recent years, for Western countries, the fight against international terrorist acts, resulting in destruction and a large number of casualties, has become a common justification for an armed attack under the pretext of the realization of the law of UN Charter. For example, the United States has used this pretext to justify the invasion of Iraq and Afghanistan. In addition, it is closely linked to the highly controversial concept of "preventive self-defense", which is officially enshrined in all US national security strategies and which causes strong contradictory internal judgments by lawmakers. The United States, in accordance with the doctrine of preventive defense, continues to rudely tear down Article 51 of the UN Charter, as well as the basic principles and rules of international law as a whole. If we look closely at Article 51 of the UN Charter, then pre-emptive strikes are a violation of international law.

The 21st century is characterized by an unprecedented increase in terrorist acts. Terrorism is becoming an integral factor and, unfortunately, a family affair. As a result of the tragic events of recent years in various countries around the world, special attention is being paid to armed terrorist acts by non-state groups. Thus, the problems of international security have

acquired new features in the last two decades, as a result of the emergence of new threats that endanger global security. The Declaration on Global Counter-Terrorism Efforts (Security Council Resolution 1377 of 12 November 2001c) states that acts of international terrorism constitute one of the most serious threats to the security of the twentieth century. As a result, the fight against international terrorism comes to the fore in ensuring peace and security. Terrorism is seen as a method of achieving the goal, which is characterized by the unilateral use of violence against persons who are not directly involved in a conflict between a state and a terrorist group and who practically do not know how to prevent it. a terrorist act. The danger of global terrorism, now emanating from the so-called Islamic State (ISIS) and other terrorist groups, is exacerbated by the fact that in recent years violently violating the UN Charter, the rule of law, the rule of law and the rule of law, were overthrown (Iran, Iraq, Libya, Egypt, Yemen) etc. The targets of pre-emptive strikes are not the states themselves, but elements of the terrorist infrastructure that are not formally linked to the host states. As a result, the concept of preventive use of force was formed as a natural development of the concept of self-defense.

UN Security Council Resolution no. 1535 of 26 March 2004 made it clear to the world community that the UN and its Security Council are ready to continue the line of improvement of security mechanisms that adequately meet the ambitious requirements of the fight against terrorism and counter-terrorism. The UN Charter distinguishes between legitimate cases of use of force by states in their international relations (when the use of force is compatible with UN objectives) and illegal (when it is incompatible with those objectives). The UN Charter states that preventive and (or) coercive measures may be applied in response to any threat to peace, to a breach of the peace or to an act of aggression (art. 39, 50), while emphasizing that are taken by the UN Security Council.

In international legal science, there are two approaches to this subject. First of all, a certain group of scientists are convinced that for an armed defensive response, a real attack on the part of the aggressor state must take place first. This is the traditional interpretation of the law of self-defense. Second, another group, on the basis of self-defense, recognizes the imminent threat of armed attack. In other words, we are talking about a broad interpretation of the right to self-defense (Naryshkin, 2015). In general, the majority of indigenous scientists consider that abstinence from the use of force and the threat of force remain the general principle of law. In other words, proponents of classical international law are still united in the fact that the UN Charter allows states to apply only self-defense

measures in response to an armed attack, and preventive measures are the exclusive competence of the UN Council.

A state that does not want to prevent terrorist attacks on its territory bears responsibility under international law in the event that a terrorist organization has carried out an attack on a state. Two terrorist acts against American citizens in Lebanon in 1983 became the "last line" for the formation of this doctrine. The Reagan administration soon adopted a series of classified national security directives that provided for the possibility of unilateral military action against state-sponsored terrorist activities. This new policy was later enacted in the speeches of Secretary of State Schulz. After international terrorists attacked the United States on September 11, 2001, the international community agreed that, even with a limited reading of Article 51, America's self-defense was justified. For the first time in its history, the UN Security Council has adopted a resolution reaffirming the inalienable right of self-defense of the state to respond to terrorist attacks. In resolution no 1368, the Security Council authorized the United States to use the armed forces in self-defense. Resolution 1368 was intended only to encourage the United States to cooperate, notes the American researcher M. Byers (2002).

Egyptian researcher J. Ali Saba believes that "after 9/11, the Security Council noted that there was a threat to international peace and security, not in connection with the attack on the United States but on the presented by international terrorism " (Ali-Saab, 2002). However, the provisions of Resolution 1368, judging by its text, cannot be formally interpreted as authorizing the use of armed measures in Afghanistan, in accordance with Chapter VII of the Charter of the United Nations. Thus, the UN Security Council, in the preamble to these resolutions 1368 and 1373, identified the existence of a threat to international peace and security. Of course, these two UN Security Council resolutions equated an international terrorist act with an armed attack on a state. A formal interpretation of these resolutions does not confirm the US right to attack, in particular Afghanistan, to use self-defense against non-state actors, ie terrorists rooted in terrorists.

The 2002 National Security Strategy enshrined the principle of a pre-emptive strike against terrorists and their supporting countries and also proclaimed the possibility of unilateral US military operations. Since 1999, NATO has adopted a strategic concept that has given it the "right" to conduct military operations against other countries at its discretion. In the 2006 US National Security Strategy, all the basics of the pre-war doctrine of 2002 were retained, but in contrast to the 2002 doctrine, the United States' all over the world "and maintaining the" supremacy of US leadership ".

Meanwhile, the position of the United States of America, which has similar rights to the rest of the states, is clearly established in international law. The doctrine of international law draws special attention to armed terrorist acts of non-state entities. This has raised the issue of proactive self-defense against non-state actors before international law. This is very important due to the fact that there is a serious risk that weapons of mass destruction (biological, chemical, radiological bombs) will fall into the hands of various terrorist organizations.

In the current century, self-defense has become an excuse for armed clashes between states. Local wars, as a rule, between frontier states have begun under the auspices of this provision. The need for self-defense must be demonstrated in such a way as to take account of current types of threats and must be applied taking into account the specific circumstances of each case (Ciuca, 2018). The use of force, taken as a whole, should not be excessive in relation to the need to prevent a military attack or to put an end to the attack. In order to recognize the response of the armed forces as legitimate, the criterion of legality must be met. In the case of an international terrorist act, the state that knows the place where the alleged perpetrators who initiated this coup are hiding, proves to be guilty of not taking any measures to combat this. Moreover, it is losing its right to participate in this conflict, with terrorism becoming an international threat. When it comes to self-defense against non-state actors, this means an armed attack on the location of a terrorist organization on the territory of the other state or even two or more states. In other words, the question is: can the injured state exercise its right to self-defense against the state in whose territory the terrorist organization that has harmed the target state is located?

IV. Conclusions

Classical international law has unequivocally argued that the state bears responsibility for the activities of private individuals only if it itself has been involved in illegalities. In this case, the principle, as the doctrine states, is the criterion for determining the state's connection with a terrorist organization. Consequently, if the involvement is not proven, it is illegal to talk about an act of aggression on the part of the state, being responsible only those who started this initiative. In this sense, a state that operates on the territory of another state commits an act of aggression. In general, the fundamental prohibition of war is being replaced by a new doctrine of 'preventive' warfare as a way of eliminating international threats. Thus, the issue of the use of force in modern international law has not been fully resolved and, despite the formal recognition of the UN Security Council,

that the only international body authorized to allow the use of self-defense is based on states to resolve conflicts and realize their own national interests.

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