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# USE OF ARMED FORCES IN INTERNATIONAL LAW

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## ABSTRACT

International Law has little option but to embrace war, regardless of the legitimacy of its beginning, as a connection that the states to it may choose to establish, and to concern itself solely with controlling the implications of the relation. The scope and boundaries of the use of the military in international affairs are still strongly contested in the 21st century. The use of armed force has been continuously an ongoing trend in international relationships, and it has been thought to be closely associated with state sovereignty, the unrestricted power carried by governments of the state to employ whatever means are necessary to secure and safeguard their own interests. Additionally, there exist countless debates about how often it is appropriate to apply armed force on the sovereign territory of another nation in order in order to safeguard one's own nation against armed threats. From century to decade over that period, there have been numerous instances of armed force operations all throughout the world. The most significant instance on the subject is the widely recognized Russia-Ukraine War, in which Ukraine utilized war against an outside nation invading its territory in self-defence against Russia. the potential for developing this aspect of international regulation, with an additional focus on amending important norms concerning armed forces is addressed at International Level. With the establishment of the United Nations, the legality of individual governments' use of force based on international law has been significantly reduced. As any war causes enormous suffering to the people involved and is subjected only to the restrictive principles of international humanitarian law, one would wonder if war is really a legitimate way of obtaining justice at all.

**Keywords:** Use of force, Ukraine-Russia War, Self- defence, United Nations Charter, Indian Perspective, Armed Forces, Adaptive measures, International Law

## **OBJECTIVE**

This research paper aims to –

- Clarify the international law concepts on use of force and the appropriate use of force on the states and its historical perspective.
- Deal with evolution of laws on war and use of force.
- Deal with provisions of UN Charter relating with use of force and its exception.
- Subsequently analyse the legality of the current military aggression in the Ukraine-Russia War.
- The position of India in the context of armed wars.
- Discuss the adaptive measures use to control excessive use of force.

## **RESEARCH METHODOLOGY**

The research is written in a descriptive language and is based on an intense and deep research. Given the characteristics of the paper, it was prepared using an analytical approach. It is based on sources such as websites, journals, essays, articles, newspapers, and international law texts. The research is conducted in such a way that the reader will find it more insightful, analytical, and useful in understanding the paper's purpose and concept. Furthermore, significant contemporary challenges surrounding the use of armed forces and conflict under international law are examined in the present work.

## **INTRODUCTION**

International law and the use of arms are inseparably connected. In certain circumstances, the law moulds conflicts strategically by setting conventional limitations prior to the appearance of unlawful behaviour. Much more often, armed conflict simultaneously exposes loopholes in the law or signifies how legislation intended for the previous battles drops lacking when implemented in modern warfare. Both international safety and conflicts between nations are undergoing arguably unparalleled major shifts in the twenty-first century. The right of a state to use armed force or war as its last option to preserve important interests or settle disputes has grown more limited. The rule of law involves a system of authorised force in which armed force exists to

preserve and improve public order aims while unauthorized task forces are outlawed. As a result, law and compulsion are not argumentative polar opponents. Only in terms of the degree of organization and control of the use of armed force does the international legal framework differ from these basic legal elements.<sup>1</sup>

*International law has no alternative but to accept war, independently of the justice of its origin, as a relation which the parties to it may set up if they choose, and busy itself only in regulating the effect of the relation.*<sup>2</sup>

**Use of Force** – The use of force has long been a feature of international relations, and it has been seen to be fundamentally connected to state sovereignty--the boundless capacity wielded by governments to employ whatever means necessary to safeguard and promote their interests. Social awareness has broadened the boundaries and even given rise to the right to wage war. This has effectively eliminated the use of force or any kind of threat in international relations, and it has evolved into a rule of law in international violent law-violation of which carries criminal liability in the eyes of the world community<sup>3</sup>. However, there are some circumstances in which it is permissible to employ force, such as self-defences, emergency relief, and aggressive power, among others.

**Historical overview** – War was seen as the very last option for resolving disputes in the nineteenth century. It was a feature of statehood and conquering resulted in a title. States maintained the right to start war in the absence of internationally agreed-upon rules and regulations. The idea of righteous and unjust conflict arose. The threat or application of force is limited to the direct or indirect use of armed force. It does not include any kind of political or economic compulsion. St. Augustine and St. Thomas Aquinas established three conditions for legitimate war, the latter famously articulated in Summa Theologica as it should be undertaken by a sovereign power; it must have a good purpose (punishment of wrongdoers); and it must be accompanied by the

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<sup>1</sup> THE USE OF FORCE IN INTERNATIONAL LAW (The Open University 2019).

<sup>2</sup> HIGGINS A. PEARCE, OXFORD, THE CLARENDON PRESS (8th ed. 1924).

<sup>3</sup> Natalia Ochoa-Ruiz\* and Esther Salamanca-Aguado, *Exploring the Limits of International Law relating to the Use of Force in Self-defence*, 16 EJIL 1, (2005), <http://ejil.org/pdfs/16/3/306.pdf>.

appropriate aim.<sup>4</sup>

The concept began to emerge with the emergence of sovereign governments in Europe. As the number of independent states increased, conflicts began to be viewed and described as a condition of legal matters rather than an ethical judgment. Later, in the aftermath of World War-I, attempts were undertaken to re-establish international relations between nations by establishing and operating an international organization that would play a vital role in ensuring that similar acts of violence would not occur again. The General Treaty for Renunciation of War as a Method of State Policy was signed in 1928, and was another effort at legislative restriction of the use of armed force. The UN Charter contains the existing legal framework governing the use of armed forces in international law.

## **USE OF FORCE – PACT, CONVENTIONS & TREATIES**

There are several<sup>5</sup> treaties, pacts and conventions which has been evolved over decades with period of time in coming up with better dispute settlement as compare to wars and use of force, these are as following –

- **The Hague Conventions** - Warfare was considered part of sovereignty, placing the legal society in a predicament where modest infringements on the liberties of other nations required justification but the greatest intervention was beyond legal thinking. At the peak of the nineteenth century, the first efforts were taken to shift a mindset towards the unrestrained use of force, not least in the ideals of humanism. These conferences are known as "The Hague Conventions" as they were signed at The Hague Peace Conferences in 1899 and 1907. They formalize the conventions and traditions of war by specifying the regulations that aggressive parties must observe during warfare. This field of international law is referred to as the rules of warfare, in contrast to the one controlling the right to obtain assistance, as specified in the Geneva Conventions, which creates protection for war

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<sup>4</sup> JOACHIM VON ELBE, THE EVOLUTION OF THE CONCEPT OF THE JUST WAR IN INTERNATIONAL LAW (Routledge 2012).

<sup>5</sup> Sebastian Heselhaus, International Law and the Use of Force , ENCYCLOPEDIA OF LIFE SUPPORT SYSTEMS (APRIL 13, 2023, 9:29 PM), <https://www.eolss.net/sample-chapters/c14/E1-36-01-02.pdf>.

victims as well as the restriction of fighting techniques. The 1899 Conventions and Declarations address themes such as Pacific resolution of international disputes and war rules and customs, which were enhanced in the 1907 Conferences.

- **The League of Nations Covenant** - The League of Nations Covenant of 1919<sup>6</sup> being the first effort to construct a system of international security whose principal aim was to guarantee peace in reaction to the experiences of World War I. It expanded on the formal method of limiting the use of force. The attendees of the League of Nations were primarily required to refer a disagreement to an investigation, arbitration, or the League Council. War of any kind had to be delayed for three months following the arbitrators' verdict or the Council's report, and it was absolutely forbidden in this instance of a state adhering to these statements. A breach of these guidelines may result in League coercive actions. In actuality, however, the League, of which the United States was never an affiliate and the Soviet Union, Germany, Italy, and Japan were only for a brief period, fell short of its ambitious targets. Members of the League pledged not to declare to war with members who complied with a similar arbitral judgment, judicial decision, or consensual council report. It must be highlighted that the league system did not forbid warfare or the use of force, however it did provide a method to limit it to a bearable level.
- **Kellogg-Briand Pact 1928** - It was a continuing battle during the interwar years to fill the breaches in the covenant in order to accomplish the entire ban of war in international legislation, which ended in the ratification of the General Treaty for the Renunciation of War (the Kellogg-Briand Pact)<sup>7</sup> in 1928. The parties to this convention denounced the use of force and committed to abstain from using it as a tool of national security in their interactions with one another. For the first time, it made the concept of a right to wage war illegal. The parties to the agreement denounced the use of war to settle international disputes and rejected it as a tool of national strategy in their interactions with one another.

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<sup>6</sup> UNITED NATIONS, <https://www.un.org/en/about/league-of-nations/covenant#:~:text=The%20Covenant%20constituted%20of%20a,achieve%20international%20peace%20and%20security%20E2%80%9D> (last visited April 13, 2023).

<sup>7</sup> Yale Law School LILLIAN GOLDMAN LAW LIBRARY, [https://avalon.law.yale.edu/20th\\_century/kbpact.asp](https://avalon.law.yale.edu/20th_century/kbpact.asp) (last visited April 14, 2023).

Since the majority of the world's governments joined the pact and the other states consented on similar limits in the Saavedra Lamas Treaty of 1933, a universal prohibition on war was reached for the first time, subject only to the signatory parties' implicit acceptance on the right of self-defence. Unfortunately, the Briand-Kellogg deal did not include any additional punishments other than the impairment of a state's rights under the deal. Furthermore, its terminology was limited to wars.

- **The Charter of United Nations** - With the establishment of the United Nations Organization (U.N.) during World conflict II, member nations strove to avert conflict through a system of collective security while avoiding past flaws. Since then, various international accords have reinforced the strategy, which includes not just violence but also non-violent methods. With practically all governments having joined the United Nations, the ban on the use of force must now be viewed as a universal rule of international law, albeit subject to the stated right of self-defence. The general restriction is secured by the United Nations' ability to impose coercive measures and the commitment to settle conflicts peacefully. As a result, the legal world is currently seeing the resuscitation of the concept of a just war in the shape of operations principally directed at the implementation of international law. Although, according to legal philosophy and the United Nations Charter decisions are explicitly non-binding, practice demonstrates that they are more convincing than simple political remarks.

## **UN CHARTER: RELATION WITH USE OF FORCE**

With the establishment of the United Nations Charter, the legality of various governments' use of force within international law has been significantly reduced. The Charter of the United Nations (UN) asserts in its preamble that the UN was established in order to save future generations from the plague of war, and its fundamental provisions compelled the member nations of the UN to resolve international conflicts peacefully as per Article 2(3)<sup>8</sup> and to abstain from threatening or using force towards the political or territorial security of any the nation, or acting in any manner

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<sup>8</sup> CHARTER OF THE UNITED NATIONS, 1945, § 2(3), STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, 1945 (San Francisco).

that is in contradiction with the Goals of the United Nations as per Article 2(4)<sup>9</sup>. This clause is currently recognised as a norm of customary international law and, as such, is obligatory on all governments in the global community. The use of the term "force" rather than "war" is advantageous since it encompasses instances in which aggression is used but does not meet the formal requirements of the doctrine of war.

Article 2(4) was developed as a concept of international law in the 1970 Declaration on Principles of the International Law and was thoroughly examined. Initially wars of aggression is an offense contrary to peace so there is international legal accountability<sup>10</sup>. Second, governments are forbidden to use threats or force to breach existing international borders or settle international disputes. Third, nations have an obligation to refrain from retaliatory acts including the use of force. Fourth, the government must not employ force to deny individuals their right to self-government and independence." Lastly, a state shall avoid from organizing, inciting, helping, or engaging in civil unrest or terrorist acts in another state, and it must not promote the creation of armed organizations for incursion into the borders of another state. Although the statement is not a legally enforceable document in and of itself, it is significant as an interpretation of the applicable charter clauses.

**Exception of Use of Force** – Chapter VII<sup>11</sup> of the United Nations Charter specifies when a nation may use force against other nations. Force may be used against another state if:

- the act is allowed by the Security Council of the United Nations as part of the international security system
- the nation involved is acting in self-defence.

The use of force is limited to the direct or indirect use of military force. It does not include any kind of political or economic obsession. Article 2(6) of the UN Charter states that the UN must guarantee that the non-UN member states behave in compliance with the norms of international

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<sup>9</sup> CHARTER OF THE UNITED NATIONS, 1945, § 2(4), STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, 1945 (San Francisco).

<sup>10</sup> Yashraj Dokania, The Use of the Force in International Laws is Limitless or Limited: A Critical Analysis, 3 ijlmh 519, (2020), <https://www.ijlmh.com/wp-content/uploads/The-Use-of-the-Force-in-International-Laws-is-Limitless-or-Limited-A-Critical-Analysis.pdf>.

<sup>11</sup> CHARTER OF THE UNITED NATIONS, 1945, art. 39 § 51, STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, 1945 (San Francisco).

law in order to maintain international security and peace. The restriction on the use of force has resulted in fundamental disagreements about whether the prohibition encompasses economic coercion, the breadth of the right to self-defence, the right to use force to advance self-determination, and the right to interfere in civil conflicts<sup>12</sup>.

### **Article 51 of United Nations Charter –**

According to this article<sup>13</sup> Nothing in this Charter is intended to limit any member of the United Nations' fundamental right to self-defence either individually or collectively in the event of an armed force, except the Security Council has taken the necessary steps to ensure global security and peace. Actions taken by the members in exercising their right to self-defence must be reported immediately to the Security Council for consideration and shall have no bearing on the Council's power and accountability under the Charter at hand to take whatever action it deems essential to preserve or re-establish international security and peace.

**United Nations Security Council (UNSC)** - The U.N. Security Council (UNSC), formed in 1945, is one of the arms of the United Nations' five core organisations, entrusted with maintaining international peace and security, as well as acknowledging new members and considering any amendments to the UN Charter. It has the ability to form peacekeeping operations, impose international sanctions, and authorise military action through Security Council decisions; it is the only UN body with the capacity to issue enforceable measures to member nations. When a situation of use of force occurs and harms international peace and security, the Security Council has the authority to assess the functioning of any such risk to tranquilly or act of violence, as well as formulate recommendations or establish which actions should be taken in compliance with the provisions of Articles 41 and 42 of the UN Charter. In such a circumstance, a state or group of nations does not respond unilaterally, as in self-defence, rather it acts cooperatively by resorting to use of force under the jurisdiction of an international body known as the UN Security Council.

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<sup>12</sup> Ananya, Use of Force in International Law, LEGAL SERVICE INDIA E-JOURNAL (April 14, 2023, 7:25 PM), <https://www.legalserviceindia.com/legal/article-1742-use-of-force-in-international-law.html>.

<sup>13</sup> CHARTER OF THE UNITED NATIONS, 1945, § 51, STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, 1945 (San Francisco).

## **INTERNATIONAL LAW: RELATION WITH MILITARY**

### **AGRESSION IN UKRAINE RUSSIA WAR**

Russian military aggression towards Ukraine has violated laws to maintain international peace and security. It had applied excess use of armed force towards Ukraine giving it right to Self-defence. There are just a few options when it comes to Russia's use of force in Ukraine<sup>14</sup>. To begin with, the relationship of nationality between people of Russian origin in Ukraine and Russia is shaky at best, and most certainly illegal given the current situation. Russia has pursued a strategy of awarding nationality to people of Russian ancestry living in neighbouring states that were once part of the Soviet Union, most notably Ukraine. Additionally, even if a right to defend individuals exists, there is no circumstance that would justify military action. No action taken by the Ukrainian government can be seen as targeting foreign nationals of a certain country in order to extract concessions. Lastly, the extent of Russia's use of force, apparently to protect people of Russian origin in Ukraine, appears to be in nowhere proportional to any action performed by Ukraine to reclaim control of the region in the midst of the ongoing internationalised internal war. In short, reasons fail on both the argument of the absence of necessity to take part in a retrieve of nationals and the immense scope of the intervention, that includes as its goal the overthrow of the sovereign Nation's lawful inherent government and the imposition of an instance in which that State is completely subordinate to the strategic goals of the invading State. Since Russia's war on Ukraine, one-third of the Ukrainian population has left the conflict.

Armed force and assault are only one component of Russia's hybrid war against Ukraine. Other elements include deception grounded in is deceitful and misleading statements, trade and monetary tension, the energy suppression, terrorism and coercion of Ukrainian individuals; cyber-attacks, an intense denial of the very existence of war towards Ukraine in spite of overwhelming data, use of Russian forces as well as satellite states in its own preferences and accusing the opposition side for its own crimes.

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<sup>14</sup> Terry D. Gill, REMARKS ON THE LAW RELATING TO THE USE OF FORCE IN THE UKRAINE CONFLICT, Lieber Institute Westpoint -Articles of War (Mar. 9, 2022), <https://lieber.westpoint.edu/remarks-use-of-force-ukraine-conflict/>.

Russia breached basic rules and tenets of international law, as well as both multilateral and bilateral agreements, by hitting armed action against Ukraine. The Russian Federation infringed fundamental laws and values of international law by reverting to the use of force against Ukraine, as enshrined in the UN Charter (1945), UN GA Resolution 3314 "Definition of Aggression" (1974), Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in accordance with the UN Charter (1970), and others. Russia also breached several of multilateral as well as bilateral pacts with Ukraine, including the Agreement between Ukraine and the Russian Federation on the Ukrainian-Russian state border (2003), the Agreement on Friendship, Cooperation, and Partnership between Ukraine and the Russian Federation (1997), and numerous others<sup>15</sup>.

The conflict between Russia and Ukraine has had a significant influence on oil and commodity prices, as well as heightened trade uncertainty. India's economy is suffering as a result of supply interruptions in Western nations and limited commerce with Russia. War has traditionally left the greatest scar on humanity. Despite the fact that it was created by man, it is now above the reach of any natural force. The entire human race must now ponder on this in order to preserve mankind. Otherwise, neither mankind nor conflict will be able to exist.

## **USE OF FORCE: INDIAN PERSPECTIVE**

Armed relations have long been a key part of India's national policy. India now has army collaboration agreements of some type with over 53 nations. In the face of altering power dynamics and new threats, India must consider how effectively to employ its armed forces and defence-related scientific, technological, economic, and academic communities to safeguard its sovereignty, self-determination, and integrity of land. India also utilises its armed forces to promote its national objectives by actively fostering world peace and security while also providing favourable conditions for India's continuing change. The defence conditions in India have continued to be impacted by changes in the region around us, where increased insecurity remains a major concern. India aspires to promote a sense of mutual trust and confidence in our bilateral

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<sup>15</sup> 10 facts you should know about Russian military aggression against Ukraine, Ministry of Foreign Affairs of Ukraine (Dec. 19, 2019, 05:40 PM), <https://mfa.gov.ua/en/10-facts-you-should-know-about-russian-military-aggression-against-ukraine>.

ties with neighbouring nations, devoid of violence and terror and is working on different confidence-building initiatives with our close neighbour. The rising threat of armed attacks remains a major source of being concerned with new issues emerging. Our armed forces are prepared to confront the difficulties posed by an asymmetric threat.

Invasion of Russia over Ukraine also has a long-term impact for India, most notably on the two countries' decades-long defence and armed weapons trade relationship. India is reliant on other countries for its military armaments, including battlefield tanks and army combat vehicles, which must be extremely manoeuvrable and have increased protection against a variety of risks, including tanks, anti-tank missiles, armed strike helicopters, and anti-armour explosives. Other technologies that are required to improve the crucial elements of mobility, lethality, and survival. Because India has solid connections with leading developed nations, it may increase and acquire formidable armed forces, that can then be employed for self-defences. It aids in building of strong defensive system in order to accomplish the necessary capabilities.

India hasn't ever armed attack or sought any country's territories, but has made ultimate sacrifices fighting for self-defence. India never attacked or invaded any sovereign state and, on several instances, Indians have given their lives to ensure world peace, such as during the World Wars. The majority of the use of force were carried out as preventative measures, in self-defences, to retake former territory, or as a result of strained connections. There is evidence of claims and claim-allegations of cross-border force attacks between India and Pakistan. However, sporadic episodes of military shooting have been recorded, with no indication of a war-like scenario. There have also been cases of force being used with degree of power and reach that would constitute a force in legal terms. There have been two incidents of this kind which is Surgical Strike 2016 and Balakot Strike of 2019<sup>16</sup>. These two cases will be analysed in order to evaluate India's state practise regarding the right to self-defence against foreign use of forces. Similarly, India also used the provision of self defence in Indo-China wars to protect its territory.

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<sup>16</sup> 24 Srinivas Burra, *Asian Yearbook of International Law* 106-127 (Brill 2020).

## **PREVENTION & RESOLUTION**

Around the world, the incidence of violent use of force and wars has increased. Almost half of all disputes perceived to have been amicably settled in the previous which are recurred, with over 20% returning three or more times. Additionally, preventing conflicts is not only important to the UN's role of preserving international peace and security, but it is also cost-effective and life-saving. To guarantee that war prevention methods are anchored on a knowledge of the core causes of a war, the link connecting 'arms' and 'armed conflict' has to be recognised<sup>17</sup>. By properly integrating conventional weapons limitation into the prevention of conflicts, the UN will be one step closer to fulfilling its overarching goal of protecting the next generation from tragedy of war. To prevent conflicts, new policies should be developed that will result in a world without war. Encourage worldwide efforts to avoid and prevent conflicts, as well as peaceful solutions to issues inside and between states. War crimes, crimes against individuals, and other breaches of international law demand responsibility and punishment.

The prevention of war can also be done by settling the State's dispute in International Court of Justice by discussing the discussing the problems in concern. The method of Alternative Dispute Settlements can also be taken up for discussing and resolving the conflicts among the states which will lead to less loss of lives, resources, rights and mankind.

Anticipatory self-defence is still prohibited. If any use of force is expected, the possible victim state must promptly notify the UN and make public announcements about the imminent attack. When a member state believes that phrases used in a UNSC resolution create doubt, it must approach the UNSC to address these concerns and determine the right interpretation. The UNSC has the authority to sanction a member state that it believes has engaged in the unlawful implementation of a UNSC policy<sup>18</sup>.

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<sup>17</sup> [E. F. M. Durbin](#), [John Bowlby](#), [Ivor Thomas](#), [D. P. T. Jay](#), [R. B. Fraser](#), [R. H. S. Crossman](#), [George Catlin](#), *War and Democracy* (Routledge 2021).

<sup>18</sup> Yashraj Dokania, *The Use of the Force in International Laws is Limitless or Limited: A Critical Analysis*, 3 *ijlmh* 519, (2020), <https://www.ijlmh.com/wp-content/uploads/The-Use-of-the-Force-in-International-Laws-is-Limitless-or-Limited-A-Critical-Analysis.pdf>.

So, there are still two ways to terminate or prevent a war international peace treaties and Alternative Dispute Settlements.

## **CONCLUSION**

Present research paper in hand shows the meaning, impact and provisions of the Use of Force and War in International Law. The use of force has always been a feature of international relationships, and it has been seen to be fundamentally linked to state sovereignty--the boundless capacity wielded by governments to employ whatever means necessary to safeguard and promote their interests. Since the dawn of time, the use of force or war has served as an active aspect of civilisation. It has been employed for more selfish purposes at times, and at other times to achieve a more "noble" aim. The ambiguity concerning the expansion of the rules regarding war and use of armed forces is highlighted in this research, emphasizing the importance of the conventional stringent method of self-defence in international law. Despite these problems and constraints, given the worldwide political environment of the twenty-first century, the deliberate and regulated development of the doctrine of self-defence in the future is unavoidable. Although there are several laws governing this aspect of world the states still invade the powers.

Using force is always an option, and it is frequently a poor one. It cannot be the only way to deal with conflicts. Nonviolent protest and obstruction is a preferable option since it defuses and aids in the resolution of conflict. It must be ingrained in society, including institutions for conflict prediction, mediation, adjudication, and peacekeeping.

As it is rightly said by Sir A.J.P. Taylor that "No war is inevitable until it breaks out." So better to prevail peace, we must plan ahead of time for the best option. Prepare for peace if you truly ambition it.