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PROHIBITION OF USE OF FORCE: INTERPRETING ARTICLE 2(4) OF THE UN CHARTER IN CONTEMPORARY INTERNATIONAL LAW

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ABSTRACT:

The United Nations Charter is a paramount document of United Nations, aims at bringing peace and security among the states. Article 2(4) of UN charter prohibits the use of force with an eye on protecting the sovereignty, territorial integrity and political independence of the states. This Article 2 (4) of UN Charter is recognized as customary international law and as peremptory norm (jus cogens) in international law. The main aim of this research is to get acquainted with the historical background of evolution of article 2(4) of UN Charter, to understand the literal meaning of this article in a more precise and easy manner and to analyze the exceptions of 'prohibited use of force' in cases of self-defense ,humanitarian intervention, self-help, counter-measures and so on.

Keywords: Article 2(4) of UN charter, use of force, peace and security, territorial integrity, political independence, customary international law, jus cogens.

INTRODUCTION:

Before 20th century there was no prohibition on use of force. But after the Second World War, the use of force was prohibited by UN Charter under Article 2(4). Article2(4) provide:

“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.”

Article 2(4) of UN Charter is the cornerstone of the UN Charter in the *Congo case*¹, since it

¹ ICJ Rep 1986, 14 (ICJ 1986).

helps in establishing peace and security among nations and it helps to protect the territorial integrity and political independence by prohibiting the threat or use of force. The threat or use of force is a very important aspect to be prohibited since that would affect the lives of the common and innocent people and disrupt the peace and security in their nations. This Article is a general law that must be followed by every nation to protect their sovereignty and political independence and to preserve peace in their nation. Therefore, this nature makes the article to act as Customary International law. And, it is declared as customary international law in the *Nicaragua case*,² The prohibition of use of force is also considered as the fundamental law that every nation must follow and that cannot be omitted. This paves way for Article 2(4) to function as a peremptory norm (*jus cogens*) in international law as defined in Article 53 of the Vienna Convention on the Law of Treaties.

HISTORICAL BACKGROUND OF EVOLUTION OF ARTICLE 2(4) OF UN CHARTER:

Drafting of Article 2(4) of UN charter in Dumbarton Oak Conference:

From the beginning of the discussions at Dumbarton Oak, there was a suggestion that there should be a separate paragraph that prohibits the use of force. In Dumbarton oaks conference, which was a series of meetings that took place in 1944 to establish a general international organization (United Nations), where the proposals of U.S, China, Soviet Union and U.K. had a paragraph regarding “the prohibition of use of force”.³ There were several changes been made and finally, in the final draft of the Dumbarton Oaks preparatory conference in its paragraph 4 of chapter II provided:

“All members of the organization shall refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the Organization”

Progressive development in drafting of Article 2(4) of UN Charter in United Nations Conference:

There were several amendments proposed over the “prohibited use of force” under the paragraph 4 of chapter II by several nations. Total of 12 amendments were suggested at San Francisco. Those nations felt that this prohibited use of force should be strengthened. But these

² 2005 I.C.J 168 (Dec. 19). 11. Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. REP. 14 (June 27); Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136 (July 2004).

³ Ch. I Purposes and Principles, Article 2 (4), Oliver Dörr, Albrecht Randelzhofer; From “The Charter of the United Nations: A Commentary”, ISBN:9780199639762; Volume I, pg. 200-233, (3rd Edition); Edited By: Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, Nikolai Wessendorf, (Assistant Editor)

efforts to amend the original phrase is opposed, mainly by U.S., in committee 1 of commission I. Among the amendments proposed by different nations, Committee 1 decided to adopt the Australian Amendment, and the committee distinguished the intention of categorical prohibition could be covered by the interpretation of the adopted Australian Amendment. The report from Committee 1 was self-contradictory and illogical under the phraseology, and thus, not welcomed in Commission I; Later the Commission I omitted the restrictive interpretation without any comment when it reported the draft to the Plenary Meeting. The Plenary Meeting, therefore, did not distinguish the prohibitive interpretation and decided on Article 2 (4) as it was provided by Commission I.⁴

The US had accepted the phrases such as ‘territorial integrity’, ‘political independence’ and even ‘self defense’, since these phrases are consistent with the purposes of the United Nations charter. Once the phrase “territorial integrity and political independence” being added in the UN Charter they faced categorical prohibition. This Article can be interpreted through the general principles of treaty interpretation under the Vienna Convention on the law of treaties.

II. INTERPRETATION ON CONSTITUENTS OF ARTICLE 2(4) OF UN CHARTER:

A. All members:

The phrase “all members” denotes the members states of UN charter. These members states are prohibited from the use of force in pursuit of protecting the territorial integrity and political of states. This phrase also impliedly includes the non-member states as well as the non-armed state actors and prohibits them from the use of force.

B. Refrain:

The term “refrain” refers to set out from legal obligations. In general terms, it means prohibition. This term is used in this Charter in order to avoid the threat or use of force which destroys peace, sovereignty, territorial integrity and peace within the states.⁵

C. Threat of force:

In the covenant of League of Nations, under Article 11(1) provided:

⁴ THOMAS M. FRANCK, *Recourse to Force (State Action Against Threats and Armed Attacks)*, pg.20-171, 2002 edition.

⁵ Ch. I Purposes and Principles, Article 2 (4), Oliver Dörr, Albrecht Randelzhofer; From “The Charter of the United Nations: A Commentary”, ISBN:9780199639762; Volume I, pg. 200-233, (3rd Edition); Edited By: Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, Nikolai Wessendorf, (Assistant Editor)

“Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take, any action that may be deemed wise and effectual to safeguard the peace of nations.”⁶

This phrase of “any action” does not expressly authorize the use of force. But it impliedly authorizes to act by means of diplomatic, sanctions, or even military intervention depending on the Council's decision, but did not mandate it. This covenant of league of Nations failed to prohibit the threat or use of force.

Once the United Nation charter had emerged threat or use of force had been prohibited. The prominent cases where the interpretation of threat of force being prohibited are as follows:

(i) Nicaragua case (U.S.A. vs. Nicaragua)

In this case, the ICJ held twelve to three votes that the use of para-military force by USA against Nicaragua had violated the ‘prohibition of threat or use of force’ under Article 2(4) of UN Charter. The claim of self-defense by USA for the use of force had been rejected by the International Court of Justice since it had failed to get authorization for using military forces from the UN Security Council.⁷

(ii) United Kingdom VS. Albania

In this case, ICJ held that a demonstration of naval force could violate Article 2(4) of the UN charter since here the threat of force had been involved. But the court was unconvinced that Operation Retail amounted to such a violation of Article 2(4). To qualify as violation of article 2(4), the British mission would have needed to exert political pressure on Albania, for which the Court found insufficient evidence. Even UK had never claimed self-defense for its action.⁸

(iii) Nuclear weapon’s advisory opinion (1996) ⁹

In the Legality of using Nuclear Weapons case, the threat or use of nuclear weapons seems to violate Article 2(4) of the UN Charter. The court also declared the unlawfulness of nuclear weapons which would promote Nuclear disarmament.¹⁰

⁶ The Covenant of The League of Nations, Art.11 ICJ Rep 1986, 14 (ICJ 1986).

⁷ ICJ Rep 1986, 14 (ICJ 1986).

⁸ (1949) ICJ Rep 244 (Official Citation): ICGJ 201 (ICJ 1949) (OUP reference)

⁹ Legality of the Threat or Use of Nuclear Weapons , Advisory Opinion, I.C.J. Reports 1996, p. 226

¹⁰ Legality of the Threat or Use of Nuclear Weapons; International Court of Justice; 26th Feb 2026, <https://www.icj-cij.org/case/95>

Therefore, the threat of force also violates Article 2(4) of the UN Charter.¹¹

D. Use of force:

Evolution of use of force:

There was use of force in the form of war for acquiring the states before 20th century. The Hague peace conference of 1899 and 1907 had begun to restrict freedom of war since it destroys the public peace. Hague convention III formalizes the freedom to resort war. After World War I, there was the need to restrict war with the aim of protecting peace and security among the states. Thus, the League of Nations had generally prohibited external aggression in respect to protect the territorial integrity and political independence of the member states through Article 10. But when it is read with Article 12, 13 and 15 it becomes evident that the league of Nations is similar to Bryan Treaties since it provides cooling off period for all cases of armed conflict while in few cases, they deprive freedom of war.

The freedom to resort war was turned into general prohibition under Kellogg Pact signed in Paris on 27th August 1928. Once UN charter was enforced, the core principle of prohibiting the war or use of force was placed under Article 2(4) of UN Charter. It was declared as the cornerstone of peace of UN Charter in the *Congo case*.¹²

Prohibited Use of Force:

The threat or use of force is illegal since it could endanger peace, territorial integrity and sovereignty within the states. Accordingly, this threat or use of force had been prohibited under article 2(4) of the UN Charter. The prohibition of use of force can be interpreted through the following cases:

1. Nicaragua vs USA

In this case US had used para-military force against the Nicaragua government. Nicaragua argued that it was clear violation of article 2 (4) of the UN charter. USA had pleaded self defence, but the ICJ had rejected the plea of self defence since it lacks merit. The International Court of justice had held that the USA government had involved in clear violation of the customary international law and the conventional laws.¹³

¹¹NIKOLAS STÜRCHLER, *The Threat of Force in International Law*, pg.61-101, 2007 edition

¹² Ch. I Purposes and Principles, Article 2 (4), Oliver Dörr, Albrecht Randelzhofer; From "The Charter of the United Nations: A Commentary", ISBN: 9780199639762; Volume I, pg. 200-233, (3rd Edition); Edited By: Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, Nikolai Wessendorf, (Assistant Editor)

¹³ ICJ Rep 1986, 14 (ICJ 1986).

2. Democratic Republic of Congo vs. Uganda

The Court finally found that the legal and factual circumstances for the exercise of the right of self-defence by Uganda against the DRC were not met. It had observed that apart from Uganda's actions on violating the sovereignty and the territorial integrity of the DRC, it had also constituted an interference in the internal affairs of the DRC and in the civil war raging there. Accordingly, it held that the unlawful military intervention by Uganda constituted tremendous violation of the prohibition on the use of force as expressed in article 2(4) of the UN Charter.¹⁴

3. Ukraine vs. Russian Federation

In this case, Russia invades Ukraine and aims involve sin breach of Article 2(4) of UN Charter. Since the Article 2(4) is a customary international law, the violation of such article took a serious look. The UN Security Council condemned the Russian invasion of the Ukraine. Even though Russia claims the plea of self defence under article 51, the court held that Russia had violated Article 2(4) of UN Charter.¹⁵

E. Territorial integrity and political independence:

In International law, territorial integrity and political independence are core principles of state sovereignty, ensuring stability and non-interference in the affairs of other nations. Territorial integrity protects a state's geographical borders and land, while political independence guarantees the state's freedom to govern itself and make decisions without coercion. These principles are enshrined in international law, particularly in Article 2(4) of the UN Charter, which prohibits the threat or use of force against a state's territorial integrity or political independence.

Territorial Integrity:

This principle protects a state's physical and geographic space, including land, sea, and airspace, from external encroachment or alteration. It means that a state has the right to maintain its borders and territory free from the force of another state.

Political Independence:

This principle protects a state's autonomy in making its own political decisions, both internally and in its relations with other states. It ensures that a state can govern itself without external

¹⁴ ICJ GL No 116 (Official Case No); [2005] ICJ Rep 168
(Official Citation)

¹⁵ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Order of 16 March 2022, I.C.J. Reports 2022

interference or coercion.¹⁶

III. EXCEPTIONS TO PROHIBITED USE OF FORCE:

Prior to the emergence of UN Charter, the use of force had been legalized in circumstances of self defense as in the *Caroline incident*. In the *Caroline incident 1837*, the British had seized and destroyed the vessel in US territory that is being used by the US nationals, assisted by the Canada through armed rebellion and killed two of the US nationals. Here, Weber declares that the use of force is lawful and can claim self defense only when such force has been resorted out of necessity and there is not any other choice of means. This right of self-defense applies only in cases of armed attack.

Once the UN Charter is enacted this self defense was placed in article 51 of UN Charter. Hence, to protect the territorial integrity and political independence of a state, the state can use the force as self-defense according to article 51 of the United Nations Charter.¹⁷

In *Serbia and Montenegro v. Belgium case*¹⁸, Serbia had filed an action against the Belgium and other NATO member states for the series of bombings. Here, the Belgium argued that NATO'S use of force aimed in protecting the fundamental rights of Kosovo and it did not aim in harming the territorial integrity and political independence of Yugoslavia. The ICJ held that the use of force is for the humanitarian purpose and gave the judgement in favour of Belgium. Since the use of force in this case is for humanitarian purpose, it doesn't violate Article 2(4) of the UN Charter.¹⁹ Therefore, Article 51 is interpreted under circumstances of following circumstances.

Anticipatory-Self defence:

The state at times anticipates that it is going to be attacked by the foreign country. In such cases the states act in precaution to protect their territory from the armed attack that they owe to face. The state that acts cautiously claims self-defence under Article 51 of the UN charter, which is recognised in certain cases based on facts and circumstances.

¹⁶ S. K. VERMA, An Introduction to Public International Law Book, Page 489-584, 3rd edition

¹⁷ Article 51, UN charter, 1945

¹⁸ [2004] ICJ Rep 279, ICGJ 33 (ICJ 2004), 15th December 2004, United Nations [UN]; International Court of Justice [ICJ]

¹⁹ Case concerning Legality of Use of Force (Serbia and Montenegro v. Belgium) Preliminary Objections Summary of the Judgment of 15 December 2004

In the Cuban missile crisis, Kennedy imposed a naval quarantine on Cuba for the removal of Soviet missiles which is a threat to the national security of US. The Council of OAS supported US to resort to force. US claims its military action doesn't violate Article 51 of the UN Charter since none had been seized and no ship had been blockaded. Here the US action to anticipatory self-defence is recognised by few but some goes with strict interpretation of Article 2(4), 51 and 53 of the UN Charter.

Counter measure:

Self-help occurs when people act together by resorting to force to resist armed attacks that they are facing in their state. This had been interpreted under Article 51 as self-defence. In the case of *India v. Portugal*²⁰, India had resort to force to free Goa from the Portuguese rule. Here India's use of force towards Portugal to evict them from Goa.

Citizens abroad:

The State uses force to protect its citizens abroad during war. This use of force can also take place in the form of military rescue. In these circumstances, the state has the possibility of claiming self-defence in the case of *Israel v. Uganda*²¹ the court had validated the use of force with the aim to protect the state's own integrity and its national vital interest. In such circumstances the UN Charter is ineffective.

Humanitarian Intervention:

Nations may face armed attacks from another country. When the neighboring country or any other country intervenes in protecting the nation suffering from armed attack, by using force against the country that imposes armed attack, such use of force can be claimed as self-defence since the use of force is for protecting the territorial integrity and political independence and to protect peace.

In the Bangladesh liberation war of 1971, East Pakistan was being tried to be suppressed by West Pakistan. Because of this conflict, people from East Pakistan started to migrate to India. In this scenario, India had intervened in the Bangladesh war of liberation by providing military support due to humanitarian crisis and wanted to undermine West Pakistan. India claims its action as humanitarian necessity since that releases the powerful state from not using the force

²⁰ Right of Passage over Indian Territory (Portugal v. India), Judgment, I.C.J. Reports 1960, p. 6

²¹ Israel v. Uganda, [1971] I.C.J. Rep. 1

in the absence of UN Security council authorization. Many claimed that the India had intervened to protect its territory since it is between East Pakistan and West Pakistan.

Even the Tanzanian action in Uganda had violated article 2(4) of the UN Charter. Tanzania claimed it's action as humanitarian intervention, but it was held that its action does not come under self-defense since it does not fall under humanitarian intervention.²²

IV. CHALLENGES FACED BY ARTICLE 2 (4) OF UN CHARTER:

In this present world, the use of force has become common and that leads to violation of Article 2(4) of UN Charter. This led to the question of Article 2(4) of UN Charter is dead or still alive? In 1970, Professor Thomas Franck published an article, titled "*Who Killed Article 2(4)? Or: Changing Norms Governing the Use of Force by States*"²³. In this article, Professor Frank is criticizing the inability of UN collective system in Prohibiting use of force and cites exceptions to the application of Article 2(4). In response to this Article, Professor Louis Henkin had made a reply entitled, "*The Reports of the Death of Article 2(4) Are Greatly Exaggerated*". Professor Henkin gave his view that even though this article is violated by many, it performs its function of prohibiting the use of force in some cases. In the Israel-Palestine conflict, according to the Court, Israel's on-going annexation of Palestinian territory, its assertion of permanent control, and its obstruction of Palestinian self-determination violate fundamental tenets of international law, exceeding the bounds of mere occupation, rendering Israel's presence in Palestine unlawful. The ICJ also concluded that these actions contravene the prohibition on the use of force in international relations and the principle of non-acquisition of territory by force. Such violations directly breach Article 2(4) of the United Nations Charter, which explicitly prohibits the threat or use of force against the territorial integrity or political independence of any state.

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²² JAMES CRAWFORD, *Brownlie's Principles of Public International Law*, Pg.18-37, 8th edition

²³ Thomas M. Franck, "*Who Killed Article 2(4)? or: Changing Norms Governing the Use of Force by States*", **Vol. 64, No. 5 (Oct. 1970)**, *The American Journal of International Law*, pg.809-837 (1970)

²⁴ **Rethinking International Law After Gaza: A Symposium and a Call to Action**, *Opinio Juris*, 7th Oct 2024, <https://opiniojuris.org/2024/10/11/rethinking-international-law-after-gaza-symposiumunlawful-occupation-as-ongoing-aggression-rethinking-legal-responses-in-the-context-of-palestine/#:~:text=The%20ICJ%20also%20concluded%20that,of%20aggression%20under%20international%20law>

V.SUGGESTIONS:

Article 2(4) should be given effect by:

- a) By imposing stringent punishments against states which violate Article 2(4) of UN charter.
- b) There can be formation of United Nations 3.0 which can give effect to this Article 2(4) of UN Charter.

CONCLUSIONS:

Article 2(4) of UN Charter, which had been declared as customary international law, is being violated by the states tremendously by using of force against other states. Article 2(4) aims at promoting peace among the states by protecting territorial integrity and political independence. This territorial integrity plays the major role in keeping the states with peace. When territorial integrity is being destroyed by the means of using force by another state, this affects the peace of the affected state.. In order to protect this article, everyone should protect this customary rule of international law and should abide by the rules made under this article by avoiding the use of force.

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