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UNIVERSITY FOR PEACE POSTGRADUATE DIPLOMA ON PEACEFUL CO-EXISTENCE

: FUNDAMENTAL ELEMENTS OF INTERNATIONAL LAW (2025)

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1. Today, 25 October, we start the 81st year of the United Nations, which came into existence on 24 October, 1945. The United Nations and the international rule of law are both under great stress.
2. This is a challenging time for international law. The super-powers are giving international law their own interpretation. There are numerous violations of international law, including aggression, gross violations of international human rights law and international humanitarian law, the challenges of climate change, and the challenges of Artificial Intelligence (AI).
3. Supporters of the international rule of law have to hope that international law will prevail in the long term. We have to safeguard the ground rules of international law. And we have to protect and support core institutions such as the United Nations and the International Court of Justice.
4. The Members of the United Nations, all 193 of them, as well as Observer States at the world body such as the Holy See and Palestine, have all pledged themselves to uphold the United Nations Charter, which contains fundamental principles of international law.
5. Article 38 of the Statute of the ICJ, which is an integral part of the UN Charter, sets out the main sources of norms of international law as follows:
 - (a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
 - (b) International custom, as evidence of a general practice accepted as law;
 - (c) The general principles of law recognized by the various nations.

(d) Judicial decisions and the teachings of the most highly qualified publicists of the various nations may be consulted as subsidiary means for the determination of rules of law.

6. The central pillar of international law is now the Charter of the United Nations. The law of the Charter was codified by the UN General Assembly in its landmark Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (resolution 2625 (XXV)). That Declaration elaborated on fundamental principles of international law, including the following:

- The principle of the non-use of force against the territorial integrity or independence of States.
- The principle of non-intervention in the internal affairs of states.
- The principle of equal rights and self-determination of people.

7. In its Advisory Opinion on climate change, delivered on 23 July, 2025, the ICJ underlined that the Charter “is a pillar of contemporary international law.” In the Advisory Opinion which it delivered on 22 October, 2025, on the legal obligations of the Occupying Power in the Occupied Palestinian territories, the ICJ held that the Occupying Power “has an obligation to cooperate in good faith with the United Nations by providing every assistance in any action it takes in accordance with the Charter of the United Nations.”

8. As we meet today, there is much controversy over the norms of international law concerning exercise of the right of self-defence and we may take this up for particular discussion.

Article 2, paragraph 4 of the UN Charter states the foundational principle that “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.”

9. Article 51 of the UN Charter clarifies, however, that “Nothing in the present Charter shall impair the inherent right of individual or collective self-

defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of the right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”

10. Armed attack: The highly authoritative Max Planck Encyclopaedia of Public International Law takes the view that under Article 51 self-defence is permissible only in the case of an actual armed attack. This term has a well-established basic meaning in international law, namely the armed violation of the territorial integrity and political independence of another state, or of its ships and aircraft on or above the high seas. In practice, however, some governments have asserted a more expansive meaning to the term ‘armed attack’. The law in this area is shady. Michael Byers has a discussion of this in his book, War Law.
11. Instant, overwhelming: In the celebrated Caroline Case (1842), US Secretary of State Daniel Webster laid down what has become the hallowed criteria of self-defence: “the necessity that self-defence is instant, overwhelming, leaving no choice of means, and no moment of deliberation.” Furthermore, nothing “unreasonable or excessive” may be done in self-defence. Georg Schwarzenberger, in his celebrated Law of Armed Conflict, took the view that self-defence is precluded in cases of merely formal or trivial breaches of international law.
12. Principle of self-assessment: Schwarzenberger took the view that the right of self-defence involves the right of a State threatened with impending attack to judge for itself in the first instance whether it is justified in resorting to force in exercise of the right of self-defence. However, whether action taken under the claim of self-defence is in fact aggressive or defensive must ultimately be subject to international investigation and adjudication.

- 13.Preparations for Self-Defence: The celebrated Corfu Channel Case (1949 – ICJ) is authority for the proposition that Article 51 of the Charter permits preparations for self-defence.
- 14.Against whom might self-defence action be taken? Schwarzenberger, took the position that self-defence may only be taken against a State to whom illegal acts are imputable, not against an innocent third party.
- 15.Prior authorization of Security Council not required : Self-defence does not require any prior authorization from the Security Council, but an exercise of the right must be immediately reported to the Council.
- 16.Proportionality: Self-defence must be proportional. Article 51 of the Charter restricts the permissible use of force in self-defence to a necessary minimum. It is restricted to the preservation or restoration of the status quo ante. The means employed in self-defence have to be necessary and proportional to the violation that gave rise to the right of self-defence.
- 17.Preventative Self-Defence: There has been, over the years, a debate whether self-defence may be preventative. The Max Plank Encyclopaedia takes the view that while Articles 2(4) and 51 forbid preventative action in principle, there might be factual situations in which a pre-emptive strike against imminent attack is justified as self-defence. Each case will need to be considered on its merits and the standards of “instant and overwhelming necessity...leaving no choice of means and no moment for deliberation” will apply.
- 18.Reporting to the Security Council: It is a matter of law that states purportedly exercising the right of self-defence have an obligation to report to the Council on the measures they are taking. Some do and many do not. The Security Council should, in the future insist on the submission of such reports. The very act of writing and submitting such reports will focus minds in the Government of the state purportedly exercising the right of self-defence.
- 19.And a Security Council Expert Committee on Self-Defence could be tasked with examining and commenting on reports received from Governments purportedly exercising the right of self-defence? The existence of such a

committee could have a positive effect in the international management of such situations.

20. Having regard to the situation now playing out in the Southern Caribbean, and on the Pacific coast of Colombia, the elements of the international law on self-defence elicited above would lead one to ask questions such as the following:

21. Has there been an armed attack? If so, by whom and against whom?

22. Are the actions being taken such as to meet the Caroline standard: "instant and overwhelming necessity...leaving no choice of means and no moment for deliberation".

23. Are the actions being taken proportionate? Are they consistent with international human rights law and international humanitarian law?

24. Have the actions taken been reported to the Security Council in accordance with Article 51 of the UN Charter?

25. For the purposes of our discussion today, we could take a look at, and discuss, the following Question: "The right of self-defence under Article 51 of the UN Charter is:

(a) Unlimited

(b) Limited

(c) Under the authority of the Security Council.

(d) Regulated by international law. If so, how?

PLEASE STATE YOUR POSITION AND EXPLAIN IT."

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He has published several books on international law, including a book on the International Law Commission and another on the International Court of Justice.

In a UN career of more than three decades, he was Chief Speechwriter for the UN Secretary-General, Director of the International Conference on the Former Yugoslavia, Director in the UN Political Department, Deputy and then UN High Commissioner for Human Rights (Ag.).

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In October 2019, the Caribbean Court of Justice Academy, in its first honour roll, designated him Eminent Caribbean International Jurist.

His latest book, published under the auspices of the University for Peace, is 'A Human Rights Handbook for Judges and Lawyers'.