The Scope of the Doctrine of Self-Defence in International Law after Nicaragua

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1. Introduction

The doctrine of self-defence usually appears in the context of the use of force. In fact, it was essentially a reaction by a state against the use or threat of force by the armed forces of another state during the period of League.[1] The scope of the doctrine was then mainly regulated by the customary practices of international law. But significant development has taken place after the Second World War in the field of treaty law, especially with the promulgation of the UN Charter in 1945. Article 2(4) of the Charter has specifically put a restriction on the threat or use of force.[2] However, there is an exception contained in Article 51 of the Charter, which permits certain uses of force in the exercise of the right of self-defence.[3] Therefore, the question arises, whether this treaty law provision has subsumed the pre-existing customary right of self-defence, especially the right of anticipatory self-defence in international law. In this context, the International Court of Justice (ICJ) has determined in *Nicaragua case* that there are two sources of law that govern the use of force, including the right to self-defence: The UN Charter and customary international law.[4] The Court clearly established that the right of self-defence exists

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1 Brownlie, Ian. 2002, *International Law and the Use of Force by States*, Oxford University Press, p. 252.

2 Art. 2(4) states: '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'.

3 Article 51 states: '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 this 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.'

4 See for details, para. 176 of the Judgement in the *Case concerning Military and Paramilitary Activities in and against Nicaragua*, 1986, ICJ, Rep. 347, hereinafter referred to as *Nicaragua Case.*

as an inherent right under customary international law as well as under the UN Charter.

Therefore, this study finds that the scope of the doctrine of self-defence in international law after *Nicaragua* is dependent on the reading of Article 51 of the UN Charter in the light of customary international law. However, the study warns that if the scope of the doctrine is not subjected to reasonably narrow construction, there would be ample chance of abuse of the ICJ's decision by the powerful states.

2. The Doctrine of Self-defence under the UN Charter

In ancient era, the right of the states to use force was considered to be an aspect of their sovereignty.[5] Gradually, the need to regulate the conduct of states in the matter of using force begun to be felt and hence, the use of force was restricted only to 'just war'.[6] After the First World War, international law sought further to control the use of force, but the Covenant of the League of Nations did not specifically prohibit that.[7] It is only after the Second World War, international law on the use of force has ushered into the 'post-war' era through the adoption of UN Charter with Article 2(4).[8] Thus the Charter was aimed at saving the succeeding generations from the scourge of war.[9] However, there is debate as to the restrictive nature of Article 2(4), since it contains a conditional prohibition on the use of force only if it is directed 'against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations'.[10] Usually, most uses of force violate territorial integrity,[11] but the condition implies that there is still scope for the use of force if it is consistent with the purposes of the United Nations, and the UN Charter has clarified that with two exceptions.[12] Apart from collective enforcement action, the only exception is for the exercise of right of self-defence against an armed attack on a member state.[13] And any such action, if for self-defence, must be reported to the Security Council and can only continue until the Security Council has taken appropriate measures in that regard.[14] However, there is

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5 Khare, Subhas C. 1985, *Use of Force Under U.N. Charter,* Metropolitan Book Co., p. 1.

6 See for details, Higgins, Rosalyn. 2007, *Problems and Process: International Law and How We Use It,* Oxford Clarendon Press, p. 238.

7 Id.

8 Franck, Thomas, M. 2002, *Recourse to Force: State Action Against Threats and Armed Attacks*, Cambridge University Press, p. 40.

9 Khare, above note 5, p. 4.

10 Stone, Julius. 2006, *Aggression and World Order: A Critique of United Nations Theories of Aggression*, The Lawbook Exchange, p. 95.

11 See for details, Higgins, above note 6, p. 240.

12 See for exceptions, Articles 42, 43 and 51 of the UN Charter.

13 See, Article 51 of the UN Charter.

14 Id.

no requirement for Security Council's approval before states go for such actions.[15] Thus, on the one hand, a state may act in self-defence without first securing the permission of the Security Council, whilst, on the other hand, the Security Council's responsibility is to take such action as it deems fit.

But this right of self-defence under the Charter refers specifically to the occurrence of an armed attack.[16] Through strict analysis of this reference, restrictionists maintain that a proper reading of Article 51 excludes any right of self-defence unless an armed attack against a state appears to be in progress.[17] Accordingly, the strict interpretation of Art.51 requires the self-defending state to wait for the point in time until attacker's violation is manifest. Even the definition of armed attack in each case may be assigned to the Security Council.[18] They tend to rely on the mutual interdependence of Articles 2(4) and 51. As Higgins has observed: 'Article 2(4) explains what is prohibited, Article 51 what is permitted'.[19] However, they argue that exceptions contained in Article 51 must not be interpreted in a way so that it undermines the principle of Article 2(4) itself.[20]

But does that mean, a state under imminent threat of attack should wait until the blow has already been struck?[21] Especially, small states without a second-strike capacity in face of an imminent attack might well have deadly consequences.[22] Besides, advancement in military technology makes it increasingly difficult to predict and prepare for a surprise attack.[23] Does it mean that strict enforcement of law would render injustice? As Franck has observed: 'the law's legitimacy is surely also undermined if, by its slavish implementation, it produces terrible consequences'.[24] Reisman also finds that this 'textualistic' approach rests on a 'rigid

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15 Strawson, John. 2010, 'Provoking International Law: War and Regime Change in Iraq', in Johns, Fluer, Joyce, Richard and Pahaja, Sundhya (eds.), *Events: The Force of International Law,* Routledge Cavendish, p.246.

16 Article 51 of the UN Charter.

17 Kittrich, Jan. 2008, The Right of Individual Self-Defense in Public International Law, Logos Verlag Berlin GmbH, p. 162.

18 Reisman, W. Michael. 1991, 'Allocating Competences to Use Coercion in the Post-Cold War World: Practices, Conditions and Prospects', in Damrosch, Lori Fisler and Scheffer, David J. (eds.), *Law and Force in the New International Order*, Westview Press, p. 45.

19 Higgins, above note 6, p. 240.

20 Kittrich, above note 17, p. 163.

21 Higgins, above note 6, p. 242.

22 Reichard, Martin. 2006, The EU-NATO Relationship: A Legal and Political Perspective, Ashgate Publishing Group, p.175.

23 Id.

24 Franck, above note 8, p. 175.

and noncontextual' reading of Article 2(4), which is not in conformity with the principle objectives of the United Nations.[25] Especially in this nuclear era, the interpretation of any such ambiguous provision cannot be in a way that 'requires a state passively to accept its fate before it can defend itself'.[26] Therefore, Dr. Bowett, holds the view that Article 2(4) left the customary right of self-defence unimpaired and that the right under Article 51 was not confined only to the reaction to an armed attack.[27] Thus counter-restrictionists/liberalists strongly argue against the assertion that Article 51 extinguished the customary law.[28] They suggest that the provision has safeguarded the customary law by inserting the term 'inherent right' and thus permits the preventive action through the use of force against threat.[29] This rationale is supplemented mainly by two other arguments:[30] Firstly, the term 'if' before armed attack in Article 51 expresses hypothesis rather than a condition and simply emphasises one possible circumstance permitting use of force. In fact, the phrase 'if armed attack occurs' was inserted for the particular purpose of clarifying the position of the right of collective self-defence treaties, which were concerned only with external armed attack and is specific with regard to these treaties. Hence it leaves customary right of self-defence unimpaired. Secondly, 'armed attack' includes the planning, organisation and also the logistical groundwork for an assault and as such the restrictive view gives the aggressor the freedom to strike first, which is not desirable. Though it is argued that ICJ has showed marked unwillingness to engage with the issue of anticipatory self-defence in very many cases,[31] the decision of ICJ in *Nicaragua case*,[32] upholding the applicability of customary law even after the promulgation of Article 51 of the UN Charter deserves detailed discussion.

3. Nicaragua Case

Strawson suggests that the starting point for contemporary law on the use of force is paragraph 176 of the ICJ's decision in the *Nicaragua case*.[33] This case was brought by Nicaragua against the USA both for the unlawful use of force against the government of Nicaragua and for its intervention through its support for military and

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25 Reisman, above note 18, p. 45.

26 Higgins, above note 6, p. 242.

27 Brownlie, above note 1, P.269.

28 Mulcahy, James and Mahony, Charles O. 2006, 'Anticipatory Self-Defence: A Discussion of the International Law', *Hanse Law Review*, Vol. 2, No. 2, p. 233.

29 Khare, above note 5, p. 112.

30 See for details, Mulcahy and Mahony, above note 28, p. 234; Khare, above note 5, p. 112.

31 See, Mulcahy and Mahony, above note 28, p. 235.

32 ICJ Reports, 1986.

33 Strawson, above note 15, p. 247.

paramilitary activities of the opposition forces.[34] One of the main issues involved in the case was whether the actions of the USA constituted an illegal use of force against Nicaragua.[35] Critically, the Court determined that both the UN Charter and the customary international law govern the use of force, including the right of self-defence.[36] In dealing with the question whether UN Charter has 'subsumed and supervened' all other sources of law on the doctrine, the Court interpreted Article 51 as follows:[37]

> Article 51 is only meaningful on the basis that there is a 'natural' or 'inherent' right to self-defence, and it is hard to see how this can be other than of a customary nature, even if its present content has been confirmed and influenced by the Charter. Moreover the Charter having recognized the existence of this right, does not go on to regulate directly all aspects of its content. For example it does not contain any specific rule whereby self-defence would warrant only measures which are proportional to the armed attack and necessary to respond to it, a rule well established in customary law. Moreover, a definition of 'armed attack', which if found to exist, authorizes the exercise of the 'inherent right' to self-defence, is not provided in the Charter, and is not part of treaty law. It cannot therefore be held that Article 51 is a provision which 'subsumes and supervenes' customary international law. It rather demonstrates that in the field in question ...customary international law continues to exist alongside treaty law. The areas governed by the two sources of law thus do not overlap exactly, the rules do not have the same content.

Accordingly, since Article 51 has termed the right of self defence as 'natural' and 'inherent', the right is essentially of customary nature and hence, for the proper understanding of Article 51, it should be read in light of customary international law.[38]

This finding definitely warrants a comparison of the Charter regime with the customary one.

Apart from exercising the right of self-defence, customary law permitted the use of force for 'self-help',[39] and also for the protection and realisation of different

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34 Gray, Christine. 2008, *International Law and the Use of Force,* Oxford University Press, p. 75.

35 Id.

36 Strawson, above note 15, p. 247.

37 Para. 176 of the Judgement in *Nicaragua Case.*

38 Id.

39 Selh-help has been defined by Higgins as 'the use of force to obtain legal rights improperly denied'. See for details, Higgins, above note 6, p. 240.

international rights.[40] But soon after the promulgation of the UN Charter, this 'self-help' was clearly found illegal in the *Corfu Channel Case*[41] where United Kingdom's minesweeping in the Albanian territorial sea was held as a violation of Albanian territorial sovereignty, and hence, a violation of Article 2(4).[42] It therefore seems that if the Charter works, any military coercion in the exercise of customary right would be rendered unlawful.[43] Even reprisals were lawful in customary law, if certain criteria were met, but not under the Charter law.[44] Thus the Charter wants to set a new regulatory regime under which any use of unilateral military force other than for self-defence is prohibited.[45] This does not mean that customary right of 'self-help' may be invoked, but the principle of 'anticipatory self-defence'[46] as introduced by the Caroline Case of 1842 is quite relevant in this regard.

In the landmark decision of that Caroline incident, there was no doubt that the British government had the right to anticipate further attacks, but any use of force must be subject to the conditions of necessity and proportionality.[47] Therefore, US Secretary of State, Webster, in a letter to the British Ambassador, admitted that UK's employment of force might have been justified by the doctrine of self-defence, but denied that such a necessity existed.[48] He laid down a widely accepted formula that the exercise of the right of self-defence must be restricted to those cases where the necessity is 'instant, overwhelming, and leaving no choice of means, and no moment for deliberation'.[49] Though the UN Charter has its own procedure for dealing with the use of force, this formulation is still very significant for the Charter system.[50] It is especially because of the ambiguity as to the meaning of the term 'armed attack' as mentioned in Article 51. Though threat of force is a violation of Artilce 2(4) of the Charter, it does not give rise to any right of self-defence under Article 51. Therefore, if the imminent threat of using force on the part of any state could amicably be settled through calling an emergency meeting of the Security

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40 Reisman, above note 18, p.30.

41 United Kingdom v. Albania, ICJ Reports, 1949.

42 Higgins, above note 6, p. 240.

43 Reisman, above note 18, p. 30.

44 Higgins, above note 6, p. 240.

45 Reisman, above note 18, p. 30.

46 The term 'anticipatory self–defence', customarily refers to a state's right to strike first in anticipation of an imminent attack. See for details, Charles Pierson, 'Preemptive Self-Defense in an Age of Weapons of Mass Destruction: Operation Iraqi Freedom', *Denver Journal of International Law and Policy,* **33** (1), 2004.

47 Mulcahy and Mahony, above note 28, p. 233.

48 Jennings, R. Y. 1938, 'The Caroline and McLeod Cases', *The American Journal of International Law,* Vol. 32, No. 1, p. 89.

49 Id.

50 Higgins, above note 6, p. 242.

Council, this Carolina test probably will not be met.[51] But what if the Security Council fails to prevent or repel the threat? Should the threatened state wait for the enemy troops to cross its border or bomb its territory? More importantly, what exactly would amount to an 'armed attack'?

4. Armed Attack: Meaning

Though restrictionists find the meaning of the armed attack sufficiently clear,[52] there is, however, no generally recognised definition of 'armed attack'.[53] The term was discussed at San Fancisco Conference but no further textual clarification can be found in the Charter except the plain reference in Article 51. Even the ICJ has considered the concept in a series of cases,[54] but carefully avoided the pronouncement of any concrete definition of the term.[55] In *Nicaragua Case*, the Court, however, addressed the question by saying that apart from action by regular armed force across an international border, an armed attack may include 'the sending by or on behalf of a state of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another state'.[56] More importantly, what about cyber-attacks, or attacks by modern missiles, which are substantially claimed to begin an 'armed attack' when 'the radar guiding the missile is locked on ready to fire'?[57] If not an armed attack in true sense, they definitely pose a threat of force against a particular state. Even the naval mines which harmed US-flagged vessels in Iraq/Iran war warranted the use of force by USA in the exercise of its right of self-defence.[58] In all these circumstances, the situation would have to meet the Caroline test for self-defence to be a legitimate response.[59]

Not only that, in the Kosovo instance, there was no armed attack at all against any state and hence, the rescue operation of the Kosovers was not authorised by the Security Council.[60] Even then NATO decided to deploy force and the report of the

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51 Id.

52 See for details, Brownlie, above note 1, p. 278.

53 Jarg Kammerhofer, Uncertainty in International Law: A Kelsenian Perspective, Taylor & Francis, 2010, p.17.

54 Such as, Nicaragua Case, 1986, Oil Platforms, 2003, Armed Activities on the Territory of Congo, 2005 etc.

55 Gray, Christine. 2003, 'The Use and Abuse of the International Court of Justice: Cases Concerning the Use of Force after Nicaragua', *European Journal of International Law*, 14 (5), p. 129.

56 Kammerhofer, above note 53, p.17.

57 Gray, above note 55, pp. 128-9.

58 Id.

59 Higgins, above note 6, p. 248.

60 Franck, above note 8, pp. 180-1.

Independent Commission on Kosovo termed the action as legitimate, though not strictly legal.[61] Thus India in Bangladesh, Tanzania in Uganda, Vietnam in Cambodia, or US in Grenada might have acted out of 'mixed motives', but their timely intervention only could have prevented the humanitarian catastrophe.[62] They are apparently unlawful but legitimate for ensuring the common good. This type of humanitarian intervention has got some basis in the customary international law, where state may take action to rescue its threatened citizens abroad, but often it is expressed in terms of an exercise of the right of self-defence.[63] Especially, in the face of terrorism and particularly after the September 11, 2001, the claim of self-defence goes beyond a claim to rescue nationals.[64] And often they take the form of reprisals, which is clearly prohibited under the Charter. Therefore, Higgins observes:

> A claim of humanitarian intervention based on self-defence could only be advanced in respect of nationals, because it is predicated on the argument that the state is being harmed through injury to its nationals, and can therefore respond in self-defence. But a claim of humanitarian intervention based on the argument that no violation of Article 2(4) is entailed, would *not* logically be limited to the protection of one's own nationals.

In fact, the latter claim of non-violation of Article 2(4) covers acts which in a way amount to reprisals or retaliation. This reality is again evident in the US military airstrike against Libya in 1986 or against Afganistan which is still going on.

5. The Scope of Self-defence after Nicaragua

It appears that the right of self-defence has already been abused in very many ways, but still the right exists.[65] The absence of such right, especially, the right of anticipatory self-defence, might lead to the unlawful actions such as reprisals or retaliation. Therefore, Dinstein argues that "[t]here is not the slightest indication in Article 51 that the occurrence of an 'armed attack' represents only one set of circumstances (among others) in which self-defence may be exercised."[66] Rather, the term 'inherent' before the right of self defence as mentioned in Article 51 clearly refers to the customary practices and this has been clearly established in the *Nicaragua case*.[67] That means, Article 51, as Strawson has observed, can only be understood in the light of customary international law which has established that 'to

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61 Ibid, p. 181.

62 Franck, above note 8, p. 189.

63 Higgins, above note 6, p. 244.

64 Id.

65 Ibid, p. 247.

66 Dinstein, Yoram. 2001, *War, Aggression and Self-Defence*, Cambridge University Press, p. 168.

67 Strawson, above note 15, p. 247.

rely on self-defence a state had to determine that force was necessary, proportionate to the threat and confined to the purpose of self-defence'.[68] Thus, the *Nicaragua case* has confirmed the Caroline test and has broadened the scope of the right of self-defence. However, Article 2(4) and Article 51 of the Charter would play the supervisory role in preventing the abuse of the right of self-defence. States are under a duty to report to the Security Council as the measures it has undertaken in the exercise of that right.[69] Therefore, right is often considered as temporary, until the Security Council 'takes measures necessary to maintain international peace'.[70] Did then the Security Council's demand via Resolution 502 (10-1-4) for ceasefire during Falklands conflict amount to 'necessary measures to maintain international peace and security' and hence, terminated UK's right to use force against the Argentine force?[71] The same question came up again in the conflict between Iraq and Iran, where Security Council Resolution 598 demanded immediate ceasefire, but the answer for Iran was in the negative, just as it was for UK against the Argentina .[72] Therefore, when asked by US Senator John Connally about the status of the right of a state in defending itself once the Council acted, John Foster Dulles assured him by explaining that the right is 'concurrent' between the state and the Council.[73] That means, even if Security Council is found in action, the states are not obliged to discontinue the exercise of their right.[74] Though this explanation is not self-evident from the plain reading of Article 51, the state practices in Iraq's invasion of Kuwait or Al-Qaeda's attack of 2011, also support the view. However, that does not mean that states may be reluctant in reporting to the Security Council as to the measures they have undertaken, rather after the Nicaragua, as Gray observes, 'it can no longer be maintained that the reporting requirement is rarely observed.[75] However, the recent evolution of 'Bush Doctrine' often undermines the Charter regime and hence deserves attention.

6. The Bush Doctrine

The 'Bush Doctrine'[76] is a relatively new addition to the debate on the scope of anticipatory self defence. The doctrine has its origin in the US National Security Strategy of September 2002, which emerged as a reaction to the September 11,

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68 Id.

69 Article 51 of the UN Charter.

70 Gray, above note 55, p. 119.

71 Ibid, p. 125.

72 Id.

73 Franck, *above note 8,* p. 49.

74 Id.

75 Gray, above note 55, p. 123.

76 See for details, Snauwaert, Dale T. 2004, 'The Bush Doctrine and Just War Theory', *The Online Journal of Peace and Conflict Resolution,* Vol. 6, No. 1, pp. 121-135.

2001, attack on New York, Washington D.C. and Pennsylvania.[77] The doctrine was stated in the following terms:[78]

> We must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries. Rogue states and terrorists do not seek to attack us using conventional means. The greater the threat, the greater the risk of inaction – and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act pre-emptively.

Thus, the doctrine, which is also known as the 'Emerging Threat' doctrine, permits the use of unilateral pre-emptive force even in instances where an attack by the enemy has neither taken place, nor imminent.[79] Noam Chomsky has, therefore, rightly termed it as the 'most threatening document of our time', the implementation of which in Iraq war has already taken countless lives and shaken the international system to the core.[80] In that document, the enemy has been described not as a 'single political regime or person or religion or ideology', but as 'terrorism'.[81] Dale finds this point as a bit of a misnomer for one cannot be at war with terrorism *per se* since terrorism is a method, a tactic.[82] However, as Collin Powell explained, the Washington has a 'sovereign right to use force' in self-defence against the states who possess weapons of mass destruction (WMD) and cooperate with terrorists, the official pretexts to invade Iraq.[83] Even if the debate regarding the exhaustive nature of Article 51 was left unresolved, the invasion of Iraq was neither legal under the Charter, nor under the pre-Charter customary law.[84] Not only that, when the old pretext to invade Iraq collapsed in the course of time, the doctrine was adaptively revised to enable them to resort to force even if a country does not have WMD, but has the 'intent and ability' to develop such weapons.[85] Thus, like all wars, 'war on terrorism' also has political origin.[86] Even, some critics argue that the Bush Doctrine

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77 Mulcahy and Mahony, above note 28, p. 236.

78 Id.

79 Id.

80 Chomsky, Noam. 2004, 'Understanding the Bush Doctrine', *Information Clearing House, available at http://www.chomsky.info/articles/20041002.htm (Last visited on 11 April, 2011).*

81 Snauwaert, above note 76, p. 121.

82 Ibid, p. 122.

83 Chomsky, above note 80.

84 Mulcahy and Mahony, above note 28, p. 236.

85 Chomsky, above note 80.

86 Snauwaert, above note 76, p. 122.

is in fact a form of imperialism that uses the language of democracy to conceal its imperial ambitions.[87] Whatever might be the reason for the evolution of Bush doctrine, one can reasonably conclude that the doctrine conflicts both with the UN Charter and also the customary international law.

7. Concluding Remarks

So far as the argument runs, there is nothing in the Charter which prohibits the right of self-defence in customary international law. Article 51 has not laid down any right afresh, rather only has upheld the already existing customary right of self-defence, as enunciated by the Caroline case. Especially, by adding the term 'collective', it also has accommodated regional or other mutual defence arrangements.[88] With the advent of the United Nations, it rather created a scope for the supervisory role by that organisation to prevent the abuse of that right. Though it is very clear from the legislative history of Article 51 that the original intention of the framers was to reserve action under the Article to the individual state and not to subject it to a requirement of advance Security Council authorisation, large-scale and violent self-help action hardly seems warranted when the sheriff is only a telephone call away.[89] Therefore, the Charter should not be side-stepped placing undue emphasis on the customary international law.

Besides, Article 51 was truly criticised by Archibald MacLeish, within the US Delegation, as 'too vague',[90] since the Article is not self-evident in explaining the term 'inherent'. Though the Nicaragua case confirmed that the Article's true meaning lies in the customary practices in international law, the scope for the doctrine of self-defence should be strictly construed in order to avoid the abuse of the right. Especially the interpretation that the right can be used against 'threat' requires careful revision since it would give wider freedom to use the force on the plea of threat, as it would be on the subjective satisfaction and the decision of the state using force.[91] The interpretation also conflicts with the Caroline doctrine that the act of self-defence must be justified by the doctrine of proportionality.[92] As Grotius observes, if neighbours build a fortress or fortification which might prove a

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87 Fiala, Andrew G. 2007, *The Just War Myth: The Moral Illusions of War*, Rowman and Littlefield Publishers, p. 122.

88 Franck, *above note 8*, p. 48.

89 Reisman, above note 18, p. 43.

90 Id.

91 Khare, above note 5, p. 113.

92 Ibid, p. 115.

source of danger, the proper remedy is to build a counter fortification and not to resort to arms.[93] Especially, the liberal view that the nuclear weapons have changed the situation that permits anticipatory self-defence against nuclear threat has fuelled the evolution of 'Bush Doctrine', which is neither permissible under the UN Charter, nor under the customary international law. Therefore, the scope for the right of anticipatory self-defence must be narrowly construed in order to avoid an all out nuclear war in near future.

[93] Choudhury, S. R. 1966, *Military Alliance and Neutrality in War and Peace,* Orient Longman, p.108.