

Purposes and Principles of the UN Charter: The four Purposes of the United Nations are stated in Article 1 of the UN Charter. The first and primary purposes of the UN Charter are to maintain international peace and security. For achieving this purpose, the organization is to take effective collective measures for prevention and removal of threats to peace and suppression of acts of aggression and provide for methods of peaceful settlement of disputes consistent with the principles of justice and international law. Other purposes are: development of friendly relations among nations on the basis of equality , achieving international cooperation in solving economic, social , cultural and humanitarian problems without any discrimination and providing an international platform for harmonizing the action of nations . Article 1 Paragraph I speaks of a distinction between ‘prevention and removal of threats to the peace and speaks only of suppression’ but not of prevention of acts of aggression and other breaches of the peace .’ Maintenance of peace can be by removal or suppression of threat to peace but not by suppression of acts of aggression. According to Hans Kelsen, the formula to maintain international peace and security appear in Article 2 paragraph 6 , Article 11 Paragraphs 1 and 2 , Article 43 paragraph 1, Article 47 Paragraph 1, Article 48 paragraph 1, Article 51,52, Article 73 (c) , Article 84, Article 99 of UN Charter.

The Principles of the United Nations Charter have been framed in pursuance of Article 1 of the UN Charter . The Charter lays down seven principles. These include the principles of sovereign equality, fulfillment of obligation assumed by the members in accordance with the Charter in good faith , settlement of international disputes in a peaceful manner so that international peace and security are not threatened . 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 manner inconsistent with the Purposes of the United Nations . All members shall give the UN every assistance in any action it takes in accordance with the present Charter. The organization shall ensure that States who are not members of the United Nations act in accordance with their Principles for the maintenance of International peace and Security. In its last principle, the United Nations is not authorized to intervene in matters which are essentially within the domestic jurisdiction of any state.

Article 2 of the UN Charter contains the Basic Principles of the Organization . A careful reading of the article necessarily entails that it is applicable not only on the member States but

also on the organs of the organization. Article 2 clearly reads that the “organization and its Members, in pursuit of the Purposes stated in Article 1 shall act in accordance with the following principles .” The opening line of Article 2 sets the tone for all the principles of the UN charter. These principles are to be carried out in pursuance of the Purposes of the UN Charter.

The Principle of Sovereign Equality of the

States : Article 2 of the UN Charter contains the Basic Principles of the organization. A careful reading of the Article necessarily entails, that it is applicable not only on the member states but also on the organs of the organization. Article 2 clearly reads that the “Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following principles .” Thus , the opening lines of Art 2 sets the tone for the following seven principles which should be carried out ‘in pursuit’ of Art 1 or Purposes of the UN Charter. These Principles were further developed in General Assembly Resolution 2625 (XXV) of 1970 and was titled “Declaration On Principles Of International Law Concerning Friendly Relations And Co Operation Among States In Accordance With The Charter Of The United Nations.”

According to Robert Kolb , Art 2 of the UN Charter represents the basic tenets of Modern International Law . According to the author , the UN Charter was the culmination of the Modern International Law and the world witnessed a breakaway from the Classical International Law , which came to an end with the signing of the Kellogg Briand Pact .

Following are the characteristics of Classical International Law and Modern international Law :

- (A) Classical International Law :
- (1) It was based on the strands of co existence and predation .
 - (2) There was an absence of common values based on humanity .
 - (3) Protection of territorial Integrity .
 - (4) Primacy of Territory, diplomacy and War.
 - (5) Co operation among States was purely voluntary and embryonic .

(6) Jus ad bellum was a pertinent feature of the State Sovereignty and could easily sway the pendulum from peace time to that of war (7) Annexation of territory was a logical corollary to the right of war .

(8) Even in peaceful times, intervention in the affairs of small states was tolerable.

(9) In a nutshell, classic international law was based on inequality of states, unequal treaties, and free use of force, colonialism and absence of legal devices for the peaceful settlement of disputes.

4.4.3 Modern International Law : The principles of Modern International Law can be enumerated as follows :

(1) It was based on the values of coexistence, co operation and community values .

(2) It promoted equality, order, justice and peace among states .

(3) It challenged inequality, intervention in the internal affairs of the state and use of force .

(4) It promotes the peaceful Settlement of disputes, international co operation , human rights and de colonization.

Doctrine of Sovereign equality: General Assembly Resolution 2625 (XXV) of 1970 elaborates on the different dimensions of the concept of sovereign equality in the following words :

“ All States enjoy sovereign equality . They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic , social ,political or other nature .”

In particular , sovereign equality includes the following elements :

States are juridically equal;

(a) Each State enjoys the rights inherent in full sovereignty;

(b) Each State has the duty to respect the personality of other States .

- (c) The territorial integrity and political independence of the States are inviolable.
- (d) Each State has the right freely to choose and develop its political , social , economic and cultural systems.
- (e) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.

Legal Content of the Principle : Following are the legal ramifications of the doctrine of Sovereign equality:

- (a) Each State enjoys the set of rights and duties as defined under International Law . The conditions for effectively implementing these rights may vary according to power. The legal content is related to formal quality and not material quality.
- (b) Every state has the right to enjoy the inherent rights of sovereignty without being categorized as a protectorate , colony etc.
- (c) The obligation to respect the rights of other states.
- (d) The right of every State to develop its own political , social , economic and cultural system, free from the intervention in the internal affairs by other States. The International Court of Justice affirmed that : “ the principle of non intervention in internal affairs forbids all State or groups of States to intervene directly or indirectly in internal or external affairs of other states. A prohibited intervention must accordingly be one bearing on matters in which each state is permitted , by the principle of State sovereignty, to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of a foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices , which must remain free ones .”

4.4.4 Prohibition of the Use of Force : Since intervention can take the form of use of force or the threat of use of force , hence it is essential to discuss Art 2 (4) of the U N Charter . The Article was drafted to modify the jus ad bellum regime in the post 1945 world . The Article provides, “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 manner inconsistent with the Purposes of the United Nations .”

The above mentioned rule has assumed the status of customary international law . The Charter allows three exceptions to the Principle :

(1) Arts 53 and 107 related to former enemies of the Allied States . The Articles are now obsolete.

(2) Art 39 which talks about the powers of the Security Council .

(3) Art 51, which talks about self defence .

(1) No enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in Regional Arrangements directed against renewal of foreign policy on the part of any such state , until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

‘Nothing in the present charter shall invalidate or preclude action , in relation to any state which during the second world war has been an enemy of any signatory to the present Charter , taken or authorized as a result of that war by the Governments having responsibility for such action.’

Art 53 and Art 107 had a particular application and were limited to a particular situation. Its drafting was based was based on the contingency that in case the vanquished states of the second world war resumed their belligerent status, then , the victorious powers would be in a position to take unilateral action. However, with the passage of time these Articles have become obsolete. Even the defeated nations have now been admitted as members of the United Nations . According to the United Nations Charter , they have been accepted as the peaceful states and the conditions for being the members of the United Nations are exhaustive .

(1) Art 39 and coercive military action following an authorization from the Security Council : Under Chapter VII of the UN Charter , the Security Council can expressly authorize the

member states , to use such force where States will no longer be violating the Art 2 (4) of UN Charter . it cannot be called an exception in the real sense, as Art 2(4) is directed towards the States acting in their individual capacity and not to Security Council as an organ of the Charter. However it talks about , military contingencies placed under the Security Council and acting on its behalf . This in turn refers back to the enforcement action under the UN Charter and thus an exception to Art 2 (4).

(2) **Art 51 and Self Defence** : Before the codification of UN Charter , the right to self defence existed primarily in customary law and was being governed by The Caroline Doctrine . Art 51 gave a conventional status to the doctrine . This right to self defence is constructed in a strict manner, so that the jus ad bellum regime is not expanded to great proportions . The self defense of charter is limited in four ways :

(a) It is reactive and non anticipatory : The existence of an armed attack is must before a State can resort to self defence . This norm limits the growing jurisprudence of ‘anticipatory self defense’.

(b) It is inter mediatory in nature :

(i) The State that is attacked defends itself ,or

(ii) With the help of other States defends itself while the Security Council – being immediately informed of the attack –has not taken collective security measures .

(c) It is subordinate : Once the Security Council has over taken collective security measures under Art 39 , then, these collective measures take precedence over self defense .

(d) It is an exception to Art 2(4).

The legal qualification for the existence of an armed attack is the prior existence of an armed attack. The principle is based on the principle of responding violence with violence : *vimi vi repellere*.

The phrase ‘armed attack’ has not been mentioned anywhere in the UN Charter . The International Court of Justice limited itself to two examples :

- (A) Action by regular armed forces across an international border
- (B) Indirect aggression by an armed group sent by another state .

In order to interpret the term aggression , it is desirable to interpret the term ‘aggression’. For this resort is to be made to UN General Assembly Resolution 3314 (1974) . The cases of Armed Aggression are :

- (1) Invasion of territory , bombardment and blockade
- (2) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State .
- (3) Violating of agreement of the sending State with respect to armed forces stationed within the territory of another, notably the extension of their presence beyond the termination of the agreement.
- (4) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression a third States .
- (5) Sending by or on behalf of a State of armed bands, irregular or mercenaries, which carry out acts of armed forces against another State of such gravity as to amount to the acts listed above, or in its substantial involvement therein .

As far as the triggering and termination of self defense is concerned , the modern international law follows the Continental System which views use of force to repel an ongoing armed attack on territory .

Robert Kolb distinguishes four types of situation in an armed attack :

- (a) Reactive Self Defence : A situation where armed attack has already attacked and the damage is already done.
- (b) Interceptive Self Defence : The course of action is irrevocable, even though the impact of attack is still not felt .
- (c) Anticipatory Self Defence : No attack is made but it is imminent.

(d) Preventive or Pre-emptive self defense :There is no foreseeable armed attack, but there is a window of opportunity to strike in order to avert future threats .

According to Mr. Kellogg “ This right (of self defence) is so inherent and universal that it was not deemed necessary even to insert it expressly in the treaty .’

According to Hans Kelsen, the term ‘inherent’ in Art 51 is reminiscent of the Natural law doctrine, and even if the word inherent was dropped from the Charter, it would not impair the rights of State to defend them. The author further lays down the characteristics of collective self defense :

(a) According to Natural Law Doctrine, it is the right of an individual , or a state, to defend its person, property or honour against a real or imminent attack .

(b) The right is conferred not only upon the attacked state but also upon other states that may assist the attacked States .

(c) Treaties for Collective Self Defence are allowed .

(d) If Art 2 (6) of the U N Charter is to be pushed to its logical conclusion, then the right of self defense cannot be denied even to non members and there is no restriction on the members to deny the non members , the assistance required under Art 51.

Collective Security must be distinguished from Collective Self Defense. Collective Security Measures are envisioned under Articles 1 para 1, Article 24 Para 1, Article 39, Article 41, Article 42. Collective Security measures are the measures of the Organization, whereas on the other hand , Collective Self Defense is the action taken by individual members. Collective Measures taken under Art 51 are provisional as there is an obligation upon the members to report the matter to the Security Council . It is permitted only, ‘until the Security Council has taken the measures necessary to maintain international peace and security’. Since Article 51 is placed under Chapter VII and Article 39 stipulates that the Security Council shall determine the existence of ‘any threat to the peace , breach of peace or act of aggression . It follows that an armed attack is an act of aggression .