

His Honour Judge Jeff Blackett, OBE, on the “The legality of the use of armed force against Iran”

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I am particularly pleased to welcome His Honour Judge Jeff Blackett, OBE, as the newest **Lawfire**[®] contributor. As his bio below reflects, he has had an amazing career, including service as Judge Advocate General of the UK Armed Forces (*and* as a civilian judge). In January, King Charles III made him an [officer of the Order of the British Empire \(OBE\) in the King's New Year Honours list](#).

Judge Blackett shares with us his personal view that the *“USA and Israel’s action to destroy Iran’s ability to continue their policy against the West was and is lawful, initially in self-defence under UN Article 51 and now under UNSCR 2817.”* He also delves into the history and purpose of the United Nations, and makes these observations:

“One lesson repeatedly learned is that the United Nations Charter must be adapted to the modern world. It is not a tablet of stone, and it is no longer sensible or appropriate to assert that the use of force is only permissible under the authority of a resolution of the Security Council or under a very narrow interpretation of Article 51.

If that is the case, the law would handcuff the very people who wish to defend the civilised world, while doing nothing to prevent those who act with impunity from taking action. The law develops through state practice, and it is important that the boundaries of Article 51 are pushed to reflect the real modern-day threats to peace and security, rather than those envisaged in 1945.”

Lawfire[®] may find something of an echo in Judge Blackett’s views in the sentiments expressed by Pete Marksteiner [here](#). At the time, I quoted the Nuremberg Tribunal for the proposition that the ***“law is not static, but by continual adaptation follows the needs of a***

[changing world](#).” And the world is changing.

Anyway, here’s His Honour’s fascinating essay::

The Legality of the Use of Armed Force Against Iran

His Honour Jeff Blackett, OBE

Introduction



This paper asserts that the use of armed force by the USA/Israel against Iran is lawful under the terms of UN Security Council Resolution 2817, and was lawful before that Resolution was adopted under UN Charter Article 51 (self-defense). It examines the history of the UN Charter and explains why it should not be interpreted narrowly and why it has to develop to meet the demands of the modern world.

The legal basis of the use of armed force against Iran is:

Action from 28 February (self-defense):

In the case of Israel, self-defence under Article 51 of the United Nations Charter is based on the support and sponsorship that Iran has given to direct attacks on Israel by terrorist groups such as Hamas, Hezbollah, and the Houthis;

In the case of the USA, self-defence under Article 51 of the United Nations Charter, based on Iran-sponsored terrorist attacks against Americans and US facilities;

In the case of the USA and Israel, self-defence under Article 51 of the United Nations Charter is based on Iran’s continuing development of nuclear weapons, together with their declared policy of “death to America and death to Israel”.

Action from 11 March (authorised by the UN Security Council)

In the case of all states, under United Nations Security Council Resolution 2817 (Mar 11 2026). This condemns “egregious attacks” by Iran on other Gulf states as a threat to international peace and security, demands the immediate cessation of all attacks by Iran, condemns threats to close the Strait of Hormuz and affirms the inherent right of individual or

collective self-defence in response to armed attacks by Iran under Article 51 of the UN Charter. There was no condemnation of the US/Israeli action before 11 March^[1] and so it is implicit that this Resolution bestows lawful authority retrospectively as well as for the ongoing action by the US and Israel. It certainly permits the use of force against Iran by the UK and other European states.

There were some statements from President Trump that action was taken partly to protect the citizens of Iran who have been persecuted by the government. There is a developing principle of humanitarian intervention but this paper does not examine that aspect as there appears to be no plan for ground forces to enter Iran to protect citizens from further human rights abuses by the Iranian regime.

This paper provides background to the legal arguments that the use of force by the US and Israel is lawful (). It does not address the conduct of the parties to the armed conflict once it has started: for example targeting, level of collateral damage etc (*jus in bello*).

Action taken in self-defence must be proportionate, and it may be that in some specific occasions during a war, the state that has a legitimate reason for participating contravenes the laws of war. That does not undermine the legitimacy of the original decision to go to war.

Equally, the lack of a plan to end hostilities and for the restoration of peace and security does not invalidate the lawfulness of the action. However, where action is taken to defeat a terrorist state, as in the case of Iran, it would have been prudent for the US/Israeli governments to have assessed the ramifications of the action on the global economy and the risk of escalation, and developed a clear plan for post-conflict reconstruction before any action was taken.

One lesson repeatedly learned is that the United Nations Charter must be adapted to the modern world. It is not a tablet of stone, and it is no longer sensible or appropriate to assert that the use of force is only permissible under the authority of a resolution of the Security Council or under a very narrow interpretation of Article 51.

If that is the case, the law would handcuff the very people who wish to defend the civilised world, while doing nothing to prevent those who act with impunity from taking action. The law develops through state practice, and it is important that the boundaries of Article 51 are pushed to reflect the real modern-day threats to peace and security, rather than those envisaged in 1945.



The Charter of the United Nations (The UN Charter) – a vision for international peace and security.

After the devastation of two world wars in the twentieth century there was hope among the international community that the UN could create a world where states would resolve differences by peaceful means. They determined that only the UN should be able to authorise the use of force (by a Chapter VII resolution of the UN Security Council), with the one exception that states could act in self defence in response to an armed attack. The UN Charter reflected that principle, and the world could look forward to peace and prosperity.

The UN Charter was signed in San Francisco on 26 June 1945 and came into force on 24 October 1945[2]. In its preamble, it includes the explanation for the establishment of the United Nations:

“We the peoples of the United Nations Determined:

- *To save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and*
- *To reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and*
- *To establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and*
- *To promote social progress and better standards of life in larger freedom*

The UN Charter demands that disputes are resolved by peaceful means[3]

Overseeing the maintenance of peace is the UN Security Council. Established by Article 23 (as amended), it mandates five permanent members[4] and ten non-permanent members, each serving for two years. Decisions on all matters by the Security Council are made by the affirmative vote of nine members, including the concurring votes of the permanent members.[5]

In other words, any one of the five permanent members can veto any vote in the Security Council. This requirement for unanimity was designed to ensure the participation of the major powers after the Second World War, to protect national interests and maintain global stability. It would mean that action would be taken only if all the major powers agreed.

The reality, of course, is that the exercise of the veto, rather than enabling peace enforcement, has been a barrier to action, facilitating armed conflict rather than preventing it.

Having said that, in the case of Iran, the UN Security Council has passed Resolution 2817, which authorizes the use of force against Iran in response to Iran's attacks on neighbors and closure of the Straits of Hormuz. This was not vetoed because two of the permanent five which might be aligned with Iran (Russia and China) abstained from the vote.

But the utopia of peaceful co-existence envisaged by the United Nations in 1945 has never been achieved. Armed conflict has erupted many times around the world between states, in internal conflicts with non-state actors and where oppressive regimes have violently subjugated their own people.

Throughout the Cold War and beyond, most states purported to respect a rules-based system to restrict the use of armed force. Security Council Resolutions authorized UN operations in Korea,^[6] the blockade of Beira in 1966,^[7] and the military action against Iraq after the invasion of Kuwait in 1990.^[8]

However, it has become increasingly difficult for states to agree on the use of force. Arguments about the legality of the use of force have become tailored to align with political views both in domestic and international debate. The danger in ignoring the law or eroding the rules-based international system is that the world will descend into a dangerous position where "might is right".

Too often, the UN Security Council has failed to achieve unanimity among the permanent five: states have dictated their positions by short-term political interests, bloc solidarity, and fear that they might fall out of favour with their friends. This means that the UN has effectively become almost impotent in its oversight of armed conflict, and the rules-based system has been ignored.

When Russia invaded Ukraine there is no doubt that there was no legal basis for the use of armed force, and President Putin hardly bothered to make an argument that it was. When the USA and Israel commenced military action against Iran there was an arguable case that the use of armed force was legal (and one that it was not), but leaders, rather than expressing the legal basis in clear and unambiguous terms, provided sometimes confusing statements of intent.

States have acted with impunity, and in contravention of the UN Charter because of the absence of two other requirements.

First the Military Staff Committee^[9] has never operated as originally envisaged. This was to be the military arm of the UN which would, if necessary, use force to prevent armed conflict.

Second, to enable the UN to take urgent military measures, members of the UN are required to maintain national air force contingents immediately available for combined international enforcement action^[10]. When requested, members of the UN undertake to make available armed forces for the purpose of maintaining international peace and security^[11].

It was envisaged that when necessary the UN Security Council would be able to act quickly to maintain peace by military intervention. Sadly, the Military Staff Committee was never properly constituted and members soon reneged on their obligations to keep forces at readiness.

Without this important ability to compel states to settle disputes peacefully, the UN lost its authority. This meant that states unable to persuade all five permanent members of the Security Council looked for arguments around self-defence to justify the use of armed force.

The law of armed conflict comprises treaty law and customary international law. Customary law is developed through state practice: rules asserted by states over time are eventually accepted as legally binding and may ultimately be included in treaty law. So, for the law to develop away from the strict wording of Article 51, it would have to take action which it believed is morally right (although it might be perceived by some as unlawful) and assert that it is lawful.

The development of Article 51 (self-defence)

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.”

This article has three elements in relation to the lawful use of self-defence:

- An armed attack occurs
- Action taken in self defence shall be reported to the Security Council
- The Security Council shall take measures necessary to maintain international peace and security

Armed attack

There is no definition in the UN Charter of what constitutes an armed attack. In the *Nicaragua* case^[12] the International Court of Justice (ICJ) held that:

“There appears now to be general agreement on the nature of the acts which can be treated as constituting armed attacks. In particular, it may be considered to be agreed that an armed attack must be understood as including not merely action by regular armed forces across an international border, but also “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 of such gravity as to amount to” (inter alia) an actual armed attack conducted by regular forces, “or its substantial involvement therein”. This description, contained in Article 3, paragraph (g), of the Definition of Aggression annexed to General Assembly resolution 3314 (XXIX), may be taken to reflect customary international law. The Court sees no reason to deny that, in customary law, the prohibition of armed attacks may apply to the sending by a State of armed bands to the territory of another State, if such an operation, because of its scale and effects, would have been classified as an armed attack rather than as a mere frontier incident had it been carried out by regular armed forces”.

Following the attacks on the twin towers in New York on 11 September 2001, the Security Council declared that these terrorist attacks were a threat to international peace and security and recognized the USA’s right of self-defence .

In other words, they accepted that terrorist attacks fell within the definition of an armed attack for the purposes of Article 51^[14], although the *Nicaragua* case suggests that there is a threshold to the seriousness of a terrorist attack without explaining what that threshold is.^[15]

Customary law also permits anticipatory or pre-emptive action in self-defence. In the *Caroline* case^[16] it was asserted, and generally accepted, that a state could take anticipatory action before an attack actually started provided an attack was “instant, overwhelming, leaving no choice of means and no moment for deliberation.”^[17]

However, as Christopher Greenwood writes in his excellent essay on self-defence [18], a statement was made ... in the context of a scale of threat and means of delivery which were radically different from those of the 21st Century.

A recent Chatham House study has suggested that the concept of imminence can no longer be viewed only in temporal terms but must take account of the wider circumstances of the threat, including such factors as the gravity of the harm which would be inflicted, the

capability of the party threatening the attack, and the nature of the attack which is threatened.”

So it is arguably lawful for a state to declare that:

- a terrorist attack comprises an armed attack which triggers Article 51,
- another state is developing a nuclear weapon, there is a real risk that it would use it and negotiation has not been able to stop development. In the context of modern weaponry that would be sufficient to trigger Article 51 even if the development of nuclear weapons is not complete.
- a state sponsoring terrorism on a large scale around the world is a party to an armed attack and that is sufficient to trigger Article 51 so that the victim states may use force in self-defence against that sponsor.

Notification to the UN Security Council.

A state’s failure to comply with the requirement to report its exercise of self-defence to the UN Security Council is a violation of the UN Charter, but it would not undermine the legality of the use of force in self-defence.^[19] That was also the position taken by the ICJ in the Nicaragua case^[20], where the Court acknowledged that the legality of self-defence relies on customary international law.

Action by the UN Security Council.

The state may use armed force in self-defence until the Security Council has taken measures necessary to maintain international peace and security. The lack of the Military Staff Committee operating as envisaged, and the lack of forces available to enforce and maintain peace means that there is no time limit on the lawfulness of a state acting in self-defence.

Ukraine has been resisting the unlawful armed attack by Russia for over four years, while the UN Security Council has been unable to intervene because of the Russian veto to any proposal condemning their action and requiring them to stop. Equally it would be lawful for the US/Israeli action against Iran to continue until the threat to international peace and security has been neutralised, although they can now act under the authority of UNSCR 2817.

Conclusion

Iran is a rogue state that has exported terrorism around the world. In particular, it has sponsored Hamas, Hezbollah, and the Houthis in their aim to destroy Israel. It preaches hatred against Israel, the USA, and Western liberal democracies and is a constant threat to peace and security.

If it were to obtain a nuclear weapon, there is no doubt that it would use it, or threaten to use it (thereby deterring states from challenging its support for terrorism), for its own malign purposes. The USA and Israel's action to destroy Iran's ability to continue their policy against the West was and is lawful, initially in self-defence under UN Article 51 and now under UNSCR 2817.

Notes

[1] A draft resolution proposed by Russia and China condemning the US/Israel action was rejected by the UN Security Council

[2] Amendments, such as to increase the size of the Security Council in Article 23, were made between 1963 and 1973. References to the UN Charter in this paper include those amendments where appropriate.

[3] Article 2.3

[4] China, France, Russia, UK and USA

[5] UN Charter Article 27.3

[6] UNSCRs 83 (27 June 1950) and 84 (10 July 1950). These were only possible because the Russian representative did not attend the relevant meetings and the Chinese vote was still held by representatives of Nationalist China

[7] UNSCR 221 of 9 April 1966

[8] UNSCR 678 dates 29 November 1990

[9] UN Charter Article 47 – established “to advise and assist the Security Council on all questions relating to military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament”

[10] UN Charter Article 45

[11] UN Charter Article 43

[12] Nicaragua v USA (Merits) (1986) ICJ Rep14 paragraph 195

[13] UNSCR 1368 dated 12 September 2001 which condemned the attacks, recognised the inherent right of self defence and called on all states to work together to bring the perpetrators, organisers and sponsors to justice while holding those harbouring them accountable

[14] UNSCR 1377 dated 12 November 2001 adopted a declaration stating that acts of terrorism are one of the most serious threats to peace and security in the 21st Century and reaffirmed the necessity to combat them by all means.

[15] Ibid “Court does not believe that the concept of “armed attack” includes not only acts by armed bands where such acts occur on a significant scale but also assistance to rebels in the form of the provision of weapons or logistical or other support. Such assistance may be regarded as a threat or use of force, or amount to intervention in the interna¹ or external affairs of other States.”

[16] This related to an incident in 1837 when British troops destroyed a US ship (Caroline) containing Canadian rebels preparing to launch an attack. The exchange of letters between the USA and Great Britain formed are accepted as customary international law defining the limits of self defence.

[17] 1837 Britain and Foreign State Papers 1129, 1138. Self-defence could only be accepted if the state could “show a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation. [The action taken must also involve} nothing unreasonable or excessive; since the act justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it.”

[18] Christopher Greenwood: Oxford Public International Law April 2011 – MPEIL

[19] Greenwood supra para 31

[20] Nicaragua v United States (supra) at para 235. “At no time, up to the present, has the United States Government addressed to the Security Council, in connection with the matters the subject of the present case. the report which is required by Article 51 of the United Nations Charter in respect of measures which a State believes itself bound to take when it exercises the right of individual or collective self-defence. The Court, whose decision has to be made on the basis of customary international law, has already observed that in the context of that law the reporting obligation enshrined in Article 51 of the Charter of the United Nations does not exist. It does not therefore treat the absence of a report on the part of the United States as the breach of an undertaking forming part of the customary international law applicable to the present dispute.

About the author



His Honour Judge Jeff Blackett, OBE, was educated at University College London, Inns of Court School of Law, and St Anthony's College, Oxford. He spent 31 years in the Royal Navy, initially as a logistics officer serving on frigates and destroyers, and later trained as a barrister. His last assignment was as Chief Naval Judge Advocate in the rank of Commodore. Retiring 2004, he was appointed as (civilian) Judge Advocate General of UK Armed Forces. He also sat in civilian courts as a Senior Circuit Judge and a Deputy High Court Judge. He retired again in 2020 to take up the role of President of England Rugby for 2 years. He contributed to the UK *Manual on the Law of Armed Conflict* and wrote the definitive textbook: [Rant on the Court Martial and Service Law](#).

Disclaimers

His Honour Judge Jeff Blackett, OBE, is expressing his personal views and not necessarily those of the British government or any other entity.

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