



Who Still Believes in Article 2(4)? The Strategic Expansion of Self- Defence and the Case for Institutional Reform of the Law on Force

RESEARCH ARTICLE

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ABSTRACT

The prohibition on the use of force enshrined in Article 2(4) of the United Nations Charter was intended to serve as the focal point of the post-1945 international order. Eighty years on, that prohibition is under more pressure than at any point since the Cold War. This paper argues that the contemporary crisis surrounding the prohibition on force is not one of textual ambiguity but of strategic instrumentalisation: states are not rejecting the norm against force so much as hollowing it out through expansive reinterpretation of its exceptions, including the right to self-defence under Article 51, increasingly invoked humanitarian intervention, and pre-emptive actions against non-state actors. Drawing on a theoretical framework that integrates constructivist norm life-cycle theory by Finnemore & Sikkink with the critical legal realism of Koskeniemi, the paper examines how state practice since 2001 has progressively widened the self-defence exception to the point where it risks swallowing the rule. It traces this trajectory through four contemporary flashpoints: the extraterritorial use of force against non-state armed groups; US and allied operations in Syria post-2014; Russia's invocation of protective intervention in Ukraine (2014–2022); and the emerging discourse around anticipatory self-defence in the context of cyber operations and AI-enabled weapons systems. The paper concludes that the current normative framework is not broken but is being selectively enforced in ways that entrench power asymmetries. It proposes that meaningful reform requires not new treaty law but a reinvigoration of the institutional framework, including a formalised General Assembly override mechanism for Security Council vetoes on matters involving *jus ad bellum* disputes.

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INTRODUCTION

Article 2(4) of the United Nations Charter (UN Charter) is perhaps the most ambitious normative commitment in modern international law: the promise that interstate violence would henceforth be the exception, governed by law, rather than the default, governed by power.¹ Eight decades of state practice have produced no formal denunciation of the prohibition. On the contrary, even states engaged in manifest uses of force invariably frame their conduct as falling within the Charter's recognised exceptions. Russia invoked self-defence in Ukraine;² the United States invoked it against non-state actors in Syria;³ and NATO invoked humanitarian necessity in Kosovo. The prohibition thus retains extraordinary *discursive* power. But its *regulatory* power, its capacity to actually constrain behaviour, is visibly declining. Article 2(4) is simultaneously the most frequently invoked and the most frequently violated norm in international law.

This paradox is not new. Franck declared Article 2(4) dead in 1970; Henkin responded that reports of its death were greatly exaggerated.⁴ Both were partly right, but both framed the question in binary terms, alive or dead, effective or irrelevant. The reality is more unsettling. Borrowing from Finnemore and Sikkink's norm-lifecycle framework, Article 2(4) is best understood as being in a state of *advanced decay*: not formally repudiated, but hollowed out from within by competing interpretations that drain it of constraining force.⁵ The framing opens the question this paper pursues: if the norm is decaying rather than dead, through what specific mechanisms does the erosion proceed, and what, if anything, can institutional reform do to arrest it?

The mechanism of this erosion is identifiable, and it runs through a single doctrinal channel. The Charter permits two exceptions to the prohibition: Security Council authorisation under Chapter VII and self-defence under Article 51.⁶ The first has been structurally compromised by the veto since 1945.⁷ The second, self-defence, has consequently been forced to bear the weight it was never designed to carry. Three post-2001 developments have stretched it beyond recognition: the 'unable or unwilling' doctrine, justifying force against non-state actors on unwilling sovereigns' territory;⁸ Russia's invocation of protective intervention in Ukraine, demonstrating that the elastic logic of exception is not a Western monopoly;⁹ and the emerging pressure for anticipatory self-defence in cyber and autonomous weapons contexts, where decision-making timelines compress beyond human oversight.¹⁰

Existing scholarship falls into two camps, each with a blind spot. Doctrinalists have produced rigorous accounts of what the law requires but proceed as though the absence of centralised enforcement is a background condition rather than the central structural problem.¹¹ Critical scholars in the Koskeniemi tradition have explained *why* doctrinal refinement cannot resolve the crisis, but stop short of prescriptive engagement.¹² This paper occupies the space between them. Its thesis is that the post-Charter consensus on force is collapsing not through open defiance but through *strategic instrumentalisation* of the self-defence exception, expanding it until the exception swallows the rule, producing a two-tier order in which force is effectively regulated for weak states and effectively permissive for powerful ones.

The paper adopts a dual-lens framework. Constructivist norm-lifecycle theory (Finnemore and Sikkink, supplemented by Panke and Petersohn on norm decay) provides the tools to track *how* the prohibition is weakening through state practice. Koskeniemi's critical legal realism, the oscillation between 'apology' and 'utopia,' explains *why* doctrinal clarity has not produced compliance: because the indeterminacy of *jus ad bellum* argumentation means that identical rules can justify diametrically opposed positions, with political power resolving the choice.

Before proceeding, the criteria governing the selection of cases merit explanation. Because the choice of cases shapes the analysis itself, the rationale behind it ought to be made explicit rather than left to inference. Three criteria govern it. The episode must involve a formal invocation of self-defence through an Article 51

communication to the Security Council, because the paper's subject is the strategic use of the Charter's own vocabulary, not force justified outside it. The invocation must rest on a doctrinal claim that extends beyond settled law, whether as to the author of the armed attack, the target of the response, or its timing. And the claim must have travelled: it must have been adopted, mirrored or built upon by other states, since the argument here concerns norm erosion through diffusion, not isolated deviance.

These criteria explain the exclusions as much as the inclusions. The 2003 invasion of Iraq, the most notorious use of force of the period, was principally justified by the contested revival of earlier Security Council authorisations rather than by self-defence, and so falls outside the first criterion; it features in this paper in the role it has actually come to play, as a precedent invoked by others to demonstrate that the rules bend for the powerful.¹³ Colombia's 2008 strike against a Revolutionary Armed Forces of Colombia (FARC) encampment in Ecuador fails the third criterion, and instructively so. The operation was condemned by the Organization of American States (OAS), Colombia apologised, and, notably, the United States declined to defend the strike in the terms it would later deploy for its own operations in Syria.¹⁴ The episode shows that regional institutions can, on occasion, arrest diffusion. The present crisis in the Middle East is a different matter. It plainly satisfies all three criteria, and its omission from the case studies is a judgment of timing rather than relevance: the record of Article 51 correspondence, third-state reaction and institutional response is still forming, and conclusions drawn from an unfinished record would not survive it. Where the region's recent practice already bears on the doctrinal argument, the paper says so; a fuller treatment must await a settling of the facts.

This paper proceeds in five parts. Part 2 examines the doctrinal architecture of Article 2(4), its two Charter exceptions, and the foundational International Court of Justice (ICJ) jurisprudence from *Nicaragua* through *DRC v Uganda* that established their boundaries.¹⁵ Part 3 analyses the post-2001 expansion of self-defence as a doctrine of convenience, treating the 'unable or unwilling' doctrine (through Operation Inherent Resolve and allied strikes in Syria) and Russia's invocation of protective intervention in Ukraine (from Crimea to the 2022 full-scale invasion) as two manifestations of the same structural phenomenon: powerful states stretching Article 51 to fit geopolitical objectives while claiming fidelity to the Charter. Part 4 addresses the emerging frontier of cyber operations, AI-enabled weapons systems, and anticipatory self-defence, where the existing framework is being tested by technologies that compress decision-making timelines beyond the capacity of the rules designed to govern them. Part 5 synthesises these developments through the theoretical framework, diagnoses the structural problem of institutional paralysis and selective enforcement, and proposes three reforms: binding ICJ advisory jurisdiction on use-of-force questions; a formalised General Assembly override for P5 vetoes on *jus ad bellum* disputes; and codification of the 'unable or unwilling' test with objective criteria and mandatory reporting. Part 6 concludes. The aim throughout is not to refine rules that no enforcement mechanism can apply, but to ask what institutional framework might make the existing rules operational.

1. THE DOCTRINAL FRAMEWORK OF ARTICLE 2(4): TEXT, EXCEPTIONS, AND JURISPRUDENTIAL BOUNDARIES

Before examining how the prohibition on force is being eroded, it is necessary to establish what, precisely, is being eroded. Article 2(4) of the Charter provides that '[a]ll 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.'¹⁶ The provision appears textually broad. Its drafters intended it as a near-comprehensive prohibition, not a general

principle subject to easy qualification.¹⁷ Corten has persuasively demonstrated that the *travaux préparatoires* confirm a restrictive reading: proposals at San Francisco to limit the prohibition to force directed at 'territorial integrity or political independence' were rejected in favour of the wider formulation that includes 'any other manner inconsistent with the Purposes of the United Nations'.¹⁸

In the language of norm-lifecycle theory, Article 2(4) represents a norm that achieved full *internalisation* with unusual speed.¹⁹ Within a generation of its adoption, the prohibition on force had moved beyond contestation: it was accepted as *jus cogens*, a peremptory norm from which no derogation is permitted. No state, however aggressive its behaviour, openly advocated for a right to wage war. The norm had not merely cascaded; it had become constitutive of what it meant to be a sovereign state in the post-1945 order. But internalisation, as Finnemore and Sikkink acknowledge, is not the same as permanence. A norm that is internalised can still decay, not through frontal repudiation but through what Koskeniemi identifies as the structural indeterminacy of legal argument: the capacity of the same legal framework to generate diametrically opposed conclusions depending on which interpretive choices are made.²⁰

1.1. The Two Charter Exceptions

The Charter permits the use of force in only two circumstances. First, the Security Council may authorise enforcement action under Chapter VII where it determines the existence of a threat to the peace, breach of the peace, or act of aggression.²¹ This was the primary mechanism. The framers envisaged a system in which unilateral force would be replaced by collective security administered through a centralised institution. Second, Article 51 preserves the 'inherent right of individual or collective self-defence if an armed attack occurs,' but only 'until the Security Council has taken the measures necessary to maintain international peace and security'.²² Self-defence was conceived as a temporary, residual right, a bridge to collective action, not a substitute for it.²³

The framework was elegant. It was also structurally compromised from the outset. Article 27(3) of the UN Charter requires the 'concurring votes of the permanent members' for non-procedural Security Council decisions.²⁴ This veto power means that Chapter VII enforcement action is constitutionally impossible whenever a permanent member is party to, or sympathetic towards, the use of force in question.²⁵ The consequence is not incidental; it is systemic. The collective security mechanism, the very institution that was supposed to make unilateral force unnecessary, has been rendered inoperative in precisely the cases where it matters most. The 'Uniting for Peace' resolution of 1950 attempted a partial remedy through the General Assembly, but its recommendations lack binding force and have not provided an effective substitute.²⁶

The structural condition that produces the crisis is what this paper examines. Because the collective security mechanism cannot function against powerful states, the self-defence exception under Article 51 has been forced to absorb normative pressure it was never designed to bear. States that wish to use force but cannot obtain Security Council authorisation, because a veto blocks it, or because the political cost of seeking it is too high, have a powerful incentive to recharacterise their actions as self-defence. Koskeniemi would recognise this immediately: it is the oscillation between *apology* (the law must accommodate the reality of state power) and *utopia* (the law must constrain state power regardless of political convenience) playing out in its most consequential domain.²⁷

1.2. International Court of Justice Jurisprudence

The ICJ has addressed the scope of the prohibition and its exceptions in three cases, each of which established significant boundaries and revealed the limits of judicial norm-enforcement in the absence of compulsory jurisdiction.

In *Nicaragua v United States*, the Court delivered its most comprehensive treatment of the *jus ad bellum*.²⁸ First, the Court affirmed that the prohibition on the use of force constitutes a principle of customary international law, binding independently from

the Charter.²⁹ Second, it drew a distinction between an 'armed attack,' which triggers self-defence, and lesser forms of force, including the provision of weapons and logistical support to insurgent groups, which do not.³⁰ Third, it held that collective self-defence requires both a declaration by the victim state that it has been attacked and a request for assistance.³¹ The United States' actions failed on all counts: there was no armed attack by Nicaragua, and the US response was neither necessary nor proportionate.³²

Nicaragua is practically instructive, though not in the way it is usually cited. The United States withdrew from the proceedings, refused to comply with the judgment, and vetoed a Security Council resolution calling for compliance.³³ The norm was judicially affirmed at the very moment it was politically defied. In norm-lifecycle terms, *Nicaragua* represents the high-water mark of institutional norm-validation, but the immediate aftermath demonstrates that judicial pronouncement without enforcement capacity cannot arrest norm decay when the violator is a permanent member of the Security Council.

That much is well known. What deserves closer attention is that the judgment did something non-adjudication cannot: it settled the doctrinal vocabulary. Before 1986 the armed attack threshold, the necessity and proportionality requirements, and the procedural conditions for collective self-defence were contested or underspecified. The Court gave them definitive shape.³⁴ Every *jus ad bellum* argument advanced since, including the ones this paper criticises, has been compelled to reckon with that framework. The United States did not comply, but non-compliance did not undo the judgment's normative work -- it revealed its limits.

That observation carries weight for Part 5, because the paper's argument depends on separating two functions that adjudication performs and that are too often conflated. The first is *norm clarification*: the authoritative statement of what the law requires in a contested case. The second is *norm enforcement*: the attachment of material consequences to breach.³⁵ *Nicaragua* succeeded comprehensively at the first. It failed entirely at the second. Those are not contradictory outcomes. They reflect different institutional capacities, and the deficit lies in enforcement, not in the enterprise of adjudication itself.

The complaint this paper raises about judicial silence in relation to Operation Inherent Resolve and the broader *jus ad bellum* dimensions of the Ukraine conflict is directed squarely at the clarification function. No court has ruled on the legality of the coalition strikes in Syria. No tribunal has addressed the use of force questions that sit at the centre of the Ukraine conflict, beyond the narrow Genocide Convention framing the ICJ's jurisdictional basis permits.³⁶ The consequence is not merely academic. A judgment declaring the 'unable or unwilling' doctrine unlawful would almost certainly not have halted the airstrikes. However, it would have forced the intervening states into a choice: abandon the justification or persist in open defiance of a binding determination and bear the reputational cost that follows.³⁷ Without adjudication, that choice never arises. The doctrinal expansion proceeds unchecked, not because law has spoken and been ignored, but because law has not spoken at all.

The *Nuclear Weapons* Advisory Opinion exposed a different dimension of the problem.³⁸ The Court affirmed the applicability of Article 2(4) and the principles of necessity and proportionality to nuclear weapons, but ultimately declined to rule on whether their use would be lawful 'in an extreme circumstance of self-defence, in which the very survival of a State would be at stake'.³⁹ This *non liquet* is perhaps the purest illustration of Koskeniemi's thesis in action: the legal arguments for and against were structurally balanced, and the Court resolved the impasse by declining to resolve it.⁴⁰ The opinion confirmed that the *jus ad bellum* framework applies to all weapons, but also demonstrated that it reaches its limits precisely where the stakes and the power of the states involved are highest.

Between these two decisions sits an advisory opinion whose contribution to the attribution question deserves separate treatment. In the *Wall* opinion, Israel had invoked Article 51 to justify

the construction of the barrier as a response to terrorist attacks emanating from the Occupied Palestinian Territory. The Court disposed of the argument in a single paragraph: Article 51 recognises an inherent right of self-defence 'in the case of armed attack by one State against another State,' and Israel did not claim that the attacks against it were imputable to a foreign state.⁴¹ The timing gave the pronouncement its significance. Three years after the Security Council had appeared, in Resolutions 1368 and 1373, to accept that the attacks of 11 September could ground self-defence without any state author, the Court reaffirmed the inter-state reading of Article 51 as though nothing had changed.

The reasoning did not even persuade the bench. Judge Higgins observed that nothing in the text of Article 51 confines armed attacks to those by states and that the restriction was a gloss the Court introduced itself. Judge Kooijmans found the dismissal of the Security Council's post-2001 practice unexplained. Judge Buergethal went further, calling the conclusion legally dubious and the approach formalistic.⁴² Murphy's verdict, that the Court had offered an *ipse dixit* rather than an analysis, captured the scholarly reception.⁴³ For present purposes, the opinion matters in two ways. It demonstrates that the Court, given a clear opportunity to adapt the attribution requirement to the reality of non-state violence, declined to reason its way to either answer, which is the pattern this paper has traced from the *Nuclear Weapons non liquet* onward. And it set the stage for *DRC v Uganda*, where the majority again reserved the question while the separate opinions of Judges Kooijmans and Simma sketched the accommodation that the majority would not.⁴⁴ Although the doctrinal vacuum into which the 'unable or unwilling' doctrine later flowed was not created by the Court's silence alone, the Court's repeated refusal is part of how the vacuum came to be filled by unilateral practice instead.

DRC v Uganda brought the question of self-defence against non-state actors into sharpest focus.⁴⁵ The Court held that Uganda could not justify its military intervention in the DRC as self-defence, because the DRC's actions did not constitute an 'armed attack' within the meaning of Article 51.⁴⁶ The majority maintained the restrictive *Nicaragua* framework. In retrospect, however, the separate opinions of Judges Kooijmans and Simma were more significant than the majority holding. Both endorsed the possibility that self-defence could be exercised against non-state actors operating from a host state's territory where that state is unable or unwilling to suppress the threat.⁴⁷ These opinions did not change the law, but they signalled that the Court's own members recognised the growing gap between the restrictive doctrinal framework and the operational realities states faced.

1.3. The Doctrinal Framework

Three observations emerge when this jurisprudence is read through the dual theoretical framework adopted in this paper.

First, the ICJ's consistent adherence to a restrictive reading of Article 51 represents, in constructivist terms, an institutional effort at *norm maintenance*: the Court has sought to hold the line against expansive interpretations that would dilute the prohibition. But norm maintenance through judicial pronouncement is only effective if the pronouncements are complied with. In the absence of compulsory jurisdiction and enforcement power, the Court's restrictive readings function less as authoritative settlements than as one voice in an ongoing contestation in which state practice, not judicial dictum, increasingly sets the terms.⁴⁸

Second, the doctrinal framework that emerged from *Nicaragua* through *DRC v Uganda* was built for a world of interstate conflict. The requirement that an 'armed attack' be attributable to a state, and that self-defence be directed against a state, presupposes a Westphalian architecture in which states are the primary actors. The rise of non-state armed groups operating across borders, from al-Qaeda to ISIL to the Wagner Group, has placed this framework under pressure that the Court has acknowledged (through the Kooijmans and Simma opinions) but has not resolved.⁴⁹

Third, and most fundamentally, the jurisprudence reveals the Koskeniemi problem in its starkest form. The doctrinal rules are reasonably clear. Self-defence requires: an armed attack; the attack must reach a gravity threshold; and the response must be necessary and proportionate. Collective self-defence also requires a request from the victim state. However, every one of these criteria involves a factual determination that, in the absence of compulsory adjudication, is made unilaterally by the state using force. 'Necessity' and 'proportionality' become what the acting state says they are. 'Armed attack' becomes what the responding state characterises it as. The law provides the grammar; power determines the syntax.⁵⁰

The doctrinal framework of Article 2(4) is not ambiguous. The prohibition is clear with defined exceptions and jurisprudential boundaries that have been drawn with reasonable precision. The problem lies not in what the law says but in what happens when the law is applied or, more precisely, when it is interpreted by the very states whose conduct it is supposed to constrain. It is this gap between doctrinal clarity and operational indeterminacy that the subsequent Parts of this paper examine through the lens of contemporary state practice.

2. SELF-DEFENCE AS A DOCTRINE OF CONVENIENCE: FROM SYRIA TO UKRAINE

This Part argues that the Western invocation of the 'unable or unwilling' doctrine and Russia's assertion of self-defence in Ukraine, though doctrinally distinct, share a common structural logic. Both include the strategic expansion of the Article 51 exception to absorb uses of force that the Charter prohibition was designed to prevent. This exploits the absence of compulsory adjudication, converting unilateral factual determinations into legal justifications and accelerating the erosion of Article 2(4).

2.1. The 'Unable or Unwilling' Doctrine

On 23 September 2014, the United States notified the Security Council under Article 51 of military operations against ISIL on Syrian territory.⁵¹ The notification's significance was doctrinal rather than operational. Ambassador Power invoked the inherent right of self-defence not against Syria, which had committed no armed attack, but against a non-state actor operating from its territory, on the basis that Syria was 'unable or unwilling to prevent the use of its territory for such attacks.'⁵² This appears to be the first formal articulation of the 'unable or unwilling' doctrine in an Article 51 notification.

Coalition partners rapidly adopted the logic, though not its formulation. The United Kingdom cited collective self-defence of Iraq, implicitly accepting the 'unable or unwilling' premise without invoking the term.⁵³ France, following the November 2015 Paris attacks, advanced a materially different basis, individual self-defence grounded in its own victimhood rather than Iraq's request.⁵⁴ Canada and Australia expressly adopted the 'unable or unwilling' formulation.⁵⁵

The coalition thus operated under a patchwork of internally inconsistent justifications, unified only by the proposition that Syrian sovereignty could be overridden where the territorial state failed to suppress threats emanating from within its borders.

The doctrinal deficiencies of the 'unable or unwilling' test are fundamental: it lacks agreed criteria, independent verification, and any mechanism of institutional review.⁵⁶ Every factual predicate — whether the territorial state is 'unable,' whether it is 'unwilling,' whether force is necessary — is determined unilaterally by the intervening state, on evidence of its own choosing, subject to no adjudication. Syria's formal protest that the strikes distorted the Charter was simply disregarded.⁵⁷ The test thus reproduces precisely the auto-interpretation that the collective security system was designed to eliminate: states acting as judges in their own cause on questions of the use of force.⁵⁸

In norm-lifecycle terms, the doctrine exemplifies what Panke and Petersohn identify as 'competitive norm entrepreneurship'; an expansive reinterpretation of an existing exception that fragments normative consensus without formally repudiating the underlying rule.⁵⁹ This is the mechanism of norm decay: not rejection but expansion, not defiance but absorption. The prohibition appears intact because every intervening state still invokes the Charter. Its constraining force, however, is progressively diminished as the exception widens to accommodate the very conduct the prohibition was designed to prevent.⁶⁰

2.2. Russia's invocation of Self-defence in Ukraine: The Logic Turned Inward

Russia's invocation of self-defence in Ukraine confirms that the elastic logic of exception is not a Western prerogative. On 24 February 2022, Russia notified the Security Council of measures taken under Article 51, layering individual self-defence against NATO expansion, collective self-defence of the newly recognised Donetsk and Luhansk entities, and an unstated humanitarian pretext alleging genocide in the Donbas.⁶¹ Each justification collapses on examination: no armed attack against Russia was committed or threatened;⁶² the Donetsk and Luhansk entities lacked statehood under any credible application of the Montevideo criteria; and the ICJ found it 'doubtful' that the Genocide Convention authorises unilateral force, noting insufficient evidence to substantiate Russia's claims.⁶³ The General Assembly condemned the invasion by 141 votes to 5.⁶⁴

The doctrinal significance, however, lies not in the arguments' credibility but in their *grammar*. Russia did not assert a right to use force outside the Charter. It invoked precisely the categories of self-defence, protection of nationals, and humanitarian necessity, that Western states deployed in Kosovo,⁶⁵ Iraq,⁶⁶ and Libya.⁶⁷ Each of these three precedents rests on a different legal basis, yet all three point to the same structural problem. Kosovo (1999) had no Security Council authorisation. Iraq (2003) relied on a disputed reading of earlier resolutions that most states and scholars rejected.⁶⁸ Libya (2011) had explicit authorisation, but the operation went far beyond its mandate and became regime change.⁶⁹ What connects them is not doctrinal consistency, there is none, but the demonstrated capacity of powerful states to construct plausible legal justifications for force that no institution can effectively challenge. Russia has drawn on all three, not as formal precedent, but as proof that the rules apply selectively, and that what is selectively enforced is selectively available.⁷⁰ This is the deeper problem the paper identifies: the vocabulary of *jus ad bellum* has become sufficiently capacious to accommodate diametrically opposed claims advanced by geopolitically opposed actors. The framework that permits one coalition to override sovereignty on grounds of counter terrorism permits another to override it on grounds of existential threat. The grammar is identical; only the geopolitical alignment of the speaker differs, and that distinction, however decisive politically, is invisible doctrinally.

2.3. The Exception that Swallows the Rule: Convergent Erosion from East and West

Koskeniemi's critique finds its most compelling application here. In both Syria and Ukraine, the self-defence framework has ceased to function as a mechanism of restraint and operates instead as a repertoire of justification, furnishing the legal vocabulary in which force, already resolved upon, is clothed in the language of legality.⁷¹ The operative predicates of that framework, 'unable or unwilling,' 'armed attack,' and 'genocide,' are nowhere subjected to independent scrutiny; they are declared by the acting state, and the declaration stands in place of any institutional determination.⁷²

What transforms this from a doctrinal concern into a structural crisis is the multiplicity of actors engaged in the same enterprise. So long as only the United States stretched Article 51, the prohibition on force was strained but legible; the exception could be read as contested rather than constitutive. Once Russia adopted the same interpretive elasticity in service of antithetical objectives, the strain ceased to be episodic and became systemic. The norm is now subject

to competing claims by states that share no common ground save the conviction that Article 51 accommodates their preferred use of force. This is the condition that Finnemore and Sikkink identify with advanced norm decay: the formal architecture endures, but the shared understanding that once gave it constraining power has dissolved.⁷³

Two features of this trajectory merit particular attention. First, neither the Western nor the Russian expansion of self-defence has been subjected to authoritative adjudication; the ICJ's mandate in *Ukraine v Russia* extends only to the Genocide Convention, and no tribunal has pronounced on Operation Inherent Resolve. The doctrinal expansion thus unfolds within a judicial silence. Secondly, the process is self-compounding: each successive invocation of an expanded rationale renders the next more difficult to resist. The exception does not merely widen; it cultivates the conditions for its own perpetuation.

3. FASTER THAN LAW: CYBER OPERATIONS, AUTONOMOUS WEAPONS, AND THE COLLAPSE OF DELIBERATION

The preceding analysis concerned the expansion of self-defence within a familiar operational paradigm; state and non-state actors, territorial sovereignty, and conventional armed force. This Part confronts a different challenge. Cyber operations, autonomous weapons systems, and the resurgence of anticipatory self-defence do not merely test the boundaries of the *jus ad bellum* framework; they call into question its foundational assumptions. These are threats the Charter's architects could not have foreseen, operating at speeds its doctrinal categories were never designed to accommodate, and generating legal questions that the existing jurisprudence is ill-equipped to resolve.

3.1. Cyber Operations and the Threshold Question

The threshold question is straightforward in formulation but elusive in application: when does a cyber operation constitute a 'use of force' under Article 2(4), or an 'armed attack' triggering self-defence under Article 51? The Tallinn Manual 2.0 addresses this by analogy, adopting a scale-and-effects test under which a cyber operation meets the requisite threshold where its consequences are comparable to those of a qualifying conventional kinetic operation.⁷⁴ As a doctrinal proposition, the transplantation of the *Nicaragua* scale-and-effects framework to the cyber domain is internally consistent, however, it remains practically elusive.⁷⁵

The most consequential cyber operations to date resist neat doctrinal classification, situated as they are in the grey zone between prohibited force and sub-threshold conduct. Operations inflicting severe economic harm without physical destruction, or degrading critical infrastructure without producing casualties, elude a framework conceived for kinetic violence.⁷⁶ NotPetya caused \$10 billion in damage across dozens of countries, but no state characterised it as an 'armed attack' or invoked self-defence under Article 51.⁷⁷ Further, no state treated it as a 'use of force' under Article 2(4).⁷⁸ The responses were diplomatic condemnation, attribution statements, and some sanctions.⁷⁹ This is the grey zone problem: an operation with effects exceeding many conventional military strikes, but which the existing legal framework could not, or states chose not, to classify as force.⁸⁰ The scale was enormous and the effects were devastating, but because nothing physically exploded and nobody died directly, it slipped through the doctrinal categories designed for bombs and bullets.

The Stuxnet operation, disclosed in 2010 and widely attributed to a joint US-Israeli programme, constitutes the first documented instance of a cyber weapon causing physical destruction of industrial infrastructure.⁸¹ The malware infiltrated the supervisory control and data acquisition (SCADA) systems at Iran's Natanz enrichment facility, manipulating centrifuge rotational speeds while masking the

sabotage from monitoring systems, and destroyed approximately 1,000 centrifuges without deploying any kinetic weapon.⁸²

Its doctrinal significance is considerable. Unlike NotPetya, Stuxnet crossed the physical damage threshold, meaning that under the Tallinn Manual's effects-based analysis, an operation producing destruction analogous to a kinetic strike would presumptively constitute a use of force under Article 2(4) and potentially an armed attack under Article 51.⁸³ Yet Iran never invoked self-defence or formally characterised the operation as an armed attack, a decision almost certainly driven by strategic calculation rather than legal assessment, since attribution would have exposed the vulnerability of a programme whose own legality was contested.⁸⁴

The juxtaposition with NotPetya is instructive. The operation nearest to satisfying the threshold for a cyber armed attack (Stuxnet) produced no *jus ad bellum* response for political reasons. The operation inflicting far greater aggregate damage (NotPetya) produced none for doctrinal reasons. In neither case did the legal framework function as an objective classification system. When the victim of a cyber-armed attack declines to name it as such, and the perpetrator of one faces no legal consequence for it. In such a case the prohibition on force has not been violated, but rather, it has been rendered irrelevant by silence.

3.2. Autonomous Weapons and the Compression of Decision-Making

Autonomous weapons systems pose a qualitatively distinct challenge to the *jus ad bellum* framework. The requirements of necessity and proportionality under Article 51 presuppose human deliberation; a decision-maker assessing the threat, weighing alternatives, and calibrating the response.⁸⁵ Systems capable of identifying and engaging targets faster than human cognition permits compress that deliberative space to the point of elimination.⁸⁶ Israel's deployment of AI-assisted targeting systems in Gaza, reportedly capable of generating hundreds of targets per day with minimal human review, illustrates the trajectory.⁸⁷ The United States' autonomous Aegis Combat System, designed to detect and intercept incoming missiles within seconds, raises the same question at the *jus ad bellum* level. If a machine initiates force in response to a perceived threat before any human evaluates whether the conditions of self-defence are satisfied, then the doctrinal requirements are not merely strained; they cease to be structurally applicable.⁸⁸

The scholarly literature on autonomous weapons has concentrated overwhelmingly on *jus in bello*, whether machines can comply with distinction and proportionality in targeting.⁸⁹ The *jus ad bellum* question is prior and more foundational: not how force is employed, but whether the decision to resort to force can satisfy necessity and proportionality when no human is involved in the decision-making. A system that launches a defensive strike in milliseconds may be operationally effective, however, it cannot, by definition, have engaged in the deliberation that the law requires, and no amount of *ex post facto* human ratification can supply what was absent at the moment of decision.⁹⁰

The argument requires a caveat. It is not obvious that human decision-making is superior to machine decision-making in all operational contexts, and the paper should not be read as making that claim. An AI system processing threat data under conditions of extreme time pressure may well outperform a human operator subject to cognitive fatigue, confirmation bias, and panic.⁹¹ The question, however, is not whether the machine decides well. It is whether the machine's decision satisfies the legal demands. Article 51's necessity and proportionality are not optimisation problems. They presuppose an exercise of judgment by an agent capable of being held to account for the reasoning behind the decision, not merely for its outcome.⁹² That is a procedural expectation, not a consequentialist one, and the distinction matters.

Consider an imperfect but useful analogy. A sentencing algorithm might produce more consistent outcomes than a human judge sitting late on a Friday afternoon. Nobody seriously contends that consistency of output satisfies the right to a fair trial. The right entails

a process including a hearing, a reasoned determination, and the possibility of being questioned and contradicted. Something is required of the decision-maker beyond arriving at the correct answer.⁹³ The *jus ad bellum* requirements of necessity and proportionality embed a comparable expectation. They assume a deliberating agent, not a calculating one. Whether that assumption ought to be revised in light of what machines can now do is a perfectly legitimate question, but it is a question about reforming the law, not about interpreting what the law currently provides for.

The empirical record, in any event, should temper enthusiasm for the view that automation cures human error. In July 1988, the USS Vincennes, operating the Aegis Combat System, shot down Iran Air Flight 655 over the Persian Gulf, killing 290 civilians.⁹⁴ The aircraft was misidentified as an attacking F-14 Tomcat. What the subsequent investigation revealed is instructive: the failure was not attributable to sensor malfunction. It resulted from crew stress interacting with system interface designed in ways that compounded rather than corrected the conditions for error.⁹⁵ The machine did not override human misjudgement. It participated in it.

A separate clarification is owed on proportionality, because the earlier formulation in this paper drew the line between *jus ad bellum* and *jus in bello* too sharply. The two regimes are analytically distinct but they are not sealed off from each other.⁹⁶ *Jus ad bellum* proportionality asks whether the overall defensive response is commensurate with the objective of halting and repelling the armed attack. *Jus in bello* proportionality asks whether individual engagements produce excessive civilian harm relative to the anticipated military advantage.⁹⁷ These are different inquiries operating at different levels of abstraction. But the ICJ in *Oil Platforms* did not treat them as unrelated: the Court evaluated the nature and scale of the specific operations the United States undertook when determining whether the overall response satisfied *jus ad bellum* proportionality.⁹⁸ The manner of force, in other words, is not irrelevant to the legality of the resort to force. A campaign composed of individually disproportionate strikes does not become proportionate at the macro level simply because the overall objective was defensive. In the autonomous weapons context, this interaction acquires particular significance. A system incapable of deliberation at the level of individual engagement cannot be assumed to satisfy requirements that depend, even partially, on how force is applied at that level.

3.3. Acting before the Blow: Anticipatory Self-defence and the Death of Imminence

These technological developments converge in the revival of a doctrine the Charter was designed to suppress. The *Caroline* formulation permits self-defence only where necessity is 'instant, overwhelming, leaving no choice of means, and no moment for deliberation.'⁹⁹ Article 51 conditions the right on an armed attack having 'occurred,' which is language the ICJ has consistently read to require an actual or, at minimum, imminent attack.¹⁰⁰ The cyber and AI context destabilises both formulations. The 2020 US strike on Iranian General Soleimani, justified by Washington as a response to 'imminent' attacks whose imminence was never substantiated, demonstrates how elastic the concept has already become in conventional operations.¹⁰¹ Transposed to the cyber domain, the pressure intensifies: if a cyber operation can disable critical infrastructure in milliseconds, as the 2015 and 2016 Russian attacks on Ukraine's power grid demonstrated, and an autonomous weapons system can execute a strike before human awareness, the case for acting *before* the attack materialises acquires a technological plausibility that the *Caroline* framers could not have conceived.¹⁰²

The trajectory is clear. Anticipatory self-defence, once severed from an objectively verifiable requirement of imminence, collapses into pre-emptive force, the unilateral resort to arms based on a threat that the acting state alone identifies, evaluates, and responds to. The Bush doctrine's assertion of pre-emptive action against Iraq in 2003 was widely rejected as incompatible with Article 51,¹⁰³ yet the logic of cyber speed and autonomous decision-making furnishes precisely the same claim with a new and more seductive justification. A

lowered threshold in the hands of states that already interpret self-defence with maximal elasticity does not refine the law; it dissolves the distinction between defence and aggression on which the entire Charter framework depends.

3.4. Theoretical Implications

The technological frontier does not merely extend the trajectory traced in Part 3. It changes its nature. The 'unable or unwilling' doctrine and Russia's protective intervention stretched the self-defence exception by contesting how its established categories applied; the categories themselves remained intact, and the argument was about their reach. Cyber operations, autonomous weapons, and anticipatory doctrines pose a different threat. They do not contest the categories, instead, they outrun them. An exception that was being argued over is now being overtaken, and the constructivist literature is clear about what that portends: norm decay becomes irreversible not when a rule is broken, but when the factual world the rule was built to govern has moved beyond its descriptive reach.¹⁰⁴

That shift reframes the task. So long as the problem was contested interpretation, the remedy lay in authoritative interpretation, a court, a tribunal, or some body able to say what the exception means. But interpretation cannot rescue a category that no longer corresponds to anything. One cannot adjudicate the attribution of an unattributable attack, the proportionality of a decision no human made, or the imminence of a harm that arrives faster than the capacity to perceive it. The question for Part 5 is therefore sharper than whether the institutions can be made to work. It is whether institutional reform can keep pace with a technological environment that is dissolving the very concepts on which the institutions were designed to operate. Part 5 turns to the question of whether institutional reform can arrest this trajectory, or whether the gap between the law as written and the world as it now operates has become unbridgeable.

4. BETWEEN PARALYSIS AND REFORM: INSTITUTIONAL FAILURE AND PATH FORWARD

The analysis thus far reveals a recurring structural deficit: the self-defence exception expands through unilateral assertion because no institution exists with the authority, jurisdiction, and enforcement capacity to say otherwise. The rules themselves are not deficient, the structure tasked with applying them is. This Part identifies the conditions that sustain that deficit and advances two reforms directed not at what the law says, but at the institutional silence that permits states to decide for themselves what it means.

4.1. The Veto as a Structural Impunity

The Security Council's inability to enforce the prohibition on force against its own permanent members is not a systemic failure; it is a constitutional feature. Article 27(3) of the Charter guarantees each P5 member an absolute shield against collective enforcement, and the veto has been wielded with strategic precision to that end. Russia cast sixteen vetoes on Syria-related resolutions between 2011 and 2024, insulating the Assad regime from enforcement action throughout a conflict that produced over 500,000 deaths and the displacement of 13 million people.¹⁰⁵ The United States has deployed the veto with comparable regularity, blocking enforcement of the ICJ's *Nicaragua* judgment in 1986, and casting successive vetoes on resolutions addressing the situation in Gaza in 2023–2024.¹⁰⁶ The pattern is not aberrational; it is constitutive. The prohibition on force is enforceable against states without a permanent member's patronage and functionally inoperative against those that enjoy it.

Koskeniemi's apology–utopia dialectic finds its sharpest expression here.¹⁰⁷ The law is doctrinally unambiguous; its enforcement is structurally selective. Whether a use of force triggers

collective consequences depends not on its legality but on the geopolitical alignment of its author. This is not a deficiency of legal reasoning, it is the inevitable product of an architecture that entrusts enforcement to the very actors whose conduct most urgently requires restraint.

4.2. Judgment without Jurisdiction, Jurisdiction without Compliance

Contentious jurisdiction requires the consent of both parties, and the states most actively expanding the self-defence exception have insulated themselves from judicial scrutiny.¹⁰⁸ The United States withdrew from compulsory jurisdiction in 1986, in direct response to *Nicaragua* and Russia has never accepted jurisdiction.¹⁰⁹ Even where jurisdiction is established, compliance depends on the goodwill of the losing party; a commodity in short supply. The United States ignored the *Nicaragua* judgment and vetoed its enforcement. Uganda failed to comply with the reparation order in *DRC v Uganda* for over a decade.¹¹⁰ The ICJ's *Ukraine v Russia* proceedings, confined to the narrow question of genocide under the Genocide Convention, cannot reach the broader *jus ad bellum* questions that constitute the heart of the dispute.¹¹¹ The norm against force thus inhabits an institutional void: the organ empowered to enforce (the Security Council) is paralysed by the veto; the organ competent to adjudicate (the ICJ) is constrained by consent; and the organ capable of expressing the international community's collective judgment (the General Assembly) possesses voice but not authority.

The constructivist and critical frameworks converge on an uncomfortable conclusion. Norm maintenance requires two institutional capacities: authoritative interpretation, distinguishing lawful from unlawful invocations of the exception; and consistent enforcement, attaching consequences to violation.¹¹² The current architecture furnishes neither. The General Assembly's 141-vote condemnation of Russia's invasion was a powerful expression of normative consensus.¹¹³ But condemnation that a state can disregard without institutional consequence is precisely the condition Koskeniemi identifies as *utopia* at its most hollow: the solemn assertion of norms that the system lacks the machinery to vindicate.¹¹⁴

To be clear about the argument: nothing said here implies that adjudication is futile merely because states sometimes refuse to comply. *Nicaragua* was not complied with, yet it gave shape to the doctrinal vocabulary that every subsequent self-defence claim has had to work within.¹¹⁵ That is the clarifying function of adjudication, and it operates independently of enforcement. The objection raised in Part 3 about judicial silence concerns the loss of precisely that function, not the loss of coercive capacity the Court never possessed.

The point is easily illustrated. No court has ruled on the legality of Operation Inherent Resolve. The *jus ad bellum* dimensions of the war in Ukraine remain adjudicated, the ICJ's jurisdiction having been confined to the comparatively narrow question of genocide.¹¹⁶ In the absence of any authoritative pronouncement, the expansion of self-defence proceeds without even the discursive constraint that a judgment, whatever its prospects of enforcement, would have imposed. A ruling that the 'unable or unwilling' test was unlawful would not have grounded a single coalition aircraft. What it would have done is confront the intervening states with a choice they have so far been spared: abandon the justification or defy a binding determination and absorb the reputational cost of doing so openly.¹¹⁷ No such choice has been forced, because no such determination exists.

4.3. Institutional Reform

The reforms advanced here target the institutional deficit, not the doctrinal one. The law is adequate; what is absent is the machinery to determine its meaning and attach consequences to its breach. Each proposal operates within the existing Charter framework, requiring no amendment under Article 108; a threshold that the P5 veto renders practically unattainable.¹¹⁸

The Uniting for Peace resolution established the principle that the General Assembly may act where the Security Council is paralysed by the veto, but confined it to non-binding recommendations.¹¹⁹ The proposal here would convert that principle into an enforceable mechanism: a two-thirds General Assembly supermajority should be empowered to override a P5 veto on Chapter VII enforcement action where a *prima facie* violation of Article 2(4) has been established by ICJ determination, independent fact-finding, or the Assembly's own assessment.¹²⁰

The role assigned to the Court needs to be set out with some care, because it does not fit any existing category neatly. What I have in mind is neither a request for provisional measures nor an exercise of contentious jurisdiction, both of which depend on the consent of the respondent state.¹²¹ The mechanism is *sui generis*. The General Assembly, voting by qualified majority under an enlarged Uniting for Peace framework, would refer the legality of a particular use of force to the Court for an advisory opinion. The binding quality of that opinion would not derive from the Statute, which contemplates advisory opinions as non-binding,¹²² but from the referring resolution itself. The General Assembly would attach binding effect as a condition of the reference, drawing on its own institutional authority rather than the Court's.

Two objections present themselves immediately, and neither is fatal. The first is that this distorts the advisory function, which was designed to furnish legal guidance to UN organs rather than to resolve disputes between states. The objection has force, but practice has already moved well beyond the textbook account. In the *Wall* opinion the Court entertained, through the advisory route, what was in substance a bilateral controversy between Israel and Palestine, and did so over precisely this objection.¹²³ The second is that the permanent members would simply decline to appear. They might, but non-appearance is not a veto over the proceedings. The Court advised on the legality of nuclear weapons notwithstanding the opposition of every nuclear-weapon state,¹²⁴ and there is no reason to think a use-of-force reference would fare differently. A state that absents itself forfeits the opportunity to shape the opinion; it does not thereby prevent the opinion from issuing.

A third difficulty goes to the Court itself, and candour requires that it be confronted rather than waved through. The mechanism proposed here would place before the ICJ the legality of force employed by major powers, or by states acting under their protection, and judicial independence alone is a thin guarantee of how such cases would be decided. The judges who sit at the Peace Palace tend to arrive by way of foreign ministries and the International Law Commission. That professional formation produces a bench with a fine sense of what the powerful will tolerate. The empirical literature offers some support for the worry: Posner and de Figueiredo found that voting at the Court tracks the national attachments of its members.¹²⁵ One might add that the *Nuclear Weapons non liquet* reads, on an uncharitable but plausible view, as deference presented in the language of legal indeterminacy. Yet the record cuts both ways. *Nicaragua* remains the case in which the Court ruled against a superpower at the peak of its influence and bore the institutional consequences of doing so.¹²⁶

The realistic assessment, then, is that some degree of deference must be priced into the proposal rather than treated as fatal to it. Even an opinion reasoned with one eye on the great powers fixes the doctrinal ground on which the dispute must thereafter be fought, obliges the acting state to justify itself within that ground, and gives the General Assembly a legal determination where none presently exists. The relevant comparison is not between a cautious Court and a fearless one. It is between a cautious Court and silence.

One refinement to the voting rule follows from a related concern. Two-thirds of the General Assembly is, as a matter of arithmetic, a majority that one or two regions acting in concert could deliver, and a mechanism vulnerable to capture on those terms would invite the objection that it simply moves hegemony from the Council chamber to the Assembly floor. The proposal therefore adopts a compound requirement: two-thirds of the membership as a whole, together with majority support within no fewer than three of the five regional

groups.¹²⁷ No override could then issue without backing that crosses the divide between North and South. The mechanism becomes harder to activate as a result, and deliberately so. An override within the gift of a single regional bloc would merit every suspicion directed at it; one resting on genuinely cross-regional agreement can claim a legitimacy that the veto it displaces has never possessed.

Had such a mechanism existed in 2022, the 141-state majority condemning Russia's invasion could have activated enforcement measures rather than issuing a resolution that Moscow was free to disregard.¹²⁸ The supermajority threshold guards against politicised abuse; the institutional link to the ICJ or independent fact-finding guards against factual overreach. Reliance on independent fact-finding to trigger the override mechanism raises a difficulty the earlier discussion passed over too quickly. The record of international fact-finding is mixed at best. Mandates are the product of political negotiation, methodologies vary in their rigour and transparency, and findings have on occasion been put to partisan use by the very bodies that commissioned them.¹²⁹ These are not hypothetical concerns, and any proposal that makes fact-finding the gateway to enforcement must take them seriously.

Three features of the proposal are designed to contain that risk, though none eliminates it. The body would be constituted only on a qualified majority of the General Assembly, which prevents a single state or regional group from manufacturing a pretext for override. Its members would be selected from a standing roster of jurists maintained by the President of the Court, removing the composition of any given panel from the reach of diplomatic bargaining.¹³⁰ And the state whose conduct is under examination would have a right of reply, with an opportunity to contest the findings before the Assembly proceeds to any vote.¹³¹ Procedural safeguards of this kind cannot guarantee impartial outcomes in an organ composed of states. What they can do is raise the cost of abuse and narrow the space within which a determination can be engineered.

The second proposal requires more careful handling than the first, because the objection to it goes to the structure of the legal order rather than to institutional design. To codify the 'unable or unwilling' test, even hedged with reporting obligations and independent review, is to accept that a state's sovereignty over its territory is conditional on the discharge of a duty to suppress threats emanating from it. That is sovereignty as responsibility, a conception with a respectable intellectual lineage running from Deng's work on conflict in Africa through the 2001 report of the International Commission on Intervention and State Sovereignty,¹³² but one whose career in positive law has been conspicuously modest. The 2005 World Summit accepted a responsibility to protect only in a form channelled entirely through the Security Council, and the membership has never endorsed any unilateral entitlement flowing from a state's failure of responsibility.¹³³ Orford's genealogy of the concept is a caution here: what began as an argument for international authority has repeatedly been pressed into service as an argument for unilateral force, which is precisely the slippage the majority of states fear.¹³⁴

Tladi has put the structural objection in its sharpest form. The state on whose territory force is used under the doctrine is, innocent: the armed attack is not attributable to it, and it has not consented. To subject such a state to military action is to make its most basic Charter protection contingent on a performance standard it may lack the capacity to meet, and to let the intervening state judge the failure.¹³⁵ The doctrine's state support is not what its proponents imply. Beyond the coalition that acted in Syria, express endorsements are scarce, while rejections, from Russia and China to much of the Non-Aligned Movement, are not.¹³⁶ A test invoked by a dozen states and repudiated or ignored by the rest is not crystallising custom, rather, it is contested practice wearing custom's clothes.

Why, then, retain a codification proposal at all? Because the alternative is not the restrictive *status quo ante*; it is the 'unable or unwilling' doctrine. State practice since 2014 confirms that the 'unable or unwilling' doctrine cannot be legislated out of existence. The US, UK, Canada, Australia, and France have all relied on it, and the operational incentive to do so will persist.¹³⁷ The realistic

objective is not suppression but institutionalisation through three mechanisms. First, codification of agreed criteria specifying what constitutes 'inability' and 'unwillingness,' building on Deeks' proposed framework but embedding it within an institutional structure rather than leaving it to unilateral application.¹³⁸ Second, mandatory reporting to the Security Council within 48 hours of any operation invoking the doctrine, with detailed evidentiary justification, strengthening the existing Article 51 obligation, which is routinely ignored and carries no consequence for non-compliance.¹³⁹ Third, independent ex post facto review by a standing body, whether a dedicated ICJ Chamber or a newly constituted expert panel, empowered to assess compliance with the codified criteria and to issue binding findings of unlawfulness. The 2014 coalition strikes in Syria illustrate this need: five states invoked five different legal bases for the same operation and no institution assessed the legality of any of them.¹⁴⁰

The proposal is therefore conditional in a way that must be stated openly. Codification is defensible only if the codified test is restrictive, if the reporting and review machinery has real bite, and if the exercise is framed, expressly, as a constraint on an existing practice rather than a legitimisation of a new entitlement. If states will not accept it on those terms, the proper conclusion is not codification on looser terms. It is that the doctrine should continue to be resisted as unlawful, with the attribution requirement of the *Wall* opinion, for all the criticism it has drawn, standing as the doctrinal line of defence. The paper holds both positions honestly: the first-best world is one in which the doctrine withers; the codification proposal addresses the world in which it will not.

Admittedly, decades of effort directed at reforming the United Nations have yielded meagre returns, and the point is not disputed here. However, the feasibility objection proves weaker on inspection than it appears at first, because it rests on a conflation that critics of UN reform rarely pause to examine. Amending the Charter under Article 108 requires ratification by two-thirds of the membership including the permanent members.¹⁴¹ Where P5 interests are engaged, that path is foreclosed, and no one familiar with the institution pretends otherwise. Institutional innovation within the existing framework is a wholly different exercise, for the simple reason that it never engages Article 108. Practice confirms as much. Uniting for Peace, the most far-reaching procedural development of the Charter's first decade, was adopted over Soviet objection and without altering a syllable of the text.¹⁴² The Liechtenstein Initiative did something similar more recently, establishing that the General Assembly convenes automatically whenever a veto is cast, and again leaving the Charter untouched.¹⁴³

Neither precedent should be oversold. What they establish is modest but adequate to the argument advanced here: the permanent members possess no veto over innovations that leave the Charter formally intact, even where those innovations function, in substance, to constrain the veto itself. It is within that space that the present proposals are situated. They undoubtedly demand more of the General Assembly than either Uniting for Peace or the Liechtenstein Initiative required, and their adoption would not be straightforward, but the difference is one of degree, not of kind. They continue a line of institutional practice already several decades in the making.¹⁴⁴

CONCLUSION

Article 2(4) is not dead. Franck's assertion was premature in 1970 and it remains premature today.¹⁴⁵ Every state that uses force still claims to act within the Charter's framework. No state has proposed the norm's abolition. The prohibition retains its constitutive status in the international legal order, it remains, in doctrinal terms, *jus cogens*. But Henkin's reassurance was equally incomplete. A norm that formally endures while its exceptions expand without limit is not a functioning legal prohibition. It is a discursive convention, a vocabulary of legitimisation that constrains rhetoric without constraining conduct.

This paper has traced the mechanism of that erosion with specificity. The self-defence exception under Article 51 has been progressively expanded through three vectors: the 'unable or unwilling' doctrine, which permits force against non-state actors on the territory of uninvolved sovereigns; the elastic invocation of protective intervention, which Russia has deployed to justify the most significant act of interstate aggression since 1945; and the emerging discourse of anticipatory self-defence in the cyber and AI domain, where the speed of operations threatens to render the requirement of a prior armed attack structurally obsolete. In each case, the expansion proceeds not through rejection of the Charter but through its reinterpretation, not through defiance but through the strategic manipulation of indeterminate legal categories.¹⁴⁶

The dual theoretical framework adopted here identifies both the mechanism and the conditions of this erosion. Constructivist norm-lifecycle theory demonstrates that Article 2(4) has moved from internalisation to advanced decay: the norm retains formal status, but the behavioural consensus that once sustained it has fragmented as competing norm entrepreneurs advance incompatible interpretations.¹⁴⁷ Koskeniemi's critical legal realism explains why doctrinal refinement alone cannot arrest the process. In a system without compulsory adjudication, legal argumentation in the *jus ad bellum* domain is structurally indeterminate, and the indeterminacy is resolved not by law but by power.¹⁴⁸

The paper's contribution is to insist that naming the problem is not the same as accepting it. The institutional proposals advanced in Part 4, a General Assembly override mechanism, and the codification of the 'unable or unwilling' test with independent review, face formidable political resistance. They are not offered as predictions of what will happen but as arguments for what should. Each addresses the correct deficit: not what the law says, but who determines what it means and what follows from violation. Incremental institutional reform will not eliminate the gap between law and power, but it can narrow that gap sufficiently that Article 2(4) functions as a legal norm rather than a rhetorical convention; and that the self-defence exception, however far it has stretched, does not swallow the rule entirely.

The stakes are not abstract. If the prohibition on force operates only against states too weak to invoke its exceptions, it ceases to be a universal norm and becomes an instrument of hegemony dressed in the language of law. The international legal order can survive selective compliance, but it cannot survive the perception that selectivity is the system's intended design. The task for international lawyers is neither to eulogise the Charter framework nor to declare it irrelevant, but to build the institutional architecture that gives its most important norm the operational capacity it was promised in 1945 and has never been granted.

NOTES

1. Charter of the United Nations 1945, art 2(4); Ian Brownlie, *International Law and the Use of Force by States* (OUP 1963) 112–114; Christine Gray, *International Law and the Use of Force* (4th edn, OUP 2018) 6–30.
2. Letter dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General, UN Doc S/2022/154 <<https://digitallibrary.un.org/record/3959647>> accessed 29 March 2026. See also Marko Milanovic, 'What is Russia's Legal Justification for Using Force against Ukraine?' (EJIL: Talk!, 24 February 2022) <<https://www.ejiltalk.org/what-is-russias-legal-justification-for-using-force-against-ukraine/>> accessed 29 March 2026.
3. Letter dated 23 September 2014 from the Permanent Representative of the United States of America to the

- United Nations addressed to the Secretary-General, UN Doc S/2014/695 <https://www.securitycouncilreport.org/atf/cf/...s_2014_695.pdf> accessed 29 March 2026; See also Ashley Deeks, 'Unwilling or Unable': Toward a Normative Framework for Extraterritorial Self-Defense' (2012) 52 *Virginia Journal of International Law* 483.
4. Thomas Franck, 'Who Killed Article 2(4)?' (1970) 64 (5) *AJIL* 809-837; Louis Henkin, 'The Reports of the Death of Article 2(4) Are Greatly Exaggerated' (1971) 65 *AJIL* 544.
 5. Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change' (1998) 52 *International Organization* 887, 895-905; Diana Panke and Ulrich Petersohn, 'Why International Norms Disappear Sometimes' (2012) 18 *European Journal of International Relations* 719.
 6. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14 [176]-[179].
 7. Charter of the United Nations, art 27(3) (requiring the 'concurring votes of the permanent members' for non-procedural decisions). For a comprehensive record of vetoes cast since 1946, see UN Dag Hammarskjöld Library, 'Security Council – Veto List' <<https://research.un.org/en/docs/sc/quick>> accessed 29 March 2026. On the structural consequences for collective security, see Jan Wouters and Tom Ruys, 'Security Council Reform: A New Veto for a New Century?' (Egmont Institute, Royal Institute for International Relations 2005) <<https://aei.pitt.edu/8980/1/ep9.pdf>> accessed 29 March 2026; Michael J Kelly, 'United Nations Security Council Permanent Membership and the Veto Problem' (2020) 52 *Case Western Reserve Journal of International Law* 101 <<https://scholarlycommons.law.case.edu/jil/vol52/iss1/8/>> accessed 29 March 2026.
 8. UNSC Res 1368 (12 September 2001) UN Doc S/RES/1368; Ashley Deeks, 'Unwilling or Unable': Toward a Normative Framework for Extraterritorial Self-Defense' (2012) 52 *Virginia Journal of International Law* 483; Letter dated 23 September 2014 from the Permanent Representative of the United States to the Secretary-General, UN Doc S/2014/695 available here <https://www.securitycouncilreport.org/atf/cf/%7B65BvFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_695.pdf>; Noam Lubell, *Extraterritorial Use of Force Against Non-State Actors* (OUP 2010) 25-55.
 9. UNGA Res ES-11/1 (2 March 2022) UN Doc A/RES/ES-11/1 <<https://digitallibrary.un.org/record/3965290>> accessed 29 March 2026; full text available at <<https://documents.un.org/doc/undoc/gen/n22/293/36/pdf/n2229336.pdf>> accessed 29 March 2026 (adopted by 141 votes in favour, 5 against and 35 abstentions, deploring Russia's aggression against Ukraine and demanding full withdrawal of Russian forces).
 10. Michael N Schmitt (ed), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (CUP 2017) Rules 69-71.
 11. Olivier Corten, *The Law Against War* (Hart 2010) 163-196; Yoram Dinstein, *War, Aggression and Self-Defence* (6th edn, CUP 2017) 192-203.
 12. Martti Koskeniemi, *From Apology to Utopia: The Structure of International Legal Argument* (CUP 2005) 58-70.
 13. Olivier Corten, *The Law Against War: The Prohibition on the Use of Force in Contemporary International Law* (Hart 2010) 497-544.
 14. OAS Permanent Council, 'Convocation of the Meeting of Consultation of Ministers of Foreign Affairs and Appointment of a Commission' CP/RES 930 (1632/08) (5 March 2008) (reaffirming the principle of territorial inviolability following Colombia's 1 March 2008 strike against a FARC encampment in Ecuadorian territory). Colombia apologised and undertook not to repeat the operation, and the episode generated no wider pattern of endorsement in the region.
 15. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14 [176]-[179]; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* (Merits) [2005] ICJ Rep 168 [146]-[147]; Tom Ruys, 'Armed Attack' and Article 51 of the UN Charter (CUP 2010) 485-530.
 16. Charter of the United Nations 1945, art 2(4) <<https://www.un.org/en/about-us/un-charter/full-text>> accessed 29 March 2026.
 17. Ian Brownlie, *International Law and the Use of Force by States* (OUP 1963) 265-268. Brownlie's account remains the foundational positivist treatment, reading the prohibition as near-absolute.
 18. Olivier Corten, *The Law Against War: The Prohibition on the Use of Force in Contemporary International Law* (Hart 2010) 50-96 <<https://doi.org/10.5040/9781472565662>> accessed 29 March 2026.
 19. Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change' (1998) 52 *International Organization* 887, 895-905 <<https://doi.org/10.1162/002081898550789>> accessed 29 March 2026.
 20. Martti Koskeniemi, *From Apology to Utopia: The Structure of International Legal Argument* (CUP 2005) 17-18, 58-70 <<https://doi.org/10.1017/CBO9780511493713>> accessed 29 March 2026.
 21. Charter of the United Nations, art 39: 'The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.'; Charter of the United Nations, art 42: 'Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.'
 22. Charter of the United Nations, art 51: '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 the measures necessary to maintain international peace and security.'
 23. Christine Gray, *International Law and the Use of Force* (4th edn, OUP 2018) 6-30, 117-160.
 24. Charter of the United Nations, art 27(3). For a comprehensive record of vetoes cast, see UN Dag Hammarskjöld Library, 'Security Council – Veto List' <<https://research.un.org/en/docs/sc/quick>> accessed 29 March 2026.
 25. Jan Wouters and Tom Ruys, 'Security Council Reform: A New Veto for a New Century?' (Egmont Institute 2005) <<https://aei.pitt.edu/8980/1/ep9.pdf>> accessed 29 March 2026; Michael J Kelly, 'United Nations Security Council Permanent Membership and the Veto Problem' (2020) 52 *Case Western Reserve Journal of International Law* 101

- <<https://scholarlycommons.law.case.edu/jil/vol52/iss1/8/>> accessed 29 March 2026.
26. UNGA Res 377(V) (3 November 1950) UN Doc A/RES/377(V) ('Uniting for Peace').
 27. Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (CUP 2005) 58–70.
 28. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14 <<https://www.icj-cij.org/case/70>> accessed 29 March 2026.
 29. *ibid* [176]–[179]
 30. *ibid* [191]–[195] (distinguishing 'armed attack' from lesser forms of force, including provision of weapons and logistical support to insurgents; holding that the latter, while potentially unlawful, does not trigger the right of self-defence).
 31. *ibid* [194]–[196]
 32. *ibid* [237]–[238]
 33. UNSC Draft Resolution S/18428 (28 October 1986), vetoed by the United States (11 votes in favour, 1 against; France, Thailand and the United Kingdom abstaining), UN Doc S/PV.2704 (1986). See also UNGA Res 41/31 (3 November 1986) (calling for full and immediate compliance with the judgment, adopted 94 to 3).
 34. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14 [176]–[195], [237]–[238] <<https://www.icj-cij.org/case/70>> accessed 29 March 2026.
 35. Yuval Shany, 'Assessing the Effectiveness of International Courts: A Goal-Based Approach' (2012) 106 *AJIL* 225, 237–241; Tom Ginsburg, 'Authoritarian International Law?' (2020) 114 *AJIL* 221, 243–249.
 36. *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)* (Provisional Measures) [2022] ICJ Rep 211 [59]–[60] <<https://www.icj-cij.org/case/182>> accessed 13 June 2026.
 37. Andrew T. Guzman, *How International Law Works: A Rational Choice Theory* (OUP 2008) 33–48.
 38. *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226 [38]–[48] <<https://www.icj-cij.org/case/95>> accessed 29 March 2026.
 39. *ibid* ('the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake').
 40. Koskenniemi (n 27) 58–70. The Court's *non liquet* in *Nuclear Weapons* is perhaps the purest illustration of his thesis: the legal arguments for and against were perfectly balanced, and the Court resolved the impasse by declining to resolve it.
 41. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136 [139].
 42. *ibid*, Declaration of Judge Buergenthal [5]–[6] (describing the majority's reasoning as a 'formalistic approach' resting on a 'legally dubious conclusion'); Separate Opinion of Judge Higgins [33]–[34]; Separate Opinion of Judge Kooijmans [35].
 43. Sean D Murphy, 'Self-Defense and the Israeli Wall Advisory Opinion: An Ipse Dixit from the ICJ?' (2005) 99 *AJIL* 62, 64.
 44. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* (Merits) [2005] ICJ Rep 168, Separate Opinion of Judge Kooijmans [25]–[32]; Separate Opinion of Judge Simma [8]–[15].
 45. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* (Merits) [2005] ICJ Rep 168 <<https://www.icj-cij.org/case/116>> accessed 29 March 2026.
 46. *ibid* [146]–[147] (holding that Uganda's military intervention could not be justified as self-defence because the DRC's actions did not constitute an 'armed attack' within the meaning of Article 51).
 47. *ibid*, Judge Kooijmans, Separate Opinion [25]–[32]; Judge Simma, Separate Opinion [8]–[15]. Both endorsed the possibility of self-defence against non-state actors operating from a host state's territory where that state is unable or unwilling to suppress the threat.
 48. Diana Panke and Ulrich Petersohn, 'Why International Norms Disappear Sometimes' (2012) 18 *European Journal of International Relations* 719, 723–728; Finnemore and Sikkink (n 5) 895–898 (describing the three-stage lifecycle: norm emergence, norm cascade, and internalisation). The prohibition on force reached 'internalisation' after 1945 but the post-2001 period exhibits the characteristics of what Panke and Petersohn term 'norm regression'.
 49. Tom Ruys, 'Armed Attack' and Article 51 of the UN Charter (CUP 2010) 485–530 <<https://doi.org/10.1017/CBO9780511779527>> accessed 29 March 2026; Yoram Dinstein, *War, Aggression and Self-Defence* (6th edn, CUP 2017) 192–203.
 50. Koskenniemi (n 27) 17–18. The structural indeterminacy is not a defect in the law; it is a constitutive feature of an international legal order that lacks compulsory adjudication and centralised enforcement.
 51. Letter dated 23 September 2014 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General, UN Doc S/2014/695 <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_695.pdf> accessed 29 March 2026.
 52. Ashley Deeks, '"Unwilling or Unable": Toward a Normative Framework for Extraterritorial Self-Defense' (2012) 52 *Virginia Journal of International Law* 483; Noam Lubell, *Extraterritorial Use of Force Against Non-State Actors* (OUP 2010) 25–55.
 53. Letter dated 25 November 2014 from the Permanent Representative of the United Kingdom to the President of the Security Council, UN Doc S/2014/851 (citing collective self-defence of Iraq). See also Ashley Deeks, 'The UK's Article 51 Letter on Use of Force in Syria' (Lawfare, 26 November 2014) <<https://www.lawfaremedia.org/article/uks-article-51-letter-use-force-syria>> accessed 29 March 2026.
 54. Letter dated 8 September 2015 from the Permanent Representative of France to the President of the Security Council, UN Doc S/2015/745 (invoking individual self-defence following the Paris attacks of 13 November 2015 and UNSC Res 2249 (20 November 2015) UN Doc S/RES/2249).
 55. Letter dated 31 March 2015 from the Chargé d'Affaires of the Permanent Mission of Canada to the President of the Security Council, UN Doc S/2015/221 (expressly invoking the 'unable or unwilling' formulation); Letter dated 9 September 2015 from the Permanent Representative of

- Australia to the President of the Security Council, UN Doc S/2015/693.
56. Olivier Corten, 'The "Unwilling or Unable" Test: Has It Been, and Could It Be, Accepted?' (2016) 29 *Leiden Journal of International Law* 777.
 57. Identical letters dated 21 September 2015 from the Permanent Representative of the Syrian Arab Republic to the Secretary-General and the President of the Security Council, UN Doc A/70/385-S/2015/727 (protesting that the coalition strikes 'distort the provisions of the Charter and manipulate international law').
 58. Tom Ruys, 'Armed Attack' and Article 51 of the UN Charter (CUP 2010) 485–530 <<https://doi.org/10.1017/CBO9780511779527>> accessed 29 March 2026.
 59. Diana Panke and Ulrich Petersohn, 'Why International Norms Disappear Sometimes' (2012) 18 *European Journal of International Relations* 719, 725–728 (describing 'norm entrepreneurs' who advance competing interpretations that fragment consensus without formally rejecting the underlying norm).
 60. Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change' (1998) 52 *International Organization* 900–905.
 61. Letter dated 24 February 2022 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General, UN Doc S/2022/154 <<https://digitallibrary.un.org/record/3959647>> accessed 29 March 2026; Marko Milanovic, 'What is Russia's Legal Justification for Using Force against Ukraine?' (EJIL: Talk!, 24 February 2022) <<https://www.ejiltalk.org/what-is-russias-legal-justification-for-using-force-against-ukraine/>> accessed 29 March 2026.
 62. James A Green, Christian Henderson and Tom Ruys, 'Russia's Attack on Ukraine and the Jus ad Bellum' (2022) 9 *Journal on the Use of Force and International Law* 4 <<https://doi.org/10.1080/20531702.2022.2056803>> accessed 29 March 2026.
 63. *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)* (Provisional Measures) [2022] ICJ Rep 211 [59]–[60] <<https://www.icj-cij.org/case/182>> accessed 29 March 2026.
 64. UNGA Res ES-11/1 (2 March 2022) UN Doc A/RES/ES-11/1 <<https://digitallibrary.un.org/record/3965290>> accessed 29 March 2026 (adopted 141 in favour, 5 against, 35 abstentions).
 65. Bruno Simma, 'NATO, the UN and the Use of Force: Legal Aspects' (1999) 10 *European Journal of International Law* 1. On the UK's legal position, see Foreign Affairs Committee, 'Kosovo' (HC 1999–2000, 28) Memorandum by the Foreign and Commonwealth Office <<https://publications.parliament.uk/pa/cm199900/cmselect/cmfaff/28/0020802.htm>> accessed 29 March 2026 (articulating a doctrine of humanitarian intervention as 'an exceptional measure to prevent an overwhelming humanitarian catastrophe').
 66. Olivier Corten, *The Law Against War* (Hart 2010) 497–544 <<https://doi.org/10.5040/9781472565662>> accessed 29 March 2026. See also Letter dated 20 March 2003 from the Permanent Representative of the United States to the President of the Security Council, UN Doc S/2003/351 (invoking UNSC Resolutions 678 (1990) and 687 (1991) as authorisation for the use of force).
 67. UNSC Res 1973 (17 March 2011) UN Doc S/RES/1973 (authorising member states to take 'all necessary measures' to protect civilians in Libya). On the subsequent controversy over the scope of the mandate, see Christine Gray, *International Law and the Use of Force* (4th edn, OUP 2018) 37–44.
 68. Olivier Corten, *The Law Against War* (Hart, 2010) 497–544; Letter dated 20 March 2003 from the Permanent Representative of the United States to the President of the Security Council, UN Doc S/2003/351; Letter dated 20 March 2003 from the Permanent Representative of the United Kingdom, UN Doc S/2003/350 (both invoking UNSC Resolutions 678 (1990) and 687 (1991) as authorisation).
 69. UNSC Res 1973 (17 March 2011) UN Doc S/RES/1973 (authorising 'all necessary measures' to protect civilians). On the mandate's expansion into regime change, see Christine Gray, *International Law and the Use of Force* (4th edn, OUP 2018) 37–44.
 70. James A Green, Christian Henderson and Tom Ruys, 'Russia's Attack on Ukraine and the Jus ad Bellum' (2022) 9 *Journal on the Use of Force and International Law* 8–12.
 71. Martti Koskeniemi, *From Apology to Utopia: The Structure of International Legal Argument* (CUP 2005) 58–70.
 72. Koskeniemi (n 27) 17–18.
 73. Panke and Petersohn (n 59) 730–733 (arguing that norm erosion accelerates when competing interpretations are advanced by multiple powerful actors rather than a single outlier); Finnemore and Sikkink (n 54) 902–904 (observing that norms are most vulnerable when the behaviour of norm-violators can be framed as consistent with the norm itself, because this prevents the clear 'naming and shaming' that sustains compliance).
 74. Michael N Schmitt (ed), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (CUP 2017) Rules 69–71, pp 329–354; Marco Roscini, *Cyber Operations and the Use of Force in International Law* (OUP 2014) 43–74.
 75. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14 [191]–[195]; Tallinn Manual 2.0 (n 1) Rule 71, commentary [6]–[13], adopting a 'scale and effects' analysis, under which a cyber operation constitutes a use of force when its consequences are analogous to those of a kinetic operation that would qualify as such.
 76. See the NotPetya attack (2017), attributed to Russia's GRU, which caused an estimated USD 10 billion in global economic damage without producing kinetic destruction; The White House, 'Statement from the Press Secretary' (15 February 2018) (attributing NotPetya to the Russian military and describing it as 'the most destructive and costly cyber-attack in history') <<https://trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-25/>> accessed 29 March 2026; UK Foreign Office, 'Foreign Office Minister Condemns Russia for NotPetya Attacks' (15 February 2018) <<https://www.gov.uk/government/news/foreign-office-minister-condemns-russia-for-notpetya-attacks>> accessed 29 March 2026; Andy Greenberg, 'The Untold Story of NotPetya, the Most Devastating Cyberattack in History' (Wired, 22 August 2018) <<https://www.wired.com/story/notpetya-cyberattack-ukraine-russia-code-crashed-the-world/>> accessed 29 March 2026.
 77. Andy Greenberg, 'The Untold Story of NotPetya, the Most Devastating Cyberattack in History' (Wired, 22 August 2018) <<https://www.wired.com/story/notpetya-cyberattack-ukraine-russia-code-crashed-the-world/>> accessed 29 March 2026.

78. Michael N Schmitt, 'Grey Zones in the International Law of Cyberspace' (2017) 42 *Yale Journal of International Law Online* 1, 4–8 (analysing why state practice has consistently declined to characterise major cyber operations as armed attacks or uses of force, notwithstanding their scale and effects).
79. The White House, 'Statement from the Press Secretary' (15 February 2018) <<https://trumpwhitehouse.archives.gov/briefings-statements/statement-press-secretary-25/>> accessed 29 March 2026 (attributing NotPetya to the Russian military); UK Foreign Office, 'Foreign Office Minister Condemns Russia for NotPetya Attacks' (15 February 2018) <<https://www.gov.uk/government/news/foreign-office-minister-condemns-russia-for-notpetya-attacks>> accessed 29 March 2026. The coordinated attribution by the US, UK, Canada, Australia, and several EU member states was accompanied by limited sanctions but no invocation of the *jus ad bellum* framework.
80. Marco Roscini, *Cyber Operations and the Use of Force in International Law* (OUP 2014) 43–74; Michael N Schmitt (ed), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (CUP 2017) Rule 69, commentary [1]–[9] <<https://doi.org/10.1017/9781316822524>> accessed 29 March 2026 (acknowledging that the effects-based threshold leaves substantial operations in a doctrinal grey zone where classification depends on state discretion rather than objective criteria).
81. Kim Zetter, *Countdown to Zero Day: Stuxnet and the Launch of the World's First Digital Weapon* (Crown 2014); David E Sanger, 'Obama Order Sped Up Wave of Cyberattacks Against Iran' (*New York Times*, 1 June 2012) <<https://www.nytimes.com/2012/06/01/world/middleeast/obama-ordered-wave-of-cyberattacks-against-iran.html>> accessed 29 March 2026.
82. Institute for Science and International Security, 'Stuxnet Malware and Natanz: Update of ISIS December 22, 2010 Report' (15 February 2011) <<https://isis-online.org/isis-reports/detail/stuxnet-malware-and-natanz-update-of-isis-december-22-2010-reportsupa-markup>> accessed 29 March 2026.
83. Michael N Schmitt (ed), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (CUP 2017) Rule 69, commentary [1]–[9], Rule 71 commentary [6]–[13] <<https://doi.org/10.1017/9781316822524>> accessed 29 March 2026.
84. Marco Roscini, *Cyber Operations and the Use of Force in International Law* (OUP 2014) 55–62 (analysing Iran's non-response as evidence that *jus ad bellum* characterisation in the cyber domain is driven by political interest rather than doctrinal assessment).
85. International Committee of the Red Cross, 'Autonomous Weapon Systems: Technical, Military, Legal and Humanitarian Aspects' (Expert Meeting, Geneva, 26–28 March 2014); UNGA, 'Lethal Autonomous Weapons Systems', Report of the Secretary-General, UN Doc A/78/324 (2023).
86. Marco Roscini, 'Assessing the Role of AI in Determining the Necessity and Proportionality of the Exercise of Self-Defense against an Armed Attack' (2025) 107 *International Law Studies* 76.
87. Yuval Abraham, '"Lavender": The AI Machine Directing Israel's Bombing Spree in Gaza' (+972 Magazine, 3 April 2024) <'Lavender': The AI machine directing Israel's bombing spree in Gaza> accessed 29 March 2026 (reporting that the Israeli military's AI-assisted system generated targeting recommendations with an average human review time of approximately 20 seconds per target).
88. On the Aegis Combat System's autonomous engagement capability, see US Department of Defense, 'Autonomy in Weapon Systems' (Directive 3000.09, updated 25 January 2023); Paul Scharre, *Army of None: Autonomous Weapons and the Future of War* (WW Norton 2018) 9–31.
89. See ICRC, 'Position on Autonomous Weapon Systems' (12 May 2021) <ICRC position on autonomous weapon systems | ICRC> accessed 29 March 2026; Convention on Certain Conventional Weapons, Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons Systems, Reports of Sessions (2017–2023).
90. Koskeniemi's framework suggests that law requiring deliberation cannot survive the elimination of the deliberative actor. The indeterminacy is no longer interpretive; it is temporal. See Martti Koskeniemi, *From Apology to Utopia: The Structure of International Legal Argument* (CUP 2005) 58–70.
91. Marco Roscini, 'Assessing the Role of AI in Determining the Necessity and Proportionality of the Exercise of Self-Defense against an Armed Attack' (2025) 107 *International Law Studies* 76, 89–95. See also Dustin A Lewis, Gabriella Blum and Naz K Modirzadeh, *War-Algorithm Accountability* (Research Briefing, Harvard Law School Program on International Law and Armed Conflict, August 2016) 28–36.
92. International Committee of the Red Cross, 'Autonomous Weapon Systems: Technical, Military, Legal and Humanitarian Aspects' (Expert Meeting, Geneva, 26–28 March 2014) 65–67; UNGA, 'Lethal Autonomous Weapons Systems', Report of the Secretary-General, UN Doc A/78/324 (2023) paras 31–38.
93. The analogy is imperfect because domestic due process rights attach to individuals, whereas *jus ad bellum* requirements attach to states. The structural point nonetheless holds: both regimes impose procedural expectations that are not satisfied merely by the correctness of the outcome. On the procedural dimensions of *jus ad bellum* compliance more broadly, see Jutta Brunnée and Stephen J. Toope, *Legitimacy and Legality in International Law: An Interactional Account* (CUP 2010) 265–290.
94. *Aerial Incident of 3 July 1988 (Islamic Republic of Iran v United States of America)*, discontinued by Order of 22 February 1996 [1996] ICJ Rep 9. For the factual record, see US Department of Defense, 'Formal Investigation into the Circumstances Surrounding the Downing of Iran Air Flight 655 on 3 July 1988' (Investigation Report, 28 July 1988) (the Fogarty Report).
95. Paul Scharre, *Army of None: Autonomous Weapons and the Future of War* (WW Norton 2018) 231–258. The Fogarty Report concluded that the crew's situational awareness degraded under combat stress in ways that the automated tracking system neither detected nor compensated for; the operators trusted the system's classification even as it diverged from available radar data.
96. Judith Gardam, *Necessity, Proportionality and the Use of Force by States* (CUP 2004) 156–162.
97. Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, art 51(5)(b).

98. *Oil Platforms (Islamic Republic of Iran v United States of America)* (Merits) [2003] ICJ Rep 161 [43], [76]. See also Yoram Dinstein, *War, Aggression and Self-Defence* (6th edn, CUP 2017) 262–268.
99. RY Jennings, 'The Caroline and McLeod Cases' (1938) 32 *American Journal of International Law* 82, 89.
100. Yoram Dinstein, *War, Aggression and Self-Defence* (6th edn, CUP 2017) 203–210; Christine Gray, *International Law and the Use of Force* (4th edn, OUP 2018) 160–175.
101. Letter dated 8 January 2020 from the Permanent Representative of the United States to the President of the Security Council, UN Doc S/2020/20 (invoking self-defence under Article 51). On the contested imminence claim, see Agnes Callamard, 'The Targeted Killing of General Soleimani: Its Lawfulness and Why It Matters' (Just Security 8 January 20220 (concluding that the evidence disclosed did not satisfy the imminence requirement under international law).
102. Andy Greenberg, *Sandworm: A New Era of Cyberwar and the Hunt for the Kremlin's Most Dangerous Hackers* (Doubleday 2019) 55–78 (documenting the 2015 and 2016 Russian GRU cyberattacks on Ukraine's electrical grid, which caused widespread blackouts affecting approximately 230,000 people). Michael N Schmitt (ed), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (CUP 2017) Rule 73, commentary [2]–[4] <<https://doi.org/10.1017/9781316822524>> accessed 29 March 2026 (noting that the majority of experts accepted the extension of anticipatory self-defence to cyber operations where an armed attack is imminent, while acknowledging disagreement on the threshold).
103. The White House, *The National Security Strategy of the United States of America* (September 2002) 15 (asserting that the US would 'act against such emerging threats before they are fully formed'). On its rejection, see Olivier Corten, *The Law Against War* (Hart 2010) 406–441; Christine Gray (n 100) 230–240.
104. Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change' (1998) 52 *International Organization* 887, 900–905; Diana Panke and Ulrich Petersohn, 'Why International Norms Disappear Sometimes' (2012) 18 *European Journal of International Relations* 719, 733–735.
105. Between 2011 and 2024, Russia cast sixteen vetoes on Syria-related resolutions, shielding the Assad regime from collective enforcement action throughout a conflict that produced over 500,000 deaths and displaced 13 million people.
106. UNSC Draft Resolution S/18428 (28 October 1986), vetoed by the United States, UN Doc S/PV.2704 (calling for compliance with the ICJ judgment in *Nicaragua v United States*). On Gaza, see UNSC Draft Resolution S/2023/970 (18 October 2023), vetoed by the United States; UNSC Draft Resolution S/2024/173 (20 February 2024), vetoed by the United States.
107. Martti Koskeniemi, *From Apology to Utopia: The Structure of International Legal Argument* (CUP 2005) 58–70.
108. Statute of the International Court of Justice, art 36(2) (the 'Optional Clause'). As of 2025, only 73 of 193 UN member states have accepted compulsory jurisdiction.
109. The United States withdrew its acceptance of compulsory jurisdiction on 7 October 1985, effective 7 April 1986, in direct response to the *Nicaragua* proceedings. See US Department of State, 'US Withdrawal from the Proceedings Initiated by Nicaragua in the International Court of Justice' (1985) 24 ILM 246. Russia (and its predecessor the Soviet Union) has never filed a declaration under the Optional Clause.
110. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14; UNSC Draft Resolution S/18428 (28 October 1986), vetoed by the United States, UN Doc S/PV.2704. *Armed Activities on the Territory of the Congo (DRC v Uganda)* (Merits) [2005] ICJ Rep 168; (Reparations) [2022] ICJ Rep 13 <<https://www.icj-cij.org/case/116>> accessed 29 March 2026 (the Court fixed the amount of reparation at USD 325 million, seventeen years after the merits judgment).
111. *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)* (Provisional Measures) [2022] ICJ Rep 211 <<https://www.icj-cij.org/case/182>> accessed 29 March 2026.
112. Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change' (1998) 52 *International Organization* 900–905; Diana Panke and Ulrich Petersohn, 'Why International Norms Disappear Sometimes' (2012) 18 *European Journal of International Relations* 719, 733–735.
113. UNGA Res ES-11/1 (2 March 2022) UN Doc A/RES/ES-11/1 <<https://digitallibrary.un.org/record/3965290>> accessed 29 March 2026.
114. Martti Koskeniemi, *From Apology to Utopia: The Structure of International Legal Argument* (CUP 2005) 58–70.
115. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits) [1986] ICJ Rep 14 [176]–[195]. On the law-clarifying function of international adjudication independent of compliance, see Yuval Shany, 'Assessing the Effectiveness of International Courts: A Goal-Based Approach' (2012) 106 *AJIL* 225, 253–258.
116. *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)* (Provisional Measures) [2022] ICJ Rep 211 [59]–[60] <<https://www.icj-cij.org/case/182>> accessed 29 March 2026. The Court's jurisdiction rested solely on the compromissory clause in art IX of the Genocide Convention, which does not extend to the lawfulness of the resort to force as such.
117. On reputation as a mechanism of compliance in the absence of coercive enforcement, see Andrew T Guzman, *How International Law Works: A Rational Choice Theory* (OUP 2008) 33–48.
118. Charter of the United Nations, art 108 (requiring ratification by two-thirds of UN members, including all P5 members). The P5 veto over Charter amendment is the structural reason why the proposals here are framed as institutional innovations within the existing framework.
119. UNGA Res 377(V) (3 November 1950) UN Doc A/RES/377(V) ('Uniting for Peace') <<https://digitallibrary.un.org/record/210079>> accessed 29 March 2026. UNGA Res 377(V) (3 November 1950) UN Doc A/RES/377(V) ('Uniting for Peace'). The resolution was invoked to convene the eleventh emergency special session on Ukraine in February 2022, but the resulting resolutions carried no binding force.
120. The proposal would formalise and extend the Uniting for Peace mechanism by empowering the General Assembly to take enforcement decisions, not merely recommendations, where a two-thirds supermajority

- determines that a *prima facie* violation of Article 2(4) has occurred and the Security Council has been prevented from acting by the veto.
121. Statute of the International Court of Justice, art 36(1)–(2).
 122. *ibid* arts 65–68; Shabtai Rosenne, *The Law and Practice of the International Court, 1920–2005* (4th edn, Martinus Nijhoff 2006) vol III, 1652–1660.
 123. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136 [46]–[50]
 124. *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226.
 125. Eric A Posner and Miguel FP de Figueiredo, 'Is the International Court of Justice Biased?' (2005) 34 *Journal of Legal Studies* 599 (finding statistical evidence that judges favour their home states and states at similar levels of development, while noting the limits of the data).
 126. *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226 [97]; cf *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v United States of America) (Merits) [1986] ICJ Rep 14, a standing counter-example of the Court ruling against a superpower.
 127. The regional groups are the African Group, the Asia-Pacific Group, the Eastern European Group, the Latin American and Caribbean Group, and the Western European and Others Group. Cross-regional thresholds are familiar from the Assembly's practice of equitable geographical distribution, including under art 23(1) of the UN Charter.
 128. UNGA Res ES-11/1 (2 March 2022) UN Doc A/RES/ES-11/1 (adopted 141 in favour, 5 against, 35 abstentions, a near-unprecedented majority that produced no enforceable consequence).
 129. On the politicisation of international commissions of inquiry and the variability of their methods, see Catherine Harwood, *The Roles and Functions of Atrocity-Related United Nations Commissions of Inquiry in the International Legal Order: Navigating between Principle and Pragmatism* (Brill Nijhoff 2019); Larissa van den Herik, 'An Inquiry into the Role of Commissions of Inquiry in International Law: Navigating the Tensions between Fact-Finding and Application of International Law' (2014) 13 *Chinese Journal of International Law* 507, 518–524.
 130. A standing roster appointed by the President of the Court would draw on the model used for the formation of chambers under art 26 of the Statute of the International Court of Justice, insulating panel composition from case-specific political pressure.
 131. The right of the affected state to comment before any adverse determination reflects the *audi alteram partem* principle, recognised as a general principle of law. See Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (CUP 1953, reprinted 2006) 290–298.
 132. Francis M Deng and others, *Sovereignty as Responsibility: Conflict Management in Africa* (Brookings Institution Press 1996); International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (International Development Research Centre 2001) paras 2.14–2.15.
 133. UNGA Res 60/1 (24 October 2005) UN Doc A/RES/60/1 paras 138–139 (confining the responsibility to protect to a Security Council response and declining to endorse any unilateral right of intervention).
 134. Anne Orford, *International Authority and the Responsibility to Protect* (CUP 2011) 1–41 (tracing the genealogy of the concept and its contested reception).
 135. Dire Tladi, 'The Nonconsenting Innocent State: The Problem with Bethlehem's Principle 12' (2013) 107(3) *AJIL* 570, 574–575. See also Mary Ellen O'Connell, 'Dangerous Departures' (2013) 107 *AJIL* 380; Elizabeth Wilmschurst and Michael Wood, 'Self-Defense Against Nonstate Actors: Reflections on the "Bethlehem Principles"' (2013) 107 *AJIL* 390; Mahmoud Hmoud, 'Are New Principles Really Needed?' (2013) 107 *AJIL* 576.
 136. Olivier Corten, 'The "Unwilling or Unable" Test: Has It Been, and Could It Be, Accepted?' (2016) 29 *Leiden Journal of International Law* 777, 785–793 (documenting rejection of the doctrine by a substantial number of states, including Russia, China, and members of the Non-Aligned Movement); Erika de Wet, 'The Invocation of the Right to Self-Defence in Response to Armed Attacks Conducted by Armed Groups: Implications for Attribution' (2019) 32 *Leiden Journal of International Law* 91.
 137. Letter dated 23 September 2014 from the Permanent Representative of the United States, UN Doc S/2014/695; Letter dated 25 November 2014 from the Permanent Representative of the United Kingdom, UN Doc S/2014/851; Letter dated 31 March 2015 from the Permanent Mission of Canada, UN Doc S/2015/221; Letter dated 9 September 2015 from the Permanent Representative of Australia, UN Doc S/2015/693; Letter dated 8 September 2015 from the Permanent Representative of France, UN Doc S/2015/745.
 138. Ashley Deeks, '"Unwilling or Unable": Toward a Normative Framework for Extraterritorial Self-Defense' (2012) 52 *Virginia Journal of International Law* 483, 503–519.
 139. Charter of the United Nations, art 51; See Security Council Report, 'In Hindsight: The Increasing Use of Article 51 of the UN Charter and the Security Council' (October 2025).
 140. The US invoked collective self-defence with the 'unable or unwilling' formulation; the UK cited collective self-defence of Iraq without the phrase; France invoked individual self-defence; Canada and Australia adopted the 'unable or unwilling' test expressly. No institution has assessed the legality of any of these justifications.
 141. Charter of the United Nations, art 108 (amendments enter into force when adopted by a two-thirds vote of the General Assembly and ratified by two-thirds of UN members, including all permanent members of the Security Council). The same constraint governs amendments adopted through a review conference under art 109(2).
 142. UNGA Res 377(V) (3 November 1950) GAOR 5th Session Supp 20, 10. On its adoption notwithstanding Soviet opposition and its constitutional significance, see Christian Tomuschat, 'Uniting for Peace' (UN Audiovisual Library of International Law, 2008) <https://legal.un.org/avl/ha/ufp/ufp.html> accessed 29 March 2026; Dominik Zaum, 'The Security Council, the General Assembly, and War: The Uniting for Peace Resolution' in Vaughan Lowe, Adam Roberts, Jennifer Welsh and Dominik Zaum (eds), *The United Nations Security Council and War: The Evolution of Thought and Practice Since 1945* (OUP 2008) 154–171.
 143. UNGA Res 76/262 (26 April 2022) UN Doc A/RES/76/262 (requiring the President of the General Assembly to convene a formal meeting within ten working days of the casting of a veto by a permanent member, to debate the situation in respect of which the veto was exercised).
 144. Rebecca Barber, 'A Survey of the General Assembly's Competence in Matters of International Peace and

Security: In Law and Practice' (2020) 8 *Journal on the Use of Force and International Law* 115.

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146. Charter of the United Nations 1945, art 2(4).
147. Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change' (1998) 52 *International Organisation* 900–905; Diana Panke and Ulrich Petersohn, 'Why International Norms Disappear Sometimes' (2012) 18 *European Journal of International Relations* 719, 733–735.
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COMPETING INTERESTS

The author has no competing interests to declare.

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