

The Right of Self-Defense as an Exception to the Prohibition of War

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INTRODUCTORY PART

The object of this article is the discussion of the right of self-defense as an exception to the prohibition of war or illegal use of force in the light of contemporary international law. Traditional international law has accepted war as a normal function of sovereign States in the pursuit of their national objectives. Hence, war was legal as an institution, if the prerequisites for its legality were satisfied, and in particular war has to be formally declared. However, at the beginning of the twentieth century, there was developed a movement for the outlawry of war as a legal institution among States. With the close of the First World War, the right to make war was greatly restricted by the Covenant of the League of Nations.¹ This is an important step forward on the long road to eliminate war as a legal institution in international relations.

Although the provisions of the League of Nations did not completely forbid the resort to aggressive wars, they substantially limited such possibilities. As substitutes for war the Covenant of the League of Nations provides the three methods of the settlement of international disputes between States in order to avert war and preserve peace, namely: (1) mediation; (2) arbitration or judicial settlement of disputes between States by the Permanent Court of International Justice; and (3) inquiry by the appropriate organs of the League.² The further step in the prohibition of war as a legal institution in the international relations is the 1923 draft Treaty of Mutual Assistance, adopted by the League of Nations. One of its provisions provides that aggressive war is an international crime.³

This provision is an important step in the process of the complete prohibition of war and the recognition of war as an illegal institution in the relations between States. The 1924 Geneva Protocol imposed obligation upon the States parties thereto not to resort to war in any case and it also imposed upon them the obligation to recognize the compulsory jurisdiction of the Permanent Court of International Justice in the situations, in which the machinery of the League

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