

## The Concept of Anticipatory Self-Defense in International Law

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The institute of self-defense in international law implies the use of force by a state in order to respond to an armed attack towards the territorial integrity and political independence of that state. Generally, a state shall have *prima facie* evidence of aggression to resort to military force [5]. Self-defense is defined in Article 51 of the UN Charter as ‘the inherent right’ of states and is fully recognized as legal.

Over the last years the concept of anticipatory self-defense, which has developed from self-defense in general [1], appears to have become more popular, since it permits the use of military force in case of so-called ‘imminent attack’, i.e. just before the beginning of hostilities [2]. Nevertheless, the use of force in anticipatory self-defense shall correspond with the criteria of necessity and proportionality [4] and shall likewise be in compliance with international humanitarian law.

The article deals with efforts to define the wording of anticipatory self-defense and international legal instruments that may contribute into its definition and application, namely those of the United Nations. As the set of the criteria of anticipatory self-defense is also argued, the author tries to provide a possible structure of these criteria relying on the examples of the practice of the International Court of Justice in deciding over disputes concerning legality of anticipatory self-defense. The practice of the ICJ is considered as one of the few sources to determine the legal test for anticipatory self-defense.

The question of compatibility of the concept of anticipatory self-defense with the general principles of international law and with peremptory norms of *jus cogens* is not decided in a defined way at the moment [3]. The International Court of Justice while examining the present conception continues to be reluctant in deciding, whether it shall be recognized as possible and lawful [3].

Considering modern circumstances, states resort to this concept in increasing frequency with the purpose of protection of their national interests; thus bringing up the problem of its legality. The question of anticipatory self-defense in case of an ‘imminent’ nuclear attack is also considered as urgent and actual.

### Источники и литература

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- 5) UN GA Resolution 3314: Definition of Aggression, para. 2 (December 14, 1974), A/RES/29/3314.