

**Does anticipatory self-defence coexist with the  
*Charter of the United Nations 1945?***

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This thesis is presented for the degree of Doctor of Philosophy  
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I declare that this thesis is my own account of my own research and contains as its main content work which has not previously been submitted for a degree at any tertiary education institution

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## ABSTRACT

An important question of public international law unresolved by the existing scholarly debate is whether anticipatory self-defence coexists with the *Charter of the United Nations 1945*. The debated issue can be simply stated.

In 1945, Article 51 of the *Charter* recognised a state's inherent right of self-defence and protected this right against impairment by the treaty's operation. However, the article simultaneously preconditioned the exercise of this right on the occurrence of an 'armed attack'. Scholars remain divided as to whether a state may exercise this right after it has suffered such an attack, or whether a state may exercise this right at some time before such an attack. The debate has almost exclusively focussed on an interpretation of Article 51.

My thesis shifts the focus from Article 51. I have adopted an historical methodology to focus on the legal nature of the inherent right of self-defence and of the international customary law principles of immediacy and necessity (principles which historically have restricted the exercise of this right). My focus demonstrates how these elements of international law enabled Article 51 in 1945 to authorise a state to exercise its inherent right of self-defence against an imminent threat of armed force.

Absent from the existing scholarly debate (and from international law) is a definition of the legal commencement of an armed attack for the purpose of Article 51. Without this definition, the beginning of the very conduct to which the precondition in Article 51 relates remains illusory. This, in turn, continues the

uncertainty over the earliest point in time at which the inherent right of self-defence may be exercised under that article. Identifying this point in time is, in my opinion, the underlying legal question debated by scholars. The resolution of this question will consequently answer the question posed by my thesis.

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