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WAS THE PROHIBITION OF THE USE OF FORCE EVER OPERATIONALLY BINDING ON GREAT POWERS?

A PROIBIÇÃO DO USO DA FORÇA ALGUMA VEZ EXERCEU EFEITO VINCULANTE EFETIVO SOBRE AS GRANDES POTÊNCIAS?

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Abstract

This article asks not whether Article 2(4) of the UN Charter has been eroded, but whether it ever exercised meaningful restraint over the states with the greatest capacity to use armed force. The central thesis is not that the prohibition lacks legal force: it remains binding as treaty law, as customary international law, and arguably as a jus cogens norm. The thesis is more nuanced: that binding status has never translated into strong operational constraint, of the kind that would prevent a Great Power from using force in the absence of a genuine armed attack. Drawing on conflict data (UCDP/PRIO, Correlates of War MID, Military Intervention Project) and qualitative case studies of Security Council permanent members' behaviour from 1945 through Operation Epic Fury (February 2026), the article argues that the prohibition functions as an analytical filter, not a physical barrier. The central mechanism is the progressive expansion of formally narrow exceptions, namely self-defence under Article 51 and Security Council authorisation, by the most powerful actors themselves, without effective sanction. When exceptions expand to cover conduct indistinguishable from aggressive war, and no enforcement authority corrects the gap, the rule remains formally intact but generates legal uncertainty and fails to predict Great Power conduct. However, the swift legal condemnation of Operation Epic Fury demonstrates normative resilience. The article concludes that the system is structurally asymmetrical: the prohibition imposes rhetorical and diplomatic costs, but it has never stopped Great Powers from acting when their vital interests were at stake.

Keywords: use of force; Article 2(4); jus cogens; jus ad bellum; UN Charter; state practice; exception-expansion; Operation Epic Fury (2026); US intervention in

Venezuela (2026); Responsibility to Protect; nuclear deterrence; legal uncertainty.

Resumo

Este artigo questiona não se o Artigo 2(4) da Carta das Nações Unidas foi enfraquecido, mas se ele alguma vez exerceu uma restrição significativa sobre os Estados com maior capacidade de empregar a força armada. A tese central não é que a proibição careça de força jurídica: ela continua vinculante como norma convencional, como norma de direito internacional consuetudinário e, possivelmente, como uma norma de *jus cogens*. A tese é mais sutil: esse caráter vinculante jamais se traduziu em uma forte limitação operacional, do tipo capaz de impedir uma Grande Potência de recorrer à força na ausência de um ataque armado genuíno. Com base em dados sobre conflitos (UCDP/PRIO, Correlates of War MID e Military Intervention Project) e em estudos de caso qualitativos acerca do comportamento dos membros permanentes do Conselho de Segurança desde 1945 até a Operação *Epic Fury* (fevereiro de 2026), o artigo sustenta que a proibição funciona como um filtro analítico, e não como uma barreira efetiva. O mecanismo central consiste na expansão progressiva de exceções formalmente restritas — notadamente a legítima defesa prevista no Artigo 51 e a autorização do Conselho de Segurança — promovida pelos próprios atores mais poderosos, sem sanções eficazes. Quando as exceções se ampliam a ponto de abranger condutas indistinguíveis de uma guerra de agressão, e nenhuma autoridade de aplicação do direito corrige essa discrepância, a norma permanece formalmente intacta, mas passa a gerar incerteza jurídica e deixa de ser capaz de prever o comportamento das Grandes Potências. Contudo, a rápida condenação jurídica da Operação *Epic Fury* demonstra a resiliência normativa do sistema. O artigo conclui que o sistema é estruturalmente assimétrico: a proibição impõe custos retóricos e diplomáticos, mas jamais impediu que as Grandes Potências agissem quando seus interesses vitais estavam em jogo.

Palavras-chave: uso da força; Artigo 2(4); *jus cogens*; *jus ad bellum*; Carta das Nações Unidas; prática estatal; expansão das exceções; Operação *Epic Fury* (2026); intervenção dos Estados Unidos na Venezuela (2026); Responsabilidade de Proteger (*Responsibility to Protect*); dissuasão nuclear; incerteza jurídica.

1. INTRODUCTION

The prohibition of the threat or use of force in Article 2(4) of the United Nations Charter is widely described as the normative foundation of the post-1945 international legal order (HENKIN, 1979; CRAWFORD, 2019). It was designed to outlaw aggressive war, permitting force only in two narrowly defined situations: self-defence against an armed attack under Article 51, or action authorised by the Security Council under Chapter VII. The prohibition has been reaffirmed in the 1970 Friendly Relations Declaration (UNGA Resolution 2625) and the 1974 Definition of Aggression (UNGA Resolution 3314), and the International Court of Justice has repeatedly called it a cornerstone of contemporary international law (ICJ, 1986).

Yet this article presses a sharper question: has Article 2(4) ever meaningfully constrained the behaviour of the states that actually decide whether wars happen, namely the five permanent members of the Security Council (the P5) and their major allies? The argument advanced here is not that the prohibition lacks legal force. It is binding as treaty law, as customary international law, and arguably as a jus cogens norm (ILC, 2022; WEIL, 1983). The argument is more nuanced: that binding force has never translated into strong operational constraint over Great Powers, the kind that would prevent a P5 member from using force across borders in the absence of a genuine armed attack. The prohibition does impose weak constraint: rhetorical costs, diplomatic friction, coalition strains, and the need for legal justification. In this limited but meaningful sense, the norm acts as an analytical filter, not a physical barrier. Whether that weak constraint is sufficient to preserve the prohibition's legal and normative integrity is the central question.

This conclusion rests on a structural mechanism that runs through the entire analysis. Article 2(4) was drafted with formally narrow exceptions. The drafters intended that those exceptions would remain narrow, leaving a genuine prohibition of aggressive war. But the actors with the greatest capacity to use force, the P5, have systematically expanded each exception without effective sanction. Anticipatory self-defence replaced the requirement of an actual armed attack. The "unwilling or unable" doctrine extended self-defence to any territory hosting a non-state actor (RUYS, 2010; TAMS, 2009). Humanitarian intervention and, later, the Responsibility to Protect claimed unwritten exceptions with no Charter basis. By 2026, at the time of Operation Epic Fury, the exception categories had become so elastic that they could accommodate virtually any use of force a Great Power wished to undertake. When exception categories expand to cover conduct indistinguishable from aggressive war, the rule no longer reliably predicts behaviour; instead it generates

legal uncertainty (FULLER, 1964). Yet the convergent condemnation of Operation Epic Fury by the international legal community (IBA; IBAHRI, 2026; DANNENBAUM et al., 2026) shows that the norm is not dead, it is contested, stretched, but still invoked as a benchmark.

A defender of the orthodox view might rely on the ICJ's reasoning in Nicaragua (1986, para. 186): when a state breaches a norm but appeals to exceptions within the rule, that conduct confirms rather than weakens the norm's customary status. Stretching the self-defence exception, however creatively, acknowledges legal accountability. True operational voidness would manifest as outright norm disregard, for example, a state declaring a right to conquer territory without any legal justification, which has not happened. No P5 member has ever argued that Article 2(4) is legally irrelevant. Even Russia, in its 2022 invasion of Ukraine, constructed elaborate legal fictions. Indeed, as the Venezuela episode of January 2026 demonstrates (discussed in Section 4.5 below), the United States went further still, denying that Article 2(4) applied at all rather than invoking an exception. That represents a qualitatively more destabilising form of norm-evasion than creative exception-stretching. This article accepts the Nicaragua logic as a correct statement of the law, while insisting that the claim advanced here is not that the norm is dead but that its operational force is asymmetrical and its exceptions have been inflated to the point of generating legal uncertainty.

The article proceeds in seven parts. Part 2 deconstructs the theoretical foundations of Article 2(4) as jus cogens, including a direct engagement with the Nicaragua logic and constructivist counterarguments. Part 3 presents a careful analysis of the statistical record of uses of force from 1945 to 2024, with explicit caveats about what the data can and cannot prove. Part 4 examines qualitative case studies of P5 conduct, from the Cold War through three distinct contemporary episodes: the Venezuela intervention (January 2026), US strikes on Iranian nuclear facilities (June 2025), and the joint US-Israeli Operation Epic Fury (February 2026). Parts 5 and 6 address nuclear deterrence and the Responsibility to Protect, respectively. Part 7 concludes.

2. THEORETICAL FOUNDATIONS: JUS COGENS AND THE ASYMMETRY OF CONSTRAINT

2.1. The Binding Force of Article 2(4) Is Not in Doubt

Before advancing any critical argument, it is essential to state clearly what is not being contested. Article 2(4) is legally binding on all UN members as a treaty obligation. It has also crystallised into customary international law (BROWNLIE, 1963; DINSTEIN, 2017). The International Law Commission's 2022 Draft Conclusions on peremptory norms identify the prohibition of aggression as a jus cogens norm in the Annex to the Draft Conclusions, to which Conclusion 23 cross-refers (ILC, 2022, Conclusion 23 and Annex).

The *ICJ in Nicaragua v. United States* (1986, para. 190) affirmed that the prohibition of the use of force is a fundamental or cardinal principle of customary international law, while expressly noting that both the ILC and Nicaragua itself had invoked its jus cogens character. The Court's own language in 1986 stopped short of formally designating the prohibition as jus cogens in its own institutional voice. That formal characterisation was consolidated through subsequent ILC work, culminating in the 2022 Draft Conclusions (ILC, 2022, Conclusion 23). This article does not challenge any of these propositions.

However, the legal validity of a norm is analytically distinct from its empirical effectiveness in constraining the behaviour of powerful actors. As WEIL (1983) observed in a seminal critique of "relative normativity," the proliferation of jus cogens risks creating a gap between formal legal hierarchy and actual state practice. The prohibition of torture is also jus cogens, yet it is regularly violated by states around the world. No international lawyer would argue that torture has ceased because it is illegal. The same logic applies to the use of force. A norm can be perfectly valid as law while being systematically disregarded by those with the capacity to violate it without facing consequences, but only if we define "constraint" as physical prevention. If we define "constraint" more broadly to include rhetorical and procedural hurdles, then even Great Powers are constrained, though weakly.

A clarification of the "strong" versus "weak" distinction is warranted before proceeding. It might be objected that the strong-constraint standard applied here, namely a constraint that would prevent a P5 member from using force in the ab-

sence of a genuine armed attack, sets a bar that no legal rule in any system could meet: domestic prohibitions on murder do not physically prevent homicides. The answer is that "strong" and "weak" are calibrated descriptors along a spectrum, not a metaphysical binary. Strong constraint, as used here, describes a condition in which a legal rule, backed by credible enforcement mechanisms, reliably deters the regulated conduct among the most powerful potential violators. Domestic murder prohibitions operate as strong constraints in exactly this sense: they do not merely impose rhetorical costs, they generate systematic deterrence through enforcement. Article 2(4) structurally lacks any effective enforcement mechanism capable of acting against its principal potential violators. That institutional gap, not the abstract difficulty of rules preventing physical acts, drives the asymmetry thesis.

2.2. The Structural Veto Problem

The Charter's enforcement mechanism is the Security Council, where each P5 member holds a veto under Article 27(3). No enforcement action can be taken against a P5 member or its allies without that member's consent. As GLENNON (2001) observed, this is not an incidental flaw but a deliberate design feature: the Great Powers designed the system to preserve their own freedom of action. This article builds on that structural insight while departing from Glennon's more categorical conclusion that international law in this domain is effectively inert: the 2026 condemnations of Operation Epic Fury and the Venezuela intervention demonstrate that the prohibition continues to impose real rhetorical and diplomatic costs, and the concept of exception-dissolution, developed in Section 4.6, identifies a structural escalation that a static diagnosis of Great Power exemptionalism could not have anticipated. ANGHIE (2004, p. 273-309) has argued from a Third World Approaches to International Law perspective that the prohibition was never intended as a genuinely universal constraint; it was intended primarily to govern relations among and with weaker states.

Yet even this structural freedom is not absolute. The veto cannot prevent the General Assembly from condemning a use of force under the Uniting for Peace procedure (UNGA Resolution 377), nor can it stop the ICJ from issuing a judgment, though the Court's jurisdiction depends on prior consent. Nor can it prevent the formation of adverse public opinion or strain on alliances. The 2026 Operation Epic Fury, for example, triggered a formal statement of illegality from the International Bar Association Human Rights Institute (IBA; IBAHRI, 2026). The Venezuela intervention of January 2026 produced a similar response: a Security Council emer-

gency session requested by Venezuela (S/2026/5); and the formal objection of the Non-Aligned Movement (UN SECURITY COUNCIL, Press Release 2026). Thus, diplomatic costs exist, even if they stop short of material sanctions.

2.3. The Nicaragua Logic and Its Implications

In *Nicaragua v. United States* (1986, para. 186), the ICJ held that when a state violates a rule but defends its conduct by appealing to exceptions contained within the rule itself, that violation should be treated as a breach confirming the rule's existence, not as evidence that the rule has changed. Otherwise, if every illegal intervention were treated as creating new law, the prohibition would disappear overnight. The Nicaragua logic protects the norm from being eroded by opportunistic state practice.

Crucially, stretching an exception, however far, still acknowledges the rule's authority. A state that claims "anticipatory self-defence" implicitly accepts that force requires a legal justification. A state that invokes the "unwilling or unable" doctrine accepts that self-defence is normally territorially limited. Three analytical steps must be distinguished to assess the limits of this logic. First, the Nicaragua mechanism of exception-confirmation operates effectively so long as the invoked exception remains recognisably within the framework of Article 51. Second, however, when exception categories are expanded to such an implausible extent, without effective sanction, that virtually any use of force can be retrofitted into one of them, the rule ceases to perform its core function of providing legal certainty (FULLER, 1964). The rule remains formally valid but operationally indeterminate. Third, the Venezuela episode of January 2026 introduces a still more radical form of norm-evasion: a P5 member that does not invoke an exception but instead denies that Article 2(4) applies at all. At that point, the Nicaragua logic of "exception-confirmation" loses its normative purchase altogether, because the state in question is not acknowledging the rule's authority at all.

2.4. Constructivist Counterarguments: The Norm Is Resilient, Not Dead

The convergent legal condemnation of Operation Epic Fury provides strong evidence of normative resilience. Within days of the strikes, the International Bar Association and its Human Rights Institute issued a statement concluding that the operation violated the UN Charter (IBA; IBAHRI, 2026). Over 100 international

law experts signed an open letter describing the strikes as a clear violation, published approximately five weeks after the initial strikes (DANNENBAUM et al., 2026). UN Secretary-General Guterres stated publicly that the airstrikes violated international law (AP; MAGID, 2026). A comparable, if geopolitically more divided, response accompanied the Venezuela intervention: WELLER (2026, 6 January) concluded that the US capture of Maduro had no justification in international law, and the Security Council debate saw the Non-Aligned Movement and much of the Global South characterise the operation as a violation of Article 2(4) (UN SECURITY COUNCIL, 2026).

Constructivists such as Brunnée and Toope (2010, p. 1-20) argue that legal discourse of this kind is itself a form of constraint. States cannot simply ignore it; they must respond. The United States and Israel, after Operation Epic Fury, formally invoked Article 51 before the Security Council (HOUSE OF COMMONS LIBRARY, 2026b, CBP-10521). They did not claim that Article 2(4) is obsolete; they argued that their conduct fell within an exception. That act of justification, however implausible, reinforces the norm's legitimacy. Notably, however, the United States chose a different strategy in Venezuela: the "law enforcement operation" framing was designed to deny the applicability of Article 2(4) altogether, not to invoke an exception within it. This move represents a more radical departure from the Nicaragua-logic framework and suggests that, at least in certain contexts, the United States no longer feels compelled to engage in the justificatory ritual at all (see arguments in: WELLER, 2026).

The central claim of this article is accordingly narrower: that the prohibition has never operated as a strong constraint on Great Powers, the kind that would have prevented Operation Epic Fury from occurring in the first place. The norm is resilient in the sense that it shapes legal discourse and imposes diplomatic costs after the fact; it is not resilient in the sense of actually preventing the use of force. For most of the 188 non-P5 states, particularly those lacking the capacity and the veto insulation of P5 members, the norm has operated as a meaningful constraint for most of the post-Charter period. It should nevertheless be acknowledged that capacity constraints, regional deterrence, and economic interdependence account for a significant share of non-P5 non-use-of-force, and cannot be cleanly disentangled from the prohibition's independent legal effect. For the P5, it has always been a weak constraint. That structural asymmetry is the article's central empirical finding.

2.5. Legal Uncertainty as a Measure of Normative Strain

One of the core functions of a legal rule is to enable actors to predict the legal consequences of their actions (FULLER, 1964, p. 46-91). When the interpretation of a rule becomes so contested that prediction is impossible, the rule ceases to function as law in a meaningful sense, even if it remains formally valid. The inflation of Article 51 exceptions has reached exactly that point. Is anticipatory self-defence lawful? The Caroline standard requires necessity and proportionality including imminence (JENNINGS, 1938). Yet states have stretched the doctrine to preventive strikes against speculative nuclear threats, as the June 2025 Iran case illustrates. Is the "unwilling or unable" doctrine a valid extension of self-defence? The Global South largely rejects it (CORTEN, 2010). Is humanitarian intervention an exception? The Kosovo intervention was described as "illegal but legitimate" (INDEPENDENT INTERNATIONAL COMMISSION ON KOSOVO, 2000, p. 4), but no customary exception has crystallised. Does narco-terrorism by a foreign government qualify as an armed attack justifying self-defence? The January 2026 Venezuela intervention tested precisely this question, and the near-universal answer from international lawyers was in the negative (WELLER, 2026; CRANE, 2026). By 2026, a government lawyer could construct a colourable legal argument for virtually any use of force a state wished to undertake. That is not a sign of a healthy, predictable legal order; it is a sign of a norm under severe structural pressure.

3. THE EMPIRICAL RECORD: USES OF FORCE SINCE 1945

3.1. What the Data Shows (and What It Does Not Show)

Three major datasets are frequently cited in debates about the use of force: the Correlates of War Militarized Interstate Disputes dataset (MID5) (PALMER et al., 2022), the UCDP/PRIO Armed Conflict Data (DAVIES et al., 2025), and the Military Intervention Project (KUSHI; TOFT, 2023). These datasets show that interstate military coercion did not cease after 1945. Rather, its form changed: total wars of conquest declined, but militarised disputes, border clashes, naval incidents, air strikes, and interventions remained frequent throughout the Cold War and beyond.

A methodological caveat is essential here and must be stated with precision before any inferential use of these data. None of these datasets distinguishes lawful from unlawful uses of force. The Correlates of War MID dataset (the most recent update of which, MID5, covers 2011–2014 only; the cumulative project extends back to 1816) codes any threat, display, or use of military force, including low-level border skirmishes or naval boardings, as a "militarised interstate dispute"; it does not filter out actions authorised by the Security Council (for example, the 1950 Korean War and the 1991 Gulf War in the pre-2011 dataset versions, or the 2011 Libya intervention within the MID5 temporal window) or genuine exercises of individual or collective self-defence. Consequently, any baseline count of "Article 2(4) failures" derived from these data is structurally inflated. The datasets cannot, by design, directly measure compliance with the prohibition. What they can show is that coercive military action has remained common throughout the post-Charter period. If the prohibition were operating as a strong constraint on all states, one would expect a post-1945 decline across all categories of interstate force. That general decline is not observed. The decline is concentrated in certain types of force, specifically conquest and formal annexation. Alternative explanations, including nuclear deterrence and economic interdependence, account for those specific declines at least as well as the legal prohibition does. The quantitative data therefore support the article's argument as background evidence of the persistence of coercive state behaviour, but they cannot establish that any specific use of force violated Article 2(4). The case studies in Section 4 perform that function, relying on legal analysis, Security Council reactions, ICJ judgments where available, and scholarly consensus.

One should also mention here that BRAUMOELLER (2019, p. 1-30) conducted a rigorous statistical analysis of conflict data from 1816 through the period preceding publication and found that the so-called "long peace" after 1945 is not a statistically significant deviation from historical norms when controlling for systemic variables. That finding is consistent with the view that Article 2(4) did not produce a structural break in interstate conflict patterns in 1945, though it does not of itself establish that the legal prohibition had no independent effect on state behaviour.

One further methodological limitation bears explicit acknowledgment. The case studies in Section 4 are drawn exclusively from instances of apparent breach or contested legality. This selection is not arbitrary, targeting precisely those cases that stress-test the prohibition's operational force, but it cannot support inference about the proportion of potential P5 force-uses that the prohibition may have deterred. The "dog that did not bark", a P5 member that considered and then refrained from using force partly because of legal costs, is structurally invisible in this methodology.

The argument is therefore more modest than a causal claim: the selected cases establish that the prohibition has never been sufficient to prevent P5 force when vital interests were engaged; they do not exclude the possibility that the prohibition has been a contributing factor in P5 restraint on other occasions.

3.2. The Resurgence of State-Based Conflict (2010–2024)

Recent data from UCDP/PRIO show that 2024 recorded the highest number of state-based armed conflicts (61) since records began in 1946 (DAVIES et al., 2025). Battle-related deaths in state-based conflicts reached approximately 128,000 in 2024; total organised violence deaths, including non-state and one-sided violence, reached nearly 160,000 (DAVIES et al., 2025). The year 2022 was the most violent in the UCDP series since the 1994 Rwandan genocide, driven primarily by Russia's full-scale invasion of Ukraine. The Russian invasion of Ukraine (2022) and the Gaza war (2023–2024) are only the most visible instances of a broader resurgence in state-based armed conflict.

Table 1: State-Based Armed Conflicts and Battle-Related Deaths (Selected Years)

Year	Active Conflicts	Battle-Related Deaths (approx.)	Source
1946	38	c. 250,000	UCDP/PRIO Armed Conflict Dataset; PRIO Battle Deaths Dataset
2014	40	c. 104,000	UCDP Annual Report 2014; Rustad et al. (2025)
2022	56	c. 200,000+ (state-based); c. 237,000 (total organised violence)	Davies, Pettersson & Öberg (2023); UCDP
2023	59	c. 131,000	Davies et al. (2025)
2024	61	c. 128,000 (state-based); c. 160,000 (total organised violence)	Davies et al. (2025); Rustad et al. (2025)

Note: Figures are approximate. The UCDP/PRIO Armed Conflict Dataset covers 1946 onward. "State-based conflicts" are defined as contested incompatibilities involving at least one state party and generating at least 25 battle-related deaths in a calendar year. Battle-related deaths for 1946 and 2014 are drawn from the PRIO

Battle Deaths Dataset and UCDP annual reports as cited in Rustad et al. (2025). The 2022 figures are from Davies, Pettersson and Öberg (2023). The 2023 and 2024 figures are from Davies et al. (2025). None of these figures distinguishes lawful from unlawful uses of force; see Section 3.1 for methodological caveats.

On the orthodox view, this resurgence would be evidence of erosion of the prohibition. On the structural-asymmetry view advanced in this article, it reflects reversion to the baseline: the relative decline in inter-state violence during the 1990s was partly an artefact of unipolarity, not a permanent normative achievement (BRAUMOELLER, 2019; WOHLFORTH, 1999). The prohibition has continued to constrain the vast majority of states, but the P5 have always operated under a different set of practical conditions: bound by the same rules in formal terms, but possessed of the capacity to stretch exceptions without facing enforcement.

4. GREAT POWER PRACTICE: A PATTERN OF EXEMPTIONALISM

4.1. The Cold War: Spheres of Influence as *Lex Specialis*

The Soviet Union invaded Hungary (1956), Czechoslovakia (1968), and Afghanistan (1979). Each invasion was a flagrant violation of Article 2(4). The legal characterisation of these invasions as violations is based on the overwhelming consensus of international legal scholarship and the resolutions of the UN General Assembly (UNGA Emergency Special Session resolutions on Hungary [UNGA Resolution 1004 (ES-II)] and Afghanistan Primary Resolution: [UNGA Resolution ES-6/2]), there being no ICJ judgment on these cases. The USSR justified its actions under the "Brezhnev Doctrine," which claimed a right to intervene in any socialist state where socialism was threatened (OUIMET, 2003). No effective sanction followed. The Security Council was paralysed by the Soviet veto.

The United States intervened in the Dominican Republic (1965), Grenada (1983), and Panama (1989). Justifications ranged from "protection of nationals" (Grenada) to "restoration of democracy" and narco-trafficking enforcement (Panama). In the Nicaragua case, the ICJ found that the US had violated the prohibition on the use of force by mining Nicaraguan harbours and supporting the Contras (ICJ, 1986, paras. 227-238). The United States responded by withdrawing from the Court's compulsory jurisdiction.

4.2. The Unipolar Moment (1990–2010)

NATO's bombing of Yugoslavia in 1999, without Security Council authorisation, was described by the INDEPENDENT INTERNATIONAL COMMISSION ON KOSOVO as "illegal but legitimate" (2000, p. 4). Bruno SIMMA (1999, p.22) warned that crossing this "thin red line" could erode the entire normative framework. Antonio CASSESE (1999) suggested the intervention might catalyse a new customary exception for humanitarian intervention. But, no such exception has crystallised into customary law. The precedent was nonetheless later invoked by Russia in Georgia (2008) and Ukraine (2014, 2022), and by the US in Syria (2018).

The US-led invasion of Iraq in 2003, justified on the basis of a claimed "revived" Security Council authorisation deriving from resolutions adopted during the 1990–1991 Gulf War crisis, was rejected by most international lawyers (WILMSHURST, 2005).

4.3. The "Unwilling or Unable" Doctrine

Beginning with drone strikes in Pakistan, Yemen, and Somalia from approximately 2002 onward, the United States and its allies developed the doctrine that a state may use force in self-defence on another state's territory if that host state is "unwilling or unable" to suppress a non-state armed threat (BETHLEHEM, 2012; DEEKS, 2012). The doctrine was invoked to justify the killing of Qasem Soleimani in Iraq (January 2020) and airstrikes on Syria (April 2018). Critics, including CORTEN (2010) and RUYS (2010), argue that the doctrine lacks the widespread state practice and opinio juris required for a new customary rule. TAMS (2009, p. 359) has shown that the use of force against non-state actors on third-state territory remains deeply contested in international law. The doctrine is asserted primarily by Western states possessing global force-projection capabilities; its acceptance in the Global South is minimal. The absence of effective legal challenge from the Security Council does not transform the doctrine into binding law, but it does illustrate how powerful states can expand the exceptions to Article 2(4) without facing enforcement consequences.

4.4. Russia and Ukraine (2014–2022)

Russia justified the annexation of Crimea (2014) with a combination of arguments: "remedial secession" (drawing on Kosovo), "protection of nationals" (echoing

the Grenada and Panama justifications), and protection against genocide (invoking R2P language). GRANT (2015) demonstrated that Russia's legal arguments were deliberately constructed to expose Western inconsistencies, exploiting the gap between the doctrines previously asserted by NATO members and those they were now seeking to invoke against Russia. The full-scale invasion of Ukraine (24 February 2022) was condemned by the UN General Assembly with 141 votes in favour and 5 against (UNGA Emergency Special Session Resolution ES-11/1, 2 March 2022). The Security Council was paralysed by the Russian veto.

4.5. The Venezuela Intervention: January 2026 and the "Law Enforcement" Fiction

On 3 January 2026, the United States launched a military operation in Venezuela, codenamed Operation Absolute Resolve, resulting in the capture of President Nicolás Maduro and his wife Cilia Flores. According to the UK House of Commons Library briefing CBP-10452 (2026a), the operation involved Delta Force special operations troops with CIA intelligence support, supported by additional naval and air assets and US Drug Enforcement Administration personnel for the post-capture transfer to New York, and resulted in a large part of Maduro's security team and at least 32 deaths among Cuban security personnel, with further civilian casualties (UN SECURITY COUNCIL, 2026; HEATHCOTE, 2026; HOUSE OF COMMONS LIBRARY, 2026a, CBP-10452). Vice President Delcy Rodríguez was sworn in as acting president on 5 January 2026. The Trump administration publicly indicated that the United States would maintain a role in governing the country pending a democratic transition (CRANE, 2026).

The administration's legal framing was analytically notable. Rather than invoking Article 51 directly, Secretary of State Marco Rubio characterised Maduro as a fugitive of American justice and described the operation as a law enforcement action rather than a use of armed force. This framing contained two implicit legal arguments, each of which requires analytical separation. The first argument was that the operation did not qualify as "force" within the meaning of Article 2(4) because it was framed as law enforcement. The second argument was that even if Article 2(4) applied, Maduro's government, which had been designated a narco-terrorist enterprise through the formalisation of the Cartel de los Soles designation in November 2025, had committed acts constituting an armed attack against the United States, thereby activating the right of self-defence under Article 51 (HEATHCOTE, 2026; BONATO, 2026).

Both arguments were rejected by nearly all international lawyers who commented on the operation. On the first argument, Marc Weller, Director of the Chatham House Global Governance and Security Centre, concluded for Chatham House (2026, 6 January) that the operation constituted a use of armed force against the territorial integrity and political independence of Venezuela under Article 2(4), regardless of the label used. On the second argument, Weller's Chatham House analysis and legal analysis published by BONATO (2026) both concluded that drug trafficking, however extensive and damaging, does not constitute an armed attack in the technical sense required by Article 51. Only kinetic military means can trigger the right of individual or collective self-defence under international law. UN human rights experts made a comparable point with respect to earlier US military strikes on Venezuelan vessels in October 2025, explicitly condemning those strikes as violations of the law of the sea and rejecting the self-defence framing (OHCHR, 2025).

The Security Council meeting called by Venezuela (S/2026/5, 3 January 2026) illustrated the structural veto problem once more. The United States faced condemnation from Russia, China, the Non-Aligned Movement, and much of Latin America, but no enforcement action was possible. A joint statement issued by Brazil, Spain, Chile, Colombia, Mexico, and Uruguay on 4 January 2026 expressed profound concern and firm rejection of the military action (UN SECURITY COUNCIL, 2026). Venezuela's representative before the Security Council stated that if the capture of a Head of State, the bombing of a sovereign country, and the open threat of further armed action are tolerated, the message sent is that "the law is optional and that force is the true arbiter of international relations" (UN SECURITY COUNCIL, 2026). That statement reflects the asymmetry thesis from the perspective of a directly affected state. Most NATO members supported or tacitly accepted the operation; the UK did not condemn it; France and Germany issued calls for international law compliance without condemning the United States directly.

The Venezuela intervention is significant for the article's central argument in three respects. First, it introduced a novel exception-category: the claim that narco-terrorism by a foreign government constitutes an armed attack activating Article 51. If accepted in state practice, that doctrine would permit military intervention against any state whose government maintains ties to organised crime, a threshold so broadly worded that it would vastly exceed even the "unwilling or unable" doctrine in scope. Second, the outright denial that Article 2(4) applies at all is a qualitatively more radical departure from the Nicaragua logic than previous P5 arguments, which at least nominally operated within the Article 51 framework.

Third, Venezuela confirms the structural continuity of US exemptionalism: the 1989 Panama invasion, which also involved the seizure of a foreign leader on drug charges, is a direct precedent. Almost forty years separate Panama from Venezuela, but the structural pattern is identical. That continuity indicates that the asymmetry identified in this article is structural, not episodic.

4.6. The Iranian Episodes: June 2025 and February 2026

Two distinct uses of force against Iran by the United States and Israel occurred within a short period. The first, in June 2025, involved US strikes on Iranian nuclear facilities. The US justified these strikes as anticipatory self-defence, not in response to an actual or imminent armed attack, but to neutralise a potential future nuclear threat. This rationale fails to satisfy the Caroline standard as established in JENNINGS (1938) and consistently applied in state practice: the standard requires that the threatened attack be instant, overwhelming, and leaving no choice of means and no moment for deliberation. Bearing this in mind, it can be logically inferred that a speculative future nuclear threat does not meet this threshold. The UN Secretary-General also condemned the strikes as a dangerous escalation (UN SECRETARY-GENERAL, 2025).

The second and more consequential episode was Operation Epic Fury, launched on 28 February 2026. This was a joint Israeli-US offensive (Israel's parallel operation was codenamed Operation Roaring Lion) targeting Iranian military commanders, nuclear-related sites, ballistic missile infrastructure, air defences, and the senior political leadership; the opening strike killed Supreme Leader Ali Khamenei along with multiple senior IRGC commanders (HOUSE OF COMMONS LIBRARY, 2026b, CBP-10521). The operation was carried out without Security Council authorisation and without any publicly substantiated armed attack by Iran that would trigger the right of self-defence under Article 51 (IBA; IBAHRI, 2026). Iran responded with missile and drone attacks on Israel and US bases in Gulf states, resulting in substantial casualties in the first phase of hostilities.

The legal reaction was convergent and rapid. The International Bar Association and its Human Rights Institute concluded that the strikes violated the UN Charter, stating that legality of the use of force cannot be determined by the perceived character or legitimacy of the government targeted (IBA; IBAHRI, 2026). An open letter signed by over 100 international law experts, coordinated through Just Security and led by Dannenbaum, Hamilton, Haque, Hathaway and Rona (DANNENBAUM et al., 2026), described the strikes as a clear violation of the United

Nations Charter. UN Secretary-General Guterres stated publicly that the airstrikes violated international law (AP; MAGID, 2026).

Despite this legal consensus, the operation proceeded. The Security Council took no enforcement action. Canada and Australia expressed support for the operation; the UK Government did not condemn the initial strikes; France and Germany condemned only Iran's counter-strikes (HOUSE OF COMMONS LIBRARY, 2026b, CBP-10521).

YUVAL SHANY and AMICHAI COHEN (2026) wrote in Just Security of a "momentous gap" between the consensus among international lawyers regarding the operation's illegality and the response of diplomats and political leaders. They expressly raised the possibility that the Charter's use-of-force provisions were effectively dead, at least for the purposes of constraining the United States and its allies. Yet the very fact that this gap was perceived as significant, and that the legal condemnation was so swift and unified, itself demonstrates the norm's continued discursive power. The norm is not dead; it is under severe stress, but it still mobilises opposition and shapes the diplomatic aftermath of force.

Taken together, the Venezuela and Iranian episodes of early 2026 reveal an acceleration of exception-expansion into what might be termed exception-dissolution: a condition in which the exceptions have become so broad, and the Charter framework so openly circumvented by its most powerful actors, that the prohibition functions as little more than a post-hoc rhetorical resource. The term "exception-dissolution" is used here analytically to describe the endpoint of a spectrum from norm-compliance through exception-stretching to outright framework-denial; it describes a structural condition rather than a legal conclusion.

Two analytically distinct mechanisms contribute to this condition and must be kept separate. The first, illustrated by Operation Epic Fury, involves formally accepting the Article 2(4)/Article 51 framework while emptying the self-defence exception of its factual predicate: invoking it in the absence of an established armed attack. Using Fuller's (1964,) criteria of legality, this constitutes a failure of congruence between the stated rule and its administration; the norm ceases to correspond to the practice it is supposed to govern. The second mechanism, illustrated by the Venezuela "law enforcement" framing, involves withdrawing Article 2(4) from the transaction altogether by denying that armed force is occurring. This is a failure not of congruence but of promulgation: the state removes the rule from the field of application rather than distorting its content. Both pathologies produce legal uncertainty, but the second is structurally more radical. A state that denies the rule applies is not stretching an exception; it is exiting the normative framework

altogether, bypassing even the justificatory ritual that the Nicaragua logic requires.

Table 2: Major Uses of Force by P5 Members Assessed against Article 2(4) (Selected Cases)

Year	Conflict	Power(s)	Justification Offered	Legal Status [basis]	Exception Expanded / Denied
1956	Invasion of Hungary	Soviet Union	Invitation by Kádár government	Illegal [GA Emergency Special Session; S]	Intervention by invitation
1968	Invasion of Czechoslo-vakia	Soviet Union	Brezhnev Doctrine (socialist solidarity)	Illegal [S; GA condemnation]	Regional hegemonic prerogative
1983	Invasion of Grenada	United States	Protection of nationals; OECS request	Contested (UNGA Resolution 38/7: illegal) [GA; S]	Protection of nationals; regional organisation request
1999	Bombing of Yugoslavia	NATO (US/UK/ FR)	Humanitarian intervention	Illegal but legitimate (Independent Commission on Kosovo, 2000) [S; no ICJ judgment]	Humani tarian intervention (unwritten exception)
2003	Invasion of Iraq	US, UK	Revived UNSC authorisation (Res. 678/687)	Illegal [S majority; UN Secretary-General statement (2004)]	Implied/ revived UNSC au-thorisation
2014	Annexation of Crimea	Russia	Remedial secession; protection of nationals	Illegal [UNGA Res. 68/262; S majority; ICJ pending proceedings]	Remedial secession; R2P language misappro-priation

Year	Conflict	Power(s)	Justification Offered	Legal Status [basis]	Exception Expanded / Denied
2022	Full-scale invasion of Ukraine	Russia	Collective self-defence (Art. 51); genocide prevention	Illegal [UNGA ES-11/1: 141-5; ICJ Provisional Measures, 16 March 2022; S]	Fabricated armed attack; collective self-defence
2025	US strikes on Iran (nuclear sites)	United States	Anticipatory self-defence (Caroline standard)	Highly contested (UN Secretary-General condemnation; S majority view: unlawful) [A; S]	Preventive (not anticipatory) force; pre-emption of speculative threat
Jan. 2026	Intervention in Venezuela	United States	Law enforcement; narco-terrorism as armed attack	Illegal [Weller 2026; BONATO 2026; S majority view; Non-Aligned Movement condemnation] [A; S; SC debate]	Denial that Art. 2(4) applies; narco-terrorism doctrine
Feb. 2026	Operation Epic Fury	US, Israel	Pre-emptive self-defence (no prior armed attack)	Illegal [IBA/IBAHRI 2026; Dannenbaum et al. 2026; UN Secretary-General statement; 100+ experts] [A; S majority]	Pre-emptive force without armed attack; exception-dissolution

Methodological Note (Table 2): This table provides a synthetic overview of selected cases based on the sources cited in Section 4 and the references listed at the end of this article. The legal classifications are not the author's unilateral determinations; each is grounded in one or more of the following bases, indicated in brackets: (J) formal finding by an international court; (GA) UN General Assembly resolution; (SC) Security Council document or debate; (S) dominant view in peer-reviewed international legal scholarship; (A) author's own legal assessment consistent with the prevailing scholarly position. No case in this table has been finally adjudicated by an international court as of the date of writing, except for Nicaragua (1986) and the ICJ provisional measures in Ukraine v. Russia (2022).

5. NUCLEAR DETERRENCE: THE RIVAL EXPLANATION

The most important rival explanation for the absence of direct Great Power war since 1945 is nuclear deterrence (WALTZ, 1990). The mutual vulnerability created by nuclear arsenals makes conventional war between nuclear powers strategically irrational, regardless of what legal texts prescribe. The ICJ's advisory opinion on Legality of the Threat or Use of Nuclear Weapons (1996, para. 105(2)(E)) implicitly acknowledged this structural reality when it declined to determine whether nuclear use would be unlawful in extreme circumstances of self-defence. This non-liquet (formal judicial inconclusiveness) on the most fundamental use-of-force question reveals the limits of legal analysis in the face of structural power realities.

If nuclear deterrence, not Article 2(4), explains the absence of direct P5-on-P5 war, then the headline statistic most often offered in defence of the prohibition's effectiveness is not evidence attributable to the legal rule. Moreover, nuclear deterrence is itself built on the threat of force, which Article 2(4) also prohibits. It is true that no nuclear-armed P5 state has accepted that deterrence violates the Charter; the dominant view among nuclear-armed states and within NATO doctrine treats deterrence as lawful or extra-Charter. That view, however, is contested. The Treaty on the Prohibition of Nuclear Weapons (TPNW), opened for signature in 2017 and entered into force on 22 January 2021, reflects the position of a substantial group of non-nuclear-weapon states that the threat of use of nuclear weapons is itself prohibited under international law, with implications for the Article 2(4) prohibition on the threat of force. The historical acceptance of deterrence by all P5 members illustrates the exception-expansion mechanism at the level of the threat-of-force pro-

hibition, but the rise of the TPNW shows that this acceptance is no longer treated as uncontested by the wider international community.

John Mueller (1989) goes further, arguing that major war had become normatively obsolete before nuclear weapons were deployed, driven by changing social attitudes toward interstate violence. On his account, the legal prohibition may have contributed to that normative shift but did not independently cause it. The precise causal weight of Article 2(4) cannot be isolated from these alternative explanations. However, the burden of proof lies with those who assert that the legal prohibition caused the observed decline in great-power war. The availability of plausible alternative explanations means that the legal-determinist case remains unproven.

6. THE RESPONSIBILITY TO PROTECT: FROM PROHIBITION TO REGULATED INTERVENTION

Another distinct variant of the above observed and described exception-expansion mechanism represents the Responsibility to Protect (R2P) doctrine. This doctrine was endorsed by the 2005 World Summit (UNGA Resolution 60/1, paras. 138-139). R2P reconceptualises sovereignty as a responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. Its third pillar, which provides for collective action when a state manifestly fails, does not create a new legal authority to use force outside the Security Council. The Security Council already possessed that authority under Chapter VII (FROWEIN; KRISCH, 2002). What R2P added was a political and rhetorical framework making humanitarian justifications for force more readily available, and thereby lowering the discursive threshold for intervention.

The NATO intervention in Libya (2011), authorised by UNSC Resolution 1973, was the high point of R2P's institutional acceptance. However, the intervention expanded rapidly from civilian protection into a regime-change operation (BELLAMY; WILLIAMS, 2011). Ramesh THAKUR (2016), one of R2P's original architects and a member of the International Commission on Intervention and State Sovereignty, acknowledged that the Libyan precedent damaged the doctrine's credibility for subsequent applications. Subsequently, Russia invoked humanitarian language to justify its actions in Georgia (2008) and Ukraine (2014). The United States and Israel also framed aspects of Operation Epic Fury in terms of Iran's human rights record (HOUSE OF COMMONS LIBRARY, 2026b, CBP-10521). Once

the humanitarian exception is legitimised by one set of actors, it becomes available to all states, including those with purely strategic objectives.

R2P thus illustrates the exception-expansion mechanism in a well-intentioned form. A doctrine designed to protect civilian populations provides a template that, once opened, proves difficult to confine. The Venezuela intervention adds a further dimension: there, the United States did not invoke R2P or humanitarian justifications at all, but simply denied that the prohibition applied. The progression from R2P as a contested exception (Libya, 2011) through framework-denial (Venezuela, 2026) suggests a trajectory of declining normative engagement with the prohibition, rather than mere exception-expansion.

7. CONCLUSION: ASYMMETRY, NOT ILLUSION, THE NORM AS ANALYTICAL FILTER

This article has argued that the prohibition of the use of force in Article 2(4) of the UN Charter has never operated as a strong constraint on the conduct of Great Powers. It has, however, operated as a weak constraint, shaping rhetoric, requiring legal justification, imposing diplomatic friction, and straining alliances, and has been genuinely binding in a meaningful sense on the vast majority of states. The system is structurally asymmetrical, not uniformly illusory. The norm is not a physical barrier; it functions as an analytical filter through which uses of force must pass, a filter that imposes real costs even when it does not prevent action.

Three propositions summarise the argument.

First, Article 2(4) remains binding law as treaty obligation, customary international law, and jus cogens. Nothing in the empirical record defeats its formal legal status. The convergent legal condemnation of Operation Epic Fury demonstrates that the norm retains its discursive power and its capacity to mobilise international legal opinion against even the most powerful actors.

Second, that binding status has never translated into strong operational constraint over the actors with the practical capacity to use armed force across borders. The Charter's enforcement mechanism is structurally disabled from acting against permanent members. The narrow exceptions in Article 51 have been progressively expanded, through anticipatory self-defence, the "unwilling or unable" doctrine, humanitarian intervention, and R2P, by the same actors, without effective sanction. The Venezuela intervention of January 2026 introduced a more radical manoeuvre:

the outright denial that Article 2(4) applies at all to a military operation framed as law enforcement. This is not exception-stretching but exception-dissolution, as defined in Section 4.6, and it represents the most direct structural challenge to the normative framework since the Charter's inception. By the time of Operation Epic Fury, the exception categories had grown so broad that the absence of legal justification did not prevent the operation. Yet the operation triggered profound multilateral fractures and legal condemnation, confirming that the norm imposes real diplomatic costs.

Third, what the existing literature describes as the "erosion" of the prohibition is more accurately characterised as the cumulative working-out of a structural condition present from the Charter's inception: a rule whose principal enforcers were given a built-in immunity from enforcement, attached to a system of exceptions that, unpoliced, expanded until they generated legal uncertainty. For most of the 188 non-P5 states, particularly those lacking Great Power capacity and veto insulation, the prohibition has been operationally binding in a meaningful sense: most have not used force across borders, and those that have often faced serious consequences, with the qualification that capacity constraints and regional deterrence are difficult to disentangle from the norm's independent contribution. For the P5, the norm has never been strongly binding, but it has never been irrelevant either. The pattern of early 2026, Venezuela in January followed by Operation Epic Fury in February, compresses into a single three-month period three distinct modalities of P5 force-use: a capture operation framed as law enforcement to avoid the Article 2(4) framework altogether; preventive strikes against a near-nuclear state; and a major joint military operation without an established armed attack basis. Whether these episodes constitute an aberration or a structural acceleration is a question that only subsequent state practice and legal responses will answer. This article's claim is narrower: they are consistent with the structural asymmetry identified throughout the post-Charter period, not a departure from it.

The international legal order is accordingly bifurcated: a rules-based order for the vast majority of states, and a structurally different order for those with the capacity and the veto to insulate themselves from enforcement, but with the crucial qualification that even those states must pay rhetorical and diplomatic tribute to the rules. The condemnation of Operation Epic Fury did not prevent the strikes, but it shaped the diplomatic aftermath, influenced alliance behaviour, and will constrain the framing of future justifications. Whether this weak constraint is sustainable as exception-dissolution accelerates is the central question for twenty-first century international law.

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