

# **The Use of Armed Force Outline**

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# UN Charter Art. 1

- To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

# UN Charter Art. 2 (4)

- All 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.
- ICJ Cases: Corfu Channel, The Wall, Nicaragua ICJ, obligation not to use force is jus cogens, principle of non-intervention is customary international law.

# UN General Assembly Resolutions

- Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States (2131, 1965)
- Declaration of the Principles of International Law (2625, 1970) (States should refrain from reprisals)
- Definition of Aggression (3314, 1974)
- Resolution on Enhancing the Effectiveness of the Prohibition of the Use of Force (42/22, 1987)

# Friendly Relations Declaration 1970

- Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.

# Use of Force

- Invasion
- Bombardment
- Blockade
- Armed attack (launching of missiles, deployment of armed groups)
- Inappropriate use of military force present in another state's territory by consent

# Does 2 (4) permit:

- Use of force in rescue operations (Israel in Uganda, USA in Grenada)
- Use of force to promote democracy (USA in Haiti)
- Use of force to support self-determination
- What about lack of effectiveness of Security Council?

# Exceptions to Prohibition on the Use of Force

- 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 measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council.
- Case: Nicaragua ICJ



# Definition of Armed Attack

- ICJ Nicaragua Case:
- The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to an actual armed attack, or its substantial involvement
- See UNSC resolution 1368 and 1373 (attacks by terrorists are threat to the peace justifying self-defence)

# Use of Armed Force

- Use of armed force to conduct **rescue operation** for the protection of Nationals
- Response to armed attack that has already occurred (strict constructionist school)
- Response to an imminent armed attack that has not yet occurred (**anticipatory self-defense**) (1896 Caroline case, UK attack of the Caroline schooner necessary to prevent supplies to Canadian rebels. US Sec. of State Webster: "necessity of self-defence is instant, overwhelming, leaving no choice of means, and no moment for deliberation.") (Imminent and unavoidable)
- Response to possible grave attack that may occur in the future if action is not taken (preemptive self-defense) (Bush Doctrine- use of force against rogue states possessing WMDs)

# Use of Armed Force Against Non-State Actor

- UN Security Council Resolutions 1368 & 1373- terrorist attacks threaten international peace and security, right to self-defense
- But see ICJ, Israeli Wall Opinion, Art. 51 right to self-defence refers to armed attack by one state against another state.

# Collective Self Defence

- NATO Treaty, Article 5: An Armed Attack against one party shall be considered an armed attack against all NATO parties

# Conditions of Self-Defense Action

- Armed Attack/invitation by victim state to respond
- Necessity: are there peaceful alternatives to self-defense. Is use of force necessary to recuperate land or repel attack?
- Proportionality
- Report actions to SC
- Customary International Law
- ICJ: Nicaragua, Nuclear Weapons, Oil Platforms cases

# Authorization by the UN Security Council

- UN Charter Arts. 24 & 39: UN Security Council may authorize states to use force.
- UN Charter, Chapter VII,(Arts. 39,41, 42) UN Security Council determines existence of threat to peace, breach of the peace, or act of aggression
- Peace Enforcement
- Peacekeeping (UN Charter Chapter VI, or Chapter VII)
- Self-determination (SC action in support of people of East Timor)

# Regional Organizations

- UN Charter Chapter VIII
- Inter American Treaty of Reciprocal Assistance (Rio Treaty), OAS Charter
- African Union
- Economic Community of West African States (ECOWAS)
- Arab League
- NATO

# Humanitarian Intervention

- If government fails to protect the rights of its people (there is a risk of overwhelming humanitarian catastrophe, gov't is unwilling or unable to prevent), the intl community is entitled to intervene.
- Is it an autonomous right, or is it contingent on SC resolution (Chap VII)?
- Must it be a collective action?
- Is use of bombs legitimate?
- Are there alternatives?
- Proportionality
- Case: Legality of the Use of Force (Yugoslavia v. Belgium) ICJ