

Is the State's use of force legal?

1. State the general rule Art 2(4) - *All members shall refrain in their international relations from the threat or use of force against the territorial integrity or sovereignty of any state, or in any other manner inconsistent with the purposes of the United Nations* - general prohibition on the unilateral use of force by states under any circumstances. Art 2(4) provides a general prohibition on the use of force, with only very limited exceptions. **2. Does an exception apply?**

i. Self Defence "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...": Art 51 UN Charter. **Necessity and Proportionality** - any use of force in self-defence must be both a necessary and proportionate response to the original armed attack on the state - *Nicaragua (Merits)* *Is it necessary?* Necessity - act of self-defence must be a response to an instant and overwhelming threat/attack with no choice of alternate means and moment of deliberation - must be of utmost necessity in the moment: *Caroline case*. *Is it proportionate?* Defending state can only do what is reasonably necessary in order to negate threat of attack, nothing more: *Caroline Case*

Oil Platforms Case: The Rule - confirms statement in *Nicaragua* that use of force in self-defence must be both a necessary and proportionate response to an original armed attack. Test - look at nature of original armed attack and ask what countermeasures are reasonably in order to deter or sufficiently prevent future attack/threat of attack.

Armed Activities in Congo - 1. Example - even if Uganda could claim self-defence, its actions in engaging in long term occupation of a huge portion of Congo was hugely disproportionate to the relatively minor cross-border raids by armed rebels from Congo.

Nuclear Weapons Advisory Opinion - no definitive statement on whether use of nuclear weapons could ever be a proportionate and necessary use of force in self-defence.

No Self-Defence for Territorial Disputes - self-defence cannot be used as a justification for the settling of territorial disputes - too dangerous to allow otherwise - *Ethiopia's Claims 1-8*

ii. Collective Self-Defence - collective self-defence is right of states to come to mutual defence of other states subject to armed attack. Usual rules of self-defence apply, in addition to two further requirements which determine the legality of the intervention of the third party states: - *Nicaragua (Merits)*; Art 51

a. **Statement by victim state** – there must be an official statement made by the state victim of the of armed attack that such an attack has occurred, AND

b. **Request for Assistance** - victim state must make a discrete request for assistance to the intervening state for them to provide help.

Can self defence be exercised against a non-state actor? Non-state actor: entity that participate or acts in international relations; organizations with sufficient power to influence and cause a change even though they do not belong to any established institution of a state; eg. NGO's, Multi-national corporations, International media, Violent non-state actors (rebel groups/ISIS), Religious groups (Amnesty, Oxfam, Greenpeace). Contentious area of law.

Wall Advisory opinion: Distinguished from the 9/11 attacks as threat originates from inside the territory. Judge Kooijmans and Buergenthal suggested that the right of self defence does not only apply to attacks by state actors. Democratic republic of Congo v Uganda: Kooijmans and Simmons JJ reaffirmed this idea that self defence can be exercised against a non-state actor.

Anticipatory self-defence – Controversial. **iii. Security council resolution.**