

Unilateral use of force essay



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There has been a long history of measures, proposals and ideals put forward to regulate or justify the use of force. This is due to a recognised presumption that the use of force is illegal and might be recognised as a *jus cogens*. The prohibiting on the use of force is condemned as contrary to international law unless it can fall within some of the exceptions that both states and organisations have put forward as justifications. Perhaps the first attempt to regulate the code of practice with regard to the use of force was initiated by the League of Nations whereby Article 10 enforced an ‘obligation by members to respect and preserve as against external aggression the territorial integrity and existing independence of all members of the League’ and unless all the measures specified in Art 11 – 17 were exhausted, war should not be resorted to. Independently of the League, certain Groups of States were concerned also to establish the illegality of conquest and the General Treaty for the Renunciation of War 1928 highlighted this aim, and was seen as consolidation of customary law and some would argue the background behind the UN Charter.

The General treaty made reservations relating to Self-defence and the reservation for collective self-defence which can be said to have been acknowledged by Art 51 of the UN charter brought into force on the 24th October 1945. One of the primary purposes of the UN charter is the ‘suppression of acts of aggression or breaches of the peace’ (art 1) and that ‘All members shall refrain in their international relations from the threat of the use of force against the territorial integrity or political independence of any state’ (art 2(4)). This strictly prohibits the unilateral use of force which is existent in both treaty and customary law after the ruling in *Nicaragua v.*

USA. However as outlined above, there are circumstances where it is recognised that there is a right to use force, and Article 51 of the Charter is the only exception to the use of force and prescribes that unilateral force may only be used for self-defence ' if an armed attack occurs against a Member of the UN' this right is described as a inherent right.

In the Nicaragua Case – the court held that the UN Charter ' by no means covers the whole area of the regulation of the use of force in international relations' and the Court acknowledged that the treaty itself refers to pre-existing Customary law in Article 51 of ' an ' inherent right' of self defence which nothing in the Charter shall impair' As a result of this, the Charter is subject to a number of interpretations as to its meaning and restriction to the use of force and the justification of self-defence. First, let us consider whether the possible consequences of the North enacting a law prohibiting trade with the South. While it is recognised that each state is politically sovereign and able to enact laws as they so wish, Membership of the UN poses some restriction on this right which must be complied with. Again we should consider customary law and treaty law with respect to this and it seems as a result of the Caroline Case ruling specifying the circumstances where self defence is acceptable, would include a situation where the attack does not itself involve measures of armed force, such as economic aggression and propaganda. Therefore, if the North can prove that this measure was in self-defence then it would be regarded under this authority as acceptable.

However although the law enacted by the North with regard to trading with the South, is not considered as an act of aggression for the purposes of Art 2

of the Charter, which outlines aggression as the use of armed force. Economic coercion is now expressly prohibited in General Assembly resolutions, such as the Declaration of Friendly Relations. Nevertheless, as stated in Article 4 the list of acts of aggression are not exhaustive and the Security Council may determine that acts constitute aggression under the provisions of the Charter and therefore find the measure enacted by the North to demonstrate an act of aggression. Now let us consider whether the North providing aid to the guerrillas in the South is justified on the basis that the South is fighting its ally the West. Firstly, it would seem on strict interpretation of Art 51, that this is not valid justification primarily because the West is not a Member of the UN – ‘Nothing in the present Charter shall impair the inherent right of an individual or collective self defence if an armed attack occurs against a Member of the UN’.

However, if there has been some arrangement between the North and the West regarding protection, Article 52 of the Charter recognises this so long as it is not inconsistent with the treaty. Therefore it would seem that the fact that the West is not a Member is irrelevant because it is a known ally of the North and falls under art 52. An example of this, was recognised in the Cuban missile crises and the union of the Inter-American Treaty. Also under article 2(6) there is a duty on the UN to ensure that even states which are non UN members act in accordance with these principles and therefore would seem to offer its protection even to non-members. Therefore the North can argue that its assistance to these guerrillas was in self-defence of one of its allies recognised by art 52.

Also the North could argue that the assistance to these guerrillas, is a form of self-defence given the threatened massacre by the South of Northern and other nationals and potentially it's state. However given the principles with regard to assistance of guerrillas and after the Nicaragua ruling these arguments appear weak. As a result the North's aid to the Southern Guerrillas would be illegal if there was no proof of a genuine threat to itself under self defence principles. So according to Article 3(g) of the Charter which states that ' the sending by or on behalf on any state of armed bands, groups, irregulars or missionaries, which carry out acts of armed force against another state of such gravity as to amount to the acts listed' would make the North's violate international law Therefore the North may be subject to claim of illegality because of their involvement in the internal conflict.

The rules against forcible intervention in civil conflict have been further developed by GA resolutions, which elaborate the charter provisions. The Friendly Relations Declaration 1970 makes clear that every state has the duty to refrain from organising , instigating, assisting, or participating in acts of civil strife in another state and a duty not to foment incite, or tolerate subversive, terrorist, or armed activities directed towards the violent overthrow of a regime of another state. The court confirmed in the Nicaragua Case the principle of non-intervention involves the right of every state to conduct its affairs and to choose its own forms of government without outside interference. It was held that through the USA ' recruiting, training, arming equipping, financing, supplying and otherwise encouraging, supporting, aiding and directing military and parliamentary actions in and

against Nicaragua' it had violated international law. Therefore it seems that the North could be subject to proceeding by the South for its intervention and aid to the Southern Guerrillas.

It would also seem that the North must also immediately report to the Security Council of its chosen action and allow the Security Council ' to take any such time as it deems necessary in order to maintain or restore international peace and security'. Presumably this has not been done and as a result may give rise to calls of illegality and lead to measures taken in response of this claim against the North.