BLOGS

Passage Based Questions on International Law for CLAT PG

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The Court considers that the prohibition of the use of force in international relations constitutes a cornerstone of the international legal order. This prohibition, reflected in Article 2(4) of the Charter of the United Nations, has also attained the status of a rule of customary international law. The existence of such a customary rule is not negated by the fact that the Charter contains specific provisions governing the use of force, since customary law continues to exist alongside treaty law and may operate independently of it. The Court therefore proceeds to examine the conduct of the United States in light of customary international law relating to the use of force and the principle of non-intervention.

The United States contended that its actions were justified as measures of individual and collective self-defence. The Court recalls that the inherent right of self-defence, as recognized in Article 51 of the Charter, is subject to strict conditions under both treaty and customary international law. In order for the right of self-defence to arise, there must have been an armed attack. The Court distinguishes between the gravest forms of the use of force, which constitute an armed attack, and other less grave forms. While the sending by a State of armed bands, groups, irregulars or mercenaries which carry out acts of armed force of sufficient gravity may amount to an armed attack, mere assistance in the form of provision of weapons, logistical support or training does not, in itself, constitute such an attack.

The Court further observes that the exercise of collective self-defence requires a prior declaration by the State allegedly under armed attack that it considers itself to be the victim of such an attack and that it has requested assistance. The Court finds no convincing evidence that the States on whose behalf the United States claimed to be acting had made such a request in the manner required by international law. The absence of such a request is fatal to the claim of collective self-defence.

Moreover, the Court emphasizes that even where an armed attack has occurred, any response in self-defence must comply with the requirements of necessity and proportionality. These

requirements form part of customary international law and are applicable irrespective of the treaty framework. The measures adopted must be strictly necessary to repel the attack and must not exceed what is required to achieve that objective. The Court finds that the scale and effects of the actions attributed to the United States could not be regarded as proportionate to any alleged armed attack.

In addition to the prohibition on the use of force, the Court reaffirms the principle of non-intervention, which forbids States from intervening, directly or indirectly, in matters within the domestic jurisdiction of another State. This principle encompasses not only armed intervention but also other forms of coercive interference aimed at influencing the political, economic or military choices of a sovereign State. The Court considers that the support provided to armed opposition forces with the intent of overthrowing the government of Nicaragua constituted a breach of this principle.

The Court concludes that the conduct in question cannot be justified under customary international law relating to self-defence. The prohibition of the use of force and the principle of non-intervention retain their full normative force, and violations thereof engage the international responsibility of the State concerned.

Extract adapted from: Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), ICJ (1986)

Q1. Which of the following best captures the International Court of Justice's approach to the relationship between Article 2(4) of the UN Charter and customary international law?

a. The Charter fully replaces customary law on use of force

b. Customary law survives only where the Charter is silent

c. Charter law and customary law operate in parallel and independently

d. Customary law applies only to non-UN members

Q2. According to the ICJ's jurisprudence, which activity most clearly crosses the threshold of an "armed attack"?

a. Financing an opposition group

b. Supplying weapons to rebels

c. Sending armed bands carrying out acts of significant military gravity

d. Political endorsement of insurgents

Q3. Why did the Court reject the argument that indirect assistance alone amounts to an armed attack?

a. Because indirect acts are excluded from international responsibility

b. Because only State-to-State attacks qualify

c. Because not all uses of force rise to the gravity of an armed attack

d. Because the UN Charter does not recognise indirect force

Q4. Which requirement is unique to collective self-defence and not applicable to individual self-defence?

a. Proportionality

b. Necessity

c. Request or declaration by the victim State

d. Existence of an armed attack

Q5. The ICJ considers the absence of a formal request for assistance by the victim State to be:

a. A procedural defect that can be cured later

b. Irrelevant if an armed attack is evident

c. Fatal to a claim of collective self-defence

d. Applicable only under treaty law, not custom

Q6. Which statement best reflects the ICJ's understanding of necessity in self-defence?

a. Any military response following an attack is necessary

b. The response must be politically justified

c. Force must be the only means available to repel the attack

d. Necessity applies only to proportionality

Q7. Proportionality in self-defence primarily requires that:

a. The response exactly mirror the attack

b. Civilian harm be entirely avoided

c. The scale and effects of force not exceed defensive objectives

d. The response be authorised by the Security Council

Q8. Why did the Court find the actions under review disproportionate?

a. They caused economic damage

b. They involved third States

c. Their scale exceeded what was required to repel any alleged attack

d. They lacked prior UN approval

Q9. Which of the following best explains why the ICJ examined customary international law despite the existence of the UN Charter?

a. The Charter was not applicable to the dispute

b. Customary law is superior to treaty law

c. Customary law continues to bind States independently of treaty obligations

d. Treaty law cannot regulate use of force

Q10. The principle of non-intervention primarily protects:

a. Territorial integrity alone

b. Political independence and sovereign decision-making

c. Diplomatic relations

d. Economic equality among States

Q11. Which conduct most clearly violates the principle of non-intervention as articulated by the ICJ?

a. Diplomatic criticism of a government

b. Trade sanctions imposed multilaterally

c. Support to armed groups aimed at overthrowing a government

d. Cultural influence through media

Q12. Why does the ICJ treat the prohibition of intervention as a rule of customary international law?

a. Because it is codified in the UN Charter

b. Because it reflects consistent State practice and opinio juris

c. Because it is enforced by the Security Council

d. Because it applies only during armed conflict

Q13. Which distinction drawn by the Court is crucial to limiting abuse of self-defence claims?

a. Armed attack vs political hostility

b. Treaty law vs domestic law

c. Grave uses of force vs less grave uses of force

d. State acts vs private acts

Q14. How does the ICJ's reasoning constrain powerful States invoking self-defence?

a. By requiring Security Council approval in all cases

b. By eliminating unilateral self-defence

c. By imposing objective legal thresholds and conditions

d. By prioritising political context over legal rules

Q15. The broader normative thrust of the Court's approach is best described as:

a. Expanding discretion in use of force

b. Weakening Charter-based restraints

c. Reinforcing legal limits on unilateral military action

d. Privileging collective security over sovereignty

Answers

1. Correct Answer: C

Explanation: The ICJ consistently holds that customary international law on the use of force exists alongside the UN Charter. The Charter does not extinguish custom; instead, both operate concurrently, allowing the Court to apply customary rules even where treaty provisions exist.

2. Correct Answer: C

Explanation: The Court distinguishes between indirect support and the sending of armed bands whose actions reach a level of military gravity comparable to conventional armed attacks. Only the latter qualifies as an "armed attack."

3. Correct Answer: C

Explanation: The ICJ's critical doctrinal move is differentiating between lesser uses of force and the gravest forms constituting an armed attack. This distinction prevents States from justifying force based on low-intensity involvement.

4. Correct Answer: C

Explanation: Collective self-defence requires an express request or declaration by the victim State. Without it, third-party force lacks legal justification, even if an armed attack arguably occurred.

5. Correct Answer: C

Explanation: The absence of a request undermines the very foundation of collective self-defence, as it prevents States from unilaterally deciding that another State requires armed assistance.

6. Correct Answer: C

Explanation: Necessity requires that force be used only when no reasonable peaceful alternatives exist. It is not a matter of convenience or preference but a strict legal threshold.

7. Correct Answer: C

Explanation: Proportionality does not demand symmetry but requires that defensive force remain limited to achieving the legitimate aim of repelling the attack, preventing escalation.

8. Correct Answer: C

Explanation: The Court evaluates proportionality by comparing the scale and effects of the response with the defensive objective. Excessive or wide-ranging military operations fail this test.

9. Correct Answer: C

Explanation: Even when States are bound by treaties, customary international law continues to apply independently. This allows the Court to avoid treaty-based jurisdictional or interpretive constraints.

10. Correct Answer: B

Explanation: The principle of non-intervention safeguards a State's right to freely determine its political, economic, and social systems without coercive interference by other States.

11. Correct Answer: C

Explanation: The ICJ treats support to armed groups seeking to overthrow a government as a paradigmatic violation of non-intervention, as it directly interferes with sovereign political choice.

12. Correct Answer: B

Explanation: The Court grounds non-intervention in widespread State practice accompanied by a sense of legal obligation (opinio juris), satisfying the criteria for customary international law.

13. Correct Answer: C

Explanation: By distinguishing grave from less grave uses of force, the Court prevents States from invoking self-defence for minor or indirect hostile acts.

14. Correct Answer: C

Explanation: The ICJ's framework restricts unilateral force by imposing objective legal conditions—armed attack, necessity, proportionality, and request—rather than subjective political judgment.

15. Correct Answer: C

Explanation: The Court's reasoning reinforces the foundational objective of international law: limiting unilateral military action and preserving international peace through legal restraint.