# Chapter 8. The Right to Wage War (jus ad bellum)

## Background

### What did the world's nations promise in Article 2(4) of the U.N. Charter?

### What was the League of Nations?

### How well did it work?

### What is the political history of the UN?

### What is the Security Council?

### How does the voting work?

### What is the role of the Security Council?

### How is the membership determined?

### How does this act as a brake on the UN Resolutions interfering with US sovereignty?

## Review the Articles

### ARTICLE 39

### ARTICLE 40

### ARTICLE 41

### ARTICLE 42

### ARTICLE 43

#### What would an Article 43 agreement create?

#### Why has there never been an Article 43 agreement?

#### How does this constrain UN peace-keeping actions?

### ARTICLE 51

#### How does Article 51 allow collective self-defense outside of UN control?

#### Why doesn't the UN Charter ban anything but UN-mediated actions?

### What does the UN have to do restore its authority?

### What is the sequence of actions that leads to a UN Resolution authorizing force?

## United Nations Participation Act

### When was the United Nations Participation Act passed?

### What does the United Nations Participation Act direct the president to do?

## Notes

### What is the limitation on presidential action under Article 43?

### What is the President allowed to do under Article 42 without consulting with Congress?

### What about non-military aid?

### Can Congress cut off funding for troops loaned to the UN?

### Is this any different from other troop actions?

### What if the UN comes up with money to support them?

### What if the President comes up with money to support them when he wants to act without congressional mandate?

### Are UN actions like Korea and the Gulf War, wars?

### What is a police action?

### Does this have any meaning in customary international law?

### What about as regards congressional powers?

### Could Congress also declare war in a UN Action?

### What would this mean?

## Nicaragua v. United States of America, 1986 I.C.J. 14 (1986)

### Does this case have any legal effect on the US?

#### Why?

### What actions by the US lead to this case?

### Did the court find that the contras were a US force?

### What did it find about the relationship between the contras and the US?

### What is the general defense of the US?

### What is the US position on the relationship between the UN Charter and CIL?

### How does the court find that the US theory of collective self-defense undermines it argument about the role of the chapter and CIL?

### 181 – How has the Charter affected CIL?

### 183 – Does the court have jurisdiction over breaches of the UN Charter?

### How does the Charter affect its review of the US’s actions?

### Do all states, at all times, have to respect at rule of CIL for it to be CIL?

### Would there be any CIL if this were the test?

### How much is enough?

### 188 – what does the court say both parties agree on as a treaty (UN Charter) obligation?

### Is this enough for the Court to have jurisdiction?

### 190 – What did the US say about non-aggression in its counter memorial?

### Is this really jus cogens?

### Is there an exception for self-defense under the principle of non-aggression?

### What is collective self-defense?

### What is necessary for collective self-defense to an exception?

### What is the principle of non-intervention?

### How is related to the whole notion of CIL?

### Even if the state asks for help, can a third party state mount an armed attack as part of collective self-defense for political, i.e., non-military actions?

### Did the court find that the US used force against Nicaragua?

### What does the court say the US can do to help the contras without breaching CIL?

### What must the court find before it decide if the US actions were a legitimate exercise of collective self-defense?

### Does supplying arms to rebels in another state constitute an armed attack under CIL?

### Was El Salvador under armed attack from Nicaragua when it asked for help from the US?

### Even if the US is justified in its attack on Nicaragua, what must it do before the attack?

### Has it done this?

### Why?

### Without satisfying this condition precedent, can the US’s actions be lawful under CIL as modified by the Charter?

### Did the court find that the US violated CIL?

### What two orders it make?

### Who would have to enforce these if the US does not comply?

## Putting the pieces together

### Given the critical role of sovereignty, why is the determination of the existence of a civil war so critical?

### Why is this an issue in Syria, and how did it play out in Libya?

### What about contemporary Libya?

### How would you apply this in Somalia?

### What internal actions can allow a military attack?

### Is this also an issue in Syria?

### What about Rwanda?

### Cambodia under Pol Pot?