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Q4

Analyzing the Article 2(4)

And Writers and States Views

Outline

- (1) Introduction
- (2) Understanding Article 2(4) legal position
- (3) Writes ~~and~~ interpretation of articles
- (4) States interpretations
- (5) Conclusion.

Introduction

After WWI and WWII states come to know that international peace and security can not maintain, if use of force is not strictly prohibited. So, the Article 2(4) is incorporated to criminalize use of force. But states and writer opine that international law at certain circumstance allows use of force. States interprets that states can use force in retaliation, retorsion, while writers claim that use of force is legal in case of humanitarian law or humanitarian intervention, environment or any other condition when international law does not prohibit. The Article 2(4) of UN categorically prohibit use of force, but international community argues to use force and it is being used.

Understanding Article 2(4).

The Article 2(4) is predated by LON (League of Nations). The article categorically prohibit use of force or threat force. As LON could not punish the perpetrators. So, UN has inculcated the Article and established the mechanism to deal with aggressors. The UN has promulgated article 39, 41, 42, 43.

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These articles are mechanism through which states will respond to use of force. The Article 2(4), interestingly, prohibit use of force, but in violation of it there is use of force as well.

Writers interpretation of the Article

Writers or international jurists are of view that The Article 2(4) not completely criminalize use of force. They argue that states can use force on humanitarian and environmental ground. "The international law allows use of force on humanitarian basis". The states take pleas of this article and intervene in other states. The Russia-Ukraine war is example of humanitarian ground. The Russia took plea that in Ukraine there is human rights abuse of Russian speaking orthodox christians, not war is required to liberate them.

The writers opine as well that use of force could be legitimate if the particular act is not breach of any international law. Taking this interpretation, states are

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continuously in proxy or fifth generation warfare. Although proxy wars are not legitimate, but absence of material evidence to make state comfortable to wage it.

Consequently, proxy war is apparently not breaching any present covenants of the UNO, so some jurist consider it legitimate.

States Interpretations

(a) States can use force under collective use of force Article 51.

The UNO charter say that the states can take joint actions to wage wars against aggressors. This way states can use force. Although this article (51) is against so for sake of peace, but ultimately states engage into war.

The USA, while 9/11, used this article and legitimized the invasion of Iraq. This war is considered illegitimate in

academic sphere due to USA motivated interest. In summation, the use of force is prohibited but there are different interpretations of states that allow use of war.

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(B) Preemptive strike:

The preemptive strike is a way to states that states can resort of use of force or threat. For preemptive strike states pledge that there are likelihood of aggression, so states are using force for strategic defense. For preemptive strike there should be concrete a concrete evidence. Indian attack on Pulwama was preemptive strike for India. In conclusion, states use force under preemptive strike ambit.

(C) Retaliation and retorsion:

Retaliation and retorsion is as well use of force by states. Unlike preemptive strike, retaliation is carried out after physical attack. Retaliation come with certain rules that use of force should be equal (reciprocal) and proportional. However, use of force is overpowered by attacks but, still it is retaliation.

Conclusion

Although the Article 2(4) prohibit the use of force, yet

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it is used and legitimized by different interpretation. There are different angle and dimensions of law that allows use of force.

For instances, collective use of force, pre-emptive attack, humanitarian and environmental accounts. The validity of the article is under interpretation of the article.

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Insurgency Movements

UNDER Subjects of LAW

Introduction.

The international law give insurgent movement designation of subject under law when they acquire position in a territory, and accumulative consent of population. They become belligerents and have rights and duties under I. Law.

(1) International law and Belligerents.

The belligerents are subject of the law. When they acquire territory, exercise political legitimacy of the masses. These characters are characters of the states, so international law considers them as subjects.

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(2) The Belligerents rights and duties:

When the insurgents acquire law and political clout, they entitled to subject. While changing the status, they meet with certain rights and duties.

(a) Right to enter into treaty:

The insurgents movements become a legal entity in international arena, therefore they can enter into treaty.

(b) Abide with humanitarian laws.

The belligerents are entitled to obey the humanitarian laws. Any breach of humanitarian laws is criminal acts, so they can be trialed or can be changed into terrorist organization.

Conclusion:

The insurgent movement is converted into Belligerents status. After this position, they are governed by the laws such as enter into treaties and humanitarian law.

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Recognition and its type

State Vs Govern: Recognition

① Introduction.

Recognition is legal law of any ^{new} states.
 Recognition can be defined as acknowledging the legal status of new states with all the properties of statehood.

② Essentials for recognition:

For recognition ~~st~~ nascent state should have permanent territory, population, and legitimate government. The new government should follow the international norms such as human right within territory.

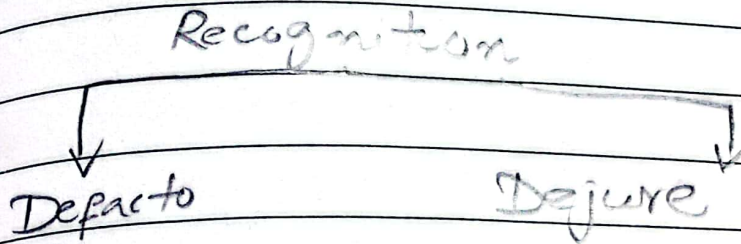
③ Why it is essential?

The recognition of states allow new born states to make treaty contracts with existing states, join international forums,

trade with states, maintain diplomatic
relation.

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(4) Types of Recognition.



There are two types of recognition

(a) De facto: This is temporary recognition that can be removed. De facto recognition is trial for new states to know its behavior in international arena.

(b) De jure:

It is a permanent recognition and can not lifted. It acknowledges that states a complete legal entity.

Difference.

State Recognition	Government Recog.
① State is collective recognition of state ie territory, population.	① It is only recognition to a government.
② It has complete right and duties	② limited rights and observatory role in international platforms.

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Notes:

International Humanitarian Law

Humanitarian law breaks the saying that everything is fair in love and war. The humanitarian law has established certain laws and duties to states to ensure humanize the war. This law starts to function after the war broke. This law laid principles such as, There should be not indiscriminate use of weapons to difference combatants and non combatants. Not to harm private property, religious places, and harm environment.

Prisoners of War in I.LAW

International law make state bound to respect the rights of prisoners of war. The laws emphasize on the following covenants.

- (1) Prisoners should be treated with the fundamental rights and should not be humiliated.
- (2) The officers should be treated with their status ~~of~~ in governmental rank.
- (3) The Red Crescent should be allowed to visit to check their condition.
- (4) The prisoners should be adequately provided with basic facilities such as, nutritious food, clean living space and drinking water.