

Quick Reference Rules of Law

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Judgment of the International Military Tribunal

[Parties not identified.]

Nuremberg, Sept. 30, 1946, reprinted in 41 A.J.I.L. 186-218 (1946).

NATURE OF CASE: Indictment for war crimes.

FACT SUMMARY: Officials of Hitler's Third Reich were indicted for instigating wars of aggression against neighboring countries.



RULE OF LAW

The planning or waging of war that is a war of aggression or a war in violation of international treaties is a crime.

FACTS: Officials of Hitler's Third Reich were indicted for instigating wars of aggression against neighboring countries.

ISSUE: Is the planning or waging of war that is a war of aggression or a war in violation of international treaties a crime?

HOLDING AND DECISION: [Judge not stated in casebook excerpt.] Yes. The planning or waging of war that is a war of aggression or a war in violation of international treaties is a crime. The legal effect of the Kellogg-Briand Pact is that the nations who signed it or adhered to it unconditionally condemned recourse to war as an instrument of policy and expressly renounced it. War for the solution of international controversies undertaken as an instrument of national policy includes a war of aggression, and such war is therefore outlawed by the Pact.

ANALYSIS

This trial involved the indictment of German officials for the seizure of Austria and Czechoslovakia and the war against Poland, as part of Germany's foreign policy. The Tribunal concluded that Germany planned wars against 12 separate nations and therefore was guilty of violating the Charter's prohibition against wars of aggression and wars in violation of international treaties (namely, the Treaty of Versailles).

Quicknotes

KELLOGG-BRIAND PACT A treaty between the United States and other powers, ratified in 1929, which provided for the renunciation of war as an instrument of national policy.

TREATY OF VERSAILLES An agreement produced in 1919 by the League of Nations (or "the Allies," headed up by Britain, France, Italy and the United States), which, following World War I, levied restrictive military sanctions against Germany, divested Germany of its colonies and gave over German

land to other countries. Poland, Lithuania, Latvia, Estonia, and Finland were formed by the treaty from land lost by Russia, and a multi-party system was imposed on German politics to inhibit any one group from taking power.

Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)

Country aiding subversives (P) v. Military intervenor (D)

I.C.J., 1986 I.C.J. 14, 103-123.

NATURE OF CASE: Proceeding before the International Court of Justice.

FACT SUMMARY: The United States (D) claimed collective self-defense as a justification for various hostile acts toward Nicaragua (P).



RULE OF LAW

Collective self-defense cannot justify hostile behavior unless the aggrieved state requests aid.

FACTS: The Sandinistas took control of Nicaragua in 1979. Not long after, they began supplying aid to subversive elements in neighboring Honduras and El Salvador. In response to this, the United States (D) commenced a series of military and paramilitary activities against Nicaragua (P), such as support of counterrevolutionaries, airspace overflights, and harbor mining. Neither El Salvador nor Honduras requested U.S. (D) intervention. Nicaragua (P) brought an action against the United States (D) in the International Court of Justice. The United States (D) claimed collective self-defense as a justification.

ISSUE: May collective self-defense justify hostile behavior if the aggrieved state does not request aid?

HOLDING AND DECISION: (Per curiam) No. Collective self-defense cannot justify hostile behavior unless the aggrieved state requests aid. Particularly where, as here, the acts of the allegedly offending state do not constitute an armed attack, a state may not come to the defense of another state, under the doctrine of collective self-defense, unless requested to do so. This is true under both the U.N. Charter and customary international law. In this instance, neither Honduras nor El Salvador was under armed attack and neither requested aid. This being so, the United States (D) could not properly invoke collective self-defense as a basis for justifying its hostile activities toward Nicaragua (P). [The Court went on to order the United States (D) to cease its activities and make reparations.]

ANALYSIS

Nicaragua (P) claimed breaches of certain international agreements, such as the U.N. Charter, the Charter of the OAS, and a 1956 treaty. The United States (D) claimed the agreements to be inapplicable. The Court was of the opinion that applicability was irrelevant, as customary international law coincided with law as provided in the agreements.

Quicknotes

BREACH The violation of an obligation imposed pursuant to contract or law, by acting or failing to act.

INTERNATIONAL LAW The body of law applicable to dealings between nations.