

## The ICJ's Impact on the Development of the Law of Self-Defense

Sunila Qazi

LLM Scholar, Abdul Wali Khan University, Mardan

[sunilaiqbal1995@gmail.com](mailto:sunilaiqbal1995@gmail.com)

### Abstract

*The International Court of Justice (ICJ) has played a considerable contribution in the advancement of the law of self-defense. In various instances, Court has explained the circumstances under which states may use force in their self-defense, and its rulings have been essential in defining state practice. The ICJ's foremost judgement on self-defense was heard in the 1986 case of Nicaragua v. United States. The Court concluded that the United States had not been rational in employing force against Nicaragua in reply to putative backing for Nicaraguan militants. The Court concluded that the US had not established that it was the target of an armed assault, hence the use of their force was not justifiable and not in self-defense. In the 2004 case of military activity in the territory of the Congo (Democratic Republic of the Congo v. Uganda), the ICJ once again defined the instances when a state may employ self-defense. In the court ruling it was declared that a state may only use the force in self-defense when it is under to danger of armed assault. Likewise, the court concluded that the force which a state employs in self-defense will be in proportion to the assault they confront and it should be an absolute need at that moment. The ICJ's rulings on self-defense have been essential in establishing state practice. Particularly, the Court's condition that a state have been the object of an armed assault has been broadly recognized by states. This criterion has helped to compel the use of force by governments and to support international peace and security. The ICJ's jurisprudence on self-defense is still emerging, and it is anticipated to continue to be contested by governments and scholars in the future. Nevertheless, the Court has played a considerable role in explaining the law of self-defense and in advocating its peaceful settlement of conflicts.*

**Keywords:** ICJ, self-defense, ICJ Jurisprudence

### 1. Introduction:

ICJ is a fundamental institution in the international legal background, accountable for resolving disputes among states and interpreting the international law<sup>1</sup>. One predominantly important aspect

<sup>1</sup> John P. Higgins and Johanna A. Higgins, 'The ICJ, the ECJ, and the Integrity of International Law1', International & Comparative Law Quarterly, 52.1 (2003), 1–20 <<https://doi.org/10.1093/ICLQ/52.1.1>>.

of the ICJ's jurisprudence is its influence in the development of the law of self-defense<sup>2</sup>. This legal structure sketches the situations under which an independent state is justified in engaging force to defend its interests, safety, and regional integrity. Over the years, the ICJ gave rulings that have both elucidated and shaped the outlines of self-defense law, impelling state behavior and evolving the cause of international peace and security. The ICJ's commitment with the law of self-defense turned out to be highly evident in its revolutionary judgement in the 1986 Nicaragua v. United States case. This case was all about the United States use of force against Nicaragua, apparently in reaction to Nicaragua's alleged support for insurgents<sup>3</sup>. In its verdict, the ICJ explicated that the United States didn't have the justification for its military engagements. Importantly, the Court accentuated that self-defense pivots on a state's capability to determine that it has been the target of an armed attack. This initial principal customary by the ICJ in Nicaragua v. United States played a substantial role in illuminating that only political or economic pressures do not fit as appropriate grounds for self-defense<sup>4</sup>. Consequently, the ICJ's influence extended to the 2004 case of armed actions in the region of the Congo (Democratic Republic of the Congo v. Uganda). In this case, the Court further developed the circumstances for legitimate self-defense. The decision repeated the importance of being a target of an armed attack, but it also accentuated the requirement for proportionality and adequacy in the reaction to the threat. In other words, the ICJ underscored that

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<sup>2</sup> James A. Green and Francis Grimal, 'The Threat of Force as an Action in Self-Defense under International Law', *Vanderbilt Journal of Transnational Law*, 44 (2011) <<https://heinonline.org/HOL/Page?handle=hein.journals/vantl44&id=289&div=&collection=>> [accessed 6 September 2023].

<sup>3</sup> Martin A. Harry, 'International Law - The Right of Self-Defense and the Use of Armed Force against States Aiding Insurgency - Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14 (Judgment of June 27)', *Southern Illinois University Law Journal*, 11 (1986) <<https://heinonline.org/HOL/Page?handle=hein.journals/siulj11&id=1307&div=&collection=>> [accessed 6 September 2023].

<sup>4</sup> Ved P. Nanda, 'United States Intervention in Nicaragua: Reflections in Light of the Decision of the International Court of Justice in Nicaragua v. United States', *University of Hawaii Law Review*, 9 (1987) <<https://heinonline.org/HOL/Page?handle=hein.journals/uhaulr9&id=559&div=&collection=>> [accessed 6 September 2023].

the use of force by a state not merely be a response to an armed attack but must also be required and proportional to the danger faced<sup>5</sup>. This demarcation facilitated states in understanding the limitations of their self-defense rights and responsibilities. The ICJ's verdicts on self-defense have not been limited to the courtroom. Instead, they have resonated across the international community, impelling state behavior and practice. Predominantly, the Court's assertion on the victim state having suffered an armed attack as a requirement for self-defense has gained prevalent acceptance. This rule has played a significant role in restricting unjustified use of force and promoting an environment beneficial to international stability, peace and security<sup>6</sup>. Whereas the ICJ's jurisprudence on self-defense has made significant developments, it remains a matter of continuing debate between states and legal scholars. As the international landscape progresses, new situations and challenges appear, encouraging the need for more explanation and adaptation of self-defense principles. The ICJ's impact in this dominion is predicted to continue as it remains to involve with multifaceted issues and react to growing state practices.

In a nutshell, the ICJ has considerably shaped the improvement of the law of self-defense through its revolutionary judgements and interpretations. The ICJ's influences in cases like *Nicaragua v. United States* and *Armed conflict in Congolese territory* have provided states with perfect strategies and rules for the justified force used in self-defense. The ICJ's impact on state practice, principally its insistence on the prerequisite of an armed attack, has promoted international peace and security. As the changing aspects of global affairs continue to unfold, the ICJ's developing

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<sup>5</sup> P Okowa, 'Necessity, Proportionality and the Use of Force by States', 2006 <<https://www.jstor.org/stable/3877236>> [accessed 6 September 2023].

<sup>6</sup> Dapo Akande and Thomas Liefländer, 'Clarifying Necessity, Imminence, and Proportionality in the Law of Self-Defense', *American Journal of International Law*, 107.3 (2013), 563–70 <<https://doi.org/10.5305/AMERJINTELAW.107.3.0563>>.

jurisprudence on self-defense will stay a foundation stone in the dominion of international law, encouraging the peaceful resolution of disputes and the answerable exercise of sovereign rights.

## **2. Objectives:**

1. Examining the ICJ's jurisprudence on self-defense.
2. Analyzing the impact of the ICJ's rulings on the development of self-defense law.
3. Examining the difficulties and possibilities the ICJ will face as it continues to establish self-defense law.

## **3. Discussion:**

The ICJ has played a substantial role in the progress of self-defense law. In innumerable cases, Court has explained the situations in which a state can use force in self-defense, and its verdicts have been powerful in shaping state practice. The ICJ's foremost major verdict on self-defense was in 1986 case of Nicaragua v. United States. According to the court, the US's use of force against Nicaragua in retaliation for the country's alleged backing of rebels was not justifiable. The court ruled that since the United States did not disclose that it had been the target of an armed assault, its use of force was not justified.

The International Court of Justice (ICJ) once again outlined the circumstances for self-defense in the 2004 case involving military actions in the Congo area (Democratic Republic of the Congo v. Uganda). A state may only employ force in self-defense, the Court said, if it has been the target of an armed assault. The Court ruled that using force should only be done when it is necessary and appropriate in light of the threat. The rulings of the ICJ on self-defense have influenced state policy significantly.

#### **4.1. An overview of the 1986 case of Nicaragua v. United States:**

The 1986 case of Nicaragua v. United States was a revolutionary dispute conveyed before the International Court of Justice. The case spun around Nicaragua's accusations that the United States had desecrated international law by supporting armed insurgent groups (known as the Contras) that were trying to take over the Nicaraguan government<sup>7</sup>. Nicaragua contended that the U.S. was involved in military and paramilitary actions that established an unjustified use of force and involvement in its internal matters.

#### **Background:**

Nicaragua blamed U.S. of coordinating military operations, providing financial support, and mining Nicaraguan ports to support the Contras. The U.S. defended its activities, challenging that its assistance for the Contras was in reaction to Nicaragua's support for leftist guerrilla groups in bordering countries, which the U.S. supposed a danger to regional stability<sup>8</sup>.

#### **ICJ Proceedings:**

Nicaragua brought the case to the ICJ in 1984, claiming violations of customary international law, the UN Charter, and a bilateral treaty between the two countries. The ICJ had to answer quite a lot

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<sup>7</sup> Fernando Lusa Bordin, 'The Nicaragua v. United States Case: An Overview of the Epochal Judgments', Nicaragua Before the International Court of Justice: Impacts on International Law, 2017, 59–83 <[https://doi.org/10.1007/978-3-319-62962-9\\_4](https://doi.org/10.1007/978-3-319-62962-9_4)>.

<sup>8</sup> E Papastavridis, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), 1986, Books.Google.Com <<https://books.google.com/books?hl=en&lr=&id=8i4lDwAAQBAJ&oi=fnd&pg=PA211&dq=ICJ+An+overview+of+the+1986+case+of+Nicaragua+v.+United+States:&ots=3BO77KeHWh&sig=l5UgRUuEwsaY594ZqBDTLEz4Pb4>> [accessed 6 September 2023].

of legal questions, comprising of whether the U.S. had violated Nicaragua's sovereignty, involved in illegitimate use of force, and broke its responsibilities under international law<sup>9</sup>.

### **ICJ's Ruling:**

In its 1986 verdict, the ICJ ruled in favor of Nicaragua on numerous counts. The court established that the U.S. had undeniably violated international law by its actions. The ICJ explained that the U.S. had breached Nicaragua's sovereignty by assisting the Contras and mining Nicaraguan harbors<sup>10</sup>. ICJ held that the U.S. had violated customary international law principles against the use of force and interference in internal affairs of another state. ICJ ordered the U.S. to terminate its activities against Nicaragua, pay compensations, and guarantee non-repetition of its unauthorized actions<sup>11</sup>.

### **Aftermath:**

The U.S. firstly overruled the ICJ's jurisdiction in this case and did not obey ruling of the court. The case emphasized the role of the ICJ in resolving clashes between states and explaining international law related to armed conflicts and intrusions. The case also elevated arguments about the efficiency of international courts and the implementation of their judgments. While the U.S. ultimately did not completely obey the ICJ's ruling, the Nicaragua v. United States case remains an important example of how international legal mechanisms can be used to address contentions

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<sup>9</sup> Megan L. Wagner, 'Jurisdiction by Estoppel in the International Court of Justice', *California Law Review*, 74 (1986) <<https://heinonline.org/HOL/Page?handle=hein.journals/calr74&id=1791&div=&collection=>> [accessed 6 September 2023].

<sup>10</sup> Francis A. Boyle, 'Determining U.S. Responsibility for Contra Operations Under International Law', *American Journal of International Law*, 81.1 (1987), 86–93 <<https://doi.org/10.2307/2202134>>.

<sup>11</sup> RB Bilder and others, 'Disentangling Treaty and Customary International Law', JSTOR <<https://www.jstor.org/stable/25658360>> [accessed 6 September 2023].

of unauthorized use of force and interference by one state in the internal affairs of another<sup>12</sup>. It accentuates the role of the ICJ in encouraging the rule of law in international affairs and pursuing justice in clashes between states.

#### **4.2. A summary of the 2004 case Democratic Republic of the Congo v. Uganda: Armed Activities on the Territory of the Congo:**

The 2004 case of "Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)" was a fundamental legal dispute presented before the ICJ. In the case, it was claimed that Uganda had broken international law by invading the DRC with military forces<sup>13</sup>.

##### **Background:**

By launching military operations in the Congolese territory, Uganda was accused by the Democratic Republic of the Congo of breaching its sovereignty and regional integrity. The DRC claimed that Uganda's actions comprised acts of violence, occupation, and looting of resources, and sought compensations for the harms done to them<sup>14</sup>.

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<sup>12</sup> Paul W. Kahn, 'From Nuremberg to the Hague: The United States Position in Nicaragua v. United States and the Development of International Law', *Yale Journal of International Law*, 12 (1987) <<https://heinonline.org/HOL/Page?handle=hein.journals/yjil12&id=7&div=&collection=>> [accessed 6 September 2023].

<sup>13</sup> Sten Verhoeven, 'A MISSED OPPORTUNITY TO CLARIFY THE MODERN IUS AD BELLUM: CASE CONCERNING ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO', *The Military Law and the Law of War Review*, 45.3-4 (2006), 355-68 <<https://doi.org/10.4337/MLLWR.2006.3-4.04>>.

<sup>14</sup> Louis Savadogo, 'Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda): The Court's Provisional Measures Order of 1 July 2000', *British Yearbook of International Law*, 72.1 (2002), 357-80 <<https://doi.org/10.1093/BYBIL/72.1.357>>.

**ICJ Proceedings:**

In 1999 the DRC brought case to the ICJ, emphasizing that Uganda's activities were in violation of international law, containing customary law and the UN Charter<sup>15</sup>. The case mainly focused on questions of state duty for armed actions and involvements in the territory of a different state.

**ICJ's Ruling:**

The ICJ rendered its decision in the case in 2005. The court determined that Uganda's actions in the DRC clearly breached international law<sup>16</sup>. The ICJ established that Uganda had violated the DRC's sovereignty, regional integrity, and violated doctrines of non-intervention. The court established that Uganda was accountable for various human rights violation and for triggering substantial economic damage to the DRC. The ICJ, in verdict, ordered Uganda to terminate its activities, extract its forces from Congolese region, and offer compensations to the DRC for the damage caused<sup>17</sup>.

**Aftermath:**

Uganda obeyed the ICJ's decision and took out militaries from the DRC<sup>18</sup>. The case emphasized the prominence of protecting the doctrines of sovereignty and non-intervention in international

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<sup>15</sup> Kimberley N. Trapp, 'Back to Basics: Necessity, Proportionality, and the Right of Self-Defence Against Non-State Terrorist Actors', *International & Comparative Law Quarterly*, 56.1 (2007), 141–56 <<https://doi.org/10.1093/ICLQ/LEI153>>.

<sup>16</sup> Trapp.

<sup>17</sup> RC Liwanga, C Turner - Emory Int'l L. Rev., and undefined 2021, 'Demystifying the Legitimacy of International Tribunals: Case Study of the International Court of Justice and Its Decisions on Armed Activities in the Congo', *HeinOnline*, 35 <[https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/emint35&section=20](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/emint35&section=20)> [accessed 6 September 2023].

<sup>18</sup> Andrew Mollel, 'International Adjudication and Resolution of Armed Conflicts in the Africa ' s Great Lakes : A Focus on the DRC Conflict', *Journal of Law and Conflict Resolution*, 1.1 (2009), 10–29.

law, mainly in cases concerning armed involvements and conflicts between states<sup>19</sup>. The ruling emphasized the ICJ's role in resolving conflicts involving state performance and the use of international law. The case of "Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)" works as a substantial illustration of how the ICJ can address accusations of violations of sovereignty, non-intervention, and territorial integrity by states<sup>20</sup>. It accentuates the role of international law in regulating state behavior and encouraging nonviolent relations among nations.

### 5. Examining the ICJ's jurisprudence on self-defense:

Key facets of the ICJ's jurisprudence on self-defense comprises:

1. **Armed Attack Requirement:** The ICJ has highlighted that a state can use force in self-defense merely if it has been exposed to an armed attack<sup>21</sup>. This means that there must be a strong and uninterrupted act of hostility against a state, such as a definite military attack.
2. **Necessity and Proportionality:** ICJ has highlighted that any use of force in self-defense must be required to stop the fight and reasonable to the threat being faced. In other words, the force used should not surpass what is required to deter the aggression<sup>22</sup>.

<sup>19</sup> Christian Wigwe, 'THE DOCTRINE OF NON-INTERVENTION AND THE USE OF FORCE IN INTERNATIONAL LAW', January 2008, 2015 <<https://www.researchgate.net/publication/274509604>>.

<sup>20</sup> Naadiya Moosajee, 'Ni ve Rs Ity Ap e To w n ve Rs e To W', Univeristy of Cape Town Msc (Physics) UOFS, May, 2009, 140.

<sup>21</sup> Rein Müllerson, 'Self-Defence against Armed Attacks by Non-State Actors', Chinese Journal of International Law, 18.4 (2019), 751–75 <<https://doi.org/10.1093/chinesejil/jmz037>>.

<sup>22</sup> Adil Ahmad Haque, 'Jus Ad Bellum', 6.Cup (2016), 1–20 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2827902](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2827902)>.

3. **Attribution of the Attack:** The ICJ has also entertained the problem of attribution, necessitating that the attack should be attributed to another state or a body acting on behalf of state<sup>23</sup>. It's not ample for the attack to be carried out solely by non-state actors.
4. **Preemptive Self-Defense:** The ICJ has been watchful about accepting anticipatory self-defense claims, maintaining that the use of force in anticipation of a potential threat must meet strict criteria to be considered legal<sup>24</sup>.
5. **Use of Force and Diplomacy:** The ICJ also emphasized the significance of following peaceful means in resolution of disputes before engaging in war. States are generally supposed to seek diplomatic solutions to the disputes arising between them before engaging in war<sup>25</sup>.
6. **Customary International Law:** The ICJ's jurisprudence on self-defense adds to the advancement of customary international law, which is shaped by regular state practice and acknowledged as a legal responsibility<sup>26</sup>. As the ICJ makes judgments on self-defense cases, it helps in shaping the complete understanding of the guidelines and procedures governing self-defense in international law.

#### NOTE:

<sup>23</sup> Erika De Wet, 'The Invocation of the Right to Self-Defence in Response to Armed Attacks Conducted by Armed Groups: Implications for Attribution', *Leiden Journal of International Law*, 32.1 (2019), 91–110 <<https://doi.org/10.1017/S0922156518000560>>.

<sup>24</sup> Mary Ellen O'Connell, 'The Myth of Preemptive Self-Defense', *The American Society of International Law Task Force on Terrorism*, August, 2002 <[http://www.pegc.us/archive/Authorities/OConnell\\_self\\_def\\_2003.pdf%5Cnpapers2://publication/uuid/8D85F5E3-81A6-496D-94D1-920829E141F5](http://www.pegc.us/archive/Authorities/OConnell_self_def_2003.pdf%5Cnpapers2://publication/uuid/8D85F5E3-81A6-496D-94D1-920829E141F5)>.

<sup>25</sup> C Note, 'OIL PLATFORMS (ISLAMIC REPUBLIC OF IRAN V UNITED STATES OF AMERICA) DID THE ICJ MISS THE BOAT ON THE LAW ON THE USE OF FORCE?', *Law.Unimelb.Edu.Au* <[https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0005/1680431/Garwood-Gowers.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0005/1680431/Garwood-Gowers.pdf)> [accessed 6 September 2023].

<sup>26</sup> Stefan Talmon, 'Determining Customary International Law: The ICJ's Methodology between Induction, Deduction and Assertion', *European Journal of International Law*, 26.2 (2015), 417–43 <<https://doi.org/10.1093/ejil/chv020>>.

It's important to note that the ICJ's jurisprudence on self-defense is very dynamic; it changes and grows over time as new cases are brought before it, and as international rules and state practices advance. The court's verdicts help guide states in understanding and interpreting the legal restrictions on self-defense while encouraging stability, peace, and the rule of law in the international arena.

## **6. Investigating how the ICJ's decisions have affected the evolution of the law of self-defense:**

The impact of (ICJ) judgements on the growth of self-defense law has been noteworthy and influential. The ICJ's verdicts and interpretations on self-defense cases played an important role in forming the legal structure surrounding when and how states can use force to protect themselves. Here are few important ways in which the ICJ's rulings impacted the development of the law of self-defense:

1. **Clarification of Legal Standards:** The ICJ's decisions have clarified the laws governing self-defense, which was much required. States now have a greater grasp of the circumstances that justify the use of force in light of the ICJ's interpretation of words like "armed attack," "necessity," and "proportionality."<sup>27</sup>
2. **Setting Precedents:** The ICJ's rulings established significant precedents that would guide ongoing cases and global practices<sup>28</sup>. These cases aid in establishing a precise, standard self-defense legal framework that promotes stability and amicable conflict settlement.

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<sup>27</sup> Antonio Cassese, 'The Nicaragua and Tadić Tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia', *European Journal of International Law*, 18.4 (2007), 649–68 <<https://doi.org/10.1093/ejil/chm034>>.

<sup>28</sup> Wolfgang Alschner and Damien Charlotin, 'The Growing Complexity of the International Court of Justice's Self-Citation Network', *European Journal of International Law*, 29.1 (2018), 83–112 <<https://doi.org/10.1093/ejil/chy002>>.

3. **Impact on State Behavior:** The ICJ's decisions have changed how countries approach conflicts involving self-defense. States often consult the rulings of the ICJ while determining their own course of action and how to respond to threats<sup>29</sup>. As a result, people are making the decision to use force in more considered and responsible ways.
4. **Promotion of Diplomacy:** As a consequence of the ICJ's emphasis on peaceful dispute settlement and negotiation before using force, states are now compelled to give these methods preference<sup>30</sup>. Using this strategy, which promotes international cooperation, reduces the likelihood of violent conflict.
5. **Restrictions on Aggressive Actions:** ICJ's emphasis on the requirement for an armed assault as a justification for using force has helped deter governments from using force without a good reason or in a hostile way<sup>31</sup>. This restriction helps maintain peace and security across the world.
6. **Advancement of Customary International Law:** The International Court of Justice repeatedly upheld right to self-defense, which aided the development of this area of law. States see the decisions of the ICJ as binding legal principles that direct state activity as long as they respect and accept them<sup>32</sup>.
7. **Advice for Legal Interpretation:** In order to comprehend and put self-defense concepts into practice, nations, attorneys, and scholars may substantially benefit from the case law

<sup>29</sup> Joan E. Donoghue, 'The Effectiveness of the International Court of Justice', Proceedings of the ASIL Annual Meeting, 108.April 2014 (2014), 114–18 <<https://doi.org/10.5305/procanmeetasil.108.0114>>.

<sup>30</sup> Sara Mc Laughlin Mitchell and Paul R. Hensel, 'International Institutions and Compliance with Agreements', American Journal of Political Science, 51.4 (2007), 721–37 <<https://doi.org/10.1111/j.1540-5907.2007.00277.x>>.

<sup>31</sup> John Norton Moore, 'Jus Ad Bellum before the International Court of Justice', HeinOnline <[https://heinonline.org/hol/cgi-bin/get\\_pdf.cgi?handle=hein.journals/vajint52&section=28](https://heinonline.org/hol/cgi-bin/get_pdf.cgi?handle=hein.journals/vajint52&section=28)> [accessed 6 September 2023].

<sup>32</sup> Alain Pellet, 'Decisions of the ICJ as Sources of International Law?', Gaetano Morelli Lectures Series Vol. 2 – 2018, Rome: Inte (2018), 1122 ([crde.unitelmasapienza.it/en/publications](http://crde.unitelmasapienza.it/en/publications)) <<http://crde.unitelmasapienza.it/it/pubblicazioni/gmls-2018>>.

of the International Court of Justice<sup>33</sup>. This makes it possible for international law to be unified and uniform.

8. **Development of International Peace:** The ICJ's rulings have improved global security and peace by defining clear guidelines and standards for self-defense<sup>34</sup>. War is less likely because states are less likely to employ force hastily or without cause.

## 7. Discussing the challenges and opportunities facing the ICJ in its continued development of the law of self-defense:

As it continues to contribute to the evolution of self-defense law, the International Court of Justice (ICJ) confronts both obstacles and possibilities. Here are some of the major difficulties and possibilities that the ICJ faces in this area:

## 8. Challenges:

1. **Complexity of Cases:** Situations involving self-defense might include complicated legal, political, and factual considerations. Because of the fluid nature of warfare, identifying whether an armed assault occurred, gauging the necessity for and appropriateness of force, and attributing assaults to particular actors may be challenging.<sup>35</sup>

<sup>33</sup> Teresa F Mayr and Jelka Mayr-Singer, 'Keep the Wheels Spinning: The Contributions of Advisory Opinions of the International Court of Justice to the Development of International Law', *ZaöRV*, 76 (2016), 425–49 <<http://www.zaoerv.de>>.

<sup>34</sup> Dapo Akande, 'The Role of the International Court of Justice in the Maintenance of International Peace', *African Journal of International and Comparative Law*, 8 (1996) <<https://heinonline.org/HOL/Page?handle=hein.journals/afjincol8&id=606&div=&collection=>> [accessed 6 September 2023].

<sup>35</sup> D. Peat, 'The Use of Court-Appointed Experts by the International Court of Justice', *British Yearbook of International Law*, 84.1 (2014), 271–303 <<https://doi.org/10.1093/bybil/bru024>>.

2. **Attribution of Attacks:** Attributing attacks to governments or state-supported groups may be challenging, particularly when non-state actors are involved<sup>36</sup>. The International Court of Justice may confront difficulties in appropriately assigning culpability, which may have an influence on the legality of self-defense claims.
3. **Preemptive Self-Defense:** Preemptive self-defense situations raise complex questions about whether the risk is immediate and whether the use of force is appropriate<sup>37</sup>. It may be difficult to reconcile the drive for self-preservation with international legal principles.
4. **State Sovereignty:** It may be difficult to strike a balance between the right of nations to protect themselves and the ideals of non-intervention and respect for state sovereignty. This balance must be struck by the ICJ while also preventing claims of self-defense from jeopardizing global peace and security.

## 9. Opportunities:

1. **Advice for State Action:** Nations are given guidance by the ICJ's decisions about when it is appropriate to use force in self-defense<sup>38</sup>. The International Court of Justice (ICJ) may urge governments to use reasonable and calculated approaches to self-defense by defining legal criteria and interpreting crucial terminology.
2. **Promotion of Peaceful Solutions:** Diplomatic solutions are encouraged by the ICJ's focus on using all peaceful options before using force. The court's decisions may persuade

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<sup>36</sup> Brent MICHAEL, 'Responding to Attacks by Non-State Actors : The Attribution Requirement of Self-Defence.No Title', AUSTRALIAN INTERNATIONAL LAW JOURNAL, 2009 <<https://doi.org/https://search.informit.org/doi/abs/10.3316/agispt.20105483>>.

<sup>37</sup> V A V Andreias, 'Anticipatory Self-Defense in International Law: Legal or Just a Construct for Using Force?', 2020, 1–42.

<sup>38</sup> William H. IV Taft, 'Self-Defense and the Oil Platforms Decision', Yale Journal of International Law, 29 (2004) <<https://heinonline.org/HOL/Page?handle=hein.journals/yjil29&id=305&div=&collection=>> [accessed 6 September 2023].

governments to place more emphasis on peaceful resolution of disputes than on military combat<sup>39</sup>.

3. **Customary International Law Development:** Consistent ICJ decisions may aid in the development of international customary law. The court's interpretations may evolve to be regarded as accepted standards that direct state action when governments and legal experts adopt and put them into practice<sup>40</sup>.
4. **Humanitarian Concerns:** By taking on self-defense cases, the ICJ has the chance to address humanitarian issues including deterring violence against people<sup>41</sup>. The court's rulings may aid in creating legal frameworks that place a high priority on safeguarding innocent lives.
5. **Strengthening International Institutions:** The ICJ's influence on self-defense legislation serves as more proof of how crucial international organizations are to sustaining peace and resolving disputes<sup>42</sup>. This might improve the credibility and efficiency of international institutions and legislation.
6. **Legal Clarity and Predictability:** The jurisprudence of the ICJ aids in making self-defense laws understandable and predictable. This may lessen the likelihood of misunderstandings or escalations and deter governments from taking strong action.

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<sup>39</sup> Y Mantilla - Cal. W. Int'l LJ and undefined 2020, 'Indigenous Peoples' Diplomacy, Mediation, and Conciliation as a Response to the ICJ Decision in the Obligation to Negotiate Access to the Pacific Ocean Case', HeinOnline <[https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/calwi51&section=5](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/calwi51&section=5)> [accessed 6 September 2023].

<sup>40</sup> Pellet.

<sup>41</sup> Surya p. Subedi, 'Protection of Human Rights through the Mechanism of UN Special Rapporteurs on JSTOR', 2011 <<https://www.jstor.org/stable/23015986>> [accessed 6 September 2023].

<sup>42</sup> Aloysius P. Llamzon, 'Jurisdiction and Compliance in Recent Decisions of the International Court of Justice', European Journal of International Law, 18.5 (2007), 815–52 <<https://doi.org/10.1093/ejil/chm047>>.

In a nutshell, the ICJ has difficulties because of the complexity of the issues it handles and the precarious balance between state sovereignty and international law. However, its decisions provide chances to direct state conduct, encourage amicable settlements, and mold established international law, address humanitarian issues, and increase the role of international institutions in preserving global security.

## **10. Recommendations:**

1. **Continuous Engagement:** The ICJ should keep taking up cases involving self-defense and continuing to provide precise and consistent interpretations of international law<sup>43</sup>. Governments will get reliable guidance on when it is legitimate to use force in self-defense by taking part in this engagement.
2. **Promotion of Diplomacy:** ICJ may persuade governments to favor diplomatic solutions by highlighting the value of peaceful dialogue before using force<sup>44</sup>. The court's decisions should reaffirm the idea that before taking armed action, diplomatic options should be explored.
3. **Addressing Evolving Threats:** The ICJ should modify its legal doctrine to accommodate contemporary problems like cyberattacks and hybrid conflict. The ICJ may provide states pertinent advice by interpreting self-defense laws in light of current dangers<sup>45</sup>.

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<sup>43</sup> J Sloan, CJ Tams - Hague Yearbook of International Law/Annuaire de La, and undefined 2013, 'The Development of International Law by the International Court of Justice', Brill.Com <<https://brill.com/downloadpdf/book/9789004287365/B9789004287365-s010.pdf>> [accessed 6 September 2023].

<sup>44</sup> Mitchell and Hensel.

<sup>45</sup> Delbert Tran, 'The Law of Attribution: Rules for Attribution the Source of a Cyber-Attack', Yale Journal of Law and Technology, 20 (2018) <<https://heinonline.org/HOL/Page?handle=hein.journals/yjolt20&id=376&div=&collection=>> [accessed 6 September 2023].

4. **Educational Outreach:** The International Court of Justice (ICJ) may launch educational campaigns to raise state, legal professionals, and general public understanding of the fundamentals and limitations of self-defense. This may advance international law knowledge on a global scale and encourage ethical state action<sup>46</sup>.
5. **Strengthening Enforcement Mechanisms:** While the ICJ's judgements aid in the evolution of the law, procedures to enforce adherence to its rules may be investigated<sup>47</sup>. Strengthening channels for enforcement may increase the effectiveness of court rulings in influencing state actions.

## 11. Conclusion:

The International Court of Justice has surely had an impact on how the law of self-defense has developed. ICJ has established precedents via cases like *Nicaragua v. United States* and *Armed Activities on the Territory of the Congo* by illuminating the circumstances and guidelines defining the acceptable use of force in self-defense. It has advanced international peace and security by discouraging governments from using force without justification. Its emphasis on the need of an armed assault as the basis for self-defense. In addition to establishing legal standards, the ICJ's jurisprudence has had an effect on governmental behavior and procedures. The court's impact on precedent-setting and customary international law results in a more predictable and stable international legal environment. Even while challenges remain, such as managing new threats and balancing state sovereignty with international obligations, the ICJ's engagement in self-defense

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<sup>46</sup> Gina Heathcote, 'Article 51 Self-Defense as a Narrative: Spectators and Heroes in International Law', *Texas Wesleyan Law Review*, 12 (2005) <<https://heinonline.org/HOL/Page?handle=hein.journals/twlr12&id=139&div=&collection=>> [accessed 6 September 2023].

<sup>47</sup> Maja Groff and Joris Larik, 'UN75 Global Governance Innovation Perspectives | September 2020 RULES-BASED GLOBAL ORDER The Case for an International Rule of Law Package', September, 2020.

cases gives opportunities to promote peaceful resolutions and improve the performance of international institutions. The self-defense case law of the ICJ will continue to be of fundamental importance in guiding States toward responsible conduct, promoting diplomatic solutions, and ensuring that the lawful use of force supports the objectives of international peace and justice.

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