

The Role of International Court of Justice in Development of Principle Legitimate Defense Analysis of International Court of votes of Justice

Mohammad Taghi Gharachorloo, Hasan Abdolazade, Hani Talaei

MA of International Law, Islamic Azad University, Damghan Branch, Damghan, Iran

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ABSTRACT

International Court of Justice for over six decades of his judicial activity always tried as a linchpin and judicial the United Nations in fact, in global court officials, adopt integrated approach and targeted towards the principle of prohibition legitimate defense. In addition to the inherent complexity of warfare for example, the interpretation of the principles of necessity and the proportion of cases is debatable. Whenever Court its jurisdiction in addressing international disputes or issuing an advisory opinion has obtained if consideration of the use of force and legitimate defense, based on the principles of international law has embarked to delineate positions and determining the content principle and the exception on it, Stances where the environment is relatively certain and without compliance with the principle balance of power and actual inequality of governments, is depicted in order to strengthen the legal system governing the international community. This article tries to by reference to the Refer to judge together and the advisory opinion of the International Court of Justice in the field of legitimate defense has review the Court decisions To analyze it find answer the role of the International Court of Justice in development of the principle of non-use of force and legitimate defense.

KEYWORDS: legitimate defense, United Nations, International Court of Justice, Court decisions, Peace and Security

1. INTRODUCTION

War is a social phenomenon that can be studied from a historical perspective, sociological, philosophical, ethical, political, military and legal specifically. War legal from the perspective, is one of the ways of exercising power and the use of force in international relations and armed action that takes place within the framework of relations between the countries and its goal is impose a particular political vision by using means provided in international law. (Bigdeli, 2013) .No one would deny that within a few century that of the passes existence of international law, its main purpose is to maintain peace. Although ethical considerations rise to international law and has shaped its development, but the international community consider essentially International law as a means to ensure establishment and keep the peace of global security. (Shaw, 2010) After the end of World War II and with founding of the United Nations ban on the use of force in international relations benefited dignity and special order in the Charter, If all of the objectives and principles of the United Nations and the distribution of powers between its organs are affected. (Zamani, 2007)

In the last century, before the creation of the United Nations Charter, no specific international standards do not forbid countries the use of force against the inhabitants of the own territory. The other hand there was the assumption that governments are obliged in their relations with citizens and other countries observe the minimum legal standards After the end of World War I. and adoption of the Covenant of the League of Nations, this Convention also do not forbade countries expressly the use of force and under the conditions authorized the use of force and finally, never able realize to demands of their constituents. (Www.wipo.int)

The weakness of this community and lack of enforcement tools led the world over relatively short time experience the Second Great War. (<http://forums.pichak.net>) Following this war, especially the formation of United Nations in 1945 and the subsequent creation of the International Court of Justice, changed the situation. Adhering countries to this major international organizations and adoption of its Charter by countries around the world, the Security Council extended the benefit of the international community. In the Charter deliberately use the term, but in the introduction, was to avoid and countries were banned explicitly the force and interference in the internal affairs

* **Corresponding Author:** Mohammad Taghi Gharachorloo, MA of International Law, Islamic Azad University, Damghan Branch, Damghan, Iran. gh33.ir@gmail.com

of other governments. Respect for human rights charter was confirmed and were mentioned the general principles of the United Nations. There are two exceptions on the exercise of non-interference and non-use of force. This two exceptions include: Article 51 That right of legitimate defense in the event of an armed attack against one of the members until the Security Council to take the necessary measures to maintain peace and International Security has not done, permits and other exceptions, resorting to acts of sabotage in a situation where the Council fulfilled under Chapter seventh, threatens or jeopardize peace and International Security (<http://www.ensani.ir>)

In general, the International Court of Justice has studied in several cases specifically, self-defense and in fact, the interpretation of Article 51 of the Charter of the United Nations:

- *The case of military and paramilitary activities in Nicaragua and against this country*
- *File legitimate use of nuclear weapons*
- *The case of oil rigs*
- *Advisory opinion of the Court in the case concerning Armed Activities on the Territory of the Congo*
- *The legal effect of wall in the Occupied Territories*

2. The Case of Military and Paramilitary Activities in Nicaragua and Against this Country

In the Ninth April 1984 Nicaragua offered to Hague its complaint against the United States and introduced the America's government as responsible for guerrilla activities that are in this country against central government, and demanded an investigation and provide opinion Court. In addition, according to Article 41 of the Statute of the International Court of Justice requested the Court has issued a final verdict, 'the safeguarding measures' issue. It requested that court check the following charges:

A. United States, has violated through stimulation and encouragement, arming, equipping, provide and management of military and paramilitary operations in Nicaragua and against this country contractual obligations her explicit and in particular the UN Charter (Articles 2 and 4) which underlying principle of non the use of force in international relations As well as articles 18 and 20 of the Charter of the Organization of American States, which confirms the false principles of intervention and safety of land.

B. The US government has violated the rules of public international law and common law and thus:

of Nicaragua had violated the rule by military attacks by land, air and sea and tried to intimidate and threaten the government of Nicaragua / applied force and the threat of force against Nicaragua / intervene in the internal affairs Nicaragua /violate the principle of free shipping and free trade / finally, the citizens of Nicaragua Killed and injured and has been detained. Nicaragua notes that fire operation continues and the fire mentioned result hit missiles which is the US provided and have been used in the attack was planned by him. In addition, the organization of agricultural production and bridges, airports and oil pipes energy production installations and schools and hospitals have been destroyed and damages caused by the destruction of over 200 million dollars. Nicaragua states that military and paramilitary operations against him, is permissible strictly in accordance with one of the US federal laws. (Gharachorloo, 70,2011)

When a sides of the divide to a cause refrain from attending hearings Or refuses to sign the bill, the usual procedure the Court while lamented which is reflected in the vote, By virtue of Article 53 of the Rules of Procedure continues to work its judicial proceedings.

Court in the judgments issued in the case concerning military and paramilitary activities in Nicaragua and against it (Nicaragua against the United States of America), by fifteen in front one vote commented that has jurisdiction over the matter and unanimously found that the petition filed Nicaragua against the United States is plausible. (ZiaeeBigdeli, c. 425) Finally International Court of Justice in its vote on 27 June 1986, which was very detailed and had more than 55,000 words, Due to the absence of the United States and based on conclusions of the Government of Nicaragua proclaimed own opinion detailed in 16 separate according to the rules of public international law and contractual. (www.ghavanin.ir)

3. File Legitimate Use of Nuclear Weapons

Request for advisory opinion about legality of the use of nuclear weapons in armed conflict by the World Health Organization pursuant to resolution No. WHA46.40 (dadgostary-ag.ir) on May 14, 1993, was registered with the Court. The question that from Court was asked to comment about it explicitly give its advisory opinion "The environmental effects of nuclear weapons" have referred. According to paragraph 2 of Article 96 of the UN Charter, World Health Organization about Court issues are "in range of activities of the World Health Organization" according to its constitution, can request advisory opinion. The Court while reviewed the request of World Health Organization, found that: "Referring to the health effects and environmental raised the question to the Court, in terms World Health Organization the use of a nuclear weapon is always seeking, Is no question that is in terms of engagement WHO ". (<http://intvisible.blogfa.com>) The Court considers, when the advisory opinion requested by a

specialized institution, for obtaining Jurisdiction of the Court three conditions must be fulfilled: specialized agency requesting an advisory opinion should authorized appropriate way, the Charter of the United Nations to request an advisory opinion from the Court, advisory opinion demand should be about a rights issue and this issue should be an issue in the activities the requesting agency. (Ziaee Bigdeli, vol. 1, 343) In this advisory opinion in addition, principle of special international enabling organizations, relied on the fact that the World Health Organization is a specialized agency of the United Nations system and accordingly in determining the powers concessional to it organization should be noted that the logic of overall system of the Charter, as appropriate. (Zamani, 2011,40)

General Assembly resolution 75/49 has been recorded pursuant to paragraph 1 of Article 96 of the Charter on 6 June 1995, the Court was asked to give advisory opinion on the following question: "Is the threat or use of nuclear weapons under any circumstances International law is allowed? »(GA / 49 / 75-6 June 1995) Court issued its opinion about application filed by the United Nations General Assembly on the issue of the legality of the threat or use of nuclear weapons. (Ziaee Bigdeli, vol. 1, 425)

In contrast, the International Court of Justice interest with emphasis on the fact that the UN General Assembly about question posed long-term and activities and resolutions of the Assembly confirms this point, question posed possess legal aspects, the purpose of an advisory opinion settlement of disputes between states but also aims to provide legal advice to organizations and institutions that have been demanding issuing an advisory opinion and in any case shall be given any legal issue issues an advisory opinion the General Assembly has the right that themselves decide about benefit of advisory opinion according to its needs and finally, the Court cannot determine whether compelling reason to refrain from issuing ratings exists or not, pay attention to the principles or political history request or distribution of votes on adoption of Resolution that by 13 votes to 1 vote against, decides to issue an advisory opinion in response to a request from the UN General Assembly. (Myrshhbyz, 1998,129) Court after qualification for responding to the request of the General Assembly, declared its terms on 8 July 1996, paragraph 2/105 as follows:

1. (Unanimously) in customary international law and contractual does not exist no special permit to the threat or use of nuclear weapons.
2. (With 11 votes in favor, 3 against dissenting vote) in customary international law the contract per se does not exist no comprehensive ban and the World to threat or use of nuclear weapons.
3. (Unanimously) the threat or use of force with nuclear weapons is contrary to paragraph 4 of Article 2 of the UN Charter and lacking all the conditions of Article 51, it is illegal.
4. (Unanimously) the threat or use of nuclear weapons must be comply with the rules of international law mandatory in armed conflict, in particular the principles and rules of international humanitarian law, as well as in accordance with obligations foreseen treaties and other commitments that are clearly related to nuclear weapons.
5. (With seven votes in favor of the President of the Court of preferential votes and seven votes against) according to conditions that mentioned above, This conclusion is reached that the threat or use of nuclear weapons is generally contrary to the rules of international law binding in the conflict conciliatory and in particular is contrary to the principles and rules of humanitarian law. However, the current state of international law and its agents, the Court can not conclude definitively that in self-defense when the country is highly vulnerable to extinction the threat or use of nuclear weapons is legitimate or illegitimate.
6. (Unanimously) there is the obligation to pursue in good faith and the outcome of the negotiations under serious and effective international leading to nuclear disarmament in all its aspects. (Dadgostary-ag.ir)

4. The Case of Oil Rigs

On 6 November 2003 the International Court of Justice issued his vote in the case of oil rigs. (ICJ Reports (2003) 161.) Government of Iran on November 2, 1992 against America recorded the petition to the International Court of Justice. Under the Statute and Rules of Court proceedings, after determining deadlines for the completion was announced a copy of the petition Iran referring to paragraph "2", Article 40 of the Statute of the Court to the relevant that America. (Mir Abbasi, 2010,74) During the period extended in order to mutual filed a lawsuit, United States of America attempted to bring up preliminary objection to the jurisdiction of the Court referred to in paragraph 1 of Article 79 of the Rules of Court. Consequently, the investigation into the case was suspended. (ZiaeeBigdeli, vol. 1, 401)

Iran recorded up its bill "Notes and Comments" in due course, and therefore file was prepared for oral hearing in respect of preliminary objections and qualification. Because the Iran among Court justices, had not the chief judge, by virtue of paragraph "2", Article 31 of the Statute Professor Rygv appointed and introduced as judge of its own and asked the court to declare their opinion to his demands (Mir Abbasi, 2010,74). The Court, by fourteen votes to two, rejected the preliminary objection United States of America based on that 1955 treaty did not foresee any

basis for the Court's jurisdiction and as well as Court by fourteen votes to two vote, establish that the basic paragraph 2 of Article 21 of the Treaty of 1955, to investigate the claims of the Islamic Republic of Iran under paragraph 1 of Article 10 has put it, qualified. (ZiaeeBigdeli, vol. 1, 400) Except for from relying on legitimate defense, the United States justify his attacks October 1987, the Iranian oil platforms too by resorting to the part D paragraph 1 of Article 20 amity Convention 1959. Representing that State Argued, Iran's actions during this period, has been regarded as a basic threat against US security interests. As a result, repeated attacks of Iran on neutral shipping, flow maritime compromised in Persian Gulf and the lives of citizens of the United States was faced with danger; so that the US Navy in security tasks faced with an obstacle the government and the citizens of America suffered severe financial losses; Therefore, in this situation, armed action in a legitimate defense, was the only possible way to prevent repeated attacks of the Iranians. (Saifi, 2003)

Islamic Republic of Iran denied responsibility for an attack on the ship C-il City and stated that in rigs targeting the US, there is no military purpose and they have no military activities. Also verdict Court of International Justice can be analyzed from different perspectives Court justices; This means that a kind of gap and differentiation is visible between the views of national judges advanced industrial countries and judges in developing countries. Position of Judges who their respective governments defenders and supporters of America's military attack on Iraq, further was shifted to This side that Court veterans no breach of the obligations contained in Article 10 of the 1955 Treaty of Amity., Should be reviewed the legitimacy or illegitimacy of America's military action against Iranian oil rigs, while judges dependent block of developing countries and particularly the Arabic countries, had different views and America influenced by unilateral measures, considered America's military attacks on Iranian oil platforms for the America great responsibility and implies payment of compensation.

5. The Court's Advisory Opinion about the Legal Effect of Wall in the Occupied Territories

In July 2004, the Court again found the opportunity to examine the rules of the use of force in legitimate defense this time because of the issue of the security wall by Israel In occupied Palestinian territory, such as internal land and around East Jerusalem. (ICJ Reports 2004) The UN General Assembly asked From International Court of Justice commented on the impact of the Wall by Israel - occupying government - in Palestine such as East Jerusalem, considering Rules of and principles of international law such as four 1949 Geneva Conventions and the relevant resolutions of the General Assembly and the Security Council of the United Nations.

Court asked from Israel to destroy the wall and as well as Court obliged Israel to pay all damages to real entities and legal on the basis methods of compensation in common law. The Court cited in its decision to paragraph 6 of Article 49 of the Fourth Geneva Convention according to Article 49 of the occupying government is not allowed to displacement of its civilian population to occupied areas and It does not have the right of settlements. Court in paragraph «D» of part Executive according to Article I, four Geneva Conventions frequently asks from governments and United Nations that respect arrangements Convention and has refused to recognize the wall and do not contribute with Israel to the construction of the wall in no way.

(<http://www.icj-cij.org/docket/files/131/1677.pdf>)

Court in case of advisory Retaining wall announced that rules and regulations of The Hague, that Israel is not a party it is part of customary law and therefore is applicable On the other hand these rules have been recognized by all Member and also procedure. The Court noted that the basic approach compensation in common law by permanent Court of International Justice has been Classified and declared as follows:

"The basic principle which is result of an illegal act and procedures International especially precedent courts of arbitration is that compensation should possibly destroy all traces and the results of incorrect act and restore the status that if mentioned act were not acted, likely there were existed: restore the former situation or if this is not possible, pay losses for damages that Restore enactment to the former or compensation cannot cover them ..."

So Israel is obliged in order to compensate the damage to the Palestinian people, possibly returns the situation to the former in the first place and for this purpose demolished parts of made of Wall and cancel legal actions relating as well as, property and Return to their owners land expropriated. Secondly, In order to compensate for the damage, Israel must pay appropriate compensation to persons whose houses, and arable land have been destroyed, in accordance with rules international law, in the event that a return To former situation is not possible materially. In addition, the Court has emphasized that Israel under the Fourth Geneva Convention of 1949 CE. is committed people accused of serious violations of international humanitarian law, whether have been issued ordered the construction of Retaining walls or design and implemented it or that are being built it , arrested and tried. (rasekhon.net)

6. The Case of the Armed Activities in Congo

On June 23, 1999 Congo proposed 3 fights against countries of Burundi, Rwanda and Uganda in the International Court of Justice, after a while, Complaint were refunded against the Government of Rwanda and

Burundi, but continued fight Against Uganda (Azizi, 2011). In December 2005, the International Court of Justice issued their votes, which contains a discussion in relation to be use of force, related to the military activities of Uganda against Democratic Republic of Congo. (www.icj-cij.org/docket/files/116/10455.pdf) But the vote is different and even can be described as a "historic vote". For the first time in the history of the Court, establish a state in which the prohibition on the use of force in paragraph 4 of Article 2 of the Charter have been violated in fact, in direct violation The most important regulations of the most important treaty of international law was declared. Court spoke for the first time directly in about realm of legitimate defense and in accordance with Article 51. (yaserziaee.blogfa.com)

Court by following from their former procedure and even with explicit mention of to the case of Nicaragua Ugandan government intervention in the internal conflict in Congo considered violate regulations ban intervention and ban the use of force in international law and also mentioned that "the Court made it clear that the ban interference in each government direct or indirect intervention and with the use or without use from armed force in support of the internal opposition is forbid in other countries. In this case, the Court pointed that military intervention is proven according to the sufficient evidence. In addition, Court confirms that the measures violate principle of non-intervention also includes directly or indirectly force and violated the principle of nonuse of force in international relations. (Aziz, 2011)

7. Conclusions

International Court of Justice in 1970 in the case of Barcelona, transactions between countries international obligations has been separated and declared that if some of the State's international obligations are reciprocal obligations, some other in terms of fundamental importance them to the international community, obligations are in relation with all and all countries have a legal interest that these obligations are adhered. (Barcelona Traction, 1970, p. 32, par.33) With regard to the jurisdiction types of contentious competence and advisory competence, Court play a role to resolve disputes and finally peacekeeping and international security are directly or indirectly. Court concerning assessed on the its direct role of in peacekeeping and International Security according to the UN Charter and its constitution and role of decisions of their contentious competence in 2 field, One is that opinions of the Court destroys the origin of the dispute between the government moreover, Terminates the uncertainties that exists concerning the many international issues between governments and led to a conflict between them. (GA / 44 / 23-17 November 1989)

Also in resolution 23/44 dated November 17, 1989 which was approved by the General Assembly, was emphasized strengthening methods International dispute resolution between friends including respect for the Court. Court attempted in the case of above analyze unknown dimensions legitimate defense institution. Court, after the issues their verdict in the case of Nicaragua, in the case of following propositions always considered their findings in this vote and used it as a benchmark tool. Hence, in subsequent decisions approve their findings in the case of Nicaragua, which were mainly the rules of customary international law, where the major include: Armed attack attributable to a foreign government, proportion and necessary actions taken in legitimate defense and the use of force in legitimate defense against military targets. also Court in its procedures, based on treaty law and customary law, strengthen the bet armed attack and tried to accept a restricted interpretation of the concept of armed attack so that it does not include pre-emptive legitimate defense and hence prevent the misuse of legitimate defense that this interpretation is more consistent with the nature of legitimate defense, because legitimate defense is an exceptional right that applies if only there is no other tool. It should be noted that the Court did not determine entirely restrictions on the use of force to apply legitimate defense. Similarly, the Court did not explain the question of pre-emptive defense "imminent". The terrorist attacks of September 11, 2001 a new dimension in legal discourse and the political establishment. (<http://iail.blogfa.com>) After the attacks of September eleventh, the Security Council adopted Resolution 1989 and 1994 in three cases, the Court did not explain them (for example, in an advisory opinion cordon them easily later) and expressly the Security Council's own interpretation of legitimate defense which was mentioned in the resolution, approve or reject it. While the Court upheld the precedent in this regard, but less benefit from opportunities to develop the legal system governing legitimate defense and even the its exact explanation. As a result, a lot of the questions about the broad concept of self-defense in customary international law remain unanswered. (<http://www.ejiltalk.org>) Court by interpret the Charter and international law play important role in the development of principle of non-force and legitimate defense. After the events of September eleventh Court precedent suggests that the Court believes the general rule ban the use of force and offer a broad interpretation of the rule instead of the narrow approach to it exceptions of the attack is legitimate and have not been outdated the rules limiting use of force enshrined in the UN Charter. (Washington Quarterly, 2003, p. 101)

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