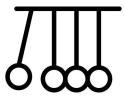


TURKEY'S UNHEARD VOICES

Use of Force and State Responsibility in Nicaragua v. United States

LAW

ELAY DERİN ULAŞ



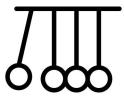
Abstract

This report examines the International Court of Justice's judgment in the *Nicaragua v. United States* case, with a particular focus on the prohibition of the use of force and on the doctrine of state responsibility under international law. It analyzes the historical background of the dispute, the Court's findings on jurisdiction and admissibility, and the interpretation of key legal principles such as the prohibition of the use of force, self-defence, and the attribution of conduct to a state. The report further evaluates the Court's rejection of the United States' claim of collective self-defence and its determination of multiple violations of customary international law and treaty obligations. The *Nicaragua judgment* is assessed as a landmark decision that clarified fundamental rules governing the use of force and reinforced the accountability of states for both direct and indirect involvement in unlawful activities.

Historical and Political Background of the Case

The dispute between Nicaragua and the United States arose in the context of increasing military and paramilitary activities in and against Nicaragua during the early 1980s. On 9 April 1984, Nicaragua instituted proceedings before the ICJ, alleging that the United States bore international responsibility for military and paramilitary actions carried out against its territory. Alongside the Application, Nicaragua requested the indication of provisional measures in order to prevent further harm pending the Court's final decision. On 10 May 1984, the Court issued an Order indicating provisional measures. Among these, the Court required the United States to immediately desist and refrain from any actions restricting access to Nicaraguan ports, particularly the laying of mines. The Court further emphasised that Nicaragua's sovereignty and political independence, as protected under international law, should be fully respected. It highlighted that such rights must not be jeopardized by activities contrary to the prohibition of the threat or use of force and the principle of non-intervention in the internal affairs of States.

At an early stage, the Court decided that the proceedings would initially address questions of jurisdiction and admissibility. During this phase, El Salvador sought to intervene in the case under Article 63 of the Statute of the Court, arguing that the Court lacked jurisdiction. However, in its Order of 4 October 1984, the Court declared El Salvador's intervention inadmissible insofar as it concerned the jurisdictional phase of the proceedings. Following



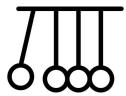
public hearings held between 8 and 18 October 1984, the Court delivered its Judgment on 26 November 1984, affirming that it had jurisdiction over the dispute and that Nicaragua's Application was admissible. The Court held that Nicaragua was entitled to rely on the United States' 1946 declaration accepting the Court's compulsory jurisdiction, in conjunction with Nicaragua's own declaration of 1929, pursuant to Article 36 of the Statute.

Subsequent proceedings took place in the absence of the United States, which announced in January 1985 its intention not to participate further in the case. Nevertheless, the Court continued the proceedings, hearing oral arguments and witness testimony presented by Nicaragua in September 1985. On 27 June 1986, the Court delivered its Judgment on the merits, rejecting the United States' justification based on collective self-defence and finding multiple violations of customary international law, including the prohibitions on the use of force, intervention, and infringement of state sovereignty, as well as obligations relating to peaceful maritime commerce. The Court concluded that the United States was under an obligation to cease its unlawful conduct and to make full reparation for the injury caused to Nicaragua. Although further proceedings were initiated concerning the form and amount of reparation, Nicaragua ultimately informed the Court in 1991 that it did not wish to continue the case, leading to its removal from the General List of the Court.

Jurisdiction and Admissibility

Before addressing the merits of the dispute, it was obligatory for the International Court of Justice to consider whether it had jurisdiction to adjudicate the dispute and whether the Application filed by Nicaragua was admissible. These preliminary issues were central, as the United States strongly contested the Court's authority to adjudicate the dispute. Nicaragua based the Court's jurisdiction on Article 36, paragraphs 2 and 5, of the Statute of the International Court of Justice, relying on the declarations made by both States accepting the Court's compulsory jurisdiction. Nicaragua invoked its own declaration of 1929, made under the Statute of the Permanent Court of International Justice, and argued that it remained valid and applicable to the ICJ. It further relied on the United States' declaration of 1946, which recognised the compulsory jurisdiction of the Court subject to certain reservations.

The United States challenged the Court's jurisdiction on several grounds. It argued, *inter alia*, that Nicaragua's 1929 declaration was invalid, that the dispute fell within the scope of its reservations to the optional clause, and that the Court lacked competence to rule on matters



involving collective self-defence and regional security arrangements. Furthermore, the United States contended that Nicaragua's Application was inadmissible due to alleged defects in its formulation and the political nature of the dispute.

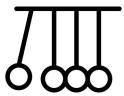
In parallel, El Salvador sought to intervene in the proceedings under Article 63 of the Statute, claiming an interest in the interpretation of relevant legal rules during the jurisdictional phase. However, the Court declared El Salvador's intervention inadmissible to the extent that it related to the question of jurisdiction, reaffirming that third-state intervention could not be used to challenge the Court's competence at that stage.

In its Judgment of 26 November 1984, the Court rejected the objections raised by the United States and held that it had jurisdiction to entertain the case. The Court confirmed the validity of Nicaragua's 1929 declaration and concluded that Nicaragua was entitled to rely on the United States' 1946 declaration, finding that the reservations invoked by the United States did not exclude the dispute from the Court's jurisdiction. The Court also concluded that Nicaragua's Application was admissible. It emphasised that the existence of political aspects in a dispute did not deprive it of its legal character, nor did it prevent the Court from exercising jurisdiction. Therefore, having affirmed both jurisdiction and admissibility, the Court proceeded to examine the merits of the case.

The Prohibition of the Use of Force in International Law

The prohibition of the use of force constitutes one of the fundamental principles of contemporary international law. The principle is enshrined in Article 2 of the United Nations Charter, which obliges all States to refrain from the threat or use of force against the territorial integrity or political independence of any State. The rule is widely recognized as a cornerstone of the international legal order and applies to both direct and indirect forms of force.

In the *Nicaragua v. United States* case, the International Court of Justice reaffirmed the centrality of this prohibition and clarified its scope under both treaty law and customary international law. The Court emphasized that the prohibition of the use of force exists not only as a treaty obligation under the UN Charter but also as a rule of customary international



law, binding on all States regardless of their membership status or specific treaty commitments.

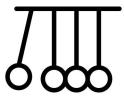
The Court examined whether the actions attributed to the United States, including military and paramilitary activities in and against Nicaragua, constituted a use of force. It found that acts such as the mining of Nicaraguan ports and the support provided to armed groups operating against the Nicaraguan government amounted to unlawful uses of force. The Court underlined that the indirect use of force, particularly through the organization, training, financing, and equipping of armed groups, could fall within the scope of the prohibition when such activities reach a sufficient level of gravity.

Furthermore, the Court distinguished between mere political or economic pressure and actions that qualify as a use of force under international law. While not every form of interference constitutes a breach of Article 2, the Court made clear that armed activities, whether carried out directly or indirectly, may violate the prohibition when they threaten the sovereignty and territorial integrity of another State. By reaffirming the customary nature of the prohibition of the use of force and clarifying its application to indirect forms of military involvement, the *Nicaragua* judgment significantly contributed to the development of international law. It confirmed that States may not circumvent the prohibition by acting through non-state actors and that respect for the principle remains essential to the maintenance of international peace and security.

Armed Attack and Self-Defense

Under international law, the prohibition of the use of force admits a limited exception in the case of self-defence. Article 51 of the United Nations Charter recognizes the inherent right of individual or collective self-defence if an armed attack occurs against a Member State. In the *Nicaragua v. United States* case, the International Court of Justice was required to examine whether the actions of the United States could be justified on the basis of collective self-defence.

A central issue before the Court was the interpretation of the concept of an armed attack. The Court clarified that not all uses of force amount to an armed attack within the meaning of Article 51. While grave forms of the use of force, such as direct military action, may constitute an armed attack, lesser forms, including certain indirect uses of force, do not



necessarily meet this threshold. The Court distinguished between the most serious forms of force and other violations of the prohibition of the use of force, emphasizing that only the former can trigger the right of self-defence.

Secondly, the Court emphasized that the exercise of collective self-defence is subject to strict conditions. These include the existence of an armed attack, a request for assistance from the victim State, and compliance with the principles of necessity and proportionality. The Court found that these conditions were not satisfied in the present case. In particular, there was no clear and formal request by the alleged injured States invoking collective self-defence, nor was it demonstrated that the measures taken by the United States were necessary and proportionate.

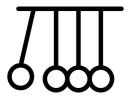
Furthermore, the Court noted that the United States had failed to report its actions to the United Nations Security Council, as required by Article 51 of the UN Charter. While the Court acknowledged that this reporting obligation is procedural in nature, it considered the absence of such notification as additional evidence undermining the claim of lawful self-defence.

In conclusion, the Court held that the United States could not rely on the doctrine of collective self-defence to justify its military and paramilitary activities in and against Nicaragua. This finding played a crucial role in establishing the unlawfulness of the use of force and laid the groundwork for the Court's determination of state responsibility in the subsequent analysis.

State Responsibility

In the *Nicaragua v. United States* case, the International Court of Justice examined whether the conduct attributed to the United States engaged its international responsibility. A key issue was the attribution of acts carried out by non-state actors, namely the Contras, to the United States. The Court applied the effective control test, assessing whether the United States exercised sufficient control over the military operations of these groups.

The Court concluded that, although the United States had provided significant financial, logistical, and military support to the Contras, it did not exercise effective control over their specific operations. As a result, the acts of the Contras could not be fully attributed to the United States. Nevertheless, the Court held that the United States incurred international



responsibility for its own conduct, particularly for organizing, training, financing, and equipping armed groups, and for direct actions such as the mining of Nicaraguan ports.

In addition to establishing responsibility for its own conduct, the Court emphasized that a State may incur international responsibility even in the absence of direct attribution of all wrongful acts. The provision of substantial support to armed groups, when it significantly contributes to unlawful activities, may itself constitute a breach of international obligations. This approach underscored that States cannot avoid responsibility by acting indirectly through non-state actors and reinforced the principle that respect for international law extends to all forms of involvement in armed conflict.

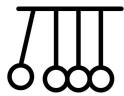
Accordingly, the Court found that the United States had breached its obligations under customary international law, including the principles of non-intervention, the prohibition of the use of force, and respect for State sovereignty.

Violations Identified by the ICJ

In its judgment on the merits, the ICJ identified several violations of international law committed by the United States in its activities in and against Nicaragua. These violations concerned both customary international law and treaty obligations and formed the basis of the Court's finding of international responsibility. First, the Court held that the United States had violated the prohibition of the use of force by engaging in military and paramilitary activities against Nicaragua. Actions such as the mining of Nicaraguan territory were considered unlawful uses of force under international law.

Secondly, the Court found a breach of the principle of non-intervention. By organizing, training, financing, and equipping the Contras, the United States unlawfully intervened in matters within Nicaragua's domestic jurisdiction, particularly its choice of political and economic system. The Court further concluded that the United States had infringed Nicaragua's sovereignty and violated obligations relating to peaceful maritime commerce, especially through actions affecting Nicaraguan ports and navigation.

In addition, the Court determined that the United States had breached specific obligations arising from the 1956 Treaty of Friendship, Commerce and Navigation between the two



States and had committed acts that deprived the treaty of its object and purpose. Taken together, these findings demonstrated a pattern of conduct incompatible with fundamental principles of international law and justified the Court's determination that the United States had incurred international responsibility.

Conclusion

The *Nicaragua v. United States* case represents a milestone in the development of international law concerning the use of force and state responsibility. Through its judgment, the ICJ reaffirmed the fundamental nature of the prohibition of the use of force and clarified that this rule exists not only under the United Nations Charter but also as a norm of customary international law. The Court's strict interpretation of the concept of an armed attack and its rejection of the United States' collective self-defence argument underscored the limited scope of lawful exceptions to this prohibition.

Furthermore, the Court made a significant contribution to the law of state responsibility by distinguishing between the attribution of acts committed by non-state actors and responsibility arising from a State's own conduct. By applying the effective control test and emphasizing responsibility for indirect involvement, the Court demonstrated that States cannot evade international responsibility by acting through proxies. Overall, the judgment strengthened the principles of sovereignty, non-intervention, and accountability, and it continues to serve as an authoritative reference in contemporary debates on the use of force in international relations.

Resources

- International Court of Justice, Military and Paramilitary Activities in and against Nicaragua Judgement of 27 June 1986 <https://www.icj-cij.org/case/70>
- United Nations, Charter of the United Nations <https://www.un.org/en/about-us/un-charter>
- Tom Ruys, 'Armed Attack' and Article 51 of the UN Charter: Evolutions in Customary Law and Practice 33 Leiden Journal of International Law <https://www.cambridge.org/core/journals/leiden-journal-of-international-law>