

ROLE OF INTERNATIONAL COURT OF JUSTICE IN RESOLVING DISPUTES

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ABSTRACT

The UN International Court of Justice's legal foundation and jurisdiction are examined in this article. It also examines the issues and contents of interstate disputes brought before this court, as well as the outcomes of the court's actions on certain subjects (making decisions or advisory opinions).

The modern world is unthinkable without the interaction of international organizations, states and individuals in all areas of society (political, economic, cultural, etc.). The positions of international judicial organizations in resolving interstate disputes, settling serious conflicts and determining those responsible for violations of international law are also noticeably strengthening. The participation of international courts in these processes determines their high international status, which makes it especially relevant to determine the legitimacy of the activities of these international judicial organizations.

The International Court of Justice - the main judicial body of the UN - is a legally equipped institution of the world community, created to ensure the rule of law in international relations. The main task of the International Court of Justice in this regard is to transfer the situation of a conflict of interest into a regime that meets the requirements of international legal

norms. At the same time, the legal balance of law and justice is ensured only if all participants in the relationship comply in good faith with their international obligations, regardless of the source of their occurrence [5, p. 63].

Since its first meeting, held in the spring of 1946, a total of about 150 cases have been referred to the International Court of Justice [11, p. 3]. At the same time, the number of cases referred in the late 1990s and to the present has increased significantly. So, if for the first fifty years of its activity (from 1946 to 1996) the court considered 97 cases (75 of them were devoted to the consideration of disputes between states, and 22 to the issuance of advisory opinions) [5, p. 63], then over the next seventeen years (from 1997 to 2013) - about 30 cases. The insignificant quantitative indicators of the cases examined by the Court are explained, first of all, by the small number of potential parties' consideration of cases in the International Court of Justice (countries



participating in the Statute (para. 1, art. 35 of the Statute), a number of other states determined by the UN Security Council (para. 2, art. 35), as well as the main bodies and specialized agencies of the UN system (art. 96 of the UN Charter and Article 65 of the Statute of the Court).

On the subject of interstate disputes pending before the court or the issues of requested advisory opinions, all cases can be conditionally divided into several categories. According to the official data of the International Court of Justice, more than half of the cases accepted for consideration concern conflicts of interest between states on territorial and border issues. The second largest number of disputes resolved in the Court and advisory opinions issued by it is a group of issues in the field of international maritime law. and diplomatic and consular law. More important to the preservation of world order are disputes over the illegal use of force. The least frequent request is for the Court to rule on commercial or private law claims against one State that is supported by another State. Such cases occupy an insignificant place in the total volume of cases accepted for trial.

The results of the activities of the court on individual issues (making decisions or advisory opinions) have become a serious contribution to the development of a set of legal principles that are the basis for maintaining world order.

The practice of resolving issues of territorial and border disputes is quite extensive. It has a number of complex problems to its credit, the solution of which by the International Court of Justice ended the international confrontation that existed

at the time of the consideration of the case and prevented the further development of the conflict. Examples of this are a number of decisions taken by the Court and enforced by the parties. Thus, one of the first decisions made on the merits of the territorial dispute was the Preah Vihear temple case, which determined the conflict of interests between Thailand and Cambodia.

By a decision of the Court of June 15, 1962, it was established that the named temple (Preah Vihear - a place of religious pilgrimage and worship of the Khmers - the main people of Cambodia), since 1954, under the control of Thailand, is located on the territory of Cambodia. It follows from this. the decision of the International Court of Justice itself: the withdrawal by Thailand of its police and military forces, as well as the return to Cambodia of all items recovered from the ruins [3].

Recognizing the jurisdiction of the International Court of Justice, Thailand complied with the decision of the Court and withdrew its armed forces and police from the designated territory. At the same time, it should be noted that the named dispute by the decision of the International Court was, unfortunately, ended only for a few decades. In 2008 (in connection with the assignment of the Preah Vihear temple complex to Cambodia by UNESCO), the bilateral confrontation between Thailand and Cambodia resumed, and in 2011, its escalation led to armed border clashes with the use of artillery and automatic weapons [8].

A special place in the total volume of cases under consideration belongs to the resolution of disputes related to the



jurisdiction of states. territory or over its citizens in other countries Usually. It's about immunity. citizenship or the right to asylum.

A striking example demonstrating the complexity of solving these problems is the high-profile case of the 1950s. - The asylum case. [4] - a heated political scandal between Peru and Colombia. In a decision of the Court of 20 November 1950, which concluded the case on the merits, the Court found that the actions of Colombia, as a State that had offered asylum in the Colombian embassy in Lima, to the Peruvian Politician Victor Raul Haya de la Torre, who was accused of conspiring to carry out a military coup d'état, are illegal, since no country should deal with the qualification of a crime (political or ordinary) committed by a refugee. The Court therefore concluded that granting asylum was an unlawful act on the part of the Colombian authorities.

Following the ICJ decision, Peru demanded that Colombia implement it and called on it to end the undue protection granted to Victor Raul Haya de la Torre by extraditing a refugee. Referring to the absence of an operative part in the decision of the Court regarding the extradition of a refugee, Colombia re-applied to the International Court of Justice with a request to determine the form of execution of the first decision and petitioned for an additional decision not obliging Colombia to extradite the refugee to the Peruvian side.

In a subsequent judgment (of June 13, 1951 c), the Court granted the request of Colombia to determine that there was no obligation to extradite Victor Raul Haya de

la Torre to the authorities of Peru and confirmed the earlier decision to terminate the asylum from the date of the judgment of November 20, 1950 with 8 ultimately, the international dispute was settled through negotiations and Mr. Haya de la Torre, after spending five years in the Embassy of Colombia, was able to leave Peru in 1953[2].

The retrial of this case does not demonstrate the impotence of the UN judiciary, but is evidence of the authority of the International Court of Justice, recognized by the member states of the Statute of the Court, seeking to comply with the decisions of the Court within the legal field of international law.

The attitude of the International Court of Justice to widely known international conflicts is of the greatest interest to the world community as a whole. The criticism voiced against the Court about the latter's inaction in the process of settling major international confrontations is, to say the least, unfair. The reason for the absence of trials is not the position of the International Court of Justice's refusal to participate in high-profile cases, but the lack of initiative of at least one of the parties to the conflict to initiate cases in the Court.

At present, the advisory opinion of the International Court of Justice dated July 22, 2010 deserves special attention of researchers. «On the Compliance with International Law of the Unilateral Proclamation of Independence of Kosovo. The close interest in the said conclusion of the Court is explained not only by the high degree of politicization of the issue, but also by some actions of the court, which



allow some researchers to characterize them as unlawful.

After the unilateral declaration on February 17, 2008, temporary Kosovo's local self-government authorities declared the independence of the Province, Serbia announced its non-recognition of this status of Kosovo and initiated the adoption of a resolution of the UN General Assembly containing a request to the International Court of Justice for an advisory opinion on the problem identified. self-government of Kosovo to the norms of international law?" [1, p.68].

In accordance with the norms of the UN Charter and the Statute, the issue preceding the consideration of the case on the merits is the determination of the jurisdiction of the International Court of Justice in relation to the initiation of proceedings for the consideration of the case or the issuance of an advisory opinion. This question in the specific case of consideration of the problem of Kosovo is of fundamental importance.

The issue of Kosovo at the time under review was predominantly within the jurisdiction of the UN Security Council, and not the jurisdiction of the General Assembly. According to paragraph 1 of Art. 12 of the UN Charter "when the Security Council is exercising the functions entrusted to it by this Charter in relation to any dispute or situation, the General Assembly may not make any recommendations concerning the dispute or situation, unless the Security Council so requests [10, p. 1, art. 121. In this connection, the Court announced that the request for an advisory opinion within the meaning of Art. 12 of the UN Charter is not

a recommendation. Using the provisions of paragraph 1 of Art. 96 of the UN Charter, according to which "the General Assembly or the Security Council may request advisory opinions from the International Court of Justice on any legal question" [10, p. 1, art. 96]. The Court has decided that it has the competence to respond to a request from the General Assembly [1, p. 69].

Analyzing the degree of legitimacy of the actions of the International Court in determining its jurisdiction, modern researchers (A. Abashidze, A. Solntsev) come to the conclusion that the decision of the Court was illegal. To prove their opinion, scientists cite the existing rule in the system of relationships and interrelationships of international law norms that special norms prevail over general norms. With regard to the provisions of the UN Charter, this rule means that Art. 10 of the Charter of the United Nations (the General Assembly is empowered to discuss any question or matter within the scope of this Charter or relating to the powers and functions of any of the organs provided for in this Charter, and, except as provided in Article 12, to make recommendations to the Members of the United Nations or the Security Council on any such questions or cases') [10, Art. 101 enshrines the general norm, and Art. 12 (p. 1) of the UN Charter - special. Since at that time Kosovo as a situation was within the competence of the Security Council on the basis of Art. 12 of the UN Charter. The General Assembly did not have the right to take any action on this issue, including applying to the International Court of Justice with a request for an advisory opinion [1, p. 74-75].



Having accepted its jurisdiction in considering the question of Kosovo, the Court proceeded to discuss the content of the question. At this stage, also some of the actions of the Court caused concern among legal scholars. Referring to existing practice, the International Court of Justice pointed out that it sometimes corrects the wording of requests if they are inadequate, unclear or poorly reflect the legal side of the issue. Such a statement of the Court is rather doubtful, since neither the Statute of the Court nor its Rules reflect the right of the court to change the text of the request. On the contrary, paragraph 2 of Art. 65 of the Statute determines that "issues on which an advisory opinion of the Court is requested are submitted to the Court in a written statement containing an exact statement of the issue on which an opinion is required ..." [9, p. 2, art. 65]. Consequently, if the Court was not clear about the request for an advisory opinion or the wording of the request was incorrect, the Court had the right to propose to the person authorized by the General Assembly to amend the content of the question. Not taking into account the norm of paragraph 2. Art. 65, the Court excluded from the request the determination of the body that declared the independence of Kosovo (the provisional authorities of self-government of Kosovo). Thus narrowing the wording of

the question. The court clarified that it would analyze the issue of the conformity of the declaration of independence with international law [1, p. 70].

Particularly noteworthy is the determination by the International Court of Justice of the legality of the actions of the interim authorities of Kosovo self-government, taking into account Resolution 1244 (1999) of the UN Security Council [7]. The said resolution was adopted on the basis of Ch. VII of the UN Charter (action in relation to threats to the peace, violations of the peace and acts of aggression). It emphasizes the importance of the principle of territorial integrity, as well as the importance of the process aimed at the conclusion of an interim political framework agreement providing for a significant degree of Kosovo self-government ..." [7]. An analysis of the content of the resolution allowed the court to conclude that this document does not contain a direct ban on the declaration of Kosovo. The outcome of the court's activities at the request of the UN General Assembly for an advisory opinion. On the Compliance with International Law of the Unilateral Declaration of Independence of Kosovo'. the court ruled that the declaration of independence of Kosovo on February 17, 2008 does not violate the norms of international law [1, p. 73].

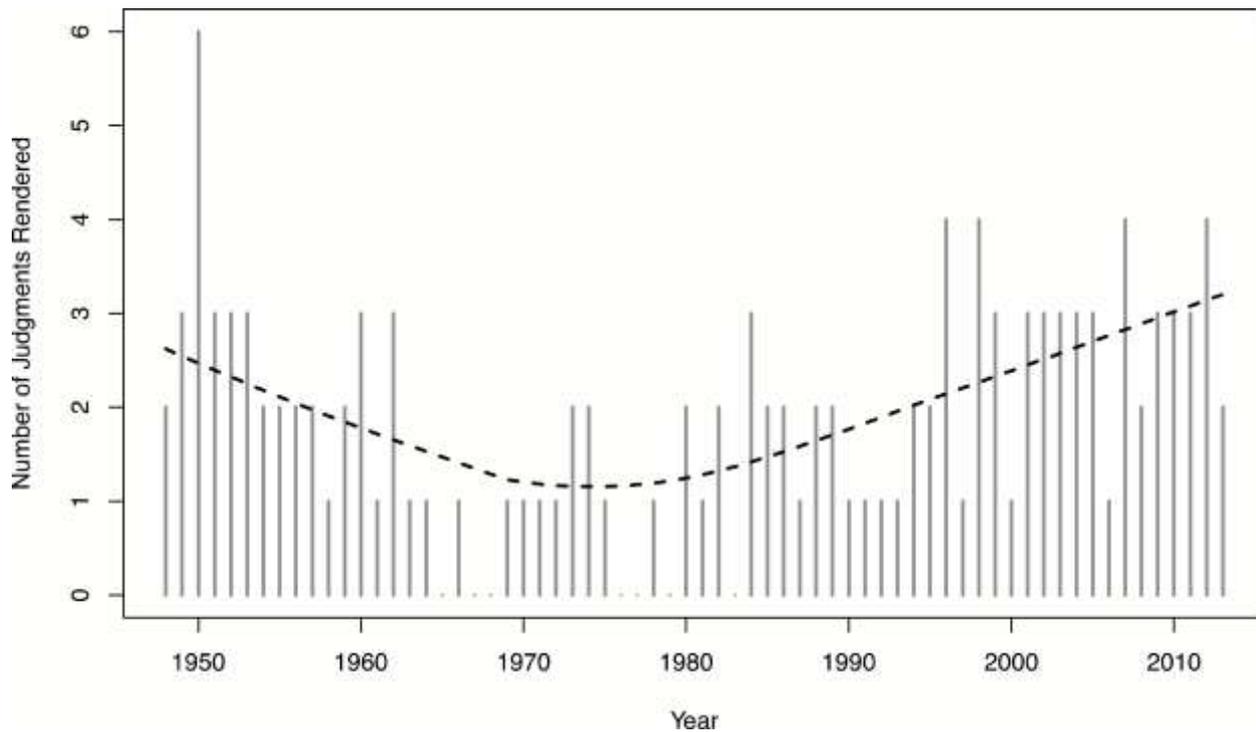


Figure 1: Annual Number of ICJ Judgments Rendered (with trend line).

The activities of the court as the main judicial body of the UN in the process of considering the issue and issuing an advisory opinion, in our opinion, require serious analysis and determination of the degree of legality (at least at the research level). At present, the desire of many authors to determine the degree and nature of the impact of the final advisory opinion of the International Court of Justice on Kosovo on the development of international law and international relations does not allow the authors [6] to objectively analyze the compliance of the Court's actions with the norms of legal documents (UN Charter, Statute and Rules of Court) and a number of international legal acts.

Thus, the activity of the International Court of Justice is a direct reflection of the level of development of international law, the attitude of the world community

towards it and the degree of influence of the principle of respect for law on the political, economic and socio-cultural processes taking place in society. Having minimal jurisdiction (the court considers disputes only if both parties give voluntary consent to its jurisdiction, the decision becomes binding also only in this case), the International Court of Justice can nevertheless clarify, interpret the rules of international law and issue advisory opinions. It is worth noting that this, at first glance, a secondary function of the International Court of Justice, in our opinion, is an example of expanding the jurisdiction of the court due to the absence of the need to obtain consent from interested parties (the request may come from the UN Security Council or, in some cases, from the General Assembly UN). At the same time, the non-mandatory jurisdiction of the International Court of



Justice (only with the consent of the party to refer the case to the Court) in some cases does not allow this international judicial body to rightfully take the main place in

resolving interstate disputes, leaving it aside from participating in the proceedings of major international conflicts.

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