

## The Advisory and Adjudicatory Role of the International Court of Justice

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### ABSTRACT

This research attempts to shed light on the role of the international Court of Justice (ICJ) and the significance of its adjudicatory and advisory functions. The theme of this research will initially project a brief introduction of the topic in question, keeping in view the historical and contemporary perspectives of the ICJ. This research also focuses on the organizational structure of the United Nations, keeping in view the position and role of the ICJ within the organization. With practical examples of case laws, the ambit of judicial review in the context of judicial and advisory function of ICJ will also be taken into account. It will also present brief analysis on the intra-organizational relationship between the ICJ and other organs of the UN.

**Keywords:** *International Court of Justice, Advisory Function, United Nations, Judicial Review, Security Council.*

### Introduction

The International Court of Justice is the principal judicial organ of the United Nations. Having its physical presence in the Netherlands, its primary role is to resolve the disputes arising between different member countries. It also performs the function of the advisory body for the organs of the UNO and certain other international agencies that are involved in the governance of various administrative matters across the world. The ICJ was established in the year 1945 and has continued to perform its designated functions since then.

The International Court of Justice came into existence by the enactment of the Statute of the International Court of Justice. This statute essentially entails the provisions about the formation and regulatory framework of the ICJ within the United Nations.

Apart from the provisions of this statute, the International Court of Justice is further obliged to consider the aims and objectives of the relevant Charter (Bruno, Simma, 2002). The same has idea been supported by different authors and jurists who have holistically observed and analyzed the Charter. In this regard, it has also been suggested that this duty of the International Court of Justice does not affect its functions as an adjudicatory and advisory body (Stephen, Schwebel 1991).

Many academics and jurists have presented wide ranging opinions in relation to the role of International Court of Justice; few amongst them suggest that the adjudicatory role of the International Court of Justice will ultimately hold impact over its advisory functions (Aljaghoub, Mahasen, 2006). Similarly, the ICJ has itself presented an opinion about its role within the organizational model of the United Nations. All the other organs of the UNO also diligently regard the advisory role of the Court as significant. Keeping in view the importance of the role of the ICJ within the organization, it seems that the advisory opinion presented by the ICJ should be regarded as a general practice, unless there are considerable reasons for not following it (Hambro, Edvard, 1945).

This paper will enshrine on the cooperative function of the ICJ between different organs of the United Nation Organization (Ibid No.3). Every organ of the organization needs to ensure that there is a reasonable balance of power between different organs whilst exercising their authorities within the scope assigned to them. This coordination between the organs is governed in the light of the Charter and other regulatory instruments. It is the Charter that elaborates the role of each organ of the UN within their perspective in the organizational framework respectively. Whenever there is any concern with respect to the legal implication of any subject matter, which particular organ of the UN refers the matter to the ICJ for its opinion. It is in the same context that the International

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Court of Justice carries out its consultative and advisory duties. It is also submitted that the International Court of Justice can exercise judicial review in direct and indirect manner i.e. by way of exercising its judicial powers with the consent of disputing parties (directly) or by way of its advisory function (indirectly). The subsequent part of this paper will elaborate the function of International Court of Justice with regard to its adjudicatory and advisory functions. The focus of the paper will also be inclined towards the importance and effectiveness of the two aforementioned roles. The following paragraphs will present a brief introduction of the organizational framework of the UNO alongside the outline of the ICJ.

### **Organizational Framework of the United Nations**

The Charter of the United Nations elaborates about the scope of work of the U.N organization that is carried out through its organs. To interpret it widely, the organizational framework of the United Nations Organization comprises of six organs, namely: the Trusteeship Council, Interim Committee of the General Assembly, the Security Council, the Economic and Social Council, the General Assembly the Secretariat. These organs of the UN organization are further divided into numerous sub-committees and sub-organs that assist them to perform their roles as prescribed to them by the Charter of the UN (Michael, Kamil & Bartolo, Idris'2000). This combination of sub-committees, departments and organs collectively formulate the UNO, as known to the world. There are four basic principles that govern the functioning of the United Nations (Mohammed, Bedjaoui 1994). The first principle dictates that all the organs of the UN are under the obligation to exercise their powers within the limits set out in the Charter. The other suggests that no organ is superior to the other organ of the UN; neither is any of it inferior to the other. Every organ of the U.N is autonomous as it is at the liberty to interpret the charter according to the subjective approach. It is in this manner that all the organs function in collaboration with one another to achieve the aims of the organization.

### **The International Court of Justice**

Being amongst the six major components of the United Nations, this court plays the role of the primary adjudicating body of the organization that carries out its function according to the powers and limitations prescribed in the Charter. As indicated earlier, this court

was founded in the year 1945, and is the sole segment of the organization having its office beyond the borders of the United States. Amongst the major contributors in this initiative, the name of Ake Hammarskjold cannot be ignored. He played a significant part in the foundation of this court and performed his duties as the first Registrar of the International Court of Justice (Richard B. Lillich, and G. Edward White 1976).

The International Court of Justice was officially made part of the United Nations Organization after its legal acknowledgment in the United Nations Charter. The relevant clauses of the said charter enshrine the role of International Court of Justice such that it should carry out its functions in consonance with the essence of the statute. The charter itself acknowledges the ICJ as one of the primary organs of the United Nations Organizations (Article 92). Unlike its predecessor court, it is regarded as an essential segment of the organization. In this regard, it also needs to be acknowledged that most of the prevalent procedural laws were formulated by the Permanent Court of International Justice, hereinafter referred to as (PCIJ) the one that preceded the ICJ. Most of the law that was laid down by the Permanent Court of International Justice (hereinafter referred to as PCIJ) helps in the administration of the institution to date. Main function and objective of the International Court of Justice is to administer issues pertaining to global conflicts. Another area of its concern is to take measures that would uphold the peace of the world. In practice, these functions are carried out by adjudicating the cases that are brought by different member countries before the ICJ. The underlying duty of this court is to comprehend the facts of the conflict and apply a rational interpretation of relevant laws. As such, the role of ICJ is confined to the interpretation of international laws and standards without being partial (Rosalyne Higgins, 2009)

In the light of Article 96(1) of the Charter, the International Court of Justice is authorized to carry out advisory opinion with respect to any legal question raised by the General Assembly or the Security Council. Article 96 states about the advisory function of the ICJ that: "The General Assembly or the Security Council may request the ICJ to give an advisory opinion on any legal question....other organs of the United Nations and specialised agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities." Being the primary

adjudicatory organ, the ICJ holds a better position to understand the complexities involved in any legal matter raised before it.

Apart from the General Assembly and the Security Council, there are other bodies authorized by the UN that have recourse to the opinion from the ICJ. These organizations include UNESCO, International Labor Organization (ILO), World Health Organization (WHO), World Intellectual Property Organization and the International Monetary Fund (IMF). In all, the function of the International Court of Justice has been articulated in Article 1 of the Charter, which dictates that the function of the International Court of Justice is to "bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace." (Bruno, Simma, 2002)

The following paragraphs will elaborate about the position of International Court of Justice within the organization and its relationship with the Council of UNO.

#### **Position of ICJ within the United Nations**

The major difference between the ICJ and its predecessor court is that the former has been articulated into the legal framework of the organization by way of the Charter. On the contrary, the Permanent Court of International Justice was not backed by any such instrument (Articles 92 and 7 of the Charter of United Nations<sup>1</sup>). The working relationship between the ICJ and other segments of the United Nations is governed by way of different inter-organizational agreements alongside the provisions of statutory instruments (Philippe, Sands, & Klein Pierre, 2001).

The primary source of governance is the charter that provides the framework of its competence and limitations with respect to its operations. It is crucial to understand the working terms of the ICJ with other organs of the UN, the reason being their impact on the performance of the organization as a whole. Reasons may be presented to suggest that the inter-relationship between these organs is likely to impact the impartiality of the ICJ, the reason being the possibility of being influenced by the political objectives of the organization.

It is due to this reason that some commentators stand for the proposition that the advisory role of the International Court of Justice is a clear reflection of its role being undergird with the policies and objectives of

the U.N (Ibid No.11). Moreover, the functioning of ICJ in practice also endorses this projection as the ICJ tends to highlight the inherent objectives of the organization while framing up its opinions. In the same way, whilst guiding the organs on their queries, the ICJ also takes into account the complexity involved in any concerned matter and suggests the optimal solutions that appear to be in the best interest of the organization (Ibid No.7). Putting forth the same argument as suggested earlier, Klabbers has also argued that the role of International Court of Justice is impartial thus far that it interprets the issues in the light of aims and objectives of its organization (Klabbers, Jan, 2002). The International Court of Justice has itself asserted that the swift and efficient working of the UNO organization is important for the upkeep of rule of law across the globe. It has also asserted that it would not be reluctant to put forth its advisory opinions for different segments of the organization, as it will help fulfilling its founding objectives (The Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal Case, ICJ Rep., 1982).

In practice, however, the court has also been vigilant in carrying out judicial review of the decisions of different segments of the UN (Shabtai, Rosenne, 1997). The role of ICJ has also been codified into five points in its opinion on the *Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory* (<http://www.icj-cij.org/icjwww/idocket/imwp/imwframe.htm>). The first point of that has been asserted in the decision is regarding the importance of the ICJ's opinion by declaring it as an essential component of the UN. It also strengthens this opinion by stating that the responses of the ICJ should not be ignored, despite the fact that these responses do not have any binding force. If the UNO considers any matter as important, the ICJ will not come under the influence of any country. The last point that can be construed from the decision is about the differentiation of advisory and adjudicatory role of the ICJ (Falk, Richard, 2005). The obligation on the ICJ to coordinate with the aims and objectives of the UNO has been proposed by many commentators as well. For instance, Rosenne has contended that the International Court of Justice must strive to act upon the requests of the Councils of the UN in order to achieve the objectives of the United Nations (Ibid No.18). With respect to the peace treaty, it has been further asserted that the ICJ should take into account the primary aims and objectives of the organization. Scholars like Pomerance have also

suggested that the position of the court within the organizational framework leaves an influence on its practice. She further suggests that the court is obliged to coordinate with other organs of the UNO (Pomerance, Michla, 1997).

In view of the foregoing, it can be deduced with certainty that the ICJ has the inherent duty to coordinate with all the other organs of the organization. Therefore, it seems essential that the ICJ ought to take into account the policies and approaches of the UN to ensure the swift operation of the organization. Subsequent paragraphs in this paper will put forth certain analysis on the adjudicatory and advisory functions of the ICJ. Apart from its role directed towards intra-organization, ICJ plays an essential advisory role for external organizations that are authorized by the UN.

#### **Relationship between the ICJ and the Security Council**

As indicated earlier, both the International Court of Justice and the Security Council are the major organs of the United Nations Organization. Despite their essential roles, the Charter of the United Nations does not make mention of anything relating to the interrelationship between these two principal bodies. In this sense, the relationship between the Security Council and ICJ is, as Rosenne has pointed out "neither a position of superiority nor in one of inferiority in relation to the others" (Rosenne, 1994). The ICJ emphasizes "the Council has functions of political nature assigned to it, whereas the Court exercises purely judicial functions. Both organs can, therefore, perform their separate but complementary functions with respect to the same events" (ICJ Reports, 1984, p. 435 para.96).

Additionally, there is no statutory or any other regulatory instrument that would determine any hierarchical pattern of the Security Council and the ICJ (Greenwood, C, 1999). As such, these two organs may be regarded as playing their respective roles without any demarcation with respect to inferiority or superiority of any (Rosenne, S., 1994). The two organs can be said to be performing exclusive functions that are entirely different from one another. In this regard, the International Court of Justice has highlighted the roles of the two respective organs by stating that the Security Council has the obligation to take into account the political tasks of the organization. As regard the role of Court, it proposed that its principal task is to perform adjudicatory functions

within the framework of UNO (International Court of Justice Reports, 1984, p. 435 para.96).

This uncertainty with respect to the guidelines about respective roles is further blurred with the concern whether the doctrine of judicial review falls within the ambit of its performance domain (Caflisch, L., 1995). Since there is no explicit guideline available that could determine the limitations of functions of the International Court of Justice, there are varying opinions regarding the pros and cons of the exercise of judicial review. One proposition in this regard would be that with no explicit guideline, any action on the ICJ's is likely to be regarded as liable to be set aside, due to the absence of any legal justification. On the other hand, the silence of statute as well as the charter cannot essentially belie its possible occurrence. It needs to be explored whether the institution of ICJ can take such initiative on its own. In the case of Belgian Amendment (Kelsen, H., 1951), it was proposed that the International Court of Justice should be allowed to carry out judicial review independently. However, this proposal was rejected at that instance. Considering the absence of any explicit guidelines and the reluctance of UNO in devoting any such authority to the International Court of Justice in the Belgian Amendment, there seem lesser chances that the ICJ will be using this doctrine of judicial review expansively. However, as indicated earlier, the other possible proposition is that the absence of guideline does not necessarily debar the International Court of Justice to independently reexamine the exercise of powers by other segments of the United Nations.

Moreover, the same has also been narrated, in other words, that the lack of expression of powers is not essentially determinative, but it is the non-expression of such powers that is essential (Akande, D., April 1997). Several jurists are also in support of this argument that the International Court of Justice, being the principal adjudicatory institution of the UN is inherently well-founded to exercise the powers of judicial review. This stance is likely to create further ambiguities for the reasons that neither the statute nor the Charter states about the procedural matters regarding its appeal or review (Krysztof. Skubiszewski, 1996). To assume all these essentialities of practice as being inherent in the charter will be an extremely farfetched extension of its possible interpretations.

Administrative affairs of the judiciary in most countries provide certain inherent powers to the courts to

conduct independent administrative and judicial review of the exercise of powers by the executives. It has been considerably criticized by the ambassadors of separation of powers doctrine, despite being practiced widely. Since there is no detailed instrument pertaining to the intra-organizational relationship, the power to conduct judicial review cannot contradict the provisions of the charter of the UN. When comparing the role of International Court with those of apex courts of respective countries, several similarities can be taken into account. This, however, may not be comparable in connection with the doctrine of judicial review. In multiple instances, the International Court of Justice has suggested that it does not hold the authority to review the decisions of councils of the UN. The ICJ in the case of Namibia (ICJ Reports, 1971, p. 45) Suggested that the International Court of Justice was not debarred from making any query with respect to the legitimacy of the General Assembly's resolution. The main point of contention was to adjudicate on the matter whether the ICJ possessed the authority to review any such resolution. The court deliberately clarified that it fell short of the authority to review the decisions concluded by the Council of the UN. Therefore, like the ones discussed previously, this case also asserts the same proposition.

### **Case Studies**

The supervision of the International Court of Justice with regard to the administrative actions of other organs of the United Nations can be construed in the light of different cases that have been dealt by the ICJ. In practice, there are two ways by which a case can be brought before the ICJ; one way is when an opinion is sought by the organs concerning the validity and invalidity of any administrative action. This is a straightforward mode as it does not involve any complex mechanism of the exercise of power. There have been several such instances whereby the organs of the U.N have requested the ICJ for its advisory opinion. There have been several cases where the Council has sought opinion from the ICJ, amongst those are the cases of case of 'Voting procedure on Questions Relating to Reports and Petitions Concerning the Territory of South-West Africa' and several others discussed below. Apart from this mechanism, another instance is when the International Court of Justice presents its opinion about the administrative measure of any particular organ without any such explicit request. It is in this respect that

Rao has commented that "it thus appears quite conceivable to acknowledge that the exercise of the judicial function of the ICJ could sometimes result in judicial review (Rao, Pemmaraju Sreenivasa, 1995)." This independent working of ICJ can be explored by a holistic study of *1971 Legal Consequences for States of the Continued Presence of South Africa in Namibia* 276 (1970) and many others listed below.

### **The Inter-Governmental Maritime Consultative Organization Case, 1960**

The case of *Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization* (IMCO) (constituted in accordance with the Convention for the Establishment of the Organization. International Court of Justice Report of 1960) was taken to the International Court of Justice in the year 1960. This case concerned the analysis of certain article of the convention of IMCO. According to the wordings of article 28 of the said Convention, certain rules were enshrined which the member states were obliged to follow. Under the said articles, eight member countries were required to be elected that had the largest pool of ship. According to this merit, two countries which were falling within this category were refused to be elected. The questions that were brought before the court involved the interpretation of the terms such as 'elected' and 'the largest ship-owning nations'. While interpreting the provisions of the said convention, the court concluded that the committee which was formulated under the said Convention was not constituted in line with the essence of the convention. In this case, the ICJ did not in particular declare the provisions of convention as null and void; however, substantial changes were made in the convention with respect to the role and powers of committee. Moreover, a new Maritime Safety Committee was formulated as per the interpretative advice of the ICJ.

### **The Namibia Case of 1971**

Another case in this regard was taken to the ICJ in the year 1971. Famously known as the Namibia case (International Court of Justice Report of 1971), this case concerned the continuation of the presence of South Africa in the Western region of the continent. In this regard, a resolution was passed by the General Assembly of UN declaring the activities of South Africa as falling in violation of its mandate. According to the resolution, the said activity of South Africa was declared as illegal,

compelling it to withdraw from it. Challenging such measures of the Security Council, South Africa sought the advisory opinion of the International Court of Justice with regard to the legal effect of its existence in Namibia. South Africa contended that all the resolutions that had been passed on the said subject matter were not valid; in so far as they had no legal standing with respect to the countries Mandate in the Western region of Africa. In adjudicating over the merits of the claim, the court presented an exhaustive explanation of its approach, which has been reproduced below for perusal of its summary:

“Before considering this objection, it is necessary for the Court to examine the observations made and the contentions advanced as to whether the Court should go into this question. It was suggested that though the request was not directed to the question of the General Assembly resolution and of the related Security Council resolutions, this did not preclude the Court from making such an enquiry. On the other hand it was contended that the Court was not authorized by the terms of the request, in the light of the discussions preceding it, to go into the validity of these resolutions. It was argued that the Court should not assume powers of judicial review of the action taken by the other principal organs of the United Nations without specific request to that effect, nor act as a Court of appeal from their decisions.

Undoubtedly, the Court does not possess powers of judicial review or appeal in respect of the decisions taken by the United Nations Organs concerned. The question of the validity or conformity with the Charter of General Assembly resolution 2145 (XXI) or of related Security Council resolutions does not form the subject of the request for advisory opinion. However, in the exercise of its judicial function and since objections have been advanced the Court, in the course of its reasoning, will consider these objections before determining any legal consequences arising from those resolutions.”(ICJ Rep, 1971, paragraph. 88-89).

Despite clear renunciation of the power to exercise juridical review, the International Court of Justice appears to have assessed the validity of the resolution of the Security Council in question. It further analyzed the relationship between the objectives of the United Nation Organization and the resolutions passed by the council. The ICJ in its advisory opinion clarified that the council possessed the authority to turn down the permission of South Africa with respect to its involvement in Namibia.

It also negated the possibility to declare the acts of council as illegal or void in lieu of the mandate concerns. The ICJ also took into account the powers of the General Assembly about propelling South Africa to pull out from the western region. Applying a holistic approach, the court concluded that such actions of the organization were in consonance with paragraph No.2 of article 11 of the UN Charter. It further clarified that the said actions fell in line with the aims and objectives of the UN Charter which enshrine the duty of Security Council to maintain world security and peace. In effect, the court had practically assessed the validity of the resolutions of the Security Council alongside those of the General Assembly.

### **Expenses of the United Nations Case of 1962**

The legal matters that arose regarding the expenditure of the United Nations(International Court of Justice Report of 1962) will be taken into account to depict the role of ICJ. The central point of this case concerned the question of laws pertaining to the authorization of expenditures by the General Assembly mainly about the ongoing operations in Congo and Middle Eastern region. Although the main concern of the query referred to ICJ was not to evaluate the legality or illegality of the particular resolution. Nevertheless, the International Court of Justice concluded that in order to evaluate the said queries, it will have to assess whether the resolution passed by the General Assembly sanctioning the expenditures was valid.. In this regard, the court further commented that it has the inherent authority to take into account all the relevant information that is available in order to formulate its advisory opinion about the matter in question. Following the same line of approach, the International Court of Justice took into account the resolution relating to the United Nations Emergency Force (UNEF) in the Middle East. After holistic consideration, the ICJ considered the resolution as valid.

### **Congo vs. Uganda Case**

In this case, the same concern was raised with respect to the power of the ICJ to review a particular resolution passed by the Security Council. This concern was raised by Uganda whereby it had challenged the Congo’s request regarding certain provisional measures. According to its claim, the said request was falling in conflict with the Lusaka Agreement as well as the resolutions of the Council. Although the claim did not

specifically inquire in relation to the validity of the resolution of Security Council, the International Court of Justice nevertheless observed its impact. According to the ICJ's opinion, the resolution in query did not preclude the ICJ to act according to its role as prescribed in the Statute. While assessing the nature of the said determination, the court further concluded that there was nothing derogatory in the decision of the Security Council. With respect to this case, it can clearly be analyzed that the court considered the parallel powers of adjudication of the two organs (namely: the ICJ and the Security Council) respectively (Okowa, Phoebe N., 2006).

### **The Lockerbie Case of 1992**

Resolution 731 was passed by the Security Council in 1992 (Gowlland-Debbas, Vera, 1994). According to the 731 resolution of 1992, Libya was asked to surrender its nationals who were found to be guilty of terrorist activity within the United States and the United Kingdom. Libya contended that the said resolution of the United Nations fell outside the ambit of international laws according to which a country cannot be compelled to expel its citizens. It further submitted that the particular concern of the resolution was the matter which should fall under the scope of Montreal Convention of 1971. On this legal basis, Libya sought the opinion of International Court of Justice to determine whether Libya was under any duty to undertake such a task in compliance with the said resolution. In other words, it sought to inquire about the validity of the resolution in question. Additionally, the Libyan authorities further inquired about the measures to be undertaken in harmony with Article 41 of the ICJ's Statute. The Security Council in this case propelled the Libyan authorities to comply with the resolution; failing which, Libya was to be exposed to consequential implications.

The ICJ refuted the requests submitted by Libya with respect to the measures challenging the authority of resolution of the Council. Considering this approach of ICJ, it may well be construed that the court in this case had presumed the actions of Council as valid at first place. One reason for such restrictive approach of the Court could be that the ICJ was obsessed to refrain to trespass the authority of the Council, because any such action would be regarded as an act of taking administrative matters of the organization into its hands. In this way, it is submitted that the ICJ avoided its conflict with the other organ of the United Nation. It had

further ensured that it worked in harmony with other organs without creating conflicts within the organizations, which would ultimately harm the functioning of the UN as a whole. In the same manner, swift practice of organization demands that the executive organs should request the opinion of ICJ formally before executing any of their matters.

### **The Scope of Judicial Review**

The aforementioned cases elaborate the function of ICJ with respect to its adjudication and advice. These case law guidelines are important due to the fact that both the Charter of the UN and statutory instrument are silent about such judicial intervention (Roberts, Ken, 1995). Furthermore, the International Court of Justice has also opined in multiple cases that all the organs of the UN have distinct scope of work which should not be superseded by the other. It is yet to be observed as to what extent the power of judicial review could be legitimately exercised by the International Court of Justice. According to the wordings of UN charter, the ICJ enjoys an integral status within the United Nations; nonetheless, there are no specific provisions with regard to the authority of the International Court of Justice to carry out judicial review of any executive decision.

A suggestion was proposed by Belgium stating that the international court of justice ought to be granted the authority to reexamine the validity of decisions of the socio-political segments of the organization. However, this suggestion was refuted in the San Francisco Conference whereby it was declared that every segment of the organization would be responsible to carry out their functions independently (Watson, Geoffrey R., 1993). Even if we consider the practical aspect of exercise of judicial review, it has been proposed that multiple prospects need to be accounted for. For instance, it has to be seen that who should review the proceedings. It is further debatable whether the function of International Court of Justice can be equated to that of any constitutional court because unlike the latter, the ICJ is not superior in position in terms of hierarchy (Rosenne, Shabtai, 1995). Although it has been ascribed with the functions to safeguard legal compliance over different international matters, it cannot be equated with the constitutional courts as it lacks the power to annul the decisions that fall contrary to the UN charter. The concept of judicial review may be regarded as highly arbitrary on part of an institution, therefore it will be

difficult for apply the same in the international context. Nonetheless, it needs to be appreciated that being a constitutional body with international influence, the actions and activities of the United Nations need to be made compatible with rational policies. This makes it essential to evaluate its checks and balancing mechanisms.

### **Evaluation of Judicial Review & its Effectiveness**

Theoretically, there is no legal basis for the ICJ to carry out judicial review of executive declarations and decisions of the Assembly and respective Council of the UN. However, the cases mentioned above demonstrate that the ICJ has collaborated with these organs in adversarial as well as advisory matters. At the same time, it is further submitted that certain complex issues remain unresolved, particularly with respect to any authoritative guideline regulating and legitimizing it. In view of the authority of segments of the UN, particularly the Security Council, article 39 of the Charter provides vast unrestricted powers to counter any threat of derailment of peace. Although bare perusal of this clause would presume the exercise of unlimited powers on the Council's part, there exists some room for review within the exercise of such powers. On the contrary, article 39 of the said Charter can be construed as excluding the scope of judicial review in the administrative affairs of the Council. With political motives of the organization, such actions need to be exclusively excluded from any intervention of ICJ, which is essentially an adjudicating body. Bowett (Bowett, Derek William, and George Paterson Barton, 2008) has interpreted his understanding of the subject in these words: "It would be wrong to allow any Court to question the Council's judgment that a... threat to the peace, breach of the peace, or act of aggression- had, or had not, occurred. Equally the Council's discretion over the choice of means to deal with situation, for example, whether to order provisional measures under Article 40, or economic sanctions under Article 41, or to institute measures of peacekeeping must be preserved as not subject to judicial challenge. The same would be true of decisions as to the timing of, or participation in, such measures."

The cases further reflect the prudent function of the ICJ. It further clarified that in normal course of dealings, the political decisions taken by the Assembly and Council shall be presumed by the Court as valid. As evident, the court has repeatedly refrained from taking any position

that could be contrary to that of the Council's. The ICJ has been in favor of maintaining a fine line between the respective roles of each organ. The terms such as the 'breach' or 'act of aggression' and 'threat' are of such subjective nature that it seems hard to define them objectively. The issues continue to remain complex because the political agendas of UNO often contradict the legal norms that are acknowledged universally. It is further essential for the long term functioning of the UNO that each segment of the organization should work in collaboration with one another. Despite the silent encroachments of the role of International Court of Justice in executive affairs of the organization, it is submitted that the judicial and political domains of the organs can be reconciled. For instance, in the case of Lockerbie, the Security Council did not seek any advisory opinion from the ICJ. Preferred practice of the Council would be such that it should have referred the matter formally to the ICJ for its legal opinion.

Since the United Nations Organizations have earned global acknowledgement and repute, any discrepancy with respect to non-compliance of legal standard is likely to lay far reaching effect. It will also bring about concerns with regard to the trustworthiness of the United Nations Organization as a whole. Since its formation, the ICJ has proven to be the principal adjudicatory and advisory organ of the United Nations, and the same proposition can be taken from the case laws mentioned hereinabove.

### **Conclusion**

This research has examined the role of the international Court of Justice (ICJ) and the significance of its adjudicatory and advisory functions. the research did also tackle the institutional relationship between the ICJ and the UN and the effects of this relationship on the Court's advisory function. the Court seems to adopt a liberal approach when considering requests for advisory opinions, however, the Court's coordination with the UN organs, which is manifested by its liberal approach, did not affect the integrity of the Court. it is submitted that despite having two different roles (advisory and adjudicatory), the functioning of ICJ does not seem to be prejudiced.

This research concludes that the Court coordinates with other organs either by issuing legal opinions, thus helping the UN organs to execute their duties, or by evaluating through a type of "judicial review", the lawfulness of UN organs' acts which have been already taken.

It has been shown through examining some of the relevant Court case-law that this relationship has been highly relevant to the attitude of the Court when giving advisory opinions. These cases also depict that while undertaking the adjudicatory and advisory roles, the court has been conservative to interfere in the political roles of the Council and the Assembly. These cases fairly project the approaches undertaken by the Court to balance between its adjudicatory and advisory roles

This study also concludes that the exercise of the advisory function is essentially a two-sided process involving "coordination" between other UN organs and the Court. It follows, that the coordination envisaged emerges from the organisational relationship between the Court and other UN organs and should be based on the respective organs' sense of responsibility towards realising the purposes of the Organisation in accordance with the Charter and International Law.

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## الدور القضائي والاستشاري لمحكمة العدل الدولية

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### ملخص

يهدف هذا البحث إلى إلقاء الضوء على دور محكمة العدل الدولية باعتبارها الجهاز القضائي الرئيسي للأمم المتحدة، كما يهدف إلى إبراز الأهمية الكبيرة للدورين القضائي والاستشاري اللذين تضطلع بهما المحكمة، اخذاً بعين الاعتبار علاقة المحكمة بالأمم المتحدة.

تجدر الإشارة، إلى أنه وبالرغم من أن المحكمة لا تملك سلطة الرقابة القضائية على قرارات الأجهزة السياسية للأمم المتحدة، إلا أنه يمكن للمحكمة أن تبحث في مشروعية القرارات الصادرة عن هذه الأجهزة في معرض قيامها بالمهام الموكلة إليها بموجب نظامها الأساسي وميثاق الأمم المتحدة. وعليه، فإن هذه الدراسة ستقوم بتحليل بعض القضايا والآراء الاستشارية ذات القيمة، التي مارست فيها المحكمة نوعاً من الرقابة القضائية على أعمال الأجهزة السياسية للمنظمة.

**الكلمات الدالة:** محكمة العدل الدولية، الرأي الاستشاري، الأمم المتحدة، رقابة قضائية، مجلس الأمن.

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