ICJ AS THE UNIVERSAL BODY FOR RESOLVING DISPUTES RELATED TO THE APPLICATION OF TREATIES

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Abstract. The article analyzes the interpretive activity of the International Court of Justice (ICJ) as the central judicial body of the United Nations (UN). The maintenance of international peace is one of the main goals of the United Nations and the activities of the United Nations Security Council (UNSC). Among the international courts, the ICJ is the universal body for resolving disputes related to the application of treaties and the most authoritative one in interpreting such treaties. The growing number of appeals to the courts to clarify and resolve disputes, the growing role and activity of courts in interpreting international law, the desire to interpret the treaty independently (authentically) in the form of subsequent agreements, and the strengthening of the ICJ peacekeeping mission in the context of political expediency in complicated cases controversial issues of international relations demonstrate the actualization of the appeal to the problem of treaties interpretation by the ICJ. The article argues that the treaties interpretation has become the basis for the practice of judicial precedent by international judicial bodies, which often refer to their previous decisions and decisions of other international judicial bodies in treating a particular case. It is essential to understand the role and features of the UNCS in treaty interpretation to resolve international disputes in modern conditions, which is part of the problem of resolving international legal relations between states and international organizations to maintain international law and order by resolving international disputes. In conclusion, it is noted that the consideration of cases by the ICJ is carried out in strict compliance with the Jus Cogens standards, which are specified in the Vienna Convention on the Law of Treaties (VCLT), as the basis of the mechanism for their recognition, as well as the principles of good faith and granting terms their usual meaning. International case law shows the evolution of the interpretation rules by the ICJ and the dominance of the principle of dynamicity.

Key words: International Court of Justice, interpretation activities, treaty, international disputes, international judicial bodies, judicial precedent, judicial discretion, rules of interpretation

МІЖНАРОДНИЙ СУД ЯК УНІВЕРСАЛЬНИЙ ОРГАН З ВИРІШЕННЯ СПОРІВ, ПОВ'ЯЗАНИХ ІЗ ЗАСТОСУВАННЯМ МІЖНАРОДНИХ ДОГОВОРІВ

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Анотація. У статті аналізується інтерпретаційна діяльність Міжнародного Суду (МС) як центрального судового органу Організації Об'єднаних Націй (ООН). Підтримка міжнародного миру є однією з головних цілей Організації Об'єднаних Націй та діяльності Ради Безпеки ООН (РБ ООН). Серед міжнародних судів Міжнародний суд ООН є універсальним органом для вирішення спорів, пов'язаних із застосуванням міжнародних договорів, і найавторитетнішим у тлумаченні таких договорів. Зростаюча кількість звернень до судів для з'ясування та вирішення спорів, зростання ролі та активності судів у тлумаченні міжнародного права, прагнення до самостійного (автентичного) тлумачення договору у формі наступних угод, посилення миротворчої місії МС ООН в контексті політичної доцільності у складних випадках вирішення контроверсійних питань міжнародних відносин свідчать про актуалізацію звернення до проблеми тлумачення договорів Міжнародним Судом ООН. У статті стверджується, що тлумачення договорів стало основою для практики судового прецеденту міжнародних судових органів, які часто посилаються на свої попередні рішення та рішення інших міжнародних судових органів при розгляді конкретної справи. Важливим є розуміння ролі та особливостей РБ ООН у тлумаченні договорів для вирішення міжнародних спорів у сучасних умовах, що є частиною проблеми врегулювання міжнародно-правових відносин між державами та міжнародними організаціями з метою підтримання міжнародного правопорядку шляхом вирішення міжнародних спорів. У висновку зазначається, що розгляд справ МС ООН здійснюється у суворій відповідності до стандартів Jus Cogens, які визначені у Віденській конвенції про право міжнародних договорів (VCLT), як основи механізму їх визнання, а також принципів добросовісності та надання умовам їх звичайного значення. Міжнародна судова практика свідчить про еволюцію правил тлумачення МС ООН та домінування принципу динамічності.

Ключові слова: Міжнародний Суд ООН, інтерпретаційна діяльність, договір, міжнародні спори, міжнародні судові органи, судовий прецедент, суддівський розсуд, правила тлумачення.

Introduction. The International Court of Justice (hereinafter referred to as the ICJ / the Court) is the principal judicial organ of the United Nations (UN). Based on Art. 92 of the Charter of the United Nations, the International Court of Justice is the principal judicial body of the United Nations. Its primary purpose is to resolve any international disputes that will be referred to the Court by the disputing States. In paragraph 1 of Art. 33 of the UN Charter names peaceful means of settling international disputes, one of which is litigation, carried out within the UN system by the International Court of Justice, which is constantly functioning. During its activity, the Court has resolved a large number of different disputes. A majority of them were pretty specific and required rapid intervention and settlement. In order to more effectively administer justice while adhering to the principle of efficiency, the Court uses provisional measures of protection in its activities as a way to quickly resolve conflicts at any stage of the proceedings. Its activities are aimed at achieving one of the main goals of the UN – to promote the maintenance of international peace (paragraph 1 of Article 1 of the UN Charter)

through decision-making and advisory opinions [1]. In addition to resolving disputes between states, the ICJ was created to ensure the fulfillment of treaty obligations by respective parties by interpreting treaty rules prior to their implementation. Such a court's function promotes not only equal understanding of a legal rule but also ensures conscientious fulfillment of obligations emerging from such a rule.

That is why the interpretation of treaties is a crucial aspect of their implementation in the framework of international law, especially at the regional level, particularly by the member states of the Council of Europe. Thus, Art. 1 of the European Convention on the Peaceful Settlement of Disputes of 1957 states the obligation of states to submit to the International Court of Justice all interstate disputes of a legal nature, including disputes concerning the interpretation of the treaty; any issue of international law; verified violations of international obligations; the nature or extent of compensation for breach of an international obligation [2]. On February 27, 2022, Ukraine filed a lawsuit against the Russian Federation in the ICJ in The Hague. Thus, in the context of determining the admissibility of the dispute, it is essential to study the interpretative activities of the Court.

The vast majority of domestic and foreign scholars argue for the possibility of recognizing the decisions of international courts as sources of international law (G. Lauterpacht, G. Schwarzenberger, V.M. Koretsky, V.G. Butkevych, O.V. Butkevych, I.M. Avramenko, L.D. Tumchenko, and others). Christian Djeffal argues that the jurisprudence of the UNSC follows an evolutionary approach to the interpretation. Nowadays, the study of the activities of the ICJ as a universal body for resolving international disputes, including disputes related to the application of treaties, is critical.

The article aims. The article aims to analyze the interpretive activity of the International Court of Justice as the principal judicial body of the United Nations and the main approaches as well as methodologies for resolving international disputes.

Among a number of international courts, the ICJ is the universal body for resolving disputes related to the application of treaties and the most authoritative one in interpreting such treaties. Its decisions are legally binding (for the parties to the dispute), and the opinions of reputable scholars of international law, who are often judges at the same time, are used in further interpretative work as aids to determine the legal rule.

Interpretation of treaties has become the basis for the practice of applying judicial precedent by international judicial bodies, which often refer to their previous decisions, as well as the decisions of other international judicial bodies in hearing the cases [19, p. 50–54].

The growing number of appeals to the courts to clarify and resolve disputes, the growing role and activity of courts in interpreting international law, the desire to interpret the treaty independently (authentically) in the form of subsequent agreements, and the strengthening of the ICJ peacekeeping mission in the context of political expediency in complicated cases controversial issues of international relations demonstrate the actualization of the appeal to the problem of treaties interpretation by the ICJ. *So, it is necessary to understand the role and features of the UNCS in treaty interpretation to resolve international disputes in modern conditions, which is part of the problem of resolving international legal relations between states and international organizations to maintain international law and order by resolving international disputes.*

If the task of interpreting the initial mechanical phase was to identify the planned intentions of the parties and genuine intentions, in the era of codification of international law, there were numerous discussions about parties' purposes, which led to several schools of interpretation dealing with categories such as text, purpose, intention or a neutral notion of meaning. A thorough reading of Art. 31 of the VCLT (Vienna Convention on the Law of Treaties) guides a tendency to appeal to the parties' intentions and Art. 32 – to the "meaning of the text", which is considered as a neutral category between objective and subjective goals [18, p. 147].

In the Arbitral Award Case of 31 July 1989 (Guinea-Bissau/Senegal) [10] The Court saw its primary task and duty in interpreting and applying treaty provisions while ensuring that the interpretation occurs in a natural and ordinary meaning and context to treaty provisions. However, suppose the words in their natural and ordinary meaning are ambiguous or lead to unreasonable results. In that case, only the Court should turn to other modes of interpretation and seek to find out what the parties really meant when they used a particular wording [10, Para 48].

The ICJ occasionally practices the interpretation of "treaties of a certain type", for which it either applies a unique approach, using advisory opinions that directly answer the question of interpretation, or

uses conclusions in which interpretative issues may be considered "random to the subject". Peter Quayle singled out nine interpretive regimes used by the ICJ: 1) a reasonably precise text is convincing; 2) the text cannot be annulled; 3) travaux preparatoires do not provide ancillary interpretation; 4) consistent case law excludes intellectual interpretation; 5) to be consistent, the case law should not be unanimous; 6) defining the consistent institutional case law; 7) the purpose may supplement the text, but may not contradict the case law; 8) practice is an interpretation that is not rejected institutionally; 9) interpretation cannot be pursued free of charge [22, p. 853–877].

Peter Quayle argues that certain deviations by the Court from the provisions of the VCLT allow it to apply a more practical and efficient approach to the interpretation of constituent documents. Such an approach makes the ICJ institutional practice particularly popular among legal scholars [22, p. 853–877].

Institutional principles of the ICJ are defined in Art. 92 of the UN Charter [1], stating that the UN General Assembly and the Security Council elect fifteen judges. Article 9 of the ICJ Charter concretizes that they must represent "the main forms of civilization and the principal legal systems". Judges must act impartially and honestly. However, the first analyzed results of decisions on the criterion of citizenship of judges showed that national and special judges voted in favor of their countries in 80–82 % of cases [24, p. 230].

The jurisdiction of the Court includes general and related powers, determining general ones, which include the resolution of legal disputes between states that fall under the mandatory jurisdiction of the Court: on the interpretation of the treaty; any issue of international law; the violation of an international obligation; on the nature and extent of compensation for breach of an international obligation (Article 36 of the ICJ Charter). Article 96 of the UN Charter notes the possibility of providing advisory opinions on international law at the request of any UN body authorized to submit such requests. Related powers also include interpreting treaties and identifying gaps in current international law. According to paragraph 1 of Art. 36 of the ICJ Charter, the Court is responsible for all cases referred to it by the parties and all matters specifically provided for in the UN Charter or treaties and conventions in force [1].

Some experts in international law analyze the need to grant the right of access to the Court to specific territories, parts of a sovereign state, as parties at the merits stage (the example of the Wall in the Occupied Palestinian Territory) [14]. They also propose the following steps to be taken to ameliorate the existing UN legal framework: to change accordingly the Art. 36 of the Charter of the International Court of Justice; to include the individuals in the list of parties to the dispute, which means that states recognize the principle of mandatory trial; to grant the right to request consultative opinions to international organizations established outside the UN such as regional governmental organizations (e.g., African Union), various specialized intergovernmental organizations, international non-governmental organizations with the general consultative status of ECOSO with the consent of the General Assembly.

The consideration of cases by the ICJ is carried out in strict compliance with the Jus Cogens standards, which are specified in the VCLT [21] as the basis of the mechanism for their recognition, as well as the principles of good faith and granting terms their usual meaning. Although the Court does not explicitly state them, it uses them as compliance with erga-omnes' obligations on the genocide prohibition, in particular [13]. For example, Judge Nabil Elaraby in his dissenting opinion in the case (*Serbia and Montenegro v. Belgium*) on the legality of the use of force and genocide in the interpretation of the phrase "existing treaties" expressed the intention to include post-World War II peace agreements to a regulation of this question as well as the elimination of breach of *jus cogens* principles [6]. He believed that in the light of the UN Charter, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide [3] can be considered as a treaty on a peaceful settlement, as it was adopted shortly after the end of the war, banning genocide as a crime against international law. It also was the first post-war human rights treaty, the first concrete legal response to the Holocaust. The Convention's philosophy, object, and goals directly result from the WWII. Besides, this multilateral treaty of universal nature is, in fact, designed to "correct violations of jus cogens".

In addition to strict adherence to the principles of interpretation by the ICJ, its activities are characterized by specific jurisdictional differences. Without going into the details of the jurisdictional features of the work of the ICJ, we point out the constant rethinking of the possibilities of admissibility of cases on the criteria for the existence of a dispute between the parties. The changes' dynamics is demonstrated in the table below.

Dynamics of formation of criteria for the existence of a dispute between the parties as a condition of admissibility for consideration by the ICJ[1]

Year	Criteria	Case
1950	"The matter of objective determination"	Interpretation of Peace Treaties with Bulgaria, Hungary and Romania)
1924	"Disagreement in terms of law or fact, conflict of legal views or interests" The ICJ is not obliged to attach the same degree of importance to questions of form as they might have in national or municipal law.	Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, para 34
1962	The claims of the parties must be "positively opposed to the other"; "A simple statement is not enough to prove the existence of a dispute; it takes more than simply denying the existence of a dispute to confirm its absence"; "The dispute is not a conflict of interest as such, but a contradiction between the respective relations of the parties. Opposing parties' attitudes to this conflict of interest may, accordingly, consist of manifestations of the will required by each party to ensure that its interests are realized."	South West Africa (*Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment, ICJ Reports 1962; dissenting opinion of Judge Morelli, p. 567)
2011	Determining the existence of a dispute is a matter of substance, not form	Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation) Preliminary Objections, Judgment, ICJ Reports 2011 (I), p. 87, para 37)
2016	The existence of a legal dispute is the subject of an objective determination of the Court	Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment, ICJ Reports 2016 (I), p. 26, para 50)
2016	"Defendant's awareness of the existence of differences" "Determining the existence of a dispute is a matter of substance, not a matter of form or procedure"	Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), Order of 19 June 2015, ICJ Reports 2015, p. 577)

The ICJ has attached due importance to the principle of *audi alteram partem*, according to which no person should be convicted without a fair trial, and each party has the possibility to respond to the evidence against him. This principle is an integral part of the rule of law and justice [4][2]. The Court also practices contextual interpretation. For example, these principles have been applied in nuclear test cases such as Nuclear Tests Case (*Australia v. France*) and Nuclear Tests Case (*New Zealand v. France*) [8]; Marshall Islands v. India Case of 19 May 2015; Marshall Islands v. United Kingdom Case *of* 19 June 2015) [15].

In particular, the Court "developed an unprecedented procedure to achieve an unprecedented situation" when the facility no longer existed because France had stopped nuclear tests in the atmosphere. However, further underground nuclear explosions carried out by France, according to New Zealand, also pollute the environment. According to Judge Christopher G. Weeramantry, a judge of the International Court of Justice from 1991 to 2000, the ICJ's protection of fundamental human rights not only in New Zealand but also in

[1] Put together by: Separate opinion of judge Owada / International Court of Justice. URL: https://www.icj-cij.org/files/case-related/160/160-20161005-JUD-01-03-EN.pdf.

[2] Dissenting opinion of judge Weeramantry Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974. *Nuclear Tests Case (New Zealand v. France)*. Judgment of 20 December 1974 / ICJ Reports. 1974. P. 325. URL: https://www.icj-cij.org/files/case-related/59/059-19741220-JUD-01-00-EN.pdf.

Australia, Samoa, Solomon Islands, Marshall Islands and the Federated States of Micronesia "It did not leave open any possibilities for circumstances yet unseen to undermine the basis of its Judgment, nor did it leave New Zealand defenseless in the protection of the very rights whose protection had brought it before the Court in the first instance [4]. The rights of the people of New Zealand "include the rights of unborn posterity". Those are rights "which a nation is entitled, and indeed obliged, to protect" [4]. Changes in circumstances and the environment sometimes lead to changes in interpretation as well as the termination and obsolescence of treaties, at the same time questioning the meaning of the terms, the validity of the treaty, or its part [4].

The above considerations indicate the evolution of the rules of interpretation by the ICJ as well as the dominance of the dynamic interpretation principle. However, in recent cases in 2016, the Court rejected with a minimal majority the Marshall Islands cases on commitments to negotiate an end to the nuclear arms race and nuclear disarmament, noting an absence of dispute between the parties by introducing such a new element of its analysis a "defendant awareness".

This notion means that the defendant should be aware that his legal position is the opposite of the one of the applicant [16]. This signals a derogation from the Court's previous case law and a decline in the possibility of a state getting access to the ICJ, especially in nuclear disarmament cases. All defendants challenged the jurisdiction of the Court, which is common practice, especially in cases based on optional declarations and compromise provisions. However, if previously the Court was guided by objective criteria for determining a dispute, the new criterion applied by the Court in this case – "the defendant's awareness of the existence of differences" – is subjective. It should be noted that the former Vice-President of the ICJ Abdulqawi A. Yusuf stressed that "the introduction of the test of "awareness" of the dispute is contrary to the consistent jurisdiction of the Court." This formal requirement, in effect, undermines the aim of procedural economy, as it requires the applicant to apply for a new case now. At the same time, the respondent State is aware of the dispute in the context of the new procedures [16].

Christian Djeffal, Professor of Law, Science and Technology Departments at the Technical University of Munich, analyzed the relationship between static and evolutionary interpretations in ICJ's case law and concluded that "at first static and dynamic approaches coexisted peacefully when the Court openly emphasized its static approach and interpreted a dynamic one only implicitly. Subsequent collisions led to a recognized evolutionary interpretation. At the current (third) stage, the case law is steadily moving toward a more dynamic evolutionary interpretation" [18, p. 235].

On February 27, 2022, the Ministry of Foreign Affairs of Ukraine announced that Ukraine had filed a lawsuit against the Russian Federation in the International Court of Justice. Critical is not only the question of the admissibility of the dispute between Russia and Ukraine but also the interpretive methodology of the trial. Ukraine has filed a lawsuit against the Russian Federation in the ICJ alongside a request for a court order on interim measures against Russia. A statement from the Ministry of Foreign Affairs of Ukraine on February 27, 2022, informed that Ukraine demanded the Court to hold an emergency hearing and to order Russia to immediately cease hostilities and an illegal attack on Ukraine in order to hold Russia accountable for its actions in the Court in The Hague.

The statement emphasized that the Court had jurisdiction to hear the case of Ukraine and to take urgent measures under the Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention). The Genocide Convention is one of the most important international treaties developed in response to World War II and the Holocaust nightmares. The statement emphasized that Russia had fudged the concept of genocide and distorted the most contractual severe obligation to prevent and punish genocide; Russia has made absurd and unsubstantiated accusations of Ukraine's alleged genocide in order to create a false pretext for its own aggression against Ukraine, violation of its sovereignty and the rights of Ukrainian citizens.

The statement said that Ukraine's case in the ICJ would find that Russia's aggression against Ukraine was based on lies and gross violations of international law and, therefore, should be stopped [25].

On March 6, 2022, the ICJ announced a decision on the request for interim measures in the case of "Ukraine v. Russia" on genocide. Within this case, Ukraine presented arguments why Russian actions should be considered as ones violating the Convention on the Prevention and Punishment of the Crime of Genocide. According to the court ruling, Russia must immediately suspend all hostilities in Ukraine and stop any military or irregular armed groups under its control or influence. By 13 votes against 2, Russia must cease military

operations on the Ukrainian territory. By 13 against 2, Russia must ensure that any military or regular military units sent or supported by Russia, as well as other organizations and individuals that may be under Russian control, will not take any steps to continue the military operation. The court also decided unanimously that the two parties must refrain from any action that could aggravate or prolong the dispute and complicate the trial.

Conclusion

Based on Art. 92 of the Charter of the United Nations, the International Court of Justice is the principal judicial body of the United Nations. Its primary purpose is to resolve any international disputes that will be referred to the Court by the disputing States. In paragraph 1 of Art. 33 of the UN Charter names peaceful means of settling international disputes, one of which is litigation, carried out within the UN system by the International Court of Justice, which is constantly functioning. All United Nations members are ipso facto members of the Court, and not members of the UN may become Court's members on conditions determined in each case by the UN General Assembly upon the recommendation of the Security Council (Article 93 of the UN Charter). The Court is open to hearing individual cases, including ones submitted by non-participating States to the UN Charter under conditions determined by the Security Council.

Thus, among the international courts, the ICJ is the universal body for resolving disputes related to the application of treaties and the most authoritative one in interpreting such treaties. Interpretation of treaties is the basis for the practice of applying judicial precedent by international judicial bodies, which often refer to their previous decisions, as well as the decisions of other international judicial bodies in hearing the cases.

Today, in treaties interpretation, the ICJ adheres to both static and dynamic principles of interpretation, when "facts", "treaties", "conventions", reservations to treaties are interpreted evolutionarily in the light of new circumstances, relating not only to human rights respect. Although there have been periods of confrontation between different theoretical approaches to interpretation in the history of the ICJ, the application of the evolutionary principle still requires more argumentation, and the interpretation of reservations is based on the static principle of their adoption.

Of particular importance in this process are ICJ judges' dissenting opinions, declarations, and comments. Significantly, the opportunity to follow the process of discussion in the Court of all aspects of the case, acquaintance with particular views of judges on the merits of the case allows analyzing the interpretative activities of the ICJ. This aspect of its work is the most dynamic and unpredictable one. Often the interpretation of treaties depends on the composition of the Court, its views on a particular school of interpretation, judges' scientific views, and the development of international law in general, the current state of which certainly affects the ICJ treaty interpretation.

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