Investigating subjective jurisdiction of International court of justice

Osman Kaveh

1 Department of Humanities, College of Law, Zanjan Branch, Islamic azad University, Zanjan, Iran. (kaveh1308@gmail.com)

1. INTRODUCTION

If we consider the development of international law it is clear that the will and consent of the government is an obstacle and a nuisance for the development of international law. Because international law, especially those international law which is based on the belief in the absolute sovereignty, has been stayed on the determination of the treaties between countries, on the other hand, a lot of things in current international life are becoming globalized. In particular, domestic issues that have already been among the internal ones, have been left the circle of state jurisdiction and flourished among the global issues and many of these issues of basic human rights and concepts related to it such as freedom of expression, freedom of societies, freedom of association with others in self-determination and sovereignty of states in conflict are obstacle to the development of international law [9].
Also with the increasing development of international law issues, the need to address these issues in a global judicial authority is felt more than ever; because countries are not eager to limit their authority scope. In many countries of the world, no judiciary units would exist or the country would be ruled by third parties, dictators and tyrants and these situations lead to tyranny and violation of the rights of nations. If there is an international court with general jurisdiction power, no power can oppress the nations under various pretexts, including territorial autonomy and the right to determine their fate, Because at the presence of an international court with jurisdiction to challenge the different legal topics, other courts and judges within this jurisdiction will not be able to c willingly dealt with subjects according to their own interests of the state and ignoring the interests and rights of nations. Since the issue of international tribunals (ICJ) is linked with the concept of justice that constitutes its essential foundations, Jurisdiction issues in national courts consistently are related the principle of separation of powers to the competent authority in order to deal with disputes and complaints. But in international law under one of the international law principle, the base is on non-jurisdiction authority of those international courts, until the claimant may introduce jurisdiction to the court or the implicit or explicit assumption of jurisdiction will be accepted by the called party.

In this article, the general jurisdiction of the International Court of Justice will be discussed, it is the judicial organ of the United Nations has been established under the UN Charter as and in accordance with the provisions of the Statute serves and is qualified to handle legal matters and provide advisory opinions to international organizations as adversarial and consultative competencies Courts.

2. HISTORY AND CAUSES OF INTERNATIONAL JUSTICE DEPARTMENTS ESTABLISHMENT

As in the domestic level, disputes and conflicts of individuals are resolved by themselves or with the help of inevitable references or competent experts. Most people in ancient times, would resolve their differences through peaceful affairs and with the help of the village chief secretary or with ways such as authority reference, peace, reconciliation and intercession of elders etc. ... in higher and broader level, governments in ancient times have been selected many different ways to resolve their differences, Among the most common ways for the government has been fighting for the right to use force and this was the most common and most obvious method of dispute resolution and settlement and the war has long been dominated in the relations between states for long times.
Institute of scientific and sociological study of wars has stated that since World War II, the world has spent about 26 days in the peace and reconciliation. Based on these calculations, the world has spent three days in peace each year. It cannot be found a day in the world without war. But paying attention to the material and moral damages of war, human society has always tried to prevent the war and in this sense sometimes have to justify wars and the concept of "fair or legitimate war" against the unjust and illegitimate war were heard repeatedly.

So governments have inspired to prevent war and settle their emerged differences, that from studying the history of international law it is proved to be the more ancient way in preventing war, reaching peace and reconciliation and live in conciliatory manners, for example in ancient Greek, city-states had agreed together if there is a dispute subject to arbitration, resolve it in accordance with the judicial settlement. This idea has also seen the continuation of 19th century Europe and great power in 1856 believed to use peaceful means before resorting to force to resolve their differences.

Finally, Nicholas II, Czar of Russia prepared a conference in order to ensure the benefits of a true and lasting peace for the public and in particular end the increasing development of existing weapons in August 1898. The aim of such negotiation was to assist governments and interest groups in conflict resolution and anti-war efforts; the subsequent consequence of it was the formation of the Inter parliamentary Union which was established as an association of International Law.

Governments participating in it refused to accede to a compulsory arbitration by resorting to terms such as "whereas the situation allows," and "as much as possible refrain from violence". Subsequently, in the second and third conferences in Hague with more governments members participating in them, were formed, the need to form an International Court was noted but it must be admitted that the members (governments) were not eager to limit their sovereignty by international bodies and from the bottom of their hearts were not pleased with the theory was strengthened by The Hague Peace. Their acts with have a lot of differences with slogans, However, given the differences and conflicts at the international level, it was necessary to establish an international tribunal authority.

3. THE INTERNATIONAL DISPUTE

International Court of Justice in its advisory opinion defined the dispute as alignment of right issues of two international members of the legal order and interests of the two. According to international jurisprudence, any disagreement is not a dispute, but the said no
agreement should be in accordance with the Permanent Court of Justice in Hague and defined differences must be established.

4. THE LEGAL MEANS TO RESOLVE INTERNATIONAL DISPUTES

Legal methods of resolving disputes mainly related to legal disputes and meet the formality and organizational affairs and ultimately dumped into binding verdicts, while in non-legal methods, they do not meet these requirements.

International law resolute dispute in the two following ways:

A) The arbitrator or arbitration

B) Judicial review

In this paper we will focus on judicial proceedings from the International Court of Justice framework.

5. THE INTERNATIONAL COURT OF JUSTICE

After the end of World War I and World War II, the League of Nations dissolve and the designers of the UN Charter were faced with the question of whether the Permanent Court of International Justice will be dissolved or as a new organization, may change to the judicial arm of the (the United Nations) and continue its existence. The changes must be made by the League of Nations. But it continued to exist after the Second World War and making changes in its structure was felt necessary. On the one hand, with existing such different institutional unit, a different performance was required for it during its short life.

Finally, countries participating in the San Francisco Conference established such Court which has not significant differences with the International Permanent, although the new Court did not suffer the fundamental objection of Permanent Court of International Justice like contentious jurisdiction, authority and control of the great powers in its structure.

International Court of Justice in The Hague is one of the main pillars of Justice and the United Nations respectively. This court which is the successor to the Permanent Court of International Justice, was established in 1920 by the former League of Nations and officially disbanded 1946 [15] Court of Justice, one of the pillars of the United Nations and its Charter
was established in accordance with February 1946 regulations and the first election of its judgment began in the same year in Hague. Court which had begun its work from April 18, 1946, was the follower of the Permanent Court of jurisdiction in terms of time unlimited plans and had two major basic tasks as:

- Resolving legal disputes between governments according to international law standards (the International agreements, international customary law).

Providing advices on legal cases based on the request of the United Nations organs and specialized agencies and according to the Court's work and its organization on the basis of the two critical documents called Statute 1 and 2 of the Charter of the Court.

6. JURISDICTION

1. Literal meaning of Jurisdiction

Jurisdiction means competent, authority, merit, worthy, deserve and high competence [3].

2. Jurisdiction in terms of civil law

Jurisdiction is called as the authority competent of court of law in ending claims and disputes and resolve them, and consists of the judicial order, [5]. In other words, and in criminal terms it can be, defined the capability of law and the duty of the judicial authority to consider and interpret a criminal case, Therefore, it is essential to recognize that such competent authorities begin to address researches devoted to study and research, [4] or to get an agent to carry out some of the issues such as jurisdiction (Article 10 of the civil procedure) and qualified officers in the planning document (Article 1257 of the Civil Code). Jurisdiction of a court in relation to the matters that can be dealt with can proceed to the investigation of the case [11].

3. Jurisdiction from the perspective of international law

Competence of a government based on international law and law enforcement. Jurisdiction is the competent of authority or power of a government over individuals, properties and events that took place in the field. Jurisdiction refers to the competent judicial authority or a judgment in the administration of justice between the parties in the case raised by the government through the final decision making and binding processes. This issue was related to the international concept of justice in law which Court's advisory opinion of the United Nations Administrative Tribunal has pointed out to it in 1954. Later, the Permanent
7. JURISDICTION BASE OF INTERNATIONAL COURT OF JUSTICE

The international court of justice is considered as a judicial organ of the United Nations and an important reference in international dispute settlements, because on the one hand was accepted with the development of members of the Assembly the court's jurisdiction and referring its cases to trial and justice is possible. Due to the expansion of the United Nations and affiliated organizations, the scope of the Court's advisory opinion will be wider for enterprises.

As was mentioned, there is an indisputable principle in international law under which no government is required to not refer its dispute to an international tribunal, so the ways of peaceful settlement of disputes are no longer the case [13].

Thus, without the consent of a government the existing differences between the two governments cannot be brought to a judicial authority to decide the referrals. This phenomenon is emphasized in Article 36 of the Statute of the Court and the Court has stated in its law case. For example, in the case of Anglo-Iranian Oil dispute, the court in this regard stated that: Two general rules contained in Article 36 of the Statute are based on the principle that the court's jurisdiction to decide a case in respect of the litigation is subject to the will of the parties, as long as the parties would not empower the Court in accordance with Article 36, the Court will be without such jurisdiction authority.

8. THE JURISDICTION RANGE OF THE COURT FROM THE SUBJECT OF DISPUTES

Since the Court is a legal entity, it only refers to those dispute have the legal aspects, legal disputes in the language of international law relates to disputes the matters concerning the interpretation or implementation of rights. Statute of the International Court of Justice in Article 36 states that the following matters are inserted at the jurisdiction range of the court.

a. the interpretation of a treaty
b. any matter that is the subject of international law.
c. the existence of any fact which, if established is considered a breach of an international obligation.
d. the type and amount of compensation should be given for the breach of an international obligation.
e. the court's jurisdiction in terms of the parties

9. THE TYPES OF JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE

Referred to the Court are in two species and, according to their type, special kind of decision for each of the cases will be dealt with.

- Contentious jurisdiction
- Advisory jurisdiction

1. Contentious jurisdiction of the international Court of justice

One of the jurisdictions of the Court is judicial or contentious, the Court in these hearings, issues decrees to settle the dispute and the decision is binding for the parties, this authority is the only due to the government, it means that just government can only be parties in located Court that expressly stated in the statute [1].

In other words, jurisdiction of the International Court of Justice to adopt binding decisions or rights under international law regarding the legal issues are referred to contentious jurisdiction which differs with the agreement and consent of the government and their adversarial jurisdiction as the Court of Justice of European Communities in Luxembourg or the Court of Justice of Human Rights in Strasbourg. No case can be referred to the International Court of Justice unless both sides and all the relevant parties of government would be present and contentious jurisdiction should be differentiated from the advisory one.

The authority of court's jurisdiction covers all of cases that the parties refer to them in call cases and the Court in the predicts treaties. (Solhchi and Nazhandi Manesh, 1380, 175).

So, the (contentious) jurisdiction of the International Court of Justice about handling disputes is under international law mandated in Article 38 of the Statute of the Court or Articles I and 93 of the Charter of the United Nations, and in accordance with Articles 34 to 38 of the Statute that specify that special kind of jurisdiction.

2. The court's jurisdiction based on the consent of the governments

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Efforts to create a binding international judicial authority both in 1920 and in 1945 were not successful [2]. Although the government during the past 90 years and at the beginning of the third millennium, were not agree to this and in all cases of the Courts Constitution, satisfaction of governments has been emphasized repeatedly in the views of International Justice.

Obtaining the consent of the government in dealing with the cases is the First duty of the court that considered as one of the primary focuses, in accordance with paragraphs 1 and 2 of Article 36 of the Statute of the Court's jurisdiction and based on the consent of the States Parties and governments claim at the membership of the United Nations Charter and the Statute of the International Court of Justice itself as a general satisfaction (General consent) [7] and the Statute should be based on one of the following forms and then announce the satisfaction [8].

- After a dispute (Arbitrary jurisdiction).
- Before the conflict (compulsory jurisdiction)

3. Arbitrary jurisdiction

State's consent to the court's jurisdiction may be achieved after the occurrence of dispute in two ways. By virtue of paragraph one of Article 36 of the Statute, the Court shall have jurisdiction in all cases parties refer to it. Because the parties have accepted the court's jurisdiction in such cases by their discretion, in which case there is no opportunity to lower the court's jurisdiction. And in accordance with Article 40 of the Statute and Article 39 of the new procedures a matter of dispute should be mentioned expressly in the contract by the parties. And if the contract is ambiguity in the interpretation of treaties Court had to interpret the contract to the conventional method which is done mostly through the 1969 Vienna Convention. In the Strait of Corfu, a specific contract has been concluded by the parties after the judgment was proven to be competent in determining the specific contract issues.

4. Late jurisdiction in contentious proceedings

In addition to the acceptance of jurisdiction (paragraph 1 of Article 136 of the Constitution) paragraph 2 of Article 36 of the Statute of the Permanent Court compulsory jurisdiction in the case of rights of minorities in Upper Silesia was considered as the third option which has approved assumed authority, under the assume jurisdiction theory of the ICC, late jurisdiction is referred to a judge by agreed parties, a jurisdiction without it, a judge cannot be called a competent one as was mentioned, in international law suits,
satisfaction of states is the main building is the court's jurisdiction. Therefore, it should be stated that all the Court's jurisdiction is from late structure.

Affording competent of authorities may be deferred to the Court in three ways:

- Governments may agree to adopt a binding decision in non-binding pillar, which essentially confirmed their refusal competent to decide to them.
- In the second case, the Court may have personal competent but part of the case will not fit in pending satisfaction before the parties, the Court has acted this form in several cases [6].
- In the events that the Court has no jurisdiction over the dispute and the respondent of a lawsuit will cause the satisfaction after lawsuit mode has been read, the competent court is to be dealt with. This is explained based on Article 8 (5) of procedure.

Although late jurisdiction was applied in mentioned ways and in different cases, but it also cannot hurt the principle of consent of the competent afford to them. There is no reason to acknowledge the importance of applying the principle of consent as the basis of competence. However, in the late jurisdiction the Court deferred, because it implicitly refers to the jurisdiction of the case and pays attention only to expressed qualification periods which will be transferred to the lawsuit. However, spent filed as a read lawsuit without the consent of the government's cannot be called a jurisdiction intact.

5. tacit consent or pending or future satisfaction

In order to extend its jurisdiction and in addition to create authority through a specific contract, the Court acts to all expression of satisfaction, especially after a lawsuit was read by the plaintiff's behavior and has its own tacit consent, which is a way of non-official consent of the government in terms of paragraph one of Article 36 of the Statute. Reading the court's jurisdiction may prove not to be forced to refer to one or a few things in nature and the means to justify Comments competency.

If Anglo-Iranian Oil Company case against Iran, the Iranian government pointed to certain elements of the nature of the dispute to reject the court's jurisdiction, and while the British government invoked the Forum / prorogatum and asked the Court to treat the Iranian government claim as an implicit acceptance of jurisdiction, but the Iranian government did not justify the argument of English party and noted the Court that the authority to investigate some nature of the things does not always help Court also rejected the Britain opinions and argued the Iranian government has repeatedly stated that the Court has no jurisdiction in all cases. So spending several points referring to the nature of the Iranian government cannot
be considered as acceptance of the local authority competent to accept the implicit rules announced.

These rule competencies the court from originally qualified institutional which has its roots in Roman law, and some legal systems arose from it.

10. COMPULSORY JURISDICTION OF INTERNATIONAL COURT OF JUSTICE

Consent of states in accepting jurisdiction of the Court in relation to pre starting phase of a dispute is called the compulsory jurisdiction of the Court which can be accessed through a unilateral declaration and accepting the jurisdiction of the Court and other provisions stipulated by international treaties or specific constraints [14]. In other words, the government also can accept jurisdiction of the court over disputes that has not arisen yet, the government's previous commitment to accept the Court's jurisdiction to deal with disputes that will arise in the future is called the acceptance of the compulsory jurisdiction of the Court.

1. Way for accepting the compulsory jurisdiction of the Court

The acceptance of the compulsory jurisdiction of the Court will be in one of two modes as follows:

2. acceptance of the compulsory jurisdiction of the Court through treaties and international agreement

In accordance with Article 36 of the Statute of the International Court of Justice which declares that the Court is projected to jurisdiction with respect to all matters in which the parties refer to and also the special case under the UN Charter or under treaties and conventions in force.

3. acceptance of the compulsory jurisdiction of the Court through a unilateral declaration

According to Article 1 of note 36 in Statute of international court of justice, any government can accept this commitment in specific ways and without a contract in itself which can be considered as an acceptable procedure [10].

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It should be noted that the issuance of such notices is optional and some governments have complete freedom of action in issuance or non-issuance of them. This means that they accept such a statement at any time and are agree with compulsory jurisdiction of the Court or whenever they do not recognize the Declaration can submit to the Secretary-General of the United Nations Declaration of Commitment surrender despite the arbitrariness of having referee power International Court of Justice in contrast to other governments that have promised and only members Statute of the Court can apply the deposit of such a declaration.

11. THE ADVISORY JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE

Advisory jurisdiction is an optional score of the United Nations Charter and the provisions of the Statute denoted to the International Court of Justice about the legal issues that international organizations referred to and the Court is able to deliver an advisory opinion herein [14].

In other words, we can say that the origin of the advisory opinion of the court is the will United Nations, but the contentious jurisdiction is based on the will of states that are parties of the dispute. (Solhchi and NazhandiManesh, Ibid 192).

The source available to the advisory jurisdiction of the court are Article 96 of the UN Charter (Article 96) and the Statute of the Court (Articles 65 to 68) that such authority has been delegated to the Court, since both the Charter and the Statute of the states will then be the source of the United Nations for an advisory opinion. But it can be mentioned that adversarial jurisdiction is originated from the will of the governments that are parties to the dispute.

Who can apply an advisory opinion are identified under Article 96 that include [3]:

A) the General Assembly or the Security Council

B) Other organizations of United Nations and the specialized agencies affiliated to the United Nations if the General Assembly authorize them (see paragraph 2 of Article 96) that include the Economic and Social Council, Trusteeship Council, marking committees of renewal petitions regardless of the votes of office and 15 other specialized branch of United Nations.

UN organs who can request an advisory opinion are as follows: General Assembly, the Trusteeship Council, Interim Committee of the General Assembly and the Economic and Social Council and specialized agencies of the UN family who can request an advisory opinion are the International Labour Organization, food and Agriculture organization, United Nations educational and scientific organization, World Health organization, the

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1. Subject of an advisory opinion

Subjects of an advisory opinion should be legal issues. General Assembly or the Security Council can request an advisory opinion on any legal question, but the other organs of the United Nations and specialized agencies just are able to request an advisory opinion about rights issues that are located at the scope of their activities. After that the questions of the Court is not a political basis, skilled and responsive eligible legal and political questions only answer the combined ball right.

2. The advisory competence base

With an advisory opinion by the International Court of Justice in accordance with Article 96 of the UN Charter and Article 65 of the Statute of the Tribunal Statute Venice and the fourth season in Article 65 of the Statute is determined how to request an advisory opinion.

In accordance with Article 96 of the Charter, the General Assembly or the Security Council can request an advisory opinion on any legal question or International Justice and according to paragraph 2 of the same article, other organs of the United Nations or specialized agencies, may be authorized by the General Assembly at any time and can take the court's advisory opinion on legal questions arising about their activities. Thus, the consent existing requirement does not apply to governments to deny or prove the Advisory's least effects [16].

12. CONCLUSION

International Court of Justice is considered as the main organ of UN ans a reference source for international dispute settlements by expanding members of the related organizations in one hand and making accepted Court's jurisdiction on the other hand. Also by expanding subsidiary organizations, the scope of the Court's advisory opinion will be reached enterprise-wide. The government has accepted in the Charter and the Statute that

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international Court of Justice is the principal judicial organ of the United Nations. Acceptance of such status for international Court of Justice by various organs of the United Nations suggests that all governments have accepted the final authority to determine the legitimacy or illegitimacy of action is the United Nations International Court of Justice. The Court's main role in the realization of the goals of the United Nations is peaceful settlement of disputes among states which were mentioned in articles 1 and 2 of the charter.

Thus, the survey is very important and effective jurisdiction and powers of the judicial body and is necessary. International Court of Justice jurisdiction to investigate the matter with Sabqhtryn and the main judicial organ of the United Nations and extension of the jurisdiction of the hand at the international level will help to reduce conflict and violence and on the other hand will lead to the development of international law. Thus, the survey is very important and effective jurisdiction and powers of the judicial body and is necessary.

In connection with the adversarial jurisdiction of the International Court of Justice since the International Court is a legal entity is only to dispute the legal aspects and legal disputes in the language of international law relating to the right to refer disputes or issues related to the interpretation and implementation is available.

On the other hand, the qualification examination and consultation in connection with advisory vote, the vote would be advisory where necessary the Secretary-General of the United Nations, national governments and courts to be that it would expand the advisory jurisdiction of the Court.

REFERENCES


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**Endnotes**

1. According to article seven of the Charter of the United Nations principal organs of the United Nations are: 1. The General Assembly, a Security Council, an Economic and Social Council, the Trusteeship Council, an International Court of Justice and a Secretariat. 2. Such subsidiary organs may be found necessary to be established in accordance with this Charter.
2. Committee of Jurists in 1920 elaborated a statute on the Permanent Court of International Justice, suggested that the court's jurisdiction to handle all disputes is compulsory and to all opposition powers (France, Italy, England) When San Francisco Conference once again, this was accompanied with serious opposition by the US and the Soviet Union.
3. The issuing advisory authority is not for the Court merely, but in other case jurisdiction is granted to the relevant authorities, such as the European Court of Human Rights and the International Court of seas.