

## Confrontation of human rights and sovereignty in the international court of justice

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### ABSTRACT

Human rights is an important component of international law today. Dealing with and acting against the fundamental human rights breaches of states as one of the actors in international law is a task that has not yet been achieved in the global arena. International Court of Justice as one of the six principal organs of the United Nations can play a very important role in the fight against human right breaches by States. Set aside its jurisdictional boundaries, after reviewing the cases brought to ICJ, it has been found that the International Court of Justice, whenever cases with the color and smell of human rights are referred to it and has passed from the jurisdiction stage to the substantive stage, in cases where the general principles of governance are not defective and/or a serious human rights crisis arises, it has defended fundamental human rights well, but the state-centered nature of this court makes it impossible to turn it into a human rights court. This is because, firstly, many governments have not expressed their consent to the jurisdiction of the Court, and secondly, the guarantee of its implementation is limited to the Security Council of United Nations, which is governed by a political mechanism and is dominated by five veto-power countries.

*Key Words: Human Rights, Sovereignty, International Court of Justice, United Nations, Universal Declaration of Human Rights*

### Introduction

Nowadays the law has changed to one of the most prominent political and legal keywords in the world; however the important point in the global arena is that the international community has not been able to constitute a universal tribunal for human rights. Probably the philosophy of the United Nations is to defend human rights. According to the Charter of the United Nations, the main objectives of the organization is faith in fundamental human rights, the promotion and encouragement of universal respect for human rights and fundamental freedoms and observing them for development of international cooperation in the economic, social, cultural, educational fields. Indeed, the International Court of Justice, which has superseded the Permanent Court of International Justice, has been created to settle disputes between governments and not as the International Court of Human Rights. if a file related to the human rights is referred to the Court, it is only by governments and individuals do not have the right to complain, however, with general jurisdiction it is possible to enter into human rights matters if necessary.

Accordingly, the human rights issues have been brought before the court in several cases and resulted in issuance of a ruling. These judgments have significant implications over international law in general and over human rights in particular.

To the extent that it may not be baseless to say that all the decisions made by the Court are somehow related to human rights matters. Shutter believes that human rights are an important part of general international law.

In this article, we will answer the question: "What is the procedure of the International Court of Justice in the duality of sovereignty and human rights?"

### **Reviewing cases**

Article 3 of the Universal Declaration of Human Rights states: Everyone has the right to life, liberty and personal security. The International Court of Justice in its first judgment that is Corfu Channel Case addressed fundamental human rights. As well as articles 10 and 11 of the Universal Declaration of Human Rights and also Article 14 of the International Covenant on Civil and Political Rights, refers to the principle of equality before the law and jurisdiction and their right for trial of their case by an independent, impartial and fair tribunal in compliance with all judicial guarantees and legal rules. As well as, in some of these cases, traces of the recognition of the right to the environment are seen as an important principle of human rights in international law. The International Court of Justice recognizes the human right to a healthy environment as a first and second generation right, for example, the right to life or in the light of the permanent sovereignty over its natural resources, as well as taking into account environmental considerations in various cases, as well as recognizing the general commitment of governments to environmental protection and their responsibility to protect the environment as an independent human right.

- **Corfu Channel Case**

In this case, which resulted in damage to British ships and the death of officers and sailors of this country. The Court declared that: under international law, Albania were obliged to declare a mine-laden area in Albanian territorial waters in favor of public shipping and informing the imminent danger to the British warships that led to their explosion and these commitments not only are based on the 8<sup>th</sup> Hague Convention 1907, which are applicable in wartime, but also are due to some general and known principles, such as "basic human considerations," which are even more necessary to implement in peacetime than in Wartime and also other principles such as freedom of navigation and the government's commitment to not to use its territory for actions that is contrary to the rights of other states.

The Court has also affirmed the importance of human rights by using the phrase "obligations ... based on ... specific general and well-organized principles" as "basic human considerations". The phrase basic human considerations is considered as declaring one or more legal rules that reflect the fundamental values of society. The Court seems to have coined such a phrase to show that the relevant States in no way can refrain from carrying out the orders contained within the considerations or orders which arise directly from their performance. With respect to the basis of the formation of these concepts, which is respect for human dignity, it can be discussed that the basic human considerations equip the judge with a spirit that enables him to, if necessary, pointed out the fundamental characteristics of a legal rule or obligations arising from it. The Court uses humanity as an indicator and determining criterion in applying the applicable rule. In this case, the Court approved the liability of governments that harm the environment as a basic principle. The Court declares that: It is the duty of any State to not to permit its territory to be used to act against the rights of other States. The Court has clearly changed the states from undisputed authority to accountable entities. In this case, the Court, despite giving the right to the states to create security barriers for preservation of their territorial integrity, requires them to issue the required warnings in this regard in order to save human lives.

- **Barcelona Traction Case**

In 1962, the Belgian government lodged a lawsuit against the Spanish government in the International Court of Justice, claiming political support for the Barcelona Electricity Company. The court with respect to this case believes that states have obligations to which all States have a legal interest in the observance and protection of them. These commitments emerge from the cessation of rape, genocide, and principles and rules of fundamental human rights, including the protection of individuals against slavery and racial discrimination. According to this, in the viewpoint of the Court, the observance of all principles and rules pertaining to the fundamental rights of individuals is one of the obligations to everyone, and mentioning slavery and racial discrimination has only an allegorical aspect and not a limitative one. Applying the term of "including ..." strengthen the above argumentation. The logical consequence of such an inference is the recognition of the right to life and the prohibition of torture and the other form of misconduct, which are undoubtedly among the most prominent fundamental human rights, are among the obligations that every country owes to the international community and are required to observe them in any time and place. The concept of corporate nationality is also ignored when human rights are addressed in order to address individuals. According to this interpretation of the Court's Judgment, it can be said that if a government is accused of violating fundamental rights by another government, it cannot refer to its sovereignty as a refuge. The Court further confirms the above impression by stating that "all governments have the capacity to protect victims of gross human rights violations, regardless of their nationality".

- **The case of Diplomatic and Consular Staff of United States Embassy in Tehran**

According to the view point of some, the clearest statement with respect to the legal nature of human rights can be realized in the decree of the case of the diplomatic and consular staff of the US Embassy in Tehran in 1980. The Court judged that Iran was accountable to the United States for continuing to detention of US consular staff and diplomats. In this case, the Court states: The deprivation of liberty and severe physical abuse of persons in difficult circumstances is clearly contrary to the principles of the Charter of the United Nations and the fundamental principles set forth in the Universal Declaration of Human Rights. The mentioned Declaration clearly expresses the Court's view on the Universal Declaration of Human Rights. The Court has linked the danger posed to individuals to peace and security.

In this case, it seems that the Court have merely sought to establish the Universal Declaration of Human Rights generally enshrines fundamental rights recognized by common international law, and that a violation of these principles is a violation of general international law. These principles and rules, which are among the fundamental human rights that are the source of Erga Omnes's obligations, were also recognized by the Court in the Barcelona Traction vote. The Court's statement is that the human rights requirements of the Charter of the United Nations include binding legal obligations.

Also, in this case, the pre-defined principles by the Court itself, which are fully in accordance with human rights obligations and not respect for sovereignty, are invoked.

- **The case of Nicaragua**

The case of Nicaragua was about US military activity in the country. In this case, Nicaragua claimed that military actions of United States, including landmines in Nicaraguan ports and supporting the opposing parties, was considered as illegal armed intervention. The court did not justify the claims of United States that it had a legitimate defense against the accusation. However, the Court pays special attention to the subject matter of human rights violations by Nicaragua, and believe that the existence of a legal obligation to respect human rights by Nicaragua requires careful study, and express that even the absence of such a commitment does not mean that Nicaragua can violate human rights without punishment. The Court believes that the treaty obligations set forth in the Geneva Convention are nothing more than a reflection of the fundamental principles of humanitarian law. As believed by Rosemary Abisab, the general principles of humanitarian international law are some part of the general principles of international law and, regardless of the treaty status of states and the state of conflict, whether it is international or domestic conflict, can be applied in all circumstances to protect victims of conflict. In the Nicaraguan case, it seems that the Court have made no distinction between the basic principles of

humanity and the general principles of humanitarian law. Therefore, the principles of humanity are the expression of general principles or moral principles that can be applied in all circumstances, whether in times of peace or war. Therefore, full guarantee of minimum humanitarian rules and standards is required, even when those standards are not formally embodied in humanitarian conventions.

The Court further cited Nicaragua's human rights obligations in international conventions which approved by the United States, such as the American Convention on Human Rights, in which monitoring mechanisms are proactive. The court stated that "Nicaragua has committed itself to the Organization of American States and is legally bound by human rights and other values, and in fact this commitment should be considered as a political commitment, but this subject is not an obstacle on the way of the organization." If the organization intends to take action in this respect, then the United States has no right to claim how the organization is dealing with the human rights situation in Nicaragua.

In other words, the Court does not confirm the doctrine of unilateral armed humanitarian intervention. In fact, in addition to rejecting unilateral intervention, the Court refers to the regional mechanisms that the state members are member of it and considers the solution to the problem in such mechanisms. Of course, this is not the first time that the Court of Human Rights has referred to these mechanisms. In the case of Barcelona Traction, the Court refers to the European Convention on Human Rights to provide a solution to the issue of the applicability of human rights standards without considering nationality and pays attention to the in-house complaint procedure under that convention. Since it believes that documents that address human rights issues globally do not confer on governments the capacity to protect victims of such violations, regardless of nationality. Some other believe that the Court refers to ethical principles in its review, regardless of custom or consensus of jurists.

- **1996 Advisory Opinion on Nuclear Weapons**

In its 1996 advisory opinion, the Court first notes that, in the viewpoint of the claimants of the illegitimacy of the use of nuclear weapons, the use of such weapons violates the right to life as reflected in Article 6 of the International Covenant on Civil and Political Rights and remind that according to the above article, the right to life is an Intrinsic human right and no person can be arbitrarily deprived of life. The Court considers that the Covenant can also be applicable in time of war because it believes that human rights and humanitarian law complement each other.

The right to life is considered as the basis of all human rights and as a fundamental right in this case. In fact, even in times of war, the Court prohibits the government from violating the right to life, contrary to Article 6 of the International Covenant on Civil and Political Rights, which states that "no person shall be arbitrarily deprived of his life" and accepts no exceptions. Also, applying the human rights mechanisms with respect to violations committed during armed conflict is also important because, contrary to humanitarian law mechanisms, it does not require the consent of the contracting government. In the case of Corfu and Nicaragua, the Court relied solely on Hague and Geneva Law in shaping the basic principles of humanitarian law, but in the advisory opinion of the legitimacy of the use of nuclear weapons had the opportunity to pay attention to examples of environmental conservation law and examples of human rights, as well as the right to life in the Covenant on Civil and Political Rights. In this advisory opinion, the attention of the court is more focused on the discussion of means and methods of warfare, and emphasizes the importance of distinguishing between legitimate military and civilian objectives, as well as the importance of not imposing unnecessary suffering on combatants. As a result, it imposes a limit on the free will of states in choosing the means and methods of warfare.

In his opposite view, Judge Shahabeddin, introduces in this advisory opinion the authorization of the threat and the use of nuclear weapons, the basic human principles by themselves, resulted in creation of legal obligations that are equivalent to a common conscience. That is why he considers the threat or use of nuclear weapons illegitimate and inaccurate because of their gross contradiction with the common conscience of the international community. Judge Viramanteri also believes that humanity represents a common collective consensus on which the masters of thought and religion, despite all the differences they have with each other and each are result of different civilizations, they agree on it.

When it comes to the issue of the naked confrontation of sovereignty and humanity with respect to threat and the use of nuclear weapons, the Court descends to the threshold of sovereignty and abruptly leaves the side of humanity. Despite the stark contrast of the use of nuclear weapons with many of the inalienable principles of humanitarian and human rights, the Court take sides of the rules that have been applied to the strength of the long-standing sovereignty. Upon the issuance of this advisory opinion, the Court was criticized severely. Perhaps this is why a new trend has emerged in the Court in recent years that, when it comes to sensitive issues pertaining to governance, it narrows down the proposed question or request as much as possible to avoid addressing challenging issues, especially those that could lead to further restrictions on governance.

- **Bosnia Case against Serbia**

The genocide case was the first chance on the international stage to be held accountable for the crime of genocide. The lawsuit was based on the massacre of more than Seven thousands Bosnian Muslims by the Serb army in the town of Srebrenica and attributed these actions to Serbia.

The unpleasant and acute human rights matters were mentioned in the case of requesting the application and execution of the convention on the prevention and punishment of Genocide Crime. The Court finally emphasize that the rights and obligations set forth in the Genocide Convention are the rights and obligations of the Ergaomnes and every government is obliged to prevent and punish this crime and is not limited to a specific territory. Finally, based on the Constitution of the International Criminal Court, it can be said that genocide is one of the rules of international law.

What can be inferred from the procedures of the court in the field of human rights issues is that fundamental human rights are among commitment of Ergaomnes and the Court, in accordance with its procedure, has not remained silent in front of their violation and considers their observance as a necessity for governments. In this case, the Court, after several reviews in 2007, found Serbia in some cases to be in violation of the Convention on the Prevention and Punishment of the Crime of Genocide, and request it to take immediate action to comply with the Convention.

- **Paraguay case against America**

On 23 April 1998, Paraguay lodged a lawsuit against the United States for violating the 1963 Vienna Convention with respect to Consular Relations. In this case, a Paraguayan citizen was arrested in the United States and was sentenced to death. The delay of America in granting the detainee the inalienable rights of the detainee and the lack of information to the Paraguayan

Government causes that Paraguay requests the court to issue a provisional order to suspend the execution of death sentence and the court votes thus. But US state officials enforce the rulings, after which Paraguay withdraws its case and the case is removed from the court's agenda. In this case, the court issued a provisional order in accordance with the permitted authority in its articles of association and tried to save the life of a human being.

- **Diallo Case**

The dispute arising between Guinea and the Democratic Republic of the Congo is regarding "gross violations of international law" allegedly committed by the Congolese against Guinean national Mr. Diallo. Diallo, who founded two private limited liability companies in the Congo. Problems led to his deportation from the Congo.

The Guinean petition was approved by the court to the extent that it concerned the defending of Diallo's rights as an individual and the protection of its direct rights as a partner in the above-cited companies. Finally, the court ruled that Congo should pay compensation to Guinea within a specified period of time. On the other hand, the court determined the amount of damages to be paid to Mr. Diallo's subordinated country and expressed that this amount would be used to compensate the person involved in the case. The governments sided in the court eliminates the possibility that the compensation reaches the individuals directly, and if the government does not have the required discretion, the injured party will have no benefits.

- **Lagrand's Theorem**

On March 2, 1999, the German government lodged a lawsuit against the United States to International Court of Justice, requesting the court to announce that the defendant violate its obligations under the 1961 Vienna Convention on Diplomatic Law.

This case may be considered a turning point in the Court's rulings on human rights matters. Germany express in the preface of its statement before the Court that there is no reason other than the imminent danger to human life for Germany to pursue its ally and for the Court to issue an provisional order for the first time without a hearing conference and only a few hours after the German request on 2 March 1999. Although the United States did not comply with the order, Germany decided to continue the cases despite Lagrand's two brothers were executed. The failure of the United States to introduce the Lagrand brothers to the law was an issue on which Germany argued:

The right to assist the consular should be considered as part of the standards of international law regarding the observance of legal formalities, and therefore constitutes a human right. Finally, the Court, in its ruling with particular emphasis on the rights of German nationals under Article 10 of the General Assembly Declaration United Nations, ruled that the United States violated the individual rights of the Lagrand brothers on consular assistance. In Lagrand's case, the Court believes that Clause one article 36 is the creator of an individual right. Also Judge "Shi" while agreed with the ruling, saying that clause one Article 36 sought to establish individual rights and the rights independent of states.

- **The case of Avena and other Mexican Nationals**

On January 9, 2003, another similar case was brought before the Lagrand brothers. In this case, the Mexican government appealed to the Court from the United States of America to try and sentence 52 Mexicans nationals to death without observing international formalities before the Mexican government. Mexico in its petition calls on the Court to declare that the right to consular information under the Vienna Convention is a human right. Mexico also requests issuance of a provisional order against the United States. Because at that time three Mexicans were on the verge of execution and since international law has recognized the dignity of human life and Article 6 of the Covenant on Civil and Political Rights stipulates that every human being has an inherent right to life, and adds that states must protect this right by law. Therefore, in order to prevent the violation of these rights, the Court issued a provisional order on 5 February 2003, examining the defense of Mexico. However, one of the judges of the court considers the issuance of this verdict as interference in the sovereignty of a government and believes that with the issuance of a provisional court order changed to the Supreme Court of the United States.

But in the end, the court ruled, as in the Lagrand case, that the United States had violated its commitments under the Vienna Convention in this case. And the Court accepts Mexico's claim of breach of US international obligations against Mexico and its nationals.

- **Advisory opinion on the continued presence of South Africa in Namibia**

In 1970, the UN Security Council consulted the Court with respect to the legal outcomes of South Africa's presence in Namibia. The Court announces South Africa's presence in Namibia is illegal and that South Africa must end its occupation as soon as possible.

Clause 131 of the Court states that, in accordance with the Charter of the United Nations, the former trustee is committed to monitor and respect human rights and other fundamental freedoms for all without distinction as to race in a country with international status and to discriminate and Restrictions based on race, color, language, or ethnic or national roots that constitute thoughts on fundamental human rights are gross violations of the purposes and principles of the Charter of the United Nations. The Court also states that racial discrimination is a denial of fundamental human rights and is therefore a clear violation of the goals of the Charter of the United Nations.

Judge Schubel stated in this respect that: "When the court speaks of the coincide of the presumed international obligations under the Charter of the United Nations with the violation of the purposes and principles of the Charter and of the commitment to respect for and observance of human rights and fundamental freedoms for all, when the court rules that such actions are a denial of fundamental human

rights and considers them as a gross violation of the Charter's objectives and principles, there is no doubt that the Charter considers UN members to have a legal obligation in the field of human rights.

- **Congo case against Belgium**

The case of the arrest of the Minister of Congolese Foreign by the Belgian government on charges of stimulating racial hostility led to an attack on Tunisian residents in Kinshasa. Belgium has extensive laws to protect victims of war crimes and crimes against humanity that allow individuals to lodge a lawsuit.

In 2000, the Congolese government lodged a complaint with the Court and request to review the subject. The Court ruled that the State Department was immune under customary international law {and, of course, the 1961 Treaty on the Law of Diplomatic Relations}. The issuance of a practical detention permit is in contrary to international law and violates the principle of absolute criminal immunity of foreign ministers, and Belgium is committed to revoke this permit in a way that it deems appropriate and to notify it to all the governments that have granted the detention permit.

In this case, the strong position of the government as a reason for the immunity of the foreign minister prevents further investigation and entry into the case.

- **Congo case against France**

In 2001, some human rights organizations filed complaints with French courts alleging crimes against humanity and torture against Congolese nationals, including the President, the Minister of the Interior, the Attorney General, and the Commander-in-Chief of the Presidential Guard.

French courts hear universal jurisdiction, Congo files lawsuit against France.

According to Congo, France has violated the principle of equality of powers.

This case did not have a specific fate and the parties compromised with each other and removed this case from the agenda of the court.

- **Advisory opinion about the retaining wall**

The UN Secretary-General in its report of November 24, 2003 described Israel's attempt to build a barrier as contrary to international law, unjustifiable, and provoked retaliation.

Kofi Annan considered it appropriate to request a consultative vote in which the court was asked to comment on the legal effects of the construction of the wall.

The Special Rapporteur of the Human Rights Council, while emphasizing that "the wall creates a new generation of refugees or internally displaced persons" states: "The time has come for the construction of the wall due to the illegal annexation of the land be convicted; "the action that is contrary to Security Council Resolutions 478 and 497.

The council, in a resolution issued in 1980 and 1981, stated that Israel's actions aimed at annexing East Jerusalem and the Golan Heights had no legal effect and should not be recognized by governments.<sup>1</sup> On October 21, 2003, the General Assembly of United Nations adopted a resolution condemning the construction of the wall, calling on Israel to suspend construction of the wall and return it to its initial state. Only the United States, Israel, the Marshall and the Micronesia Islands voted against this resolution.

Members of the Security Council also issued a resolution condemning Israel's attempt to build a wall that was thwarted by a US veto. At the end, on December 7, 2003, the General Assembly requested the International Court of Justice to issue an advisory opinion on the legal effects of the construction of the wall.

The Assembly has requested the Court to take into account the rules and principles of international law, including the 4<sup>th</sup> Geneva Convention 1949 and pertaining resolutions of the General Assembly and the United Nations Security Council give comment with respect to the effects of Israeli wall construction on Palestinian land, including East Jerusalem.

It is clear that for answering this question, the Court must first speak of the legitimacy or illegitimacy of the construction of the wall and clarify whether the construction of the wall is in contrary to the principles and rules of international law or not, and then explain its effects. The Court strongly emphasizes that Israel's action in construction of the wall is in contrary to various principles of international law, and emphasizes it in various places.

The Court emphasizes that the construction of the wall could undermine the right of the Palestinian people to self-determination, and that this right, which is an inalienable right of the nations and is mentioned in numerous international instruments, must be recognized by Israel (clause 88). Israel is obliged to respect the right of the Palestinian people to self-determination (Article 149)

The court expresses that the construction of the Wall of Freedom violates Palestinian movement and is therefore in contrary to clause one, Article 12 of the International Covenant on Civil and Political Rights (clause 128 and 134).

By considering the report of secretary council, the court finds that the wall has an impact on the forcible transfer of civilian population considers it in contrary to Article 49 of the 4<sup>th</sup> Geneva Convention and does not consider acceptable the Israel's claim that military necessity demands it and is therefore permissible under the Convention.(clause 134 and 135).

On the strength of Articles 6 and 7 of the Covenant, as well as articles of the Convention on the Rights of the Child, the Court has ruled that the construction of a wall is in contrary to labor right (clause 130, 131 and 134).

According to the court's view, article 9, clause one of the 1994 Convention confirms the Israeli-Jordanian peace and emphasizes that commitment, which explicitly obliges both parties to ensure freedom of access to places of religious and historical importance (clause 129).

Considering the world-shocking reports, the court firmly declares that Israel, by construction of a wall that leads to many oppressions and restrictions on the Palestinians and deprives them of the labor rights, freedom of choice of housing, the right to food and water, the right to health and education, it pursues another goal, which is the forced transfer of the people of the occupied territories and the change in the demographic composition of those areas, which is in contrary to Cause 6, Article 49 of the 4<sup>th</sup> Geneva Convention and prohibits the movement of persons protected by the occupied territories to the territory of the occupying power or to the territory of any other State for any reason (clause 134).

Considering the reports, in particular the report of the Secretary-General, the court concludes that the construction of the wall has led to the destruction, detention and confiscation of Palestinian property which is in contrary to Articles 46 and 52 of The Hague Regulations and Article 53 of the 4<sup>th</sup> Geneva Convention. The court also rejects the claim of Israel that destruction is absolutely necessary on the basis of military action (clause 135).

- **The case of Croatia against Serbia**

Immediately after the declaration of Croatia's independence on June 7, a military confrontation broke out between Croatian and Serb forces opposed to the secession of Croats, as well as the military forces of the Federal Republic of Yugoslavia, which lasted until 19 June. On July 1999, Croatia lodged a lawsuit against the Federal Republic of Yugoslavia alleging that the respondent government violated the provisions of the convention during the mentioned conflict.

Similarly, the Federal Republic of Yugoslavia (later renamed Serbia) made a similar claim in its counterclaim. In explaining the applicable law in this case, the court considered the Convention on genocide necessary for both parties and stated that this Convention is the only basis for exercising the jurisdiction of the International Court of Justice. In this judgment, the Court has only dealt with alleged violations under the Convention. However, in the case of the court, this does not mean that other rules of international law, such as the principles governing the interpretation of treaties and the responsibility of the state in international violations, are no longer considered. The court ruled in the present case 18 November 2008, The acts that constitute the material element of genocide have been committed in each of the areas of claimed by claimant and defendant, but neither party has been able to prove the existence of the spiritual element of genocide or other acts prohibited by the Convention on genocide.

The important point in this case is that the court believes that Psychological damage to members of a group within the meaning of clause B Article 2 of the Convention on genocide, even if not directly related to the physical or biological destruction of members of the group, it may be committed for intentional or partial destruction of group. On the other hand, the phrase "with the intention of destroying a group" must be interpreted in good faith and in the light of ordinary meanings, as well as according to the subject and purpose of the treaty. Thus, in the view point of the court, this intention considers not only the targeting of certain individuals because of their membership in a particular group, but also the intention of the partial or total destruction of the group itself.

- **The case of Iran against the United States**

The illegal withdrawal of the United States from the Joint Comprehensive Plan of Action (BARJAM) is a clear violation of the rules of international law, which, according to experts, is a violation of the basic principles of international law. The return of unilateral US sanctions in various dimensions, especially through the imposition of secondary sanctions, provided the possibility of restrictions in many cases and a negative impact on the lives of Iranians, so that these sanctions in banking transfers, international aviation, Transport, industry and trade impose many restrictions.

Iran's complaint against the United States in the International Court of Justice led to the issuance of a provisional order by the Court emphasizing that the United States should solve any restrictions on the export of medicine and medical supplies, food, aviation equipment and flight safety. Any financial payments and bank transfers are excluded from US sanctions. This order of the Court, which is binding according to Article 41 of the Constitution, according to its provision, is a binding international judicial protection of the rights of the Iranian people against the United States, which has a special prominence in terms of human rights and in the history of international judicial protection of human rights, has been considered.

The provisional order of court emphasizes fundamental human rights, such as the right to food, the right to health and treatment, which are binding in accordance with customary international law and international human rights law, Governments are bound by them under the Covenant on Economic, Social and Cultural Rights and during this decision the court has imposed a judicial injunction on the United States to prohibit any action that violates these fundamental rights and has declared that these restrictions must be removed.

Removing aviation restrictions which includes the export of aircraft parts and technical inspections, is an undeniable necessity in the light of guaranteeing the right to life, physical integrity and health on international flights and guaranteeing freedom of movement that US has violated these fundamental rights of the aviation industry, and the court has issued a serious warning to the United States with respect to imposing any restrictions.

The Court emphasizes the possibility of bank transfers in the international payment and receipt system, that this type of order of the Court is directly related to economic sanctions since Americans try to influence the economies of countries and disrupt lives of people by restricting banking transactions in order to disrupt the market and trade, employment and income, which is a violation of economic rights such as the right to trade, private property, the right to have a job, and appropriate living and leads to unfavorable living conditions in countries and indirectly affects other civil, political, social and cultural rights. This is a judicial guarantee over the economic rights and prevention of the violation of the living rights of a nation.

- **Theorem of Fishing Territory**

In this case, which concerns the rights of the third generation, namely the rights of the environment, the Court states: The survival of the natural environment is an important principle that must be considered in the extraction of natural resources. If it is approved that these resources are not only for the use of the present generation but also for the next generation, and that no government can use exclusively the natural resources of the environment and ignore the common heritage of humanity because these

resources are gifts which are vital for the use of present and future generations. Accordingly, the survival of natural resources as the principle of consideration for the interests of others constitute vital pillars and the principle of contemporary environmental law.

- **Jadaf case (India and Pakistan)**

In 2017, the Indian government lodged a lawsuit against the Pakistani government, in its petition claiming that Pakistan had violated the Vienna Convention on Consular Relations by arresting, prosecuting and executing an Indian national. According to the Indian petition, Pakistan was obliged to inform the government of the convicted person in accordance with its international obligations of detain and trying the nationals of the state's parties to the Vienna Convention. But the Pakistani government has not fulfilled this commitment. India requested the Court to rule on the following: 1- Execution of the death sentence of an Indian citizen should be stopped immediately. 2. The death sentence of an Indian national was in contrary to the Vienna Convention. 3. Pakistan shall abolish the death penalty in any way it can.

The court issued an order a day after receiving the petition, urging Pakistan to postpone the execution of the Indian national. After ensuring that the man was not executed, the court settled the dispute and required Pakistan to re-try the Indian national and ensure a fair trial, but objected to India's request that his sentence was abolished and returned to India and considered it within the scope of authority of the Pakistani government. In this case, the court even shows the obligation to realize the rights of citizens of another country, even between two hostile states, but after ensuring a fair trial, it does not enter the realm of government and the execution or non-execution of a human being if based on law. In Europe, on the other hand, ensuring that a person is not executed for any crime is seen in the case of the German murderer.

- **Advisory opinion on the Chagos Archipelago in Mauritius**

In 2017, the General Assembly asked the Court for an advisory opinion with respect to the legal consequences of the separation of the Chagos Archipelago from Mauritius. Morris, which became independent from British colonization in 1968, still considered the Chagos Archipelago under British occupation. The General Assembly raised two questions from the Court: First, whether the anti-colonial process really took place in Mauritius and has Britain adhere to its commitments under the Declaration of Independence? And what are the legal implications of separating the archipelago from Mauritius, considering that the Moroccan government cannot deploy its citizens to the Chagos Archipelago?

In this regard, the Court refers to the principle of self-determination and says that even residents of areas that do not have independent indigenous sovereignty can decide their own destiny. The Court further notes Morris' consent to the separation of the Chagos Archipelago at the time of its independence from Britain, and believes that this agreement was not consulted by the people of the island and the persons in question. Finally, the Court notes that the new colony created after Maurice's independence came into being illegally and that the process of Maurice's independence from Britain in 1968 did not take place properly.

The court on the second question by referring to the illegitimacy of British continued sovereignty over the Chagos Archipelago, requests all members of the United Nations to cooperate in line with the United Nations objectives of enforcing the law and removing the Chagos Archipelago from British colonial rule. The Court also re-mention the principle of self-determination as a universal principle, stating that all States have a legal duty to protect it. The Court finally considers this to be a human rights matter and calls on the General Assembly to pursue the Morris independence process to the fullest extent possible.

## **Conclusion**

In accordance with the Constitution of the International Court of Justice, the Court has general jurisdiction over all types of international legal disputes. In this regard, human rights have been the subject of some of the lawsuits brought before this international tribunal and have made important decisions regarding human rights over the years. Especially in recent years, the court has played an

important role in the protection of human rights in cases involving the use of the day, the right to life, genocide, a fair trial and fair protection of freedom of expression. The reason for this is that the court is the mainstay of the United Nations judiciary and inherently cannot refuse to make decisions on human rights issues that are closely linked to the maintenance of international peace and security and that the Organization is obliged to achieve.

An important point in the review of some cases, such as the case of Nicaragua and Barcelona, is the referral of the Court to regional human rights mechanisms. As stated in the context of the Charter of United Nations, the Court has found that, with respect to the long and hard process of dealing with human rights matters within itself, addressing these issues in regional mechanisms will be easier and closer to a conclusion. Another feature is that it conforms to the culture and bilateral or multilateral agreements of governments with countries in their region.

Therefore, in response to the research question: "What is the procedure of the International Court of Justice in the duality of sovereignty and human rights?" It can be said that the International Court of Justice, despite all its formal and structural limitations, whenever cases with the color and smell of human rights are referred to it and has passed from the jurisdiction stage to the substantive stage, in cases where the general principles of governance are not defective and/or a serious human rights crisis arises, it has defended fundamental human rights well, but the state-centered nature of this court makes it impossible to turn it into a human rights court. This is because, firstly, many governments have not expressed their consent to the jurisdiction of the Court, and secondly, the guarantee of its implementation is limited to the Security Council of United Nations, which is governed by a political mechanism and is dominated by five veto-power wielding countries.

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