

THE INTERNATIONAL COURT OF JUSTICE AS A UN MECHANISM FOR THE PROTECTION OF HUMAN RIGHTS: BETWEEN STATUTE AND PRACTICE



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Abstract:

The International Court of Justice (ICJ) constitutes one of the principal organs of the United Nations, as it serves as the judicial organ of the Organization. It is competent to provide advisory opinions and also exercises judicial jurisdiction in matters stipulated in its Statute. Among the issues examined by the Court are those related to human rights, although such matters do not fall within the Court's primary jurisdiction. Nevertheless, practice has shown that the Court contributes effectively to the protection of human rights. Some of its decisions delivered within the framework of this jurisdiction have become important references whenever the protection and promotion of human rights at the international level are discussed.

Key Words: International Court of Justice, human rights, jurisdiction, decisions, international conventions, Statute.

محكمة العدل الدولية آلية أممية لحماية حقوق الإنسان،
بين نصوص النظام الأساسي لها و الممارسة الفعلية

ملخص:

تشكل محكمة العدل الدولية أحد أهم أجهزة الأمم المتحدة، باعتبارها الجهاز القضائي للمنظمة. تختص بتقديم آراء استشارية، كما تمارس الاختصاص القضائي في المسائل المنصوص عليها في نظامها الأساسي. من بين المسائل التي تنظر فيها، نجد المسائل المتعلقة بحقوق الإنسان والتي لا تعتبر اختصاصا أصيلا للمحكمة، إذ أظهرت الممارسة أن المحكمة تساهم بشكل فعال في حماية هذه الأخيرة، بل جعلت بعض من القرارات الصادرة عنها في إطار ممارسة هذا الاختصاص سوابق يشار إليها كلما تعلق الأمر بالحديث عن حماية وتفعيل حقوق الإنسان على الصعيد الدولي .
الكلمات المفتاحية: محكمة العدل الدولية، حقوق الإنسان، الاختصاص، قرارات، الاتفاقيات الدولية، النظام الأساسي.

La Cour internationale de Justice, mécanisme onusien de protection des droits de l'homme : entre les dispositions de son Statut et la pratique effective

Résumé:

La Cour internationale de Justice (CIJ) est l'un des principaux organes des Nations Unies, puisqu'elle en constitue l'instance judiciaire. Elle est habilitée à rendre des avis consultatifs et exerce une compétence contentieuse dans les matières prévues par son Statut. Parmi les questions soumises à la Cour figurent celles relatives aux droits de l'homme, bien que ces dernières ne relèvent pas directement de sa compétence première. Toutefois, la pratique a montré que la Cour contribue de manière effective à la protection des droits de l'homme au niveau international. Certaines de ses décisions sont ainsi devenues des références majeures dès lors qu'il est question de la protection et de la promotion des droits de l'homme dans l'ordre international.

Mots-clés : Cour internationale de Justice, droits de l'homme, compétence, conventions internationales, Statut.

Introduction:

It goes without saying that the International Court of Justice (ICJ) is among the most important organs of the United Nations, as it constitutes its principal judicial body. Its competences range between judicial and advisory roles, since the Court's work is tied to the UN's founding objectives and principles, particularly the peaceful settlement of international disputes.

Moreover, given the connection between maintaining international peace and security and the establishment and protection of human rights, the ICJ, alongside other UN bodies, mainly specialized agencies, has worked to achieve this goal.

Although the judges of the International Court of Justice are not specialized in human rights matters, and although the Court does not have jurisdiction to rule on appeals lodged by individuals, the ICJ nevertheless contributes to the protection of human rights through its jurisdiction over related disputes.

On this foundation, it is necessary to examine the legal basis on which the Court relies to justify exercising this jurisdiction, first by considering the provisions of its Statute, and then by examining the extent to which its decisions relating to human rights are implemented in practice and contribute to the protection of human rights at the international level. This also serves to remove any ambiguity or uncertainty that may arise from the actions and decisions of states in the implementation of their international obligations or in applying international human rights conventions.

This discussion leads to the question of whether the ICJ can be considered an effective UN mechanism for the protection of human rights.

To answer this issue, an analytical and inductive approach is adopted, presenting the international texts on the subject.

THE FIRST TOPIC:

THE LEGAL FRAMEWORK OF THE INTERNATIONAL COURT OF JUSTICE

In terms of its work, the court, like all other similar international institutions, especially judicial ones, is subject to its statute, which includes provisions on the legal system to which it is subject.

First requirement: the Concept of the Court

As one of the most important principal organs of the United Nations, it is necessary to investigate both its definition and its importance, in addition to its composition.

First section: Overview and creation

Within the United Nations system, the International Court of Justice (ICJ) functions as its principal judicial organ. It was created to settle, in accordance with international law, disputes between states and provide advisory opinions on matters submitted to it by UN organs and specialized agencies. The Court was established on 26 June 1945 under the UN Charter, and its first inaugural session was held in April 1946.

The idea of creating the Court arose from the international community's urgent desire to create a mechanism similar to domestic courts, aiming to prevent war and its devastating consequences. Its historical roots date back to the first arbitration body between Great Britain and the United States in 1794, which issued its first arbitral decision in 1873, obligating Britain to compensate the United States for acts of aggression, including the sinking of ships, and supplying weapons to the southern states. This culminated in 1899 with the creation of the Permanent Court of Arbitration, though it did not fully achieve its objectives, particularly the establishment of a permanent and stable international system. A legal committee subsequently prepared a draft Statute, ratified on 16 December 1920. The Court was formed in 1922, headquartered in The Hague. However, its activities were disrupted by World War II, leading to the resignation of its judges¹.

¹ Ali Farhan Hamid, *The Contribution of the International Court of Justice to Activating the Role of the United Nations*, Alexandria: Dar Al-Jami'a Al-Jadida for Publishing, 2021, pp. 30–31.

Second section: Importance of the Court

The ICJ is a significant international organ that serves to settle international disputes in a way that is aimed at achieving the main purposes of the UN, which are the maintenance of international peace and security. The Court also aims through its decisions and judgments to contribute to the protection of human rights, the promotion of justice, the strengthening of fairness and equity and the development of friendly relations among nations. Furthermore, it encourages the understanding, interpretation and application of the provisions of international law.

The importance of the Court is also expressed in its continuing work to promote the principle of the rule of law by implementing the fundamental principles of justice and the defense of human rights globally.

Third section: Composition of the Court

The Court is composed of fifteen judges, elected for a term of nine years by the UN General Assembly and Security Council, as proclaimed in Article 3 of the ICJ Statute. According to Article 9 of the Statute, both the principal legal systems of the world and geographical distribution must be fairly represented. Judges who receive an absolute majority in the General Assembly and the Security Council are elected judges.

Furthermore, article 16 of the Statute stipulates that judges are prohibited from exercising any administrative or political functions or engaging in any independent profession. They may not act as lawyers or advisers in any case or participate in adjudicating a case in which they were previously involved as counsel, adviser, or a member of a national or international court, an inquiry commission, or any other capacity.

Court sessions are normally held with the full bench, except in special circumstances. The Court may excuse one or more judges from participating in a hearing, provided that at least eleven judges are present. From time to time, the Court may form one or more chambers, each composed of three or more judges, according to its determination for considering specific categories of cases².

Second requirement: Functions of the Court

It exercises two types of jurisdiction: judicial and advisory.

First section: Judicial Function

The exercise of this jurisdiction is linked to consensual jurisdiction, which requires the consent of the states concerned. This consent may be expressed through a unilateral declaration or pre-existing agreement, whereby a state acknowledges the Court's competence to adjudicate any dispute in which it is a party, provided that the other state has also accepted such jurisdiction. It may also derive from treaty

² Khadija Medjahdi & Ibrahim Medjahdi, *The Law of Contemporary International Society: Its Development, Subjects and Legal Sources – An Analytical Study*, Alexandria: Dar Al-Jami'a Al-Jadida, 2025, p. 355.

provisions granting the Court authority to resolve disputes arising therefrom, or through a special agreement between two or more states to submit their disputes to the Court.

Finally, there is the theory of the extended jurisdiction, also known as deferred consent, which allows states to propose that the Court rely on consent not yet expressed. The request explains the matter to the other state and invites its agreement. The Court first recognized this in the Democratic Republic of Congo vs. France and Djibouti vs. France cases (concerning mutual legal assistance in criminal matters), where Djibouti relied on Article 38(5) of the ICJ Rules, which confirms the necessity of the consent of the requested state and its right to define the scope of the dispute³.

Second section: Advisory Function of the Court

In addition to its contentious jurisdiction, the International Court of Justice is empowered to issue advisory opinions on legal questions submitted to it. This advisory competence is governed primarily by Article 65 of the Court's Statute, which requires the Court to exercise this jurisdiction in the following cases:

- Providing advisory opinions on any legal question at the request of any organ authorized by the Charter or permitted by it.
- Submitting written requests that detail the matter under consultation, accompanied by all supporting documents.
- Allowing the Security Council, General Assembly, and UN organs and specialized agencies authorized by the General Assembly to request advisory opinions on domestic legal matters related to their functions, as stipulated in Article 96 of the Statute.

Advisory jurisdiction is limited to the General Assembly, the Security Council, and other UN organs and specialized agencies, but only after authorization by the General Assembly. States themselves may not request advisory opinions. The subject matter is strictly limited to legal questions⁴.

The Court has issued numerous advisory opinions, including:

- The 1949 Advisory Opinion on Compensation,⁵
- The advisory opinion on the reservation to the 1951 Convention on the Prevention and Punishment of the Crime of Genocide,
- The Advisory Opinion on the legal consequences of the construction of a wall in the Occupied Palestinian Territory⁶.

³ Khawla Mohieddin Youssef, *Human Rights before the International Court of Justice: A Study of Reality and Prospect*, 1st ed., Lebanon: Halabi Legal Publications, 2020, p. 24.

⁴ Khadija Medjahdi & Ibrahim Medjahdi, *op. cit.*, p. 361.

⁵ *Advisory Opinion of 11 April 1949, Reparation for Injuries Suffered in the Service of the United Nations*, I.C.J. Reports 1949. Available at: www.icj-cij.org

⁶ Ibrahim Medjahdi, *International and Regional Protection of Human Rights and Fundamental Freedoms and the Mechanisms for Their Supervision*, Academic Center for Publishing & Arab Studies Library for Publishing and Distribution, 2024, p. 147.

The advisory opinions issued within this jurisdiction carry significant legal, ethical and political weight. In many of its opinions, the Court has referred to previous opinions it has issued, and some of its decisions have set precedents that reflect its position on the application of the principles and provisions of international law. Advisory opinions have provided an important platform for the Court to clearly demonstrate its role in the field of human rights⁷.

Third requirement: the Characteristics of the International Court of Justice:

These characteristics are many, including:

First section: the Civil Nature of the Court's Judgments

The Court is, first and foremost, a court of states rather than individuals, as explicitly provided in Article 34 of its Statute. Some scholars have viewed this as a reflection of the traditionally uncertain legal status of the individual under international law.

That said, cases brought before the Court, particularly those involving human rights, often bear a close, albeit indirect, connection to individuals. This was already evident in the jurisprudence of the Permanent Court of International Justice, which dealt with issues such as minority rights and the right to self-determination, where the interests and positions of individuals were clearly at stake. Today, states increasingly submit disputes that directly concern the rights and interests of individuals⁸.

Second section: the Distinction between ICJ Judgments and International Criminal Decisions

Another defining feature of the Court is its distinction from international criminal tribunals. Although certain cases before the ICJ may involve elements touching upon international criminal responsibility, the Court itself does not exercise criminal jurisdiction. Matters concerning individual criminal responsibility, investigation and prosecution fall under the competence of bodies such as the International Criminal Court. The ICJ's role remains civil and inter-state in nature, even when dealing with issues that carry serious legal implications.

Third section: the Broad Scope of the Court's Jurisdiction

The comprehensive character of the Court's jurisdiction is closely linked to its relationship with the UN Charter, given that it operates within a universal organization. This universality is further reflected in the legal rules it applies, particularly those relating to human rights, which themselves possess a global and inclusive character.

⁷ Khawla Mohieddin Youssef, *op. cit.*, pp. 29–30.

⁸ For further details, see: Khawla Mohieddin Youssef, *op. cit.*, pp. 19–20.

Moreover, the Court plays a central role in interpreting international treaties, as they constitute primary sources of international law under its Statute. Through this interpretative function, the Court contributes to shaping and clarifying the development of international legal norms.

Fourth section: the Court's Judgments

When deliberating, the Court withdraws for confidential discussions. Decisions are taken by a majority of the judges present, with the President casting the deciding vote in the event of a tie. Judgments must state the reasons on which they are based and indicate the names of the judges who participated in the decision⁹.

The Court's decisions are final and not subject to appeal, except for requests for revision, which are allowed only if a decisive fact unknown to the parties emerges, provided it was not overlooked due to negligence. Requests for revision must be submitted within six months of discovering the new fact and no later than ten years after the judgment¹⁰.

THE SECOND TOPIC:

ENHANCING THE PROTECTION OF HUMAN RIGHTS THROUGH THE WORK OF THE INTERNATIONAL COURT OF JUSTICE

The Court intervenes in human rights matters due to its grounding in the core foundation of the activities of the United Nations system. Such involvement relates to the international legitimacy of human rights, the foundations of which are reflected in the legal standards of the Universal Declaration of Human Rights. The fundamental and authoritative legal framework contains various elements of law, such as the two International Covenants of 1966 on Civil and Political Rights and on Economic, Social and Cultural Rights, as well as their additional protocols.

The international conventions, adopted alongside fundamental instruments for the protection of human rights, are among the most significant legal frameworks globally. The framework involves a large jurisdiction for the Court to consider any dispute arising between parties that agree to submit the matter for adjudication, and the comprehensive nature of these protocols reflects the idea of the connection between international law and humanity. These essential and fundamental instruments contain various elements of authority, for instance, jurisdiction over matters explicitly provided for in the Charter of the United Nations and in the

⁹ See Articles 54, 55 and 56 of the *Statute of the International Court of Justice*.

¹⁰ See Articles 61–65 of the *Statute of the International Court of Justice*.

international treaties in force, regardless of whether the dispute is of a legal or political nature¹¹.

First requirement: Interpreting Human Rights and Defining Their Scope

The International Court of Justice is seized to resolve disputes in relation to the interpretation, application, or implementation of international conventions concerning human rights. This generally occurs when one of the disputing parties asks the Court for help, reflecting the significant role it plays in the development of rules of international law through its interpretation of international legal provisions.

When it comes to human rights, reference may be made to the dispute brought in 2017 by the Government of Ukraine against the Russian Federation concerning alleged violations by the latter of international conventions relating to the suppression of the financing of terrorism and the eradication of racial discrimination. In that context, the Court specified provisional measures requiring the Russian Federation to comply with its international obligations, including the guarantee of access to education in the Ukrainian language.

The Russian Federation objected to the Court's jurisdiction in this dispute. The Court, however, carefully looked at the conventions themselves. It noted expressions like "without delay" and "the adoption of immediate and effective measures." On this basis, it concluded that jurisdiction was valid. This was a milestone in the Court's practice. Not only did it clarify the Court's authority under the International Convention on the Elimination of All Forms of Racial Discrimination, but it also helped define the scope of its role under one of the most significant human rights treaties¹².

Turning to the broader rules of interpreting international law, the Court relied on the 1969 Vienna Convention on the Law of Treaties¹³.

The ICJ's role in shaping international human rights law has been particularly influential. In several cases, it examined whether states could make reservations to treaties. A key example is the 9 December 1948 Convention on the Prevention and Punishment of the Crime of Genocide. In its 28 May 1951 advisory opinion, the Court highlighted the United Nations' determination to punish genocide. It explained that genocide involves denying entire human groups the right to exist. Such acts, the Court noted, shock the conscience, wound the spirit of humanity, and violate the very purposes of the United Nations.

¹¹ Khaled Atwi, "The Role of the International Court of Justice in Developing Its Jurisdiction," *Al-Ustadh Al-Bahith Journal for Legal and Political Studies*, Vol. 1, No. 8, 2017, p. 161.

¹² Anas Mohammed Issam Abdelrahman, "The Role of the International Court of Justice in the Protection of Human Rights," *Middle East Journal for Legal and Jurisprudential Studies*, Vol. 4, No. 1, 2024, pp. 162–163.

¹³ *Practical Dictionary of Humanitarian Law*, "International Court of Justice", humanitarian-law.org.

Within this context, the Court also stressed the practical value of reservations. They can help ensure that international conventions, even if adopted by majority vote, are applied as universally as possible, especially when these conventions serve the collective interest of the global community¹⁴.

The Court faced again the question of genocide in the case of *Bosnia and Herzegovina v. Yugoslavia*. The Sarajevo Government turned to the Court and requested provisional measures aimed at protecting human rights. In its orders on 8 and 13 September 1993 and 11 July 1996, the Court affirmed its jurisdiction to indicate such measures. It further clarified that, when the Genocide Convention applies, there is no need to determine whether the acts occurred in an international or internal armed conflict. And importantly, the Court confirmed that states' obligations to prevent and punish genocide under the Convention are not limited to any particular territory; they are universal¹⁵.

Second requirement: Examples of areas of court intervention:

The Court is faced with numerous issues, particularly those directly concerning the protection of human rights. The following are examples of decisions rendered:

First section; Advisory Opinions in Matters Related to Human Rights (Use of Nuclear Weapons):

The advisory opinion on the use of nuclear weapons is considered one of the most important opinions issued within the Court's advisory jurisdiction. The Court first examined whether an agreement existed prohibiting the use of nuclear weapons, which the Court answered by stating that there is no international agreement preventing it, but it acknowledged that there are agreements restricting the possession and use of such weapons.

Secondly the Court addressed the extent to which customary international law prohibits the use or threat of nuclear weapons. It considered that any resort by states to the use or threat of force must comply with Article 2(4) of the Charter and respect the conditions set out in Article 51.

The Court considered that the use of nuclear weapons contradicts international law applicable in armed conflicts. Therefore, the International Court of Justice did not conclusively clarify the legal status of these weapons due to the absence of an international legal instrument that categorically prohibits their use or threat.¹⁶

¹⁴ Khawla Mohieddin Youssef, *Human Rights before the International Court of Justice: A Study of Reality and Prospects* 1st ed., Lebanon: Halabi Legal Publications, 2020, p. 104.

¹⁵ H. Guldich, "La protection des droits de l'homme dans le droit international et le système onusien," in *Mélanges offerts à Dali Jazi*, Tunis: C.P.U., 2010, p. 16.

¹⁶ Ali Farhan Hamid, op cit , p 422.

Second section: issuing Judicial Decisions

In this context, it is useful to refer to the well-known case of the American hostages in Tehran, which was brought before the International Court of Justice. This dispute falls within the field of diplomatic and consular law. The events began when a group of Iranian students stormed the United States embassy in Tehran. They took several diplomats hostage and seized documents and files belonging to the embassy.

The students justified their actions by accusing the United States of committing international crimes against the Iranian people. At the same time, they demanded that the United States stop interfering in Iran's foreign policy.

In response, the United States demanded by calling for the immediate release of the hostages and the restoration of the embassy premises.

Following these events, the United States filed a case against Iran before the International Court of Justice under Article 36 of its Statute. It also requested provisional measures under Article 41, requesting the Court's urgent intervention. The Court granted these measures, but Iran refused to comply.

When delivering its judgment, the Court relied on several legal instruments, including the Vienna Convention on Diplomatic Relations (1961), the Vienna Convention on Consular Relations (1963), their related protocol, the Treaty of Friendship and Consular Relations between the two states, as well as the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including diplomatic agents.

In its decision, the Court confirmed the international responsibility of the state concerned. It ordered the release of the hostages and their transfer to Switzerland. It also addressed the issue of compensation, including the determination of the damages owed to the United States.

Despite this ruling, Iran did not comply with the Court's decision. As a result, negotiations between the two countries became necessary. These talks eventually involved mediation by Algeria, which played an important role in securing the release of the hostages.

The judgment later became an important reference in matters relating to compensation. It was cited, for example, by the International Law Commission and the United Nations Human Rights Committee when discussing violations of the International Covenant on Civil and Political Rights, particularly regarding the restoration of the situation to its status prior to the violation.

More broadly, the International Court of Justice has addressed several questions related to human rights. This is notable because only states have standing before the Court. Nevertheless, human rights issues have appeared in its work, especially through its advisory jurisdiction. Examples include:

- The 1951 advisory opinion on reservations to the Convention on the Prevention and Punishment of the Crime of Genocide.

- The advisory opinion concerning Namibia.
- The provisional measures the Court may indicate in urgent situations in order to protect human rights¹⁷.

Third section: Advisory Opinion in the Case of the German Settlers in Poland

This advisory opinion confirmed an important idea: individual rights do not vanish simply because states change or cease to exist.

The case concerned measures taken by the Polish government against German minorities living in its territory. Many of these settlers occupied land for which they paid rent, although they did not hold formal ownership titles. The Polish authorities expelled them and required them to leave the land, arguing that their rights had been obtained during the period when Poland and Germany had been politically united.

In its advisory opinion of 10 September 1923, the Permanent Court of International Justice concluded that Poland had violated its international obligations, particularly those relating to the rules governing state succession¹⁸.

On 10 December 1923, the Court clarified another important point. It explained that the principle of equality in the relevant agreements does not simply mean that laws must avoid explicit discrimination. It also means that no discrimination should arise in practice, even when legal provisions appear formally neutral.

On that basis, the Court invalidated a Polish law adopted in 1920. That law required the expulsion of anyone occupying immovable property under a contract concluded with a person subject to Polish taxation. In practice, however, the measure mainly affected individuals of German nationality who had previously lived in Germany before the First World War and had concluded their contracts with Prussia during that period.

The Court later adopted a similar approach in its decision of 4 February 1932 concerning the treatment of Polish nationals and persons of Polish origin or Polish language in the territory of Free City of Danzig. In that case, the Court rejected a measure that had been presented as a general rule but which, in reality, specifically targeted Polish citizens, people of Polish origin, and the use of the Polish language¹⁹.

Fourth section: Affirming the Unity of the Foundations of International Humanitarian Law and its Complementarity with International Human Rights Law

¹⁷ Yahya Yassin Messaoud, *Human Rights between State Sovereignty and International Protection*, Cairo: National Center for Legal Publications, Cairo, 1st ed., 2016, p. 85.

¹⁸ Al-Amin Benaissa, "The Role of the International Court of Justice in the Development of Rules of International Law", *Algerian Journal of Law and Political Science*, No. 4, December 2017, p. 20.

¹⁹ S. Exc. M. Gilbert GUILLAUME, "La Cour internationale de Justice et les droits de l'homme," *Revue Droits Fondamentaux*, No. 1, Seminar of Bali, 12–13 July 2001, p. 24.

The International Court of Justice clearly emphasized the fundamental unity of international humanitarian law in its advisory opinion on the threat or use of nuclear weapons, delivered on 8 July 1996. In that opinion, the Court explained that this unity constitutes one of the key foundations of humanitarian law.

1. Provisional Measures

More recently, the Court has also addressed human rights issues through provisional measures. One example is the decision adopted in 2018 in the dispute between Qatar and the United Arab Emirates concerning the application of the International Convention on the Elimination of All Forms of Racial Discrimination.

In that decision, the Court required the Emirati authorities to take measures to reunite Qatari-Emirati families that had been separated during the Gulf crisis. It also ordered that Qatari students be allowed to recover their academic records. At the same time, both parties were instructed to refrain from taking any action that could aggravate the dispute while the case was still before the Court.

More generally, it is now widely accepted that certain rules of international law do not create obligations only toward the states directly involved. They also establish obligations toward the international community as a whole.

In this regard, reference can be made to Article 36(1) of the Vienna Convention on Consular Relations, which grants specific rights to individuals. In particular, individuals must be informed by the receiving state's authorities of their right to communicate with consular representatives. At the same time, the provision gives individuals the right, though not the obligation, to benefit from consular assistance.

The Court has examined such questions in different disputes. One example concerns the rights of the brothers Karl and Walter LaGrand, in which Germany sought consular protection on their behalf. The case involved both the individual rights of the two brothers and Germany's rights under the Convention²⁰.

A similar issue arose in another case concerning Article 36 of the Vienna Convention. In that dispute, India brought proceedings against Pakistan, leading to the Court's decision²¹ of 8 May 2017. India argued that Pakistan had violated the Convention in relation to an Indian national who had been sentenced to death in Pakistan.

According to India, Pakistan had failed to inform it of the arrest and had also neglected to inform the detainee of the rights provided under Article 36. In addition, Pakistan had refused to allow Indian consular officials to contact him.

India therefore requested provisional measures asking the Court to suspend the execution of the sentence. The Court accepted this request, noting that carrying out the death penalty would constitute an irreversible act.

²⁰ P. Couvreur, "La jurisprudence de la Cour internationale de Justice en matière de droit de l'homme," available at: <http://milas.xhost.com>, p. 251.

²¹ International Court of Justice, Jadhav (India v. Pakistan), Request for the Indication of Provisional Measures, Order of 18 May 2017, General List No. 168.

The Court also stressed that the execution might occur before the final judgment expected in August 2017, which established the element of urgency required for provisional measures.

For that reason, the Court ordered Pakistan to take all necessary measures to ensure that the execution would not be carried out until the Court delivered its final judgment. After the written stage of the proceedings, the case later continued with public hearings held in February 2019.²²

More recently, relying on the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide, the International Court of Justice examined, on 11 and 12 January 2024, the case brought by South Africa against Israel. In its application, which was based on Article 9 of the Convention, South Africa relied on its legal standing and its capacity to appear before the Court, allowing it to bring proceedings and submit its claims. It also relied on earlier case law established by the Court, according to which any State party having an interest in the prevention of genocide may bring a claim before the Court²³.

The Court ordered a number of provisional measures in the case brought by South Africa against Israel, including:

- the obligation to take all necessary measures to prevent acts including killing, causing serious harm, and creating conditions affecting life;
- the provision of humanitarian aid and services, together with efforts to improve the difficult conditions faced by civilians in Gaza;
- the submission of a report to the Court within one month from the date of the decision, detailing the measures that had been taken;
- the punishment of direct and public incitement to commit genocide.

However, in this particular case, the Court did not fully follow its previous case law, despite having ruled on similar and relatively recent genocide-related disputes. One example is the case brought by The Gambia against Myanmar concerning acts of genocide against the Rohingya population. In that case, the Court ordered the adoption of all possible measures to prevent and punish the acts listed under Article 2 of the Convention, as well as measures aimed at preserving evidence. A similar approach was followed in the case brought by Ukraine against the Russian Federation on 26 February 2022²⁴. In its Order of 16 March 2022, the Court required the Russian Federation to suspend the military operations initiated on Ukrainian territory and

²² P. Couvreur, *op. cit.*, p. 253.

²³ DIB Mohamed, DJIMAOUI Nabila, “A Reading of the United Nations’ Work in the Field of Human Rights (The Case of South Africa v. the Israeli Entity before the International Court of Justice as a Model)”, *Journal of Legal and Political Studies*, Vol. 10, No. 2, June 2024, p. 12.

²⁴ Mohamed ABIDI, “South Africa’s Allegation that Israel Committed Genocide in the Gaza Strip (A Reading of the Operative Part of the International Court of Justice Decision)”, *Academic Journal of Legal and Political Research*, Vol. 8, No. 1, 2024, p. 233.

called on both parties to refrain from any action likely to aggravate or extend the dispute and make its resolution more difficult²⁵.

2. Intervention of the Court to Preserve Human Dignity

Humanitarian concerns focus on protecting basic human needs, including the right to life and physical integrity. These concerns can influence how international law is interpreted and applied, especially during wars, within the framework of international humanitarian law²⁶.

3. Development of Peremptory Norms in Human Rights (*jus cogens*)

The Court has not merely applied existing legal rules. Over time, it has contributed to the development of binding norms aimed at strengthening the protection of human rights.

Even if it was not expressly stated, the Court has gradually assumed a role comparable to that of a human rights court. This started back with the Permanent Court of International Justice, especially in issues of diplomatic protection and protection of national minorities. Later, the International Court of Justice carried on this work, notably in decolonization cases and matters concerning the right of peoples to self-determination. Ultimately, the Court acknowledged that some peremptory norms (*jus cogens*), have priority and are binding on all states²⁷.

These principles later found a place in the 1969 Vienna Convention on the Law of Treaties, even if the term “*jus cogens*” was not explicitly used. The Court first referred to this idea when it clarified the distinction between obligations owed to the international community as a whole and those owed to another State within the framework of diplomatic protection. In this respect, the first category concerns all States²⁸.

Nine years later, on 15 December 1979, the Court added that no State is obliged to establish diplomatic or consular relations with another State. However, it cannot disregard imperative obligations set out in the 1961 and 1963 Vienna Conventions, which both Iran and the United States had ratified²⁹.

The Court has also weighed in on the rights of peoples, with one of the first examples being the Namibia case in the 1950s.

Here, the facts are about South Africa continuing its presence in Namibia, despite UN Security Council Resolution 276 of 1970, which demanded South Africa’s withdrawal³⁰. The Court emphasized that the mandate over South West Africa was

²⁵ Mohamed ABIDI, *op. cit.*, p. 234

²⁶ Parfait Obama, “La Cour internationale de justice et la problématique des droits de l’homme,” *Humanité et liberté en Afrique centrale*, Vol. 1, 2009, p. 3.

²⁷ E. Decaux, “Justice et droits de l’homme,” *Droits Fondamentaux*, No. 2, January–December 2002, p. 84.

²⁸ Parfait Obama, *op. cit.* p. 3.

²⁹ Parfait Obama, *op. cit.*, p. 3.

³⁰ Al-Amin Benaissa, *op. cit.*, p. 28.

meant to serve the interests of the local population and humanity in general; it was an international mission, a sort of “sacred trust of civilization.”

The Court, however, concluded by 1971 that South Africa failed to respect human rights and fundamental freedoms in Namibia, disregarding the international status of the territory. The policy of apartheid, applied by South Africa, was seen as a deliberate violation of the UN Charter’s goals and principles. Accordingly, the Court declared South Africa’s presence in Namibia illegal and illegitimate³¹.

Conclusion:

Protecting human rights is clearly a matter that goes beyond specialized courts like regional human rights tribunals. Today, the importance of safeguarding these rights has extended to international bodies, even those not primarily focused on human rights. Among these, the International Court of Justice stands out. Looking at its decisions, it is clear that the Court places significant emphasis on protecting human rights at the international level. In doing so, it strengthens the protection of these rights and highlights their universal and binding character.

That said, the Court still faces challenges that limit its impact. For instance, its jurisdiction depends on the willingness of states to accept its authority. This reliance can sometimes prevent the Court from stepping in, especially in sensitive human rights cases.

Even though it is not a court solely dedicated to human rights, the ICJ has carved out a role in interpreting and clarifying human rights norms, particularly in the context of international conventions. Key takeaways include:

- Bilateral and multilateral agreements remain the most effective route to bring human rights issues before the Court.
- The Court’s advisory jurisdiction helps harmonize different interpretations of legal questions concerning human rights.
- As a principal organ of the United Nations, the Court serves as a reminder to states of their obligations under international human rights law, while providing a forum for addressing responsibility for violations of these rights. This complements international criminal responsibility, which other bodies handle.

In conclusion, although the ICJ is not a specialized human rights tribunal, it has consistently demonstrated through its jurisprudence that it occupies a central and

³¹ Gilbert Guillaume, *op. cit.*, p. 26.

stabilizing position in consolidating both the protection and the interpretation of human rights on the international st

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