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ONE OF THE IMPORTANT ROLES OF INTERNATIONAL JUDICIAL ACT IN THE PROCESS OF MAINTAINING INTERNATIONAL PEACE AND SECURITY

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Abstract

Through the functions it performs, the judicial act has an important role in the maintenance of international peace and security, the prevention and repression of crime, as well as of the international protection of human rights and fundamental freedoms. Even the duties of public international law coincide with these goals.

Keywords: *cooperation, international jurisdictions, cases*.

Introduction

Since it is an act of jurisdiction to decide a dispute which is a threat to international peace and security, it should be treated from now on as a particular source, since it ensures the realization of the fundamental principles of international law.

One of the fundamental requirements of the maintenance of international peace and security is the peaceful settlement of international conflicts. International disputes were solved over history-for the restitution of the rights claimed or actually infringed-on the battlefield, often resorting to force of arms, ignoring the law.

Before resorting to military force, in case of an Interstate dispute, it is best to finish all the means suitable to bring about a peaceful solution, especially with no human casualties.

Peaceful settlementof international disputes

Either in the practice of international relations and in the theory of international law, the means of resolving disputes are particularly varied, international law representing one of the guarantees of peace and constructive international cooperation in the light of the principle of peaceful coexistence between nations.

The maintenance of this unique coexisting is the principle of the settlement by peaceful means of disputes-international fundamental - principle of international law and international relations-whence the obligation of all subjects of international law to settle all conflicts arising between them only by peaceful means, regardless of the nature and reasons, we are referring here, including the obligation to refrain from the application and the threat of force.

The establishment of a competence as a conflict situation issue belongs, practically, to the UN Security Council not developing general criteria of qualifications, the Council appreciatingthe circumstances of each case in particular.

A particular importance has the differentiation of divisions, which are not yet qualified as conflict situations – which, as a result of unilateral actions of States, aimed at changing the existing position in his favour – and turns in international conflicts, acquiring the qualification of threatening situations of peace or act of aggression.

The experience of history, the current evolution of the international situation, yet again demonstrates that recourse to peaceful means is the only possible and logical way of solving any disputes.

Peace guarantee is given by the peaceful resolution of disputes between States because:

- Other way, it comes down to a stable recovery of endangered due to the dispute arose;
- as a result of peaceful regulation we understand better the causes that gave rise to the conflict, thus reinforcing the close warring parties;
- by using peaceful means we regain confidence between the two sides, shaken by the appearance of the strain and the conflict that sparked.

Practice has shown that regulations imposed by violence have fared relatively short, because the party has been forced to accept themcannot remember to forget the injustice that was caused and that she was forced to endure. Doctrine and practice show that several essential elementscan be found in configuring the solution for stability based on peaceful means:

a) the option for peaceful means is proof that both sides have expressed their attachment to this inadequate force, based on the pressures and coercion;

b) a peaceful resolution to the conflict is preventing the negative evolution of preventing its damage to a state of serious conflict;

c) the conclusion of the process during which the dispute has been resolved finally leads to the restoration of the original relations between the two sides, being created the prerequisites of normal cohabitation.

The dispute is a disagreement between two or more States, resulting from the difference of opinions or interests.

The dispute has been defined in international law and even the Permanent Court of International Justice as a disagreement over an issue of fact or law, opposition legal theses or of interests between two persons.

Thus, the notion of a dispute, in a broad sense, includes appeals, differences or conflicts between at least two subjects of international law, such disputes having either legal or political.

According to the article 36 of the Statute of International Court of Justice legal disputes are those who oppose legal claims between States and which have as their object the interpretation of a treaty, a matter of international law, the existence of a fact which, if established, would constitute a violation of international obligations, as well as determining the extent and nature of the repair due to a breach of an international obligation.

What's certain is that the doctrine of international law was particularly concerned about the distinction between the two concepts, that the difference between a legal dispute and a dispute considered political in nature is founded primarily on the claims of the parties in the dispute. It should be noted that if the claims are legal and based on legal considerations, the dispute will be legal and will be solved according to the rules of international law.

Also, conflicts and conflict situations are mentioned by the UN Charter, without establishing certain criteria for differentiating them. The UN Charter gives high importance to differentiation and conflict situations, the extension of which could threaten peace and security in the world or who created such a threat and those conflicts and situations that do not in any way threaten international security. The Foundation is political in this differentiation, whereas the UN Charter obliges States to resolve, in the first place, conflicts and situationswhose extension is threatening international peace and security. And at the same time, the distinction has a legal arrangement as permanent member of UN Security Council, which is a party in the conflict, and is obliged to abstain from voting during the discussion on the conflict and during the clarifying of the situation (in accordance with article 27 of the Charter).

However, this rule of the Charter has produced a non-concentrated practice, being rarely raised in front of the Security Council, prompting one undeniable precedent to obtaining the Eichmann in Argentina in 1960, however, being a permanent member of the UN Security Council.

The article 36 of the Charter of the United Nations shows the recommendations made in the Security Council when faced with a dispute, to take account of the fact that legal disputes shall be submitted to the International Court of Justice.

Thus, by carrying out the differentiation between a political dispute and a legal one, the Charter operates a „separation" between the competence of the UN Security Council and ICJ in

matters of dispute settlement.

The UN Security Council has followed, for the first time; this recommendation in the Corfu affair, when by Resolution No. 22 of 9 April 1947has recommended the two countries (Albania and the United Kingdom) to "submit soon this dispute to International Court of Justice in accordance with the provisions of the Statute of the Court".

Although Albania has accepted the recommendation of the Security Council, however art. 36 of the Charter do not establish a case of compulsory jurisdiction and the doctrine unanimously accepted this point of view. Because of this issue, it is explained the reluctance of the Security Council to recommend the jurisdictional dispute, the Parties shall ensure that its recipients are willing to recognize the competence of the Court, because, otherwise a recommendation without reaction will affect undeniably the Council credibility.

These discussions lead us to the reflections on the role international jurisdictions play into maintaining international peace and security.

According to the position expressed by UN officials, namely examining the dispute about issuing judicial decisions binding on the parties, the ICJ may contribute to the maintenance of international peace and security, and a greater confidence in the Court would constitute an important contribution to the work of the United Nations *peace-making*.

However, the doctrine is more reticent in promising positions. Even G. Shinkaretkaya remarked that in the Mission of maintaining international peace and security, the expectations of international tribunals are an exaggeration of their abilities, their role in ensuring the rule of law. According to the doctrine, international jurisdictions should contribute to establishing a climate of cooperation and good neighbourly relations, while they themselves can enable effectively only within such a climate.

Despite the doctrinal reticence, however the ICJ has settled a number of disputes threatening to international peace and security, the curious fact is that in exercising their role of contributing to the preservation of peace, the ICJ ruling on the substantive issues, ruling the precautionary measures, but also advisory opinions, which exceed the contentious jurisdiction.

So far, the International Court of Justice has received 17 casesof involvement and/or the use of force in international relations, of which 10 cases have been initiated from Serbia and Montenegro (Yugoslavia at that time) against the allied States members of NATO, accusing them of bombing its territory. Serbia filed a writ against us and yet 9 States (France, Spain, Italy, United Kingdom, Netherlands, Germany, Canada, Belgium, Portugal) on 29 April 1999.

On the same date, the applicant has requested the application of conservatory measures, urging the Court to order the U.S.A. to immediately cease recourse to use of force and refraining from any act that constitutes the threat or use of force against the Federal Yugoslav Republic. By order of 2 June 1999, the Court refused to apply such measures, since it indicated that this obviously has no competence to examine the cause, relinquishing jurisdiction. Through the vote of the 12 judges against three judges, the ICJ ordered the removal of the case from his role. The same order was handed down to Spain.

The other 8 cases have been removed from the pending by clone decisions on the 15 December 2004 on the preliminary exceptions, declaring that the ICJ stated that it is not competent to examine the case.

Another cause in which the ICJ has been asked to cut the armed conflict between the two countries was Border and Cross-Border Armed Actions (Nicaragua vs. Honduras); the dispute is referred to the activities of armed gangs on the territory of Honduras conducted by them to the border with Nicaragua and the Nicaraguan territory. The Court declared unanimously that it is competent to examine the cause and that the applicant's request as admissible, by decision upon the competence and admissibility of 20 December 1988. However, the case was removed from the role of the Court by order of 27 May 1992as a result of extrajudicial agreement concluded between the parties „aimed at fostering their neighbourly relations" and to renounce his claims to the plaintiff.

Conclusions

These examples do not combat doctrinal criticism which is satisfied that the settlement of disputes by judicial process can be a means of securing peace only in two conditions:

1) If the danger results from the dispute itself, but not from other conflicts;

2) If peace is not affected, in particular, until such time as it has not yet applied to armed force.

There are few cases in which the ICJ however ordered protective measures aimed to ensure the freezing of the conflict, such as in the matter of Nuclear Experiments (Australia vs. France). The Court has indicated the Australian government and that of the French to avoid any action that would aggravate or extend the dispute or prejudice to another party to obtain the execution of any judgment which the Court could have concerned, by order of 22 June 1973. Particularly, the ICJ ordered France to refrain from proceeding to the nuclear experiments likely to cause radioactive deposits on Australian territory.

Concluding, the functions of the international instrument are not likely to typological classification, which shall be exercised by an international jurisdiction in the process of examining a specific litigation, either as a whole or separately, contributing substantially to the achievement of public international law: the maintenance of international peace and security, the prevention and suppression of international crime and the protection of human rights and fundamental freedoms.

Annex I

Territorial disputes

No crt.	Business	Year of referral	Date of the judgment
1.	Antarctica (United Kingdom vs. Argentina)	1955	Ordinance pending removal — 16 March 1956
2.	Antarctica (United Kingdom vs.	1955	Ordinance pending removal — 16 March 1956
3.	Right of passing on Indian territory (Portugal vs. India)	1955	E-26 November 1957 F-12 April 1960
4.	Sovereignty over the plots border (Belgium vs. Netherlands)	1957	F-20 June 1959
5.	The Temple of Preah Vihear (Cambodia vs. Thailand)	1959	E-26 May 1961 F-15 June 1962
6.	African South West (Ethiopia vs. South Africa)	1960	E-21 December 1962 F-18 July 1966
7.	African South West (Liberia vs. South Africa)	1960	E-21 December 1962 F-18 July 1966
8.	Septentrional Cameroon (Cameroon vs. United Kingdom)	1961	E-2 December 1963
9.	Frontier dispute (Burkina Faso vs. Mali)	1983	F-22 December 1986
10.	Territorial dispute (Libya vs. Chad)	1990	F-3 February 1994
11.	Oriental Timor (Libya vs. Chad)	1991	F-30 June 1955
12.	Kasikili/Sedudu Island (Botswana vs. Namibia)	1996	F-13 December 1999
13.	Sovereignty over Pulau Ligitan Sipadan (Indonesia c. Malaieziei)	1998	I-October 23, 2002 (Philippines) F-17 December 2002
14.	Frontier dispute (Benin vs. Niger)	2002	F-12 July 2005
15.	Sovereignty over Pedra Branca, Middle Rocks and South Ledge (Malaysia vs. Singapore)	2003	F-23 May 2008
16.	Frontier dispute (Burkina Faso vs. Niger)	2010	-
17.	Some activities undertaken by Nicaragua in border region (Costa Rica vs. Nicaragua)	2010	-

See: Annex 1.

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