

# **A Study on the relation between United Nations Security Council and International Court of Justice**

**Nan Thin Thiri Myat Thu<sup>1</sup>**

## **Abstract**

United Nations (UN) is an intergovernmental organization responsible for maintaining international peace and security, developing friendly relations among nations achieving international cooperation, and being a center for harmonizing the actions of nations. Through the United Nation's Charter, the UN Security Council represents the most powerful executive institutional body in the field of collective security. The General Assembly and the Security Council may, however, seek advisory opinion from the ICJ in matters associated with the legal questions. This article examines whether the ICJ has implied power to conduct judicial review in matters undertaken by the Security Council where legal questions are involved. The Security Council of the United Nations has primary responsibility, under the Charter, for the maintenance of international peace and security. The International Court of Justice sometimes called the World Court, is the principal judicial organ of the United Nations. The ICJ's primary functions are to settle international legal disputes submitted by states and give advisory opinions on legal issues referred to it by the UN. The relation between the Security Council and the International Court of Justice is established by the Charter of the United Nations as well as by the Court's Statute. ICJ is the principal judicial organ of the United Nations and is a body to which States may refer their legal disputes under Article 36 of the UN Charter, the Security Council can make a recommendation for action to be taken.

**Key words; United Nations, International Court of Justice, Security Council, United Nations Charter.**

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<sup>1</sup> Daw Nan Thin Thiri Myat Thu, Assistant Lecturer, Department of Law

## 1. INTRODUCTION

In 1899, the first International Peace Conference was held in The Hague to elaborate a multilateral instrument for settling crises peacefully, preventing wars and codifying rules of warfare. It adopted the Convention for the Pacific Settlement of International Disputes and established the Permanent Court of Arbitration, which began its work in 1902. Subsequently, in 1919, the League of Nations, conceived during the First World War, was established under the Treaty of Versailles to promote international cooperation and to achieve peace and security. While the League of Nations ceased activities after failing to prevent the Second World War, the need for peaceful resolution of conflicts through international collaboration and dialogue continues to grow. The term United Nations was coined by United States President Franklin D. Roosevelt during the Second World War. The United Nations was established after World War II, succeeding the ineffective League of Nations. The United Nations is an international organization founded on 24 October 1945. Headquartered in New York, it is currently made up of 193 Member States. The mission and work of the United Nations are guided by the purposes and principles contained in its founding Charter. The main organs of the United Nations are the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice and the UN Secretariat. The United Nations family, however, is much larger, encompassing 15 specialized agencies, numerous funds and programmes, as well as other entities.

### 1.1 Objective of the Study

The objective of the study are as follows:

- ❖ To know United Nations function and maintaining worldwide peace and security.
- ❖ To know the Security Council has primary responsibility, under the United

Nations Charter, for the maintenance of international peace and security.

- ❖ To know the functions of the International Court of Justice and principal judicial organ of the United Nations.
- ❖ To know giving an advisory opinion on any legal question from the Security Council to ICJ.

### 1.2 Method of the study

This paper is mainly based on secondary data sources available in printed books, law author books, academic journals and Charter of the United Nations and other online sources.

### 1.3 Limitations

The main object of this paper is to study the functions of the United Nations Security Council and International Court of Justice. The relation between the requesting an advisory opinion on a specific legal issue between states could help resolve matters that causes an impasse and assist the relevant parties in moving forward to resolve further issues.

## 2. Main organs of the United Nations

The United Nations has six main organs. Five of them- the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council and the Secretariat, are based at UN Headquarters in New York. The sixth, the International Court of Justice is located at the Hague in the Netherlands. The six organs of the United Nations are outlined in the sections below:

### General Assembly

The General Assembly is the chief deliberative, policy making and representative organ of the UN. It is composed of representatives of all member states, each of which has one vote. Decisions on important questions require a

two third majority. Decisions on other questions take place by simple majority.

### **Security Council**

Under the Charter, the Security Council has primary responsibility for the maintenance of international peace and security. It has 15 members and each member has one vote. Under the Charter, all member States are obligated to comply with Council decisions. The Security Council takes the lead in determining the existence of a threat to the peace or act of aggression. Its call upon the parties to a dispute to settle it by peaceful means and recommends methods of adjustment or terms of settlement. In some cases, the Security Council can resort to imposing sanctions or even authorize the use of force to maintain or restore international peace and security. The Security Council has a Presidency, which rotates, and changes, every month.

### **Economic and Social Council**

The Charter of the United Nations established the Economic and Social Council as the principal organ to coordinate the economic and social and related work of the United Nations and the specialized agencies and other bodies. Building on its coordination role with the UN system, the Council is a gateway for UN partnership and participation by the rest of the world. The 54 members of the Council serve for three year terms. Seats on the Council are allocated based on geographical representation, with 14 allocated to African states, 11 to Asian states, 6 to Eastern European states, 10 to Latin America and Caribbean states and 13 to Western European and other states. Voting in the Council is by simple majority, with each member having one vote.<sup>2</sup>

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<sup>2</sup> Basic facts about the United Nations, United Nations Department of Public Information, New York, 2011, p-5,7,12.

### **Trusteeship Council**

The Trusteeship Council was originally established by the Charter to provide international supervision for 11 Trust Territories placed under the administration for seven member states, and to ensure that adequate steps were taken to prepare the Territories for self-government or independence. It carried out this work for forty-nine years. The last was Palau, formerly part of the Trust Territory of the Pacific Islands, which became a member state of the United Nations in December 1994.

### **International Court of Justice**

The International Court of Justice is the principal judicial organ of the United Nations. Its seat is at the Peace Palace in the Hague. The Court's role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations and specialized agencies. The Court is charged with settling legal disputes between States and giving advisory opinions to the United Nations and its specialized agencies. According to Article 1 of the Statute of the ICJ, The International Court of Justice established by the Charter of the United Nations as the principal judicial organ of the United Nations shall be constituted and shall function in accordance with the provisions of the present Statute. The Statute of the ICJ is divided into 5 Chapters and consists of 70 articles. The 69 Articles are grouped in 5 Chapters;

- Chapter I; Organization of Court (Article 2-33)
- Chapter II; Competence of the Court (Article 34-38)
- Chapter III; Procedure (Article 39-64)
- Chapter IV; Advisory Opinions (Article 65-68)
- Chapter V; Amendment (Article 69-70).

Under Article 38, the court is allowed to decide a case *ex aequo et bono* if the parties agree there to.

### **Secretariat**

The UN Secretariat, consisting of staff representative of all nationalities working in duty stations all over the world, carries out the day to day work of the organization. Calling upon some 41,000 staff members worldwide, the Secretariat services the other principal organ of the United Nations and administers the programmes and policies established by them. The duties carried out by the Secretariat are wide-ranging. These extend from administering peacekeeping operations, mediating international disputes and organizing humanitarian relief programmes to surveying economic and social trends, preparing studies on human rights and sustainable development and laying the groundwork for international agreements.

The United Nations System includes the United Nations and its subsidiary bodies, specialized agencies, and affiliated organizations. Some of the organizations of the United Nations system predate the founding of the United Nations in 1945. The United Nations, its subsidiary bodies, thirteen of the specialized agencies (ILO, FAO, UNESCO, WHO, ICAO, UPU, ITU, WMO, IMO, WIPO, IFAD, UNIDO, and UNWTO), and one related body (IAEA) are part of the UN common system.<sup>3</sup>

### **2.1 Purposes and Principles of the United Nations**

The purposes of the United Nations are;

- Maintain international peace and security;
- Develop friendly relations among nations based on respect for the principle

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<sup>3</sup> Basic facts about the United Nations, United Nations Department of Public Information, New York, 2017, p-3

of equal rights and self-determination of peoples;

- Cooperate in solving international economic, social, cultural and humanitarian problems in promoting respect for human rights and fundamental freedoms;
- Be a center for harmonizing the actions of nations in attaining these common ends.

The United Nations acts in accordance with the following principles;

- ❖ Its based on the sovereign equality of all its members;
- ❖ All members are to fulfil in good faith their Charter obligations;
- ❖ They are to settle their international disputes by peaceful means and without endangering international peace, security and justice;
- ❖ They are to refrain from the threat or use of force against any other state;
- ❖ They are to give the United Nations every assistance in any action it takes in accordance with the Charter;
- ❖ Nothing in the Charter is to authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.<sup>4</sup>

Originally, there were 51 members of the UN. Today, however, there are 193 member countries, which includes most of the countries around the world. Membership in the UN is generally open to any country that is peace-loving and agrees to be bound by principles in the UN Charter. U Thant was a burmese diplomat and the third Secretary-General of the United Nations from 1961 to 1971.<sup>5</sup>

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<sup>4</sup> Basic Facts about the United Nations, United Nations Department of Public Information, New York, 2017, p-5

<sup>5</sup> <https://www.un.org>, About the United Nations.

## 2.2 Functions and Power of the Security Council

Under the Charter, the functions and powers of the Security Council includes;

- Maintain international peace and security in accordance with the principles and purposes of the United Nations;
- Investigate any dispute or situation that might lead to international friction, and recommend methods of adjustment or terms of settlement;
- Call on the parties to a dispute to settle it by peaceful means;
- Formulate plans for establishing a system to regulate armaments;
- Determine the existence of a threat to the peace or act of aggression and recommend what action should be taken;
- Call on the parties concerned to comply with such provisional measures as it deems necessary or desirable to prevent an aggravation of the situation;
- Call on members of the United Nations to apply sanctions and other measures not involving the use of armed force to give effect to the Council's decisions;
- Resort to or authorize the use of force to maintain or restore international peace and security.
- Encourage the peaceful settlement of local disputes through regional arrangements and use such regional arrangements for enforcement under its authority;
- Recommend to the General Assembly the appointment of the Secretary-General and, together with the Assembly, elect the judges of the International Court of Justice (ICJ);
- Request the ICJ to give an advisory opinion on any legal question; and
- Recommend to the General Assembly the admission of new members to the United Nations.<sup>6</sup>

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<sup>6</sup> Basic Facts about the United Nations, 2017, P-7

The functions and powers of the Security Council, as provided for in Article 24, of the Charter of the United Nations.

1. In order to ensure prompt and effective action by the United Nations, its members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.
2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapter VI, VII, VIII and XII.
3. The Security Council shall submit annual and, when necessary special reports to the General Assembly for its consideration.<sup>7</sup>

## 2.3 International Court of Justice

The ICJ is the successor of the Permanent Court of International Justice (PCIJ), which was established by the League of Nations in 1920 and began its first session in 1922. After the Second World War, both the League and the PCIJ were succeeded by the United Nations and ICJ, respectively. The Statute of the ICJ draws heavily from that of its predecessor, and the latter's decisions remain valid. All members of the UN are party to the ICJ Statute. The ICJ comprises a panel of 15 judges elected by the General Assembly and Security Council for nine-year terms. The court is seated in the Peace Palace in The Hague, Netherlands, making it the only principal U.N. organ not located in New York City. Its official working languages are English and French.

The International Court of Justice (ICJ), sometimes called the World Court, is the principal judicial organ of the United

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<sup>7</sup> Charter of United Nations and Statute of the International Court of Justice, United Nations, New York, P-15.

Nations (UN). The ICJ's primary functions are to settle international legal disputes submitted by states (contentious cases) and give advisory opinions on legal issues referred to it by the UN.<sup>8</sup>

## 2.4 Establishment of the International Court of Justice

In 1942 the United States and United Kingdom jointly declared support for establishing or re-establishing an international court after the war, and in 1943, the U.K. chaired a panel of jurists from around the world, the "Inter-Allied Committee", to discuss the matter. Its 1944 report recommended that:

- The statute of any new international court should be based on that of the PCIJ;
- The new court should retain an advisory jurisdiction;
- Acceptance of the new court's jurisdiction should be voluntary;
- The court should deal only with judicial and not political matters

Several months later, a conference of the major Allied Powers China, the USSR, the U.K., and the U.S. issued a joint declaration recognizing the necessity "of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving States, and open to membership by all such States, large and small, for the maintenance of international peace and security".

In April 1946, the PCIJ was formally dissolved, and the ICJ, in its first meeting, elected as President José Gustavo Guerrero of El Salvador, who had served as the last President of the PCIJ. The Court also appointed members of its Registry, drawn largely from that of the PCIJ, and held an inaugural public sitting later that month. The

<sup>8</sup>[www.en.wikipedia.org.International Court of Justice](http://www.en.wikipedia.org.International Court of Justice).

first case was submitted in May 1947 by the United Kingdom against Albania concerning incidents in the Corfu Channel.<sup>9</sup>

## 2.5 Organisation of the International Court of Justice

The Court is to be 'composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial office or are jurists-consults of recognised competence in international law'. The Court is composed of 15 judges elected for a nine year term by the General Assembly and the Security Council. The number was originally eleven judges and four deputy judges. Subsequently the number of judges was increased to fifteen and the provision as to deputy judges was suppressed. Judges are not representatives of the States of which they happen to be nationals. Article 3, lays down that no two members of the Court may be nationals of the same state. In view of the paramount importance of the process of nomination and of election of judges generally, a list of candidates having been prepared in this way, the General Assembly and the Security Council proceed 'independently of one another' but in effect simultaneously, to elect the members of the Court, no person being considered as elected who does not obtain an absolute majority of votes both in General Assembly and in Security Council. The members of the Court are elected for nine years and are re-eligible. The judges elected at the first session, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.<sup>10</sup> The composition of the Court has also to reflect the main forms of civilization and the

<sup>9</sup> <https://www.icj-cij.org>, International Court of Justice.

<sup>10</sup> [https://www. Security Council report.org/In Hindsight: The Security Council and the International Court of Justice](https://www.Security Council report.org/In Hindsight: The Security Council and the International Court of Justice).

principal legal system of the world. The result is that every three years five judges are elected by the General Assembly and the Security Council in addition to any vacancies to be filled as the result of resignation, death or dismissal. When engaged on the business of the Court judges enjoy diplomatic privileges and immunities.<sup>11</sup>

Article 31 of the statute sets out a procedure whereby *ad hoc* judges sit on contentious cases before the court. The system allows any party to a contentious case (if it otherwise does not have one of that party's nationals sitting on the court) to select one additional person to sit as a judge on that case only. It is thus possible that as many as seventeen judges may sit on one case.<sup>12</sup>

## 2.6 Mission of the International Court of Justice

The Court has a two fold role, first to settle in accordance with international law, legal disputes submitted to it by states and second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the UN system. Contentious cases have represented 80 percent of the work of ICJ since its creation and it has delivered over a hundred judgements on disputes concerning, for example; international boundaries and territory sovereignty, violations of international humanitarian law, and diplomatic relations. The Court has also rendered nearly 30 advisory opinions.<sup>13</sup>

## 2.7 Advisory Jurisdiction of the Court

The Court is open to all states that are parties to its Statute, which includes all members of the United Nations. Only states

may be parties in contentious cases before the Court and submit disputes to it. Article 65 of the Statute lays down that the Court may give an advisory opinion on any legal question at the request of whatever body may be authorised to do so by the Charter of the United Nations or in accordance with it. These bodies are, according to Article 96 of the Charter, the General Assembly, the Security Council and other organs of the United Nations and Specialized Agencies authorised by the General Assembly to ask for Advisory Opinions. The number of advisory opinions given by the Court almost equals that given by ways of judgements.<sup>14</sup> The Court shall apply;

- (a) International Conventions, whether general or particular, establishing rules expressly recognised by the contesting States.
- (b) International Custom, as evidence of a general practice accepted as law.
- (c) The general principles of law recognised by the civilised nations.
- (d) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.<sup>15</sup>

## 2.8 The relationship between the International Court of Justice and the Security Council

The relationship between the ICJ and the [Security Council](#), and the separation of their powers, was considered by the court in 1992 in the [Pan Am case](#). The court had to consider an application from Libya for the order of provisional measures to protect its

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<sup>11</sup> International and Comparative Law Quarterly, British Institute of International and Comparative Law, Volume 46, Issue 2, April 1997, P-309.

<sup>12</sup> [www.en.m.wikipedia.org.International](http://www.en.m.wikipedia.org.International) Court of Justice.

<sup>13</sup> Basic Facts about the United Nations, 42<sup>nd</sup> Edition, 2017, P-16.

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<sup>14</sup> Oppenheim, International law, A Treatise, Disputes, War and Neutrality, Seventh Edition, Longmans, Green and Co Ltd. Printed in Great Britain, 1952.

<sup>15</sup> Charter of the United Nations and Statute of the International Court of Justice, United Nations, New York, 1945

rights, which, it alleged, were being infringed by the threat of economic sanctions by the United Kingdom and United States. The problem was that these sanctions had been authorized by the Security Council, which resulted in a potential conflict between the Chapter VII functions of the Security Council and the judicial function of the court. The court decided, by eleven votes to five, that it could not order the requested provisional measures because the rights claimed by Libya, even if legitimate under the [Montreal Convention](#), could not be *prima facie* regarded as appropriate since the action was ordered by the Security Council.<sup>16</sup>

In accordance with Article 103 of the UN Charter, obligations under the Charter took precedence over other treaty obligations. Nevertheless, the court declared the application admissible in 1998. A decision on the merits has not been given since the parties (United Kingdom, United States, and Libya) settled the case out of court in 2003.

The relationship between the International Court of Justice and the Security Council may be approached from the perspective of the United Nations Charter and the way it delimits competences between two principal UN organs and regulates the exercise of their concurrent powers. The Court, however, has a dual ambivalent role. It is not only the principal judicial organ of the United Nations under Article 92 of the Charter, it is also an autonomous adjudicative body with the function under Article 38 of its Statute, of applying international law to such disputes between states as are brought before it.

The role of the International Court of Justice attained its legal ground in 1945 by means of the Charter of United Nations, whereby it assesses its function as the principal judicial organ of the United Nations. The ICJ acts in accordance with the UN Charter and an annexed Statute of the International Court of Justice in two different fields: non-binding

advisory opinions and continuous cases with mandatory consequences for the states involved.

### **Advisory opinions**

Firstly, the ICJ is entitled to provide the General Assembly and the Security Council with an advisory opinion on any legal question. Moreover, a request for an advisory opinion might also be made by the other organ of the United Nations and specialised agencies with authorization of the General Assembly on legal questions arising from the scope of their activities. Article 93 of the Charter which declared that all Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice. Other Articles of the Charter, such as those relating to the enforcement of the Judgments of the Court and its advisory jurisdiction at the request of the organs of the United Nations, give additional expression to that association of the Court with the United Nations. The advisory jurisdiction has in fact proved to be much more fertile and more important than was originally contemplated. The number of advisory opinions given by the court almost equals that given by way of judgments. The advisory function of the court is designed primarily to assist the Security Council and the General Assembly in the discharge of their duties of conciliating and reporting upon disputes submitted to them, by affording them an authoritative legal opinion upon points of law. There are no parties when the Court is exercising its advisory jurisdiction, but the Statute instructs the Court to give notice of the request for an advisory opinion to all States entitled to appear before the Court and international organizations considered by the Court as likely to be able to furnish information on the question. They are to be informed that the Court will be prepared to receive written statements or to hear, at a public sitting to be

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<sup>16</sup> en.m.wikipedia.org, International Court of Justice.



held for the purpose, oral statements relating to the question.<sup>17</sup>

### **Contentious cases**

The jurisdiction of the International Court of Justice subsumes cases which the parties refer to it and matters especially provided for in the Charter of the United Nations or in other treaties and conventions in force. The Security Council can make a recommendation that a legal dispute should be, as a general law, referred by the parties under the Court's jurisdiction. The decisions of the ICJ are, in contentious cases, binding solely on an inter-party basis. When examining the aptitude of the ICJ as the proper body to review the legality of the SC's actions, it is worth noting the case that brought this issue into wider discussion.

Only States may apply to and appear before the International Court of Justice. International organizations, other authorities and private individuals are not entitled to institute proceedings before the Court. The Court can only deal with a dispute when the States concerned have recognized its jurisdiction. No State can therefore be a party to proceedings before the Court unless it has in some manner or other consented thereto.<sup>18</sup>

## **2.9 Jurisdiction of the International Court of Justice**

The International Court of Justice has jurisdiction in two types of cases; contentious cases between states in which the court produces binding rulings between states that agree, or have previously agreed, to submit to the ruling of the court; and advisory opinions, which provide reasoned, but non-binding, rulings on properly submitted questions of international law, usually at the request of the United Nations

General Assembly. Advisory opinions do not have to concern particular controversies between states, though they often do.<sup>19</sup>

### **2.9.1 The Lockerbie Case**

On 21 December 1988, N 739PA, a bomb exploded in the cargo hold of Pan Am Flight 103, on its way to New York's John F. Kennedy Airport, exploded over Lockerbie, a town in Southern Scotland. All 259 passengers and crew, as well as eleven Lockerbie residents also were killed as the shattered civilian carrier crashed to the ground. The investigation that followed indicated that Libya and Libya agents were almost exclusively responsible for the bombing. On November 14, 1991, the United States handed down indictments against Abdel Basset Ali Al-Megrahi and Lamien Khalifa Fhimah for their role in murder of passengers and crew of Flight 103.<sup>20</sup>

The UN Charter to which all parties to this dispute are signatories, prohibits aggression. Article 2(4) of the Charter of the United Nations states, All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purpose of the United Nations. The Security Council resolutions were responding to the Libyan aggression specify article 2(4) as the basis for international action. According to United Nations Security Council Resolution 731 and 748, in Resolution 731 requested Libya to comply with U.S., U.K and French requests concerning the bombing of Pan Am Flight 103. Under the terms of the resolution, Libya was required to renounce terrorism and to surrender the individuals involved in the bombing of Pan Am Flight 103.<sup>21</sup>

<sup>17</sup> Oppenheim, International law, A Treatise, Disputes, War and Neutrality, Seventh Edition, Longmans, Green and Co Ltd. Printed in Great Britain, 1952.

<sup>18</sup> <https://www.icj-cij.org>>contentious jurisdiction

<sup>19</sup> <https://en.m.wikipedia.org>>Jurisdiction of the International Court of Justice

<sup>20</sup> <https://en.m.wikipedia.org>>Pan Am Flight 103.

<sup>21</sup> A Preview of the Lockerbie Case, Michale P. Scharf, American Society of International Law, Volume: 5,

The Security Council adopted Resolution 748, was adopted under Chapter VII of the United Nations Charter and imposed mandatory sanctions on Libya. A combination of events had led Libya to challenge the imposition of sanctions in the ICJ. The Libyans refused to surrender the individuals and then brought the Lockerbie incident cases before the ICJ three reasons. First, Libya was concerned that to surrender Al Megrahi and Fhimah would be tantamount to admitting guilt, a proposition the Libyan government was probably unwilling to face. Second, the refusal to surrender the men and the following application to the ICJ were attempts to stall the prosecution and the sanctions. Finally, according to Libya, it could not surrender Al Megrahi and Fhimah because Libyan domestic law prohibits the extradition of nationals. ICJ Justices have expressed that examining the validity and effect of Security Council decisions relevant to a case is paramount to its judicial function, particularly because the political intervention of the Security Council in certain matters does not prevent the exercise of ICJ's judicial function. Despite its political character, the Security Council is subject under Article 24(2) of the Charter to observe certain limitations imposed by UN principles and purposes. The UN Charter authorizes the Security Council to act on behalf of all United Nations members in order to maintain international peace and security. Every United Nations member is bound by a Security Council resolution. As an organ of the United Nations, the Security Council independently determines its own jurisdiction to act in pursuit of its overarching responsibility for the maintenance of international peace and security.<sup>22</sup>

As a result of extensive three year long investigation, the U.S and the U.K presented

the case before the UN Security Council and the General Assembly. In January and March 1992, the Security Council adopted two resolutions on this matter: the first, Resolution 731, urged Libya to respond fully and effectively to the request of U.S and U.K and France. While the second, Resolution 748, imposed economic sanctions on Libya. The sanctions were extended in 1993. Libya then brought the case before the International Court of Justice seeking provisional measures to prevent the U.S or the U.K from taking any action to coerce Libya into handing over the two suspects or otherwise prejudicing the rights claimed by Libya. On 14 April 1992, the ICJ declined to order the provisional measures, thereby confirming the validity and binding force of Resolution 748. The ICJ's ruling means that under Article 103 of the including the Montreal Convention.<sup>23</sup>

### 2.9.2 Jadhav Case (India v. Pakistan)

Kulbhushan Sudhir Jadhav is an Indian national. It is alleged by the Pakistani government that he was arrested in the Pakistani province of Balochistan on charges of terrorism and spying for Indian's intelligence agency.<sup>24</sup>

On 8 May 2017, India filed an Application instituting proceedings against Pakistan in respect of a dispute concerning alleged violations of the Vienna Convention on Consular Relations of 24 April 1963 "in the matter of the detention and trial of an Indian national, Mr. Kulbhushan Sudhir Jadhav", who had been sentenced to death by a military court in Pakistan in April 2017. India claimed that Pakistan had failed to inform it, without delay, of the arrest and detention of its national. It further contended that Mr. Jadhav had not been informed of his rights under Article 36 of the Vienna Convention on Consular Relations, and that India's consular officers had been denied

<sup>22</sup> The Relationship Between the International Court of the Justice and the Security Council in the Light of the Lockerbie Case, Vera Gowlland Debbas, Cambridge University Press, The American Journal of International Law, Vol. 88, No.4, PP- 643-649

<sup>23</sup> [www.ejil.org](http://www.ejil.org)>pdf, The Lockerbie Case: The Role of the Security Council in Enforcing the Principle, European Journal of International Law.

<sup>24</sup> [En.m.wikipedia.org](http://en.m.wikipedia.org).Kulbhushan Jadhav.

access to Mr. Jadhav while he was in custody, detention and prison, and had been unable to converse and correspond with him, or arrange for his legal representation. As basis for the Court's jurisdiction, India referred in its Application to Article 36, paragraph 1, of the Statute of the Court and Article I of the Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes. On the same day, India also filed a Request for the indication of provisional measures, requesting the Court to direct Pakistan to "take all measures necessary to ensure that Mr. Kulbhushan Sudhir Jadhav is not executed" and to "ensure that no action is taken that might prejudice the rights of the Republic of India or Mr. Kulbhushan Sudhir Jadhav with respect to any decision the Court may render on the merits of the case".

By an Order dated 18 May 2017, the Court directed Pakistan to "take all measures at its disposal" to ensure that Mr. Jadhav would not be executed pending a final decision in the case, and to inform the Court of all the measures taken in implementation of that Order. It also decided that, until the Court had given its final decision, it would remain seized of the matters which formed the subject matter of the Order. Public hearings on the merits of the case were held from 18 to 21 February 2019. In its Judgment of 17 July 2019, the Court first outlined the background of the dispute, before concluding that it had jurisdiction to entertain India's claims based on alleged violations of the Vienna Convention. The Court next addressed the three objections to admissibility raised by Pakistan, which were based on India's alleged abuse of process, abuse of rights and unlawful conduct. The Court concluded that India's Application was admissible. Turning to the merits of the case, the Court examined in turn each of Pakistan's three contentions concerning the applicability of the Vienna Convention. Having found that none of the arguments raised by Pakistan could be upheld, the Court concluded that the Vienna Convention

was applicable in the case, "regardless of the allegations that Mr. Jadhav was engaged in espionage activities".

Next, the Court examined India's claim that Pakistan had acted in violation of its obligations under Article 36 of the Vienna Convention, by failing to inform India, without delay, of Mr. Jadhav's detention. The Court observed that Pakistan did not contest India's assertion that Mr. Jadhav had not been informed of his rights under Article 36, paragraph 1 (b), of the Convention, and thus concluded that Pakistan had breached its obligation under that provision. As regards Pakistan's alleged breach of its obligation to inform India, without delay, of the arrest and detention of Mr. Jadhav, as provided for in Article 36, paragraph 1 (b), of the Vienna Convention, the Court found that since Pakistan had failed to inform Mr. Jadhav of his rights, it was under an obligation to inform India's consular post of his arrest and detention, that obligation also being implied by the rights of consular officers, under Article 36, paragraph 1 (c) of the Convention, to visit the national, "to converse and correspond with him and to arrange for his legal representation". The Court then pointed out that Pakistan had notified India of Mr. Jadhav's arrest and detention on 25 March 2016, some three weeks after his arrest; taking account of the particular circumstances of the case, the Court considered that Pakistan had thus breached its obligation to inform the consular post "without delay", as required by Article 36, paragraph 1 (b), of the Vienna Convention. The Court then turned to India's third claim concerning Pakistan's alleged failure to allow Indian consular officers to communicate with Mr. Jadhav, recalling in this regard that "Article 36, paragraph 1, creates individual rights, which, by virtue of Article I of the Optional Protocol, may be invoked in this Court by the national State of the detained person". It being undisputed that Pakistan had not granted any Indian consular officer access to Mr. Jadhav, the Court was of the view that India's alleged

failure to co-operate in the investigation process in Pakistan did not relieve Pakistan of its obligation to grant consular access, and did not justify Pakistan's denial of access to Mr. Jadhav by consular officers of India. Further, Mr. Jadhav's choice to be represented by a defending officer qualified for legal representation did not dispense with the consular officers' right to arrange for his legal representation. The Court therefore concluded that Pakistan had breached the obligations incumbent on it under Article 36, paragraph 1 (a) and (c), of the Vienna Convention, by denying India's consular officers access to Mr. Jadhav, contrary to their right to visit him, converse and correspond with him, and arrange for his legal representation.

With regard to India's contention that it was entitled to *restitutio in integrum*, its request for the Court to annul the decision of the military court and restrain Pakistan from giving effect to the sentence or conviction, and its further request for the Court to direct Pakistan to take steps to annul the decision of the military court, release Mr. Jadhav and facilitate his safe passage to India, the Court found that the submissions made by India could not be upheld. The Court also found, however, that Pakistan was under an obligation to provide, by means of its own choosing, effective review and reconsideration of the conviction and sentence of Mr. Jadhav, so as to ensure that full weight was given to the effect of the violation of the rights set forth in Article 36 of the Vienna Convention.<sup>25</sup>

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<sup>25</sup> [https://www.icj-cij.org>Jadhav\(India v. Pakistan\)](https://www.icj-cij.org/Jadhav(India%20v.%20Pakistan))

## **Conclusion**

Through the United Nation's Charter, the UN Security Council represents the most powerful executive institutional body in the field of collective security. The advisory opinion and continuous cases give the ICJ room to provide for control over the Security Council's actions, even though reviewing capacity is not explicitly expressed in the substantive constituting documents. The Charter of the United Nations endows the Security Council with the primary responsibility for the maintenance of international peace and security. Article 94 establishes the duty of all UN members to comply with decisions of the court involving them. If parties do not comply the issue may be taken before the Security Council for enforcement action. The Charter grants the General Assembly or the Security Council a power to request the Court to issue an advisory opinion on any legal question. The ICJ is mandated to settle contentious legal disputes submitted by states against other states in accordance with international law. The Court also gives advisory opinions to the Council, the General Assembly and other authorised bodies on legal questions referred to it by these entities. Requesting an advisory opinion on a specific legal issue between states could help resolve matters that cause an impasse and assist the relevant parties in moving forward to resolve further issues.

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