

## Recent case-law of the ICJ and its significance for International Law

### OC - (ILA-14183) - ICJ'S INFLUENCE IN THE DEVELOPMENT OF INTERNATIONAL LAW (DECISIONS FROM JAN 2018 TO JUNE 2019)

Gayathiri Ekambaram (India)<sup>1</sup>

1 - LEIDEN LAW SCHOOL

#### Gayathiri Ekambaram

EDUCATION 2018-2019 LEIDEN LAW SCHOOL, Netherlands LLM (ADV.), PJD SPECIALIZATION - IDS TRACK Thesis: Role of ICJ in advancing international legal order in the era of internationalism 2006-2011 CHANAKYA NATIONAL LAW UNIVERSITY, India B.A. L.L.B (HONS.), CGPA 5.69/7 EXPERIENCES 2018-2019 THE INTERNATIONAL COURT OF JUSTICE, Judicial Fellow 2015-2017 ATTORNEY GENERAL OF INDIA & MEMBER OF PARLIAMENT, Junior Counsel 2014-2017 SOLICITOR GENERAL OF INDIA, Assisting Counsel 2011-2014 CHIEF JUSTICE OF INDIA, Judicial Law Clerk-cum-Research Assistant 2011 PASSED THE BAR EXAMINATION 2010 INDIAN MINISTRY OF EXTERNAL AFFAIRS, Research Intern PUBLICATIONS "Uniform Definition of "Child", International Journal Lexigentia, Vol 2: 154-174 (2016) "Polluter Pays Principle: Emerging as a 'Luxury Tax' for Pollution", Madras Law Journal, (2016) 7 MLJ 5 UNDER CONSIDERATION FOR PUBLICATION "Imbalance in the Investment Arbitration: Is it endangering the system? Book review of "Is International Law International" by Anthea Roberts

#### Abstract

The Court's docket in 2018-19 is the fullest in this decade. From January 2018 to June 2019, the ICJ gave one Advisory Opinion, six Judgments and made four notable Orders. Of the six judgments, one was a judgment fixing the amount of compensation, two concerned preliminary objections and three on merits; and out of four Orders, two concerned discontinuance of proceedings and two regarding provisional measures request. Further, as on date two cases i.e. India v. Pakistan (*Merits*) and Ukraine v. Russian Federation (*Preliminary Objections*) respectively, are under deliberation and one request for provisional measures by respondent in Qatar v. UAE is due to be pronounced on 14 June 2019. Two new cases are instituted, one by Palestine against the USA regarding the relocation of the US Embassy to Jerusalem and another by way of a special agreement between Guatemala and Belize concerning legal claims of Guatemala against Belize to land and insular territories and to any maritime areas pertaining to these territories.

In this paper, I will examine and analysis the aforesaid cases from three viewpoints namely, Jurisdictional, Procedural, and Subject matter; and accordingly, assess how the Court independently contributed to each of this domain and thereby developed the international law. **First** under the head jurisdictional, the paper will expound on the issues confronted and the methodology adopted by the Court to interpret the compromissory clause of the respective treaties and the reservations in Declarations submitted by States under the Statute of Court; how the Court utilized its advisory jurisdiction to curb the continuing breach of an international obligation; and elucidate the constraint inbuilt in Court's compensation and preliminary objection jurisdiction and how the Court skilfully conquered it. **Second**, in the procedural chapter, the paper will speak on Court's jurisdiction to safeguard the procedural rights of parties; the right of respondent to seek provisional measures vis-à-vis non-compliance of a non-aggravation order; and on the concerns raised in fulfilment of preconditions in the compromissory clause to seize Court's jurisdiction. **Lastly**, the paper will discuss the substantial contribution of the Court to various streams of international law, like, the 'Maritime Delimitation', the process of 'Decolonisation and Self-determination', invoking 'State Responsibility', remedy of 'Review and Reconsideration' for breach of consular access, and the application and interpretation of 'General Principles of Law' like abuse of process, abuse of rights, unclean hands, and exhaustion of local remedies by the Court.

My endeavour in this paper is to demonstrate the subtle but an imperative role that the World Court plays in developing the corpus iuris gentium through its adjudication process and how it amplifies the coherence of international law as a whole. Also, how the Court provides white-glove responds to inbound challenges in the international community and legal environment through its tool of interpretation without the charge of donning the hat of activism.

**Palavras-chave : Precedents, Contribution, international law**