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**SIGNIFICANCE OF INTERNATIONAL ADJUDICATIVE BODIES IN
LIGHT OF TRANSNATIONAL CRIMES AND GLOBAL POLITICS:
ANALYSIS**- Isha Sharma¹**ABSTRACT**

The recent development of Public International Law and increase in number of international conflicts has led to the enhanced role of international adjudicative bodies and they have gained important stance in modelling contemporary world politics and vice versa. These bodies have been keenly framed to deliver fair decisions but it has been found that their verdicts are prone to be influenced by variant factors which hinder the effective working of these bodies and leave them merely as sham structures.

Through this piece of research there has been made a contrasting effort to present the supposed and superficial traits of the international adjudicative bodies by giving a glimpse of their true and contradictory realities.

Keywords- International adjudicative bodies, International Organizations, Verdicts, Transnational Law, Treaties, Conventions, Political Constraints.

INTRODUCTION

We are aware of the fact that most of the nations across the globe have gained status of sovereignty and thus are free from external control or interference. We also know that there prevails a condition of anarchy at international level since no single body or state is in absolute authority in today's world that subsists features of multipolarity.

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This stimulates the fascination to understand that how could the behaviors of different nations be controlled when there lies complete anarchy at international level. Here we tend to heed the significance and obliged role of Public International Law(PIL) and respective adjudicative bodies to actually bring state of peace in international arena and support cooperation among states.

The rise of international conflicts among nations with contradictory interests especially in terms of geopolitics is inevitable in contemporary world where there have been explicit efforts to establish hegemony by nations known to carry out activities in pursuance of the same. For resolution of conflicts there has been rise in demand of alternate international tribunals and other bodies in addition to the existing bodies for fair adjudication. The working of these bodies though may seem fair and perfect from the exterior but it cannot be denied that they have never gained the status and authority that is possessed by domestic judiciaries of countries like India. They definitely possess lacunas and need firm reforms that are only possible when all the nations reach on a consensus with the desire of establishing a new and rule based international order.

DIFFERENT INTERNATIONAL ADJUDICATIVE BODIES

TYPE 1: Judicial, i.e., permanent in nature

TYPE 2: non judicial, i.e., temporary in nature , the ones that are constituted after the dispute arises with aim of resolving one particular issue of dispute.

1. International Court of Justice (ICJ) established as an organ of United Nations after signing of the UN Charter also called its “principle judicial organ”
2. International Criminal Court (ICC) established by ratification of Rome Statute, also called the “court of last resort”
3. European Court of Human Rights (ECHR)
4. International Tribunal for Law of Sea (ITLOS)
5. World Trade Organization Dispute Settlement Body (WTO DSB)
6. Administrative Tribunal of International Monetary Fund
7. International Centre for Settlement of Investment Disputes (ICSID)
8. Permanent Court of Arbitration (PCA)
9. Other Arbitral bodies and ad hoc bodies
10. International Claims and Compensation Bodies for example Iran-US Claims Tribunal created in 1981,

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11. International criminal tribunal for former Yugoslavia (ICTY) created by United Nations security council(UNSC) in 1993

12. International Criminal Tribunal for Rwanda created in 1994².

STAND OF ICJ ON RECENT CONTROVERSIAL ISSUES:

Russia – Ukraine Conflict:

The ICJ has a firm stance in this conflict that drew attention of the world and condemned the Russian Federation's acts of violence in Ukraine's territory. It ordered Russia to suspend its military operations commenced by it on 24 February 2022 in Ukraine. On Ukraine's plea to address the violation of Geneva Convention by Russia, the court gave the mentioned directions.³

Israel – Palestine Conflict:

The UN beckoned for ICJ's advisory opinion via a resolution in context of the Israel's constant violent nudges in Palestinian territory especially the bombings in 2022. ICJ has ruled that "Israeli settlements in occupied Palestinian territory have been established in breach of international law".⁴

War crimes and crimes against humanity in Afghanistan:

The prosecutor on 20 November 2022 requested from the judges of ICC to authorize investigations into war crimes taking place in Afghanistan since May1, 2003. The investigation was apparently targeted against the Taliban, Afghan government and the deployed US military and Central Intelligence Agency (CIA). But the authority to investigate hasn't been granted yet.

Geopolitical tensions in South China sea:

The court said that China's maritime activities in the South China sea haven't been related to sovereignty.

Kulbhushan Jadhav Case:

India approached ICJ on 8 April 2017 when Pakistan's military court gave a death penalty to an Indian Naval officer Kulbhushan Jadhav on allegations of espionage and terrorism. India

² ICTR created by resolution 955 of UN security council

³ ICJ preliminary decision in Ukraine v Russia (2022)

[https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA\(2022\)729350#:~:text=On%2016%20March%202022%2C%20after,meanwhile%2C%20rejected%20the%20Court's%20jurisdiction](https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2022)729350#:~:text=On%2016%20March%202022%2C%20after,meanwhile%2C%20rejected%20the%20Court's%20jurisdiction)

⁴Commission of enquiry welcomes General Assembly resolution requesting an ICJ Advisory Opinion relating to the Israeli occupation of Palestinian territory.

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contended that Pakistan violated Article 36 of Vienna convention.⁵ICJ acknowledged India's contentions and laid obligation on military court of Pakistan to review its decision.⁶

Various other judgments by the court have punished the convicts of war crimes or perpetrators of terrorist activities. Cases such as **Al Werfalli case, Abd Al Rehman case, Al Bashir case, Al Hassan case** are in list⁷. It has been observed that most of these convicts hold nationality of under developed nations like Sudan, Libya, Kenya.

CERTAIN IRANIAN ASSETS (ISLAMIC REPUBLIC OF IRAN v. UNITED STATES OF AMERICA)

CASE BRIEFING:-

Background : The case was instituted on 14 June 2016 by Islamic Republic of Iran against United States of America, with allegations imposed on the respondent party, USA that it violated the "Treaty of Amity" which was signed by the two nations in 1955 and covers ambit of 'economic relations and consular rights'. The court (ICJ) in its verdict delivered on 30 March 2023 has review the decision delivered by it in 2019.⁸

Consideration of facts: The court has observed that in 1984, USA, designated Iran as a state "sponsor of terrorism" and further in 1996 amended its Foreign Sovereign Immunities Act thereby exposing Iran to the number of prosecutions in the US courts. Some other executive and legislative measures by USA as Iran claims are in contravention to the treaty of amity.⁹

USA president blocked Iran's assets in 2012 including that of the Bank Markazi (central bank of Iran).

Objections regarding Jurisdiction and admissibility:

The first objection on part of USA was regarding court's jurisdiction **rationemateriae** and dealt the concern that whether the Bank Markazi is a company within the meaning of treaty of amity. To this the court answered in negative and objection of USA was upheld.¹⁰

⁵Vienna convention on Consular Realations,1963. Article 36: communication and contact with nationals of the sending state

⁶Jadhav(India v. Pakistan),Judgement, I.C.J Reports 2019, p.418

⁷International Criminal Court Cases.<https://www.icc-cpi.int/cases>

⁸<https://www.icj-cij.org/node/202629>

⁹'Treaty of Amity' <https://www.state.gov/wp-content/uploads/2019/05/Treaty-of-Amity-Economic-Relations-and-Consular-Rights-between-the-United-States-of-America-and-Iran-Aug.-15-1955.pdf>

¹⁰rationemetre is subject matter jurisdiction of the Centre, under article 25(1) of the ICSID is defined as "any legal dispute arising directly out of an investment

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The second objection, regarding admissibility of Iran's claims on the basis of failure to exhaust local remedies was not upheld by court with an explanation that there were no reasonable possibilities to obtain redress on part of Iran.

Alleged violations of "Treaty of Amity": Court has examined all the articles of the of the treaty cautiously and reached to a conclusion that USA has violated article III of the treaty, but Iran has not successfully been able to establish that USA has violated any of its obligations under Article IV.¹¹

BASIC ELEMENTS OF THEIR WORKING THAT GIVE THEM FAIR AND BIASED CHARACTER SIMULTANEOUSLY:

Principles to be followed while making decisions : Article 38 of the ICJ statute book states that courts shall decide matters according to the international law and shall apply international conventions (general or particular), international customs, general principles of law recognized by civilized nations.

Bench composition: composition of bench is fair as in ICJ 15 judges are selected from different parts of the world, representing different geographies and no more than one judge representing one nationality could be appointed, giving it a fair character. Article 31 of the ICJ statute book states that the judges of nationality of each party state shall hold right to constitute the bench as they can provide view of familiarity with needs of states:

It has also been found that the nationality of judges often obstructs them from giving unbiased approach while dealing with matters concerning their home states.¹²

Enforcement of decision: Article 59 of ICJ statute book says the decisions delivered by the court are binding on the parties only and no other state. In case of non-compliance by the parties, the matter is referred to the UN Security Council for specific enforcement of the decision. Moreover, the states also evade the binding international dispute settlements by withholding consent to jurisdiction which further dilutes the relevance of bodies.¹³

Influence of UN Security Council on ICJ: Article 94 of the UN Charter establishes a duty on UN members to comply with decisions of the court and in failure to do so the matter is referred to UN Security Council for enforcement.¹⁴ This shows the flaccid authority of

¹¹ ibid

¹² ICJ statute book https://legal.un.org/avl/pdf/ha/sicj/icj_statute_e.pdf

¹³ ibid

¹⁴ UN charter signed on 26 June 1945 <https://www.un.org/en/about-us/un-charter>

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decisions of ICJ. Five permanent members of UNSC namely UK, USA, China, Russia, France hold veto power and they veto the decision if it is against the interest of their state, rendering the judgments of court as ineffective. Clearly, the true separation of power does not exist.

CRITICISM OF ICC BY SOME NATIONS:

ICC is a stand-alone body, meaning that it is not an organ of any international organization. It came into existence after a set of countries ratified Rome Statute on 17 July, 1998¹⁵.

Major countries like USA, India, Russia, China have refrained their participation to ICC and they contend that the body's existence is not needful and it serves no desirable purpose as the UNSC itself has the power to constitute criminal tribunals when needed. Moreover, the Rome statute states that it shall be a permanent institution shall have power to exercise its jurisdiction over persons and not states for most serious crimes of international concern. It also gives the court the power to be complimentary to national criminal jurisdiction. It is called the "court of last resort".

In this way the court indirectly intervenes into the judicial structures of the sovereign countries and prosecutes their nationals for the crimes for which their state does not try them either willingly or unconsciously. There has been also an objection that Rome Statute imposes obligations on the non-state parties without their consent.¹⁶

TRANSNATIONAL CRIMES

UN defines transnational crimes as "offences whose inception, perpetration, direct and indirect effects involve more than one country"

They are different from international crimes which basically deal with *genocide, war crimes and crimes against humanity*.

The newly emerging transnational crimes that have been identified by the Conference of Parties to the United Nations Convention on Transnational Organized Crime, 2018 include cybercrime, fraudulent bankruptcy, money laundering, theft of intellectual property, counterfeiting, corruption, bribing of public officials, terrorism, environmental crimes aircraft

¹⁵ Rome statute <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

¹⁶Steven W. Becker, "The Objection of larger nations to international criminal court"
(DANS REVENU INTERNSTIONALE DE DRIOT PENAL 2010/1-2 (Vol.81))

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and land hijacking, human trafficking, drug trafficking, migrant smuggling, illicit trade in weapons and armaments¹⁷.

Globalization acting as a fuel to commission of transnational crimes: the easy access to cheap, faster and affordable technology as well as the deregulated financial markets and open international borders have made the illicit flow of money and people easier for the abettors.

Transnational law: Unlike Public International law which principally revolve around states, the transnational law has a wider scope and covers states, non-state actors, international organizations, multinational companies, other natural and legal persons that have influence across multiple nations. Transnational criminal law covers crimes of international concern that take place in treaty violations.

There hasn't been paid much attention to the treaty violations lately since the core focus has been grabbed by the offences highlighted by Rome Statute. But there has been felt a need to analyze the system established by crime control treaties.

Examples of treaties addressing transnational crimes include UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, UN Convention against Transnational Organized Crime(UNTOC) of 2000,etc.

POLITICAL CONSTRAINTS ON INTERNATIONAL COURTS

Political constraints hold core importance to understand international law and politics on the same table. There has been a debate among scholars that whether legal or political considerations ultimately dominate and it has been concluded that distinction lay with matters of state interest. There is an inevitable influence of global politics on international adjudicative bodies and it has been time and gain said that the politically and economically powerful states can potentially manipulate the decisions and working of such bodies Since the element of sovereignty makes states immune to binding nature of enforceability of decisions of adjudicative bodies, politics has somewhat overwhelmed law in international sphere. The post cold war era witnessed the boom of international courts and also their exposure to political manipulation.¹⁸

The limited jurisdiction of courts as they only entertain matters specifically brought by states and can't take suo motu action is another constraint.

¹⁷<https://www.unodc.org/toc/en/crimes/organized-crime.html>

¹⁸. Tom Ginsburg, "Political constraints on international courts"
(University of Chicago Public Law & Legal Theory Working Paper No. 453, 2013)

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Moreover, States have been keen in declining the orders that are against their interests. The state that is unhappy with the decision of court is free to exit court's jurisdiction or not comply with the decision or completely ignore it, thereby abandoning the regime. For instances, USA withdrew from Operational Protocol of Vienna Convention after Avena decision in 2004. The Caribbean states' exit from the jurisdiction of the Privy Council in London in response to decision implementing ECtHR prohibitions against the death penalty, Israel's ignorance to court's decisions and rejecting it on an argument that they are politically motivated. There are many more instances to support the statement.

With the passage of time when the need to upgrade structures of legislature has been felt so as to enhance its efficiency, the objective could be achieved by making suitable amendments in existing law. The process of amendments is facilitated by domestic law but the same is difficult to be carried out at international level. The amendment of treaties can only take place when all the member states arrive at a consensus which seldom happens¹⁹.

REVIEWS OF INTERNATIONAL PUBLIC OFFICIALS AND STATE DELEGATES IN REGARD TO THE ROLE OF INTERNATIONAL COURTS AND TRIBUNALS :

It was openly emphasized by UN Secretary General Antonio Guterres in the meeting held on 12 January 2023, that "from the smallest village to the global stage, the rule of law is all that stands between peace and stability and a brutal struggle for power and resources".

He stressed that "we are at a grave risk of lawlessness" with special reference to the flouting of international law in Russia -Ukraine conflict, Israel-Palestine issue, crimes against humanity in Afghanistan and instability in Democratic People's Republic of Korea , Myanmar and Haiti.

He addressed the dire need to promote the rule of law in international arena, seeking support from member states and the council.

John E. Donoghue , the president of court , said that that engagement in international dispute settlements demands participation by states in proceedings brought against them in addition to the acceptance of jurisdiction.

¹⁹Clifford J. Carruba and Matthew Gabel, "International courts: a theoretical assessment"
(ANNUAL REVIEW OF POLITICAL SCIENCE (vol.20:55-73))

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Dapo Akande, professor of public international law at University of Oxford, also highlighted the importance of state's consent in successful working of international tribunals. He stressed on the contention that increased acceptance of court's jurisdiction would contribute to maintenance of peace and advancement of rule of law.

David Rutley, the delegate of United Kingdom noted that even after strong commitments, states have been seen as being indifferent to rules of international law, pointing out at the Russia's illegal and unethical invasion in Ukraine, he urged the need to reiterate support to the rule of law.

China's Representative questioned the phrase "rule-based order" and said that follow up of such approach has plunged the world into chaos and contended that all countries should be involved in rule-making to counter dominance of a few.

India's delegate opined that rule based international order respects sovereignty, territorial integrity, transparency and peaceful resolution of conflicts. She also stood on the ever long demand of reforming the security council rigid membership structure so as to meet the actual purpose of the body.

Egypt's delegate gave a strong contention and voiced concern over continuous efforts by some countries to include concepts that do not enjoy consensus while imposing them on other countries. He stressed that every country is unique in itself and has different approach while dealing with crimes. He said that such recurring efforts to bring forceful uniformity will jeopardize the rule of law at international level.²⁰

SUGGESTIONS:

The research insinuates to the dire need to upgrade the international adjudicative bodies and reform them in a way that they are able to achieve the purpose for which they were once constituted. The adherence to rules of Public International Law is needful for the peaceful co-existence of nations across the globe. All people, institutions, entities and even the states are accountable before law. Rule of law is the first line of defense against atrocity crimes, creates trust in institutions and supports international cooperation and multilateralism. The states have to be more compliant to international rulings as state's strategic interests are best served when it supports international adjudication.

²⁰.United Nation General Assembly meeting held on 12 January 2023, meetings coverage and press releases.
<https://press.un.org/en/2023/sc15171.doc.htm>

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To ensure the compliance on part of states some judicial techniques need to be adopted. Quality of decisions definitely is surely important in this regard. The courts need to give decisions that receive compliance from set of audiences. It has to somehow ensure insulation from attack on decisions by bringing strong and powerful states on its side. Courts can also insulate decisions from attack by pleasing the particular interest groups, media houses, or specific sections of public.

CONCLUSION

We can undeniably say that the international adjudicative bodies play a significant role in bringing the principles of international law into effect and seek to bring peace and stability in international order by protecting basic human and political rights of people. But they haven't been as effective with their rulings as they are supposed to be and thus need a stronger and more independent stance, free from political constraints so as to be able control and counter hegemonic forces and preserve the interests of all nations in international arena and lead to the emergence of a better world order.

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